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4/17/00

John R. Carfley, Esq.	KAY CHURNER, Individually and as Executrix of the Estate of JOHN DIMMICK	MARCH 15, 2000, COMPLAINT IN CIVIL ACTION, filed by John R. Carfley, Esq., Attorney for the Plaintiff Four Certified Copies to Sheriff Four Certified Copies to Attorney	1
		MAR. 20, 2000, PETITION FOR PRELIMINARY INJUNCTION, filed by s/JOHN R. CARFLEY, ESQ.	2
		MAR. 22, 2000, RULE TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE, UPON DEFENDANTS, RETURNABLE APRIL 05, 2000: BY THE COURT: s/JOHN K. REILLY, JR., PRESIDENT JUDGE SIX (6) CC ATTY CARFLEY	3
	00-328-CD	MAR. 24, 2000, CERTIFICATE OF SERVICE, PETITION FOR PRELIMINARY INJUNCTION UPON DEFENDANTS, filed by s/JOHN R. CARFLEY, ESQ. ONE (1) CERT TO ATTY	4
		APR. 04, 2000, ORDER, RE: RULE issued upon Defendants, RETURNABLE the 17th day 2000: BY THE COURT: s/JOHN K. REILLY, JR., P.J. FIVE (5) CC ATTY CARFLEY	5
		APR. 05, 2000, AFFIDAVIT IN SUPPORT OF PLAINTIFF'S PETITION FOR PRELIMINARY INJUNCTION, filed s/KAY-CHURNER FIVE (5)-CERT TO ATTY	6
	CLIFFORD COX, an incompetent, by John R. Ryan, Esquire, his LINDA ESTRADA, individually Guardian ad litem, LINDA ESTRADA and as next friend (ANF) of ind. and as next friend (ANX) CLIFFORD COX, and of Clifford Cox, and SOUTHWEST GUARANTY TRUST CO., N.A.	APR. 07, 2000, CERT OF SERVICE, ORDER OF APR. 4, 2000, and PLAINTIFF'S AFFIDAVIT UPON LINDA ESTRADA AT HER P.O. BOX ADDRESS, s/JOHN R. CARFLEY, ESQ. ONE (1) CC ATT CARFLEY	7
		APR. 07, 2000, CERT. of SERVICE, (AS ABOVE BUT TO STREET ADDRESS) s/JOHN R. CARFLEY, ESQ. ONE (1) CERT TO ATTY CARFLEY	8
Mark S. Weaver		APR. 07, 2000, CERT. OF SERVICE, (AS ABOVE BUT TO ATTY WHITAKER) s/JOHN R. CARFLEY, ESQ. ONE (1) CC ATTY CARFLEY	9
		APR. 07, 2000, CERT. OF SERVICE (AS ABOVE BUT TO CLIFFORD COX) S/JOHN R. CARFLEY, ESQ. ONE (1) CC-ATTY CARFLEY	10
		APR. 12, 2000, CERTIFICATE OF SERVICE, IMPORTANT NOTICE ON CLIFFORD COX, filed by s/JOHN R. CARFLEY, ESQ. ONE (1) CERT TO ATTY	11
	Pro BY ATTY 80.00 Shff Hawkins By Atty 93.07	APR. 12, 2000, CONSTABLE'S RETURN, filed. NO CC	12
	Pro By Atty 20.00	APR. 14, 2000, CERTIFICATE OF SERVICE, IMPORTANT NOTICE ON SOUTHWEST GUARANTY TRUST CO., N.A., s/JOHN R. CARFLEY, ESQ. ONE (1) CC TO ATTY	13
	Pro By Atty 20.00	APR. 13, 2000, PRELIMINARY OBJECTION OF DEFENDANT SOUTHWEST GUARANTY COURT TRUST TO PLAINTIFF'S COMPLAINT, filed by s/MARK S/ WEAVER, ESQ. ONE (1) CC ATTY WEAVER	14
	Pro By Atty 20.00	APR. 14, 2000, AFFIDAVIT IN SUPPORT OF DEFENDANT SOUTHWEST GUARANTY COURT TRUST PRELIMINARY OBJECTION TO PLAINTIFF'S COMPLAINT, filed by s/MARK S. WEAVER, ESQ. THREE (3) CC ATTY WEAVER	15
		APR. 14, 2000, SHERIFF RETURN, COMPLAINT UPON CLIFFORD COX, COMPLAINT ON LINDA ESTRADA RETURNED BY USPS "UNCLAIMED", -80-ANSWERS, -CHESTER-A HAWKINS, SHERIFF by s/Marilyn Hamm	16
		APR. 17, 2000, PLAINTIFF'S PRELIMINARY OBJECTIONS TO THE DEFENDANT, SOUTHWEST GUARANTY TRUST CO., N.A.'S PRELIMINARY OBJECTIONS, filed by s/JOHN R. CARFLEY, ESQ. THREE (3) CERT TO ATTY	17
		APRIL 18, 2000, CERTIFICATE OF SERVICE, DEFENDANT'S SUPPORTING AFFIDAVIT, upon JOHN R. CARFLEY, filed by s/MARK S. WEAVER, ESQUIRE TWO (2) CC ATTORNEY WEAVER	18
		APRIL 18, 2000, ORDER, filed. AND NOW, this 18th day of April, 2000, RE: Petition for Preliminary Injunctive Relief BY THE COURT: /s/John K. Reilly, Jr., P.J. (SEE ORIGINAL FILING) CERT COPIES TO CARFLEY AND WEAVER	19
		APRIL 19, 2000, PRAECIPE FOR ENTRY OF DEFAULT OF JUDGMENT, filed by Atty. Carfley One (1) Cert. to Atty. JUDGMENT shall be entered on liability only as provided by the Rules of Civil Procedure; Damages herein shall be assessed at time of trial on Clifford Cox. Notice mailed to Clifford Cox CERTIFICATE OF SERVICE	20
		APRIL 19, 2000, PETITION FOR APPOINTMENT OF GUARDIAN, filed by Atty. Carfley Nine (9) Cert. to Atty.	21
		APR. 20, 2000, RULE TO SHOW CAUSE, RE: APPOINTMENT OF GUARDIAN, RETURNABLE MAY 4, 2000: BY THE COURT: s/JOHN K. REILLY, JR., PRESIDENT JUDGE NINE (9)-CERT TO ATTY	22
		APR. 20, 2000, ORDER DIRECTING NOTICE TO INTERESTED PERSONS IN THE MATTER OF CLIFFORD COX, AN ALLEGED INCAPACITATED PERSON BY THE COURT, S/JOHN K. REILLY, JR., PRESIDENT JUDGE NINE (9) CERT TO ATTY	23
		APRIL 24, 2000, AFFIDAVIT OF SERVICE OF PETITION/NOTICE TO INTERESTED PERSONS, filed by /s/John R. Carfley /s/David Carfley ONE (1) CC ATTY	24
		APR. 25, 2000, CERTIFICATE OF SERVICE, IMPORTANT NOTICE UPON LINDA ESTRADA, filed by s/JOHN R. CARFLEY, ESQ. ONE (1) CC ATTY CARFLEY	25
		MAY 04, 2000, ORDER DETERMINING DEFENDANT'S MENTAL CAPACITY AND APPOINTING GUARDIAN AD LITEM ON HIS BEHALF BY THE COURT: s/JOHN K. REILLY, JR., PRESIDENT JUDGE SIX (6) CC ATTY CARFLEY	26
		MAY 09, 2000, PRAECIPE FOR ENTRY OF DEFAULT OF JUDGMENT, filed. JUDGMENT shall be entered on liability only as provided by the Rules of Civil Procedure; Damages herein shall be assessed at time of trial. s/JOHN R. CARFLEY, ESQ. ONE (1) CERT TO ATTY NOTICE TO DEFENDANT	27
		MAY 15, 2000, AFFIDAVIT IN SUPPORT OF DEFENDANT SOUTHWEST GUARANTY TRUST CO., N.A.'S BRIEF, filed by s/MARK S. WEAVER, ESQ. THREE (3) CC ATTY WEAVER	28
		MAY 15, 2000, AFFIDAVIT IN SUPPORT OF DEFENDANT SOUTHWEST GUARANTY TRUST CO.'S BRIEF, filed by s/S. BRADY WHITAKER, ESQ. THREE (3) CC ATTY WEAVER	29

MAY 16, 2000, CERTIFICATE OF SERVICE, BRIEF IN SUPPORT OF PRELIMINARY OBJECTION TO PLAINTIFF'S COMPLAINT
FILED BY DEFENDANT SOUTHWEST GUARANTY TRUST CO., N.A./AFFIDAVIT IN SUPPORT OF DEFENDANT'S BRIEF, UPON
JOHN R. CARFLEY, ESQ. and S. BRADY WHITAKER, ESQ.: filed by s/MARK S. WEAVER, ESQ. NO CC

AUG. 04, 2000, PETITION FOR TRANSFER OF TRUST ASSETS FILED ON BEHALF OF DEFENDANT, CLIFFORD COX, filed
by s/JOHN R. RYAN, ESQ.

AUG. 08, 2000, RULE, ON SOUTHWEST GUARANTY TRUST CO., N.A. to APPEAR and SHOW CAUSE, RETURNABLE the 6th day of
October, 2000. BY THE COURT, s/JOHN K. REITLY, JR., PRESIDENT JUDGE

AUG. 22, 2000, PRAECIPE FOR EXEMPLIFIED CERTIFIED DOCUMENTS: s/JOHN R. CARFLEY, ESQ.
CERT. & EXEMP. OF REQUESTS TO TX

AUG. 25, 2000, CERTIFIED MAIL RECEIPT, filed.

AUG. 25, 2000, AFFIDAVIT, filed by s/JOHN R. CARFLEY, ESQ.

AUG. 28, 2000, DOMESTIC RETURN RECEIPT, filed.

SEP. 12, 2000, PRAECIPE FOR EXEMPLIFIED CERTIFIED DOCUMENTS: s/JOHN R. CARFLEY, ESQ.
CERT. & EXEMP. OF REQUEST TO TX

SEP. 20, 2000, DOMESTIC RETURN RECEIPT, filed.

**PLEASE REFER TO COMPUTER
FOR FURTHER ENTRIES**

Date		Judge
01/08/2001	Transferred from the docket.	No Judge
38	Affidavit, filed by s/John R. Carfley, Esq. 3 cc atty Carfley	No Judge
01/19/2001	39 ORDER, re: Proceedings stayed. By the Court, s/JKR,JR.,PJ 2 cc atty J. John K. Reilly Jr. Carfley	
07/20/2001	40 Motion For Joinder of a Related Party. Filed by s/John R. Carfley, Esq. 4 cc atty Carfley	John K. Reilly Jr.
08/03/2001	41 RULE, NOW this 3rd Day of August, 2001, a Rule is granted upon the following Defendants to appear and show cause why the prayer of said Motion should not be granted. Rule Returnable, the 12th Day of September, 2001, at 9:00 am in Courtroom No. 1. By The Court, s/JKR, Jr.,P.J. 4 CC to Atty Carfley	John K. Reilly Jr.
08/15/2001	42 Plaintiff's Petition to Cross-Index Judgment Filed by Agreement of the Parties in Litigation Filed to No. 99-825-CD in the Cause of Action Filed to the Above Captioned Number. Filed by s/ John R. Carfley, Esq. s/John R. Ryan, Esq. 3 cc atty Ryan	John K. Reilly Jr.
10/10/2001	43 ORDER, NOW, this 9th day of October, 2001, re: Status Conference. by the Court, s/JKR,JR.,P.J. 1 cc Atty Carfley, Ryan, Weaver, and Naddeo	John K. Reilly Jr.
10/29/2001	44 ORDER OF COURT, re; Judgment filed to no 99-825-CD be and is hereby exemplified to this docket and the Prothonotary is directed to make provisions to file a duplicate judgment in this matter and to enter evidence thereof on the docket entries in this proceeding. by the Court, s/JKR,JR.,P.J. 1 cc Atty Carfley	John K. Reilly Jr.
02/27/2002	45 Affidavit In Support Of Plaintiff's Memorandum. Filed by s/John R. Carfley, Esq. 1 cc Atty Carfley	John K. Reilly Jr.
	46 ORDER, NOW, this 27th day of Feb. 2002, re: Counsel for Defendant shall, within 10 days from date hereof, file a supplementary brief as he may desire and Plaintiff granted five days following receipt of said brief to file a reply thereto. by the Court, s/JKR,JR.,P.J. 1 cc Atty Carfley, Ryan, and Weaver	John K. Reilly Jr.
03/11/2002	Certificate of Service, Supplementary Brief filed on March 8, 2002, served upon John R. Carfley, Esq. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA.

NO. 00-
Jury Trial Demanded

KAY CHURNER, IND. and as
Executrix of the Estate of
JOHN DIMMICK,
Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
IND. and ANF of CLIFFORD COX,
and SOUTHWEST GUARANTY TRUST
CO., N.A.

COMPLAINT

JOHN R. CARLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
PHILIPSBURG, PENNSYLVANIA 16866

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

(64) KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

(26) CLIFFORD COX; (65) LINDA ESTRADA,
individually and as next friend
(15) (ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:
:
No. 00- 328-00
:
Jury Trial Demanded
Document filed: Complaint
:
Filed on behalf of:
Plaintiff
:
Counsel for this Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

FILED

MAR 15 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-
CLIFFORD COX; LINDA ESTRADA,	:	Jury Trial Demanded
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO., N.A.	:	
Defendants	:	

NOTICE

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 that 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 other claims 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 A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-
CLIFFORD COX; LINDA ESTRADA,	:	Jury Trial Demanded
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO., N.A.	:	
Defendants	:	

COMPLAINT

AND NOW comes the Plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick, who by and through her attorney, John R. Carfley, Esquire, sets forth the following claims and in support thereof avers as follows:

1. Plaintiff, Kay Churner is an adult individual residing at P. O. Box 98, Brisbin, Pa., 16620.

2. Plaintiff is the mother of John Dimmick, deceased.

3. Plaintiff was appointed Executrix of the Estate of John Dimmick on May 28, 1999, by the Register of Wills of Clearfield County, Pennsylvania.

4. Plaintiff filed a personal injury action pursuant to 42 Pa. Cons. Stat. §8301 and Pa. R.C.P. 2202(a) as the personal representative of decedent, on her own behalf and on behalf of all those entitled by law to recover damages for the wrongful death of decedent, John Dimmick.

5. Plaintiff filed this action in the Court of Common Pleas

of Clearfield County, Pennsylvania, to No. 99-825-CD on behalf of decedent's estate pursuant to 20 Pa. Con. Stat. §3373 and 42 Pa. Con. Stat. §8302 for damages suffered by the estate as a result of decedent's death as well as for the pain, suffering, and inconvenience which decedent underwent prior to his death.

6. Said action was initiated by writ of summons which was served on the defendant Linda Estrada individually and as next friend for Clifford Cox on the 1st day of September, 1999, all of which is evidenced by the return receipt for certified mail, a true and correct copy of which is affixed hereto as Exhibit A.

7. The names and addresses of all persons legally entitled to recover damages for the death of decedent, and their relationship to decedent are as follows:

Name	Address	Relationship to Decedent
Kay Churner	P. O. Box, Brisbin, Pa., 16620	Mother

8. Defendant herein is Clifford Cox, (hereinafter Cox) an adult individual presently incarcerated in the Clearfield County prison.

9. Defendant herein is Linda Estrada, (hereinafter Estrada), individually and as next friend (ANF) of Clifford Cox who presently resides at P. O. Box 705, Sante Fe, Texas, 77517.

10. Defendant herein is the Southwest Guaranty Trust Co., N.A. (hereinafter Southwest Guaranty) believed and therefore averred to be a Texas Corporation with principal offices located at 10411 Westheimer Road, Houston, Texas, 77042, which entity is presently named as the Trustee of a certain trust created on or

about the 9th day of November, 1999, for the defendant Clifford Cox which trust was established with proceeds received by the defendant Cox from the settlement of a personal injury suit filed to No. A157378 in the District Court of Jefferson County, Beaumont, Texas. A true and correct copy of said trust instrument is attached hereto and marked Exhibit B.

11. At the time of the settlement hereinabove referenced defendant Cox's interest was represented in the proceeding by Attorney Timothy Ferguson of Beaumont, Texas who was appointed as the Attorney ad litem in said proceeding.

12. The underlying basis of plaintiff's claim against the defendant, Cox, in the litigation filed in Clearfield County to No. 99-825-CD rests upon the fact that on or about the 10th day of May, 1999, Cox illegally purchased a handgun in the Commonwealth of Pennsylvania and without warning, provocation and/or excuse shot to death plaintiff's decedent as a result of which a cause of action has arisen for wrongful death and survival all of which is stated in the complaint filed against the defendants Cox and Estrada to No. 99-825-CD, the averments of which complaint are incorporated herein by reference as fully as though set forth at length.

13. The nature and amount of the plaintiff's claims for damages are set forth in Plaintiff's Complaint and are supported by an Economist's Report which places Plaintiff's compensatory damages in the range of \$1,000,000.00.

14. Said claim for damages has not been reduced to judgment at the present time.

15. It is believed and therefore averred that the defendants Cox and Estrada, as of September 1, 1999, were fully and completely aware of the potential litigation arising out of the shooting of the plaintiff's decedent, they having been apprised of the pendency of the action by correspondence from Plaintiff's counsel and by the issuance of a Writ of Summons which was served on the defendant Estrada on September 1, 1999, which correspondence and summons alerted these defendants as to the potential for claims under the Wrongful Death and Survival Statutes.

16. Notwithstanding this notice defendants Cox and Estrada, on November 9, 1999, acting in concert and with the intent to defraud the plaintiff conveyed the proceeds of the personal injury award believed to consist of approximately \$750,000.00 to the defendant Southwest Guaranty Trust Co., N.A. pursuant to a trust instrument created for the defendant Cox with spendthrift provisions which provisions were inserted at the insistence of the defendants, Cox and Estrada, with the intent to hinder, delay, and defraud the plaintiffs who are legitimate creditors of the defendants.

17. Defendant Cox was rendered insolvent by the aforesaid conveyance to the defendant Trustee.

18. No consideration was exchanged in the creation of the trust and it is believed that the parties involved in the transaction to wit, defendants Cox and Estrada made the transfer in order to prevent the application of the aforesaid proceeds to the payment of Cox's debts including the judgment expected to be

rendered in Plaintiff's suit knowing or having reason to know that Cox would be rendered insolvent thereby.

19. Defendant Southwest Guaranty acting as the repository of the sums transferred to the Trust on behalf of Cox and as Trustee charged with the administration and disposition of the trust res has been apprised of the claim asserted by Plaintiff against Cox and of its responsibility to protect the trust res for the benefit of creditors by letter dated the 14th day of March, 2000, a true and correct copy of said letter being affixed hereto as Exhibit C.

20. Section 5101 et. seq. of the Pennsylvania Uniform Fraudulent Transfer Act (12 Pa. C.S.A. §5101 et. seq.) provides remedies to a plaintiff in circumstances where a transfer has been made with actual intent to hinder, delay or defraud a creditor which remedies include the avoidance of the transfer or obligation to the extent necessary to satisfy the creditors' claim, attachment or other provisional remedy against the asset transfer or other property of a transferee in accordance with the procedures established by applicable law, issuance of an injunction against further disposition by the debtor or transferee or both of the asset transferred or other property, appointment of a receiver to take charge of the asset transferred or of other property of the transferee, and/or such other relief as the circumstances may require. (12 Pa. C.S.A. §5107).

21. Under Pennsylvania Law, a transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer

was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer and the debtor was insolvent at the time of the transfer or the debtor became insolvent as a result of the transfer. (12 Pa. C.S.A. §5105)

22. Under the Pennsylvania Uniform Fraudulent Transfer Act an Order may issue regardless of whether the claim or right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. (12 Pa. C.S.A. §§5101; 5104)

23. It is believed and therefore averred that if the Trust res is allowed to remain available to the defendants Cox and/or Estrada the asset will be dissipated by these defendants in due course all to the prejudice and detriment of the plaintiffs.

24. The State of Texas has adopted the Uniform Fraudulent Transfer Act (V.T.C.A. Bus. & C. §§24.001 - 24.012), as a result of which the courts of that jurisdiction will enforce judgments and/or decrees entered by a sister state pursuant to said Uniform Act based on the full faith and credit provisions of federal and state law.

25. While the situs of the trust is currently in the State of Texas, Pennsylvania Courts continue to exercise in personam jurisdiction over the beneficiary Cox and as a result suit may be maintained under the Uniform Fraudulent Transfer Act pursuant to the doctrine of concurrent jurisdiction.

WHEREFORE, Plaintiff prays

(a) that the transfer to the Trust created as aforesaid be declared to be fraudulent, void and of no effect;

(b) that the defendants, Cox, Estrada, and Southwest Guaranty be enjoined and restrained from conveying or in any other way encumbering this asset;

(c) that defendant Southwest Guaranty be ordered to retain the trust in tact or that a receiver be appointed for purposes of liquidating the same and applying the proceeds to the satisfaction of plaintiff's judgment at such time as the judgment is rendered;

(d) that defendants, their officers, agents and employees be restrained preliminarily until final hearing and permanently thereafter from selling, transferring, disposing of, liening or in any way diminishing the quantity and value of the asset and property in trust for Cox;

(e) that defendants and each of them be declared a trustee for the benefit of plaintiff for an amount not less than Cox's liability to the plaintiff;

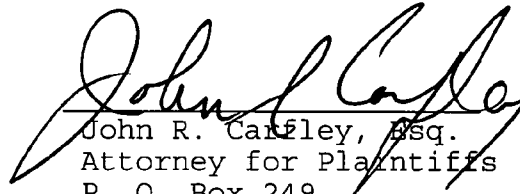
(f) that it be declared that Southwest Guaranty is the real defendant in interest and liable to the plaintiff for the amount of the judgment to the plaintiff up to and including the limit of the trust res and all interest, income and dividends generated thereon exclusive of trustee's reasonable costs, commissions, charges and fees;

(g) that Southwest Guaranty, its officers, agents, and

employees be restrained from enforcing any security interest in any assets or property which were transferred to them for and on behalf of the defendant Cox;

(h) that Southwest Guaranty be ordered to account for all monies, assets or property of any kind or description which it received for and on behalf of Cox;

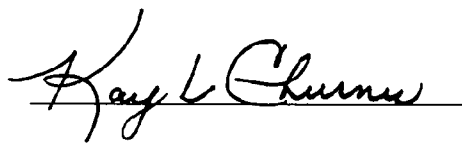
(i) such other relief as the court may deem just and proper.


John R. Carfley, Esq.
Attorney for Plaintiffs
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: March 14, 2000

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Kay L. Churner", is written over a horizontal line.

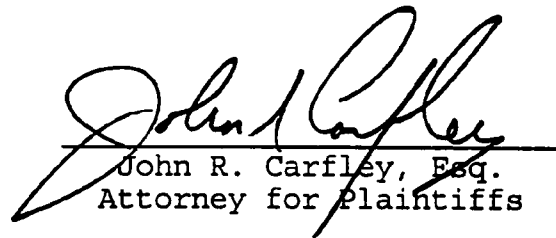
Dated: March 14, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
:
vs. : No.99-825-CD
:
CLIFFORD COX; LINDA ESTRATA, : Jury Trial Demanded
individually and as next friend :
(ANF) of Clifford Cox, RESTA :
JENE GREGORI and DARLENE A. GREGORI: :
individually and T/D/B/A :
JENE'S GUNSHOP, INC and UNISYS :
CORPORATION :
Defendants :

CERTIFICATE OF SERVICE

I do certify that I made service of the Writ of Summons filed in the above captioned matter upon defendants, Linda Estrata, individually and as next friend (ANF) of Clifford Cox, by certified mail, return receipt requested. Service was accomplished as evidenced by the signed return receipt attached hereto.


John R. Carfley, Esq.
Attorney for Plaintiffs

Dated: 2/29/00

Exhibit A

Thank you for using Return Receipt Service.

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

August 19, 1999

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Linda Estrata
P. O. Box 705
Sante Fe, Texas, 77517

RE: John Dimmick Estate
vs. Clifford Cox
No. 99-825-CD-Clearfield County

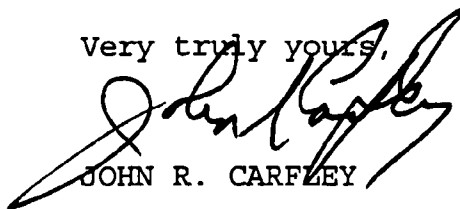
Dear Ms. Estrata:

Please find enclosed a Summons from the Court of Common Pleas of Clearfield County, Pennsylvania, notifying you individually and as next friend of Clifford Cox of the commencement of an action filed on behalf of Kay Churner, individually and as Executrix of the Estate of John Dimmick.

The complaint in this matter will allege causes of action under the Pennsylvania wrongful death and survival statutes and will seek damages as specified therein.

Should you have any questions concerning this litigation, please do not hesitate to contact me.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

Encls.

Certified Mail
Return Receipt Requested

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

KAY CHURNER, individually
and as EXECUTRIX OF THE ESTATE
OF JOHN DIMMICK

Plaintiff(s)

S U M M O N S

No. 99-825- - CD

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, BOMAC

CONTRACTORS, INC., URETEK, U.S.A.;
INC. and B.G. ANDREW

Defendant(s)

To the above named Defendant(s) you are hereby notified that the
above named Plaintiff(s), has/have commenced a Civil Action
against you.

Date August 10, 1999

William A. Shaw
Prothonotary

By



(Deputy)

ISSUING ATTORNEY:

John R. Carfley, Esquire

Cmm

No. A-0157378

LINDA ESTRADA,
As Next Friend of
CLIFFORD COX, et. al.

§
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§
§
§
§

IN THE DISTRICT COURT

VS.

JEFFERSON COUNTY, TEXAS

BO-MAC CONSTRUCTORS, INC.,
et. al.

58th JUDICIAL DISTRICT

ORDER CREATING TRUST FOR
THE BENEFIT OF CLIFFORD COX
UNDER SECTION 142.005 OF THE TEXAS PROPERTY CODE

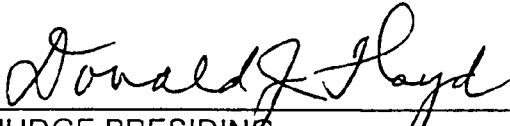
On this day came to be heard the Application LINDA ESTRADA, as next friend of CLIFFORD COX an incapacitated person (the "Beneficiary"), requesting that the Court establish a trust for the Beneficiary pursuant to Section 142.005 of the Texas Property Code, and due and proper notice of such application and hearing thereon having been given to all necessary and interested persons, and all persons necessary for jurisdiction having appeared in person or by attorney, and the Court having considered the evidence presented, the argument of counsel, and the terms of the trust agreement attached to this Order as Exhibit A which is incorporated herein for all purposes by this reference, the Court hereby finds that the Beneficiary is an incapacitated person as defined by Section 142.005 of the Texas Property Code, and such trust is in the best interest of the Beneficiary and should be created under the authority of Section 142.005 of the Texas Property Code; it is therefore

ORDERED, that the funds awarded to the Beneficiary pursuant to the Final Judgement in the above entitled and numbered cause shall be held in trust for the benefit of Beneficiary pursuant to Section 142.005 of the Texas Property Code, and pursuant to the terms of the trust agreement, a copy of which is attached hereto as Exhibit A; and it is further

ORDERED, that Southwest Guaranty Trust Company N.A., Houston, Texas, is hereby appointed sole Trustee of the Trust; and, upon the Trustee's acceptance of such Trust, the Defendants are hereby ORDERED to pay to the Trustee for the benefit of Beneficiary all sums awarded herein in the above entitled and numbered cause; and it is further

ORDERED, that approval is hereby granted to the Trustee to charge a reasonable fee for its trust services at the rates and in the manner provided for in the Trust Agreement.

SIGNED this the 9th day of December, 1995.



JUDGE PRESIDING

APPROVED:



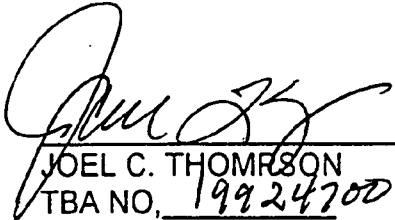
LINDA ESTRADA
P. O. Box 705
SANTA FE, TEXAS 77517

A/N/F OF CLIFFORD COX



TIMOTHY FERGUSON
TBA NO. 06929500
ATTORNEY AT LAW
1122 ORLEANS STREET
BEAUMONT, TEXAS 77701
TEL: 409-832-9900
FAX: 409-838-6337

GUARDIAN AD LITEM



JOEL C. THOMPSON
TBA NO. 19924700
ATTORNEY AT LAW
BERRY & THOMPSON L.L.P.
2727 ALLEN PARKWAY SUITE 800
HOUSTON, TEXAS 77019
TEL: 713-520-2500
FAX: 713-520-2525

ATTORNEY FOR PLAINTIFF

Handwritten initials "HV" and the word "Scanned" in cursive.

Exhibit A
TRUST AGREEMENT UNDER SECTION 142.005
OF THE TEXAS PROPERTY CODE

This instrument establishes the terms of a trust (herein called the "Trust") created for the benefit of CLIFFORD COX, an incapacitated person, pursuant to the order of the 58TH DISTRICT COURT of JEFFERSON County, Texas, (herein called the "Court") under the authority of Section 142.005 of the Texas Property Code.

1. Trustee. The trustee of the Trust is and shall be Southwest Guaranty Trust Company N.A., Houston, Texas, (hereinafter called the "Trustee"). Upon receipt from the Defendant of the funds constituting the corpus of this Trust, the Trustee's duties shall commence in accordance with the terms hereof. No bond or other security is required of the Trustee or of any successor trustee.

2. Beneficiary. The sole and only beneficiary of the Trust is CLIFFORD COX, (hereinafter called the "Beneficiary"), who was born on January 24, 1950 and whose Social Security number is 195-42-7643.

3. Trust Estate. The Trust shall be funded with the sum of \$264,602.04 which is or has been awarded to the Beneficiary as a result of a settlement or final judgment in Cause No. A-0157378 styled LINDA ESTRADA, AS NEXT FRIEND OF CLIFFORD COX, ET. AL. VS. BO-MAC CONSTRUCTORS INC., ET. AL. in the 58TH DISTRICT COURT, JEFFERSON County, Texas. Such sum of money together with the following sums of money which will hereafter be acquired by the Trust and all income therefrom, shall constitute the trust estate of the Trust:

Guaranteed Monthly Payments:

\$4,677.27 PER MONTH, GUARANTEED FOR 10 YEARS CERTAIN AND LIFE THEREAFTER, WHICHEVER IS LONGER, WITH PAYMENTS BEGINNING 12/01/1999.

4. Distributions from the Trust. The Trustee shall pay to or apply for the benefit of the Beneficiary such amounts out of the net income and principal (if income is insufficient) of the Trust as are reasonably necessary in the sole discretion of the Trustee to provide for the health, education, support, or maintenance of the Beneficiary. Any income not so distributed shall be added to the principal of the Trust.

The Trustee is ORDERED to make a distribution to LINDA ESTRADA in the amount of \$35,000.00 for reimbursement of living expenses for CLIFFORD COX.

Additionally, Trustee is ORDERED to make a distribution to the attorneys for CLIFFORD COX in the amount of \$25,000.00 in order to pay for his defense of criminal charges pending against him.

In making any discretionary payments to the Beneficiary, the Trustee shall consider (i) the standard of living to which the Beneficiary shall have been accustomed prior to the creation of the Trust; (ii) any known resources of the Beneficiary; (iii) the ability of any person who is legally obligated to support the Beneficiary to do so.

No distribution from the Trust shall be made to the Beneficiary to satisfy any obligation if such obligation would otherwise be met from any federal or state assistance program if the Trust had not been created; provided, however, that the Trustee shall not be responsible for making such a determination nor shall the Trustee be held liable for any

distribution made in good faith which results in the loss of any federal or state assistance.

The Trustee may make any distribution required or permitted hereunder, without the intervention of any guardian or other legal representative, in any of the following ways:

(i) to the Beneficiary directly; (ii) to the legal or natural guardian of the Beneficiary; (iii) to any person having custody of the Beneficiary; or (iv) by utilizing the distribution directly for the Beneficiary's benefit.

5. Termination. The Trust shall terminate when the beneficiary regains his capacity, or upon the Beneficiary's death. Upon termination, the Trustee shall pay all of the then remaining trust estate of the Trust to the Beneficiary free of any further trust; or, if the Beneficiary is then deceased, to the personal representative of the Beneficiary's estate.

6. Revocability. This Trust shall not be amended, altered or revoked by the Beneficiary or any guardian or other legal representative of the Beneficiary, but it shall remain subject to amendment, modification, or revocation by the Court at any time prior to the termination of the Trust. If the Court revokes the Trust prior to the time that the Beneficiary attains the age of eighteen (18) years, the Court may enter such further or additional orders concerning the trust estate as may be authorized by Section 142.005 of the Texas Property Code. If the Court revokes the Trust after the Beneficiary attains the age of eighteen (18) years, the trust estate shall be paid and delivered to the Beneficiary free of this Trust.

7. Spendthrift Provision. Prior to the actual receipt of any distribution of any portion of the trust estate by the Beneficiary, no property (whether income or principal) of

the Trust shall be subject to anticipation or assignment by the Beneficiary, or to attachment by or the interference or control of any creditor or assignee of the Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of the Beneficiary. Any attempted transfer or encumbrance of any interest in the trust estate of the Trust by the Beneficiary prior to the actual distribution thereof to the Beneficiary shall be wholly void. In addition to being applicable to the Beneficiary, the preceding provisions of this paragraph shall also apply to anyone else, other than the beneficiary, who may be entitled to any portion of the trust estate upon termination of the Trust.

8. Trustee's Investment Authority. The Trustee shall invest the trust estate in accordance with the standards now or hereafter set forth in the Texas Property Code (or any subsequent applicable law), and the Trustee may also invest all or any part of the trust estate in a common trust fund now or hereafter established by the Trustee pursuant to the Texas Property Code.

9. Trustee's Compensation and Expenses. The Trustee shall be entitled to receive for the Trustee's services hereunder a fair and reasonable compensation determined in accordance with the then customary and prevailing charges for similar services charged by corporate fiduciaries in Houston, Harris County, Texas; but the Trustee's compensation shall not exceed the Trustee's then published fee schedule for such services. The Trustee shall also be reimbursed for all reasonable expenses incurred by the Trustee in connection with the Trust. The fees and expenses heretofore incurred hereunder by the Trustee have been approved by the Court at the inception of the Trust, but the Court may review any future fees and expenses in excess of the then customary

and prevailing charges for similar services by corporate fiduciaries in Houston, Harris County, Texas, at any time on the Court's own motion or at the instance of the Trustee or any other party interested in the welfare of the Beneficiary, and upon a hearing of the matter, the Court shall take any action with respect to such fees and expenses as the Court may deem appropriate. The Trustee shall reimburse the Trust for any fees previously paid to the Trustee by the Trust in the event of a final Court order that the Trustee do so.

10. Administrative Provisions. In the administration of the Trust, the Trustee shall be authorized and empowered:

(i) To exercise all of the powers now or hereafter granted to trustees of express trusts by the Texas Trust Code or any corresponding statutes, except that in any instance in which the Texas Trust Code or other statutory provision may conflict with the express provisions of this trust instrument, the provisions of this trust instrument shall control.

(ii) To adjust, arbitrate, compromise, abandon, sue on or defend, and otherwise deal with and settle all claims in favor of or against the Trust; to engage and retain attorneys or accountants at any time when it may be reasonably necessary to do so in order to provide for the prudent management and preservation of the Trust.

(iii) To continue to act as Trustee of the Trust regardless of any change of name of the Trustee and regardless of any reorganization, merger or consolidation of the Trustee.

11. Miscellaneous. The Trust shall also be held and administered pursuant to the following terms and conditions:

(i) This trust shall be governed in all respects by the laws of the State of Texas in which State jurisdiction and venue lie in any and all matters involving the Trust estate and those persons acting in connection with the Trust estate.

(ii) The Trustee shall keep books of account respecting the Trust and all transactions involving the Trust, and shall furnish to the Beneficiary, or to the person having the care and custody of the Beneficiary if the Beneficiary is then under a legal disability, statements at least quarterly showing receipts and disbursements of income and corpus of the Trust, and a list of assets held in the Trust. Such statements shall also be furnished to the Court on request of the Court. The Trustee shall not be responsible or liable to the Beneficiary or any other person on account of any actions that the Trustee may take or fail to take in Trustee's good faith reliance on any order or proceeding of the Court.

(iii) No person or entity dealing with the Trustee hereunder shall be obliged to see to the application of any money or property paid or delivered to the Trustee, and no such person or entity shall be obliged to inquire into the expediency or propriety of any transaction or the authority of the Trustee to enter into and consummate the same upon such terms as the Trustee may deem reasonably appropriate.

(iv) The Trustee may not resign as Trustee of the Trust without receiving prior authority from the Court to do so.

(v) The headings appearing in this instrument are for convenience only and do not purport to define or limit the scope or intent of the provisions to which they refer.

12. Inception of the Trust. This Trust shall become effective upon (i) the entry of

the decree to which this trust indenture is attached, (ii) the transfer of the above stated sum of money to the Trustee, (iii) the execution of this instrument by the guardian ad litem of the Beneficiary, and (iv) the Trustee's acceptance of the Trust which shall be evidenced by the signature below of the appropriate representative of the Trustee.

SIGNED on this the ____ day of _____, 19____.

SOUTHWEST GUARANTY TRUST COMPANY N.A.
HOUSTON, TEXAS

By William L. Terry
Title SR. VICE PRESIDENT

10411 Westheimer Road
Houston, Texas 77042

TRUSTEE

The form and content of this trust instrument is hereby approved.

Date: Nov. 9, 1999

Donald J. Floyd
JUDGE PRESIDING

Date: 11-05-99

Linda Estrada
LINDA ESTRADA

Date: 11-09-99

Timothy Ferguson
TIMOTHY FERGUSON
TBA NO. 06929500
ATTORNEY AT LAW
1122 ORLEANS STREET
BEAUMONT, TEXAS 77701
TEL: 409-832-9900
FAX: 409-838-6337

GUARDIAN AD LITEM

Date: 11/8/99

Joel C. Thompson
JOEL C. THOMPSON
TBA NO. 19924700
BERRY & THOMPSON L.L.P.
2727 ALLEN PARKWAY SUITE 800
HOUSTON, TEXAS 77019
TEL: 713-520-2500
FAX: 713-520-2525

ATTORNEY FOR PLAINTIFF

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

March 14, 2000

Southwest Guaranty Trust Co. N.A.
10411 Westheimer Road
Houston, Texas, 77042

Attention: William L. Terry,
Senior Vice President

Dear Mr. Terry:

Please be advised that I have been retained to represent the interest of Kay Churner, individually and as Executrix of the Estate of John Dimmick, late of the Borough of Ramey, Clearfield County, Pennsylvania. On May 10, 1999, John Dimmick was shot and killed by one, Clifford Cox, who is now charged with criminal homicide and is incarcerated in the Clearfield County Prison. At the time of this incident, Mr. Cox was involved in a personal injury suit filed to No. A157378 in the District Court of Jefferson County located in Beaumont, Texas, as a result of which he received a substantial cash settlement.

A lawsuit was initiated by the plaintiff in August of 1999 and the writ of summons was served on Ms. Estrada on September 1, 1999. Notwithstanding the institution of this suit to recover damages for personal injuries under the Pennsylvania Wrongful Death and Survival Statutes, and the notice to Estrada of the pendency of the claim, Estrada, upon receipt of the settlement proceeds in the Texas lawsuit, saw to the creation of a trust for the benefit of Clifford Cox which trust is currently being administered by your bank.

I have retrieved copies of the trust and have reviewed the spendthrift provisions of the trust so as to become familiar with the same in the event that a judgment is entered on behalf of my clients here in the Commonwealth of Pennsylvania.

I believe that the trust res constitutes an asset by which an award for damages to the plaintiff may be partially satisfied and would request that the Trustee voluntarily defer from any further distributions which tend to dissipate the trust estate. We are not asking that the trustee restrict disposition for routine expenditures such as trustee's fees or the like, however, any distribution to Cox and/or to Estrada or any other party for his or their benefit could result in legal action to secure a court order

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

(2)

which would include relief in the form of an order of avoidance of the transfer, an attachment or other provisional remedy against the asset transfer, an injunction against further disposition of the asset or other property and/or the appointment of a receiver to further administer the asset.

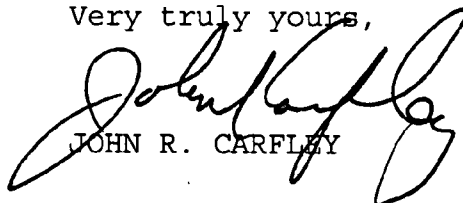
We believe that the original transfer of the settlement proceeds into a trust with spendthrift provisions constituted a fraudulent transfer under the Uniform Fraudulent Transfer Act which has been adopted by the Commonwealth of Pennsylvania and the State of Texas (V.T.C.A. Bus. & C. §§ 24.001 to 24.012). It is my opinion that the intent of the settlors, Cox and Estrada, was to hinder, delay and defraud a legitimate creditor to wit: the John Dimmick Estate in the pursuit of its claim.

I would hope that we would be able to work together in this matter since the damages which we are seeking in the suit in Pennsylvania, are in excess of \$1,000,000.00 as established by our economist. The Uniform Fraudulent Transfer Act specifies that the claim need not be liquidated in order to be asserted, particularly where the intent of the settlor was to defraud the creditor and the transfer effectively created an insolvency in the debtor. I believe all of these requirements are present in the principal case and that a court would issue an injunction if we choose to proceed in that manner.

We would simply ask that the trust res be sequestered until further notice pending the outcome of the litigation in Pennsylvania. Our concern is that the trust res will be dissipated by Cox and Estrada prior to the completion of the personal injury litigation here in Pennsylvania unless some action is taken to prevent it. If you cannot assist us without formal court action, please so advise. If I do not hear from you by week's end, I will assume that a formal petition for injunctive relief will be required and will proceed accordingly.

Please review this matter and then contact me or have your attorney contact me with respect to your position on the matter.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA.

NO. 00-328-CD

KAY CHURNER, ET AL.
Plaintiff

vs.

CLIFFORD COX ET. AL.
Defendants

PETITION FOR
PRELIMINARY INJUNCTION

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
PHILPSBURG, PENNSYLVANIA 16866

THE PLANKENHORN CO., WILLIAMSPORT, PA.

6/12/2014
Notary
Notary

6 cases to ATTOR

2014

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:

Document filed: PETITION
FOR PRELIMINARY INJUNCTION
Filed on behalf of:
Plaintiff

:

Counsel for this Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

FILED

MAR 20 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:

:

:

vs.

:

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:

:

:

RULE TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE

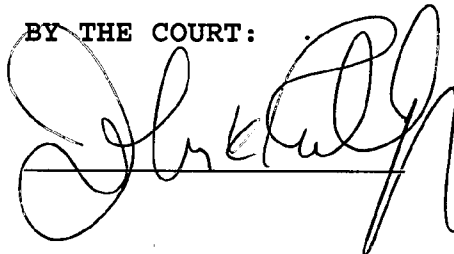
AND NOW this 20th day of March, 2000, upon consideration of the verified complaint in equity in this action and plaintiff's petition for preliminary injunctive relief, it is hereby ORDERED that:

1. Defendants show cause before the Court on the 5th day of April, 2000, at 9:00 Am. in Courtroom No. 1

Clearfield County Courthouse, Clearfield, Pennsylvania, why a preliminary injunction should not issue, providing the relief requested by plaintiff; and

2. Plaintiff cause copies of this rule to show cause, the complaint in equity and the petition for preliminary injunctive relief with its accompanying papers, to be served upon all parties in interest at least 10 days before the date of the hearing.

BY THE COURT:



FILED

MAR 22 2000

William A. Shaw
Prothonotary

FILED

MAR 22 2000

0133016cc atty
William A. Shaw

#Prothonotary

Carley
Ept

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
:
vs. : No. 00-
:
CLIFFORD COX; LINDA ESTRADA, :
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

RULE RETURNABLE

NOW, this ____ day of ____, 2000, upon consideration of the attached Petition, a Rule is hereby issued upon defendants/ Respondents, to show cause why the relief requested should not be granted. Rule Returnable the ____ day of ____, 2000, for filing written response and the ____ day of ____, 2000, for hearing thereon.

NOTICE

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following pages, you must take action on or before _____ by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the court without further notice for relief requested by the petitioner or movant. You may lose rights important to you.

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

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PA, 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA,	:	
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO., N.A.	:	
Defendants	:	

PETITION FOR PRELIMINARY INJUNCTION

Plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick, by the undersigned counsel, petitions this Court for a preliminary injunction pursuant to Pa. R.C.P. No. 1531, and sets forth the following in support thereof:

1. Plaintiff has filed a verified complaint in equity, attached hereto as Exhibit A alleging, inter alia, that defendants, Clifford Cox and Linda Estrada have attempted to defraud the plaintiff and prevent plaintiff's recovery of damages for the death of plaintiff's decedent at the hands of the defendant Clifford Cox by transferring the proceeds payable to Cox from a personal injury settlement into a spendthrift trust which is subject to the care, control and disposition of the defendants, Estrada and Southwest Guaranty Trust Co., N.A.

2. Plaintiff's complaint further avers that subsequent to August 10, 1999, when plaintiff instituted suit against the defendants, Cox and Estrada, these defendants deposited funds into

a trust fund with the defendant Southwest Guaranty with actual intent to hinder, delay and/or defraud the plaintiff all of which actions are to the detriment and prejudice of the plaintiff.

3. Plaintiff further avers that said action was taken by Cox and Estrada with the specific goal of preventing the plaintiff from executing on any judgment entered in the personal injury action filed to No. 99-825-CD in the Court of Common Pleas of Clearfield County, Pennsylvania, since it is believed and therefore averred that the funds deposited or to be deposited into the trust account totalling approximately \$750,000.00 are the sole assets available to Cox by which a judgment in favor of the plaintiffs would potentially be satisfied.

4. Plaintiff's complaint requests, inter alia, that this Court enjoin defendants Cox, Estrada and Southwest Guaranty from spending or utilizing any of the funds that Cox has on deposit with Southwest Guaranty or which may hereafter be deposited with said institution pursuant to a structured settlement and that the court enjoin Southwest Guaranty from honoring any requests by the defendants Cox, Estrada and/or anyone acting on behalf of Cox and/or Estrada for the withdrawal of funds in question by check or otherwise.

5. In connection with the foregoing by letter dated the 14th day of March, 2000, a copy of which is attached to Plaintiff's Complaint as Exhibit C and hereto as Exhibit B, plaintiff advised Southwest Guaranty of plaintiff's position that the funds on deposit with that institution constitute a fund by which the

personal injury award expected to be entered in favor of the plaintiff could be satisfied.

6. Plaintiff further requested in said letter that Southwest Guaranty refuse to honor any demands or requests made by the defendants Cox and/or Estrada for withdrawals of the funds in question and to sequester the funds pending the outcome of litigation in this jurisdiction.

7. Plaintiff further advised Bo-Mac Constructors, Inc. and Uretek, U.S.A., Inc., two entities charged with funding the structured settlement for Cox, through their counsel, of the existence of plaintiffs' claim and the need to protect the integrity of the trust res. True and correct copies of those letters are attached hereto and marked Exhibits C and D.

8. Defendant Southwest Guaranty responded by counsel to this notice but counsel for Bo-Mac and Uretek have to date not answered this inquiry.

9. Defendants Cox and Estrada should not be permitted to spend or utilize any of the funds which are presently on deposit with Southwest Guaranty or to spend or utilize the funds which will be deposited pursuant to the structured settlement nor should Southwest Guaranty be permitted to honor any requests for withdrawal of such funds that are currently in defendant Cox's account until such time as a hearing is held and this court can finally determine the respective rights of each party named herein for the following reasons:

a. Plaintiff believes and therefore avers that because

defendants Cox and Estrada, have access to and control of the funds on deposit in Southwest Guaranty that they will continue to dissipate and convert the proceeds if defendant Cox and/or Estrada are permitted to utilize and spend any of the funds on account with Southwest Guaranty or if Southwest Guaranty is permitted to honor requests for withdrawals of such funds.

10. On or about November 9, 1999, Cox and Estrada, as aforesaid, transferred, assigned, conveyed or otherwise disposed of certain assets legal title to which had vested in Cox and/or Estrada as next friend, by transferring the same into a trust fund with the defendant, Southwest Guaranty, which trust contained spendthrift provisions which, it is averred, were inserted by Cox and Estrada for the sole purpose of hindering, delaying and/or defrauding the plaintiff in the pursuit of her claim for damages.

11. It is believed and therefore averred that at the time of the settlement, the creation of the trust and the funding of the trust Estrada was cognizant of the claims asserted against Cox and the propensity for a substantial jury verdict based on his tortious conduct having had the benefit of competent counsel both in the Commonwealth and in the State of Texas with whom she could confer relative to the civil proceedings lodged or to be lodged against her principal (Cox).

12. The transfer of the property to the defendant, Southwest Guaranty, was made without receiving a reasonably equivalent value and the debtor (Cox) became insolvent as a result of the said transfer.

13. The transfer of the property to Southwest was made with the actual intent to hinder, delay and/or defraud any creditor of the debtor including the plaintiff.

14. The transfer of the property to the defendant constitutes a fraudulent transfer within the meaning of the Uniform Fraudulent Transfer Act which Act has been adopted by both the Commonwealth of Pennsylvania and the State of Texas. (12 Pa. C.S.A. §51-1 et. seq.; V.T.C.A. Bus. & C. §§24.001 to 24.012)

15. At the time of the transfer of the proceeds from the Cox personal injury settlement into trust, Estrada was acting as an agent, fiduciary, custodian, guardian and/or representative of the defendant Cox and in addition was acting as next friend (ANF) for Cox in the litigation in Texas and in that capacity had been served with a writ of summons issued by the Court of Common Pleas of Clearfield County, Pennsylvania, alerting her as to the existence of Plaintiff's claim for damages.

16. Service of the writ was made upon the defendant Estrada by certified mail as provided for under the Pennsylvania Rules of Civil Procedure. (Rule 403; 404 Pa. R.C.P.)

17. Notice of the pendency of the suit and information pertaining to the alleged claims to be asserted by the plaintiff against Cox and Estrada was also served on Joel Thompson, Esq., attorney for Cox and Estrada, in the personal injury suit filed in the District Court of Jefferson County, Texas.

18. The transfer of all assets available to the defendant Cox by which Cox could satisfy the judgment of any creditor occurred on

November 9, 1999, subsequent to the date Estrada, as next friend, was served with notice of the pendency of the personal injury claim in Pennsylvania and as a result of the above described transfers, plaintiffs' ability to satisfy her judgment from defendant Cox's assets has been defeated, plaintiff has been prejudiced and defendant has hindered and delayed plaintiff and other creditors in their pursuit of civil remedies.

19. Pursuant to the Settlement Agreement, Order of Court and the Trust Agreement attached to plaintiff's complaint as Exhibit B, the trust was funded with a lump sum of \$264,602.04 which was awarded to Cox as the beneficiary in final settlement of the cause of action filed to No. A-0157378.

20. The sum of \$30,000.00 was then distributed to Estrada for reimbursement of the living expenses of Cox and a further distribution of \$25,000.00 was made from the trust res to the defense attorneys in the Commonwealth of Pennsylvania hired by Estrada to prosecute Cox's defense against the criminal charges pending against him for criminal homicide and related crimes. These disbursements resulted in a reduction of the net trust res to approximately \$200,000.00 which sum was to be augmented by monthly payments from Bo-Mac and Uretek of \$4,677.27 per month guaranteed for ten years certain and life thereafter whichever is longer, which payments began on December 1, 1999.

21. It is believed and therefore averred that Bomac and Uretek are required by Court Order and under the terms of the settlement agreement to make periodic payment of these sums to the

trustee for and on behalf of the defendant Cox.

22. It is believed and therefore averred that the Court of Common Pleas of Clearfield County, Pennsylvania, has jurisdiction over Estrada and Southwest Guaranty in that the payment of sums by Southwest to Cox's defense attorneys in the Commonwealth of Pennsylvania established minimum contacts with the Commonwealth of Pennsylvania and thus established jurisdiction over the defendant trustee since such contacts are sufficient to establish a nexus between Southwest and the Commonwealth so as to allow courts of competent jurisdiction with the Commonwealth to exercise jurisdiction over the defendant bank for entry of orders disposing of and/or otherwise controlling the trust res. (42 Pa. C.S.A. §5322)

23. It is further believed and therefore averred that the Court of Common Pleas of Clearfield County, Pennsylvania, can assert in personam jurisdiction over the defendant Estrada based upon her contacts with the Commonwealth to wit: her retention of Cox's defense attorneys in the Commonwealth of Pennsylvania, her assistance in that defense, her payment of the defense team to provide a legal and psychiatric defense for Cox and her fraudulent and tortious conduct outside the Commonwealth which caused harm or injury within the Commonwealth. (42 Pa. C.S.A. §5322)

24. It is believed and therefore averred that the courts in Texas will uniformly apply the provisions of the Uniform Fraudulent Transfer Act of the Commonwealth of Pennsylvania in that the State of Texas has adopted the Uniform Fraudulent Transfer Act and at

Section 24.012 their statute provides as follows:

"This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it."

WHEREFORE, Plaintiff requests, pursuant to Pa. R.C.P. No. 1531(a), that a preliminary injunction forthwith be granted by this Court in order to preserve the status quo until such time as this Court finally determines the rights of each party by:

a. Enjoining defendants Cox and Estrada from spending or utilizing any of the proceeds on deposit with Southwest Guaranty or elsewhere or any payments received pursuant to the structured settlement or otherwise; and

b. Enjoining Southwest Guaranty from honoring any request for the withdrawal of the funds that are currently in Cox's trust or will be received therein pursuant to the structured settlement or other payment, by check or otherwise; and

c. Scheduling and holding a timely hearing, pursuant to Pa. R.C.P. 1531, pertaining to the continuance of such preliminary injunction; and

d. Canceling and setting aside the transfer of the property to the defendant Southwest and declaring that said transfer was and is void as against creditors of Clifford Cox including plaintiff; and

e. Declaring that the title to the property is vested in Clifford Cox; and

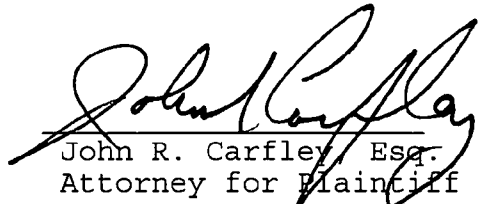
f. Awarding plaintiff its costs incurred herein and accruing costs; and

g. Restraining the defendants Cox, Estrada and Southwest from further disposing of any property including the trust res and/or any payments received pursuant to the structured settlement or otherwise; and

h. Appointing a receiver to take charge of the property; and

i. Authorizing the plaintiff to attach, levy and/or execute on the property conveyed, and/or to be conveyed pursuant to the structured settlement or otherwise, now or in the future to be within the possession and control of Southwest Guaranty; and

j. Such other and further relief as may be just and appropriate under the circumstances.



John R. Carfley Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: March 20, 2000

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Kay L Churney

Dated: March 20, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:
:
No. 00- 328-CD
:
Jury Trial Demanded
Document filed: Complaint
:
Filed on behalf of:
Plaintiff
:
Counsel for this Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 15 2000

Attest:

William L. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

: Jury Trial Demanded
:
:

NOTICE

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 that 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 other claims 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 A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :

vs. : No. 00-

CLIFFORD COX; LINDA ESTRADA, : Jury Trial Demanded
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

COMPLAINT

AND NOW comes the Plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick, who by and through her attorney, John R. Carfley, Esquire, sets forth the following claims and in support thereof avers as follows:

1. Plaintiff, Kay Churner is an adult individual residing at P. O. Box 98, Brisbin, Pa., 16620.

2. Plaintiff is the mother of John Dimmick, deceased.

3. Plaintiff was appointed Executrix of the Estate of John Dimmick on May 28, 1999, by the Register of Wills of Clearfield County, Pennsylvania.

4. Plaintiff filed a personal injury action pursuant to 42 Pa. Cons. Stat. §8301 and Pa. R.C.P. 2202(a) as the personal representative of decedent, on her own behalf and on behalf of all those entitled by law to recover damages for the wrongful death of decedent, John Dimmick.

5. Plaintiff filed this action in the Court of Common Pleas

of Clearfield County, Pennsylvania, to No. 99-825-CD on behalf of decedent's estate pursuant to 20 Pa. Con. Stat. §3373 and 42 Pa. Con. Stat. §8302 for damages suffered by the estate as a result of decedent's death as well as for the pain, suffering, and inconvenience which decedent underwent prior to his death.

6. Said action was initiated by writ of summons which was served on the defendant Linda Estrada individually and as next friend for Clifford Cox on the 1st day of September, 1999, all of which is evidenced by the return receipt for certified mail, a true and correct copy of which is affixed hereto as Exhibit A.

7. The names and addresses of all persons legally entitled to recover damages for the death of decedent, and their relationship to decedent are as follows:

Name	Address	Relationship to Decedent
Kay Churner	P. O. Box, Brisbin, Pa., 16620	Mother

8. Defendant herein is Clifford Cox, (hereinafter Cox) an adult individual presently incarcerated in the Clearfield County prison.

9. Defendant herein is Linda Estrada, (hereinafter Estrada), individually and as next friend (ANF) of Clifford Cox who presently resides at P. O. Box 705, Sante Fe, Texas, 77517.

10. Defendant herein is the Southwest Guaranty Trust Co., N.A. (hereinafter Southwest Guaranty) believed and therefore averred to be a Texas Corporation with principal offices located at 10411 Westheimer Road, Houston, Texas, 77042, which entity is presently named as the Trustee of a certain trust created on or

about the 9th day of November, 1999, for the defendant Clifford Cox which trust was established with proceeds received by the defendant Cox from the settlement of a personal injury suit filed to No. A157378 in the District Court of Jefferson County, Beaumont, Texas. A true and correct copy of said trust instrument is attached hereto and marked Exhibit B.

11. At the time of the settlement hereinabove referenced defendant Cox's interest was represented in the proceeding by Attorney Timothy Ferguson of Beaumont, Texas who was appointed as the Attorney ad litem in said proceeding.

12. The underlying basis of plaintiff's claim against the defendant, Cox, in the litigation filed in Clearfield County to No. 99-825-CD rests upon the fact that on or about the 10th day of May, 1999, Cox illegally purchased a handgun in the Commonwealth of Pennsylvania and without warning, provocation and/or excuse shot to death plaintiff's decedent as a result of which a cause of action has arisen for wrongful death and survival all of which is stated in the complaint filed against the defendants Cox and Estrada to No. 99-825-CD, the averments of which complaint are incorporated herein by reference as fully as though set forth at length.

13. The nature and amount of the plaintiff's claims for damages are set forth in Plaintiff's Complaint and are supported by an Economist's Report which places Plaintiff's compensatory damages in the range of \$1,000,000.00.

14. Said claim for damages has not been reduced to judgment at the present time.

15. It is believed and therefore averred that the defendants Cox and Estrada, as of September 1, 1999, were fully and completely aware of the potential litigation arising out of the shooting of the plaintiff's decedent, they having been apprised of the pendency of the action by correspondence from Plaintiff's counsel and by the issuance of a Writ of Summons which was served on the defendant Estrada on September 1, 1999, which correspondence and summons alerted these defendants as to the potential for claims under the Wrongful Death and Survival Statutes.

16. Notwithstanding this notice defendants Cox and Estrada, on November 9, 1999, acting in concert and with the intent to defraud the plaintiff conveyed the proceeds of the personal injury award believed to consist of approximately \$750,000.00 to the defendant Southwest Guaranty Trust Co., N.A. pursuant to a trust instrument created for the defendant Cox with spendthrift provisions which provisions were inserted at the insistence of the defendants, Cox and Estrada, with the intent to hinder, delay, and defraud the plaintiffs who are legitimate creditors of the defendants.

17. Defendant Cox was rendered insolvent by the aforesaid conveyance to the defendant Trustee.

18. No consideration was exchanged in the creation of the trust and it is believed that the parties involved in the transaction to wit, defendants Cox and Estrada made the transfer in order to prevent the application of the aforesaid proceeds to the payment of Cox's debts including the judgment expected to be

rendered in Plaintiff's suit knowing or having reason to know that Cox would be rendered insolvent thereby.

19. Defendant Southwest Guaranty acting as the repository of the sums transferred to the Trust on behalf of Cox and as Trustee charged with the administration and disposition of the trust res has been apprised of the claim asserted by Plaintiff against Cox and of its responsibility to protect the trust res for the benefit of creditors by letter dated the 14th day of March, 2000, a true and correct copy of said letter being affixed hereto as Exhibit C.

20. Section 5101 et. seq. of the Pennsylvania Uniform Fraudulent Transfer Act (12 Pa. C.S.A. §5101 et. seq.) provides remedies to a plaintiff in circumstances where a transfer has been made with actual intent to hinder, delay or defraud a creditor which remedies include the avoidance of the transfer or obligation to the extent necessary to satisfy the creditors' claim, attachment or other provisional remedy against the asset transfer or other property of a transferee in accordance with the procedures established by applicable law, issuance of an injunction against further disposition by the debtor or transferee or both of the asset transferred or other property, appointment of a receiver to take charge of the asset transferred or of other property of the transferee, and/or such other relief as the circumstances may require. (12 Pa. C.S.A. §5107).

21. Under Pennsylvania Law, a transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer

was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer and the debtor was insolvent at the time of the transfer or the debtor became insolvent as a result of the transfer. (12 Pa. C.S.A. §5105)

22. Under the Pennsylvania Uniform Fraudulent Transfer Act an Order may issue regardless of whether the claim or right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. (12 Pa. C.S.A. §§5101; 5104)

23. It is believed and therefore averred that if the Trust res is allowed to remain available to the defendants Cox and/or Estrada the asset will be dissipated by these defendants in due course all to the prejudice and detriment of the plaintiffs.

24. The State of Texas has adopted the Uniform Fraudulent Transfer Act (V.T.C.A. Bus. & C. §§24.001 - 24.012), as a result of which the courts of that jurisdiction will enforce judgments and/or decrees entered by a sister state pursuant to said Uniform Act based on the full faith and credit provisions of federal and state law.

25. While the situs of the trust is currently in the State of Texas, Pennsylvania Courts continue to exercise in personam jurisdiction over the beneficiary Cox and as a result suit may be maintained under the Uniform Fraudulent Transfer Act pursuant to the doctrine of concurrent jurisdiction.

WHEREFORE, Plaintiff prays

(a) that the transfer to the Trust created as aforesaid be declared to be fraudulent, void and of no effect;

(b) that the defendants, Cox, Estrada, and Southwest Guaranty be enjoined and restrained from conveying or in any other way encumbering this asset;

(c) that defendant Southwest Guaranty be ordered to retain the trust in tact or that a receiver be appointed for purposes of liquidating the same and applying the proceeds to the satisfaction of plaintiff's judgment at such time as the judgment is rendered;

(d) that defendants, their officers, agents and employees be restrained preliminarily until final hearing and permanently thereafter from selling, transferring, disposing of, liening or in any way diminishing the quantity and value of the asset and property in trust for Cox;

(e) that defendants and each of them be declared a trustee for the benefit of plaintiff for an amount not less than Cox's liability to the plaintiff;

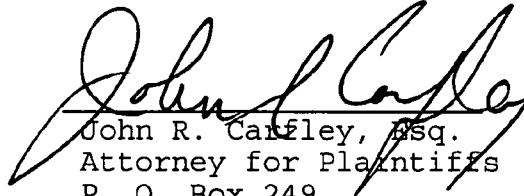
(f) that it be declared that Southwest Guaranty is the real defendant in interest and liable to the plaintiff for the amount of the judgment to the plaintiff up to and including the limit of the trust res and all interest, income and dividends generated thereon exclusive of trustee's reasonable costs, commissions, charges and fees;

(g) that Southwest Guaranty, its officers, agents, and

employees be restrained from enforcing any security interest in any assets or property which were transferred to them for and on behalf of the defendant Cox;

(h) that Southwest Guaranty be ordered to account for all monies, assets or property of any kind or description which it received for and on behalf of Cox;

(i) such other relief as the court may deem just and proper.


John R. Canfley, Esq.
Attorney for Plaintiffs
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: March 14, 2000

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Kay L Churner

Dated: March 14, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA


KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs. : No.99-825-CD

CLIFFORD COX; LINDA ESTRATA, : Jury Trial Demanded
individually and as next friend
(ANF) of Clifford Cox, RESTA
JENE GREGORI and DARLENE A. GREGORI:
individually and T/D/B/A
JENE'S GUNSHOP, INC and UNISYS :
CORPORATION
Defendants :

CERTIFICATE OF SERVICE

I do certify that I made service of the Writ of Summons filed in the above captioned matter upon defendants, Linda Estrata, individually and as next friend (ANF) of Clifford Cox, by certified mail, return receipt requested. Service was accomplished as evidenced by the signed return receipt attached hereto.


John R. Carfley, Esq.
Attorney for Plaintiffs

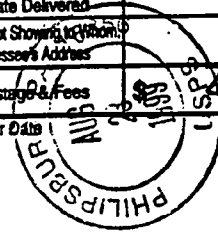
Dated: 2/29/00

7 520 845 809

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided.
 Do not use for International Mail (See reverse)

Sent to Linda Estrata	
Street & Number P. O. Box 705	
Post Office, State, & ZIP Code Santa Fe, Texas 77517	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 3.51
Postmark or Date	

PS Form 3811, December 1994



Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article Addressed to:

Linda Estrata
P. O. Box 705
Santa Fe, Texas 77517

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

102595-98-8-0229

Domestic Return Receipt

- I also wish to receive the following services (for an extra fee):
- 1. ☐ Addressee's Address
 - 2. ☐ Restricted Delivery
- Consult postmaster for fee.

4a. Article Number

2 520 845 809

4b. Service Type

- ☐ Registered
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☐ COD

7. Date of Delivery

9.1.99

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

P 404 554 369

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided.
 Do not use for International Mail (See reverse)

Sent to Linda Estrata	
Street & Number P. O. Box 705	
Post Office, State, & ZIP Code Santa Fe, Texas 77517	
Postage	\$ 99
Certified Fee	140
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	125
Postmark or Date	PA 27 1999

PS Form 3811, December 1994

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
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3. Article Addressed to:

Linda Estrata
P. O. Box 705
Santa Fe, Texas, 77517

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

102595-98-8-0229

Domestic Return Receipt

4a. Article Number

P 404 554 369

4b. Service Type

- ☐ Registered
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☐ COD

7. Date of Delivery

9.1.99

8. Addressee's Address (Only if requested and fee is paid)

- I also wish to receive the following services (for an extra fee):
- 1. ☐ Addressee's Address
 - 2. ☐ Restricted Delivery
- Consult postmaster for fee.

Thank you for using Return Receipt Service.

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5381
FAX 342-1127

August 19, 1999

Linda Estrata
P. O. Box 705
Sante Fe, Texas, 77517

RE: John Dimmick Estate
vs. Clifford Cox
No. 99-825-CD-Clearfield County

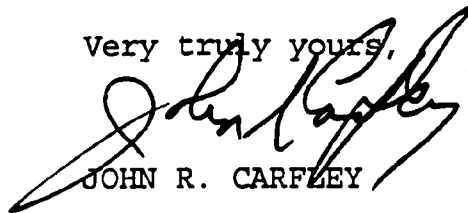
Dear Ms. Estrata:

Please find enclosed a Summons from the Court of Common Pleas of Clearfield County, Pennsylvania, notifying you individually and as next friend of Clifford Cox of the commencement of an action filed on behalf of Kay Churner, individually and as Executrix of the Estate of John Dimmick.

The complaint in this matter will allege causes of action under the Pennsylvania wrongful death and survival statutes and will seek damages as specified therein.

Should you have any questions concerning this litigation, please do not hesitate to contact me.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

Encls.

Certified Mail
Return Receipt Requested

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

KAY CHURNER, individually
and as EXECUTRIX OF THE ESTATE
OF JOHN DIMMICK
Plaintiff(s)

S U M M O N S

No. 99-825- - CD

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, BOMAC
CONTRACTORS, INC., URETEK, U.S.A.;
INC. and B.G. ANDREW
Defendant(s)

To the above named Defendant(s) you are hereby notified that the
above named Plaintiff(s), has/have commenced a Civil Action
against you.

Date August 10, 1999

William A. Shaw
Prothonotary

By William A. Shaw
(Deputy)

ISSUING ATTORNEY:

John R. Carfley, Esquire

Civ

No. A-0157378

LINDA ESTRADA,
As Next Friend of
CLIFFORD COX, et. al.

§
§
§
§
§
§
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§
§
§
§

IN THE DISTRICT COURT

VS.

JEFFERSON COUNTY, TEXAS

BO-MAC CONSTRUCTORS, INC.,
et. al.

58th JUDICIAL DISTRICT

ORDER CREATING TRUST FOR
THE BENEFIT OF CLIFFORD COX
UNDER SECTION 142.005 OF THE TEXAS PROPERTY CODE

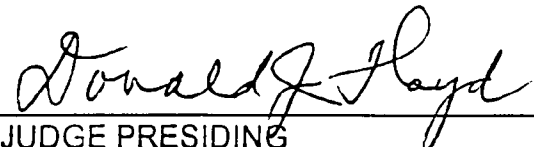
On this day came to be heard the Application LINDA ESTRADA, as next friend of CLIFFORD COX an incapacitated person (the "Beneficiary"), requesting that the Court establish a trust for the Beneficiary pursuant to Section 142.005 of the Texas Property Code, and due and proper notice of such application and hearing thereon having been given to all necessary and interested persons, and all persons necessary for jurisdiction having appeared in person or by attorney, and the Court having considered the evidence presented, the argument of counsel, and the terms of the trust agreement attached to this Order as Exhibit A which is incorporated herein for all purposes by this reference, the Court hereby finds that the Beneficiary is an incapacitated person as defined by Section 142.005 of the Texas Property Code, and such trust is in the best interest of the Beneficiary and should be created under the authority of Section 142.005 of the Texas Property Code; it is therefore

ORDERED, that the funds awarded to the Beneficiary pursuant to the Final Judgement in the above entitled and numbered cause shall be held in trust for the benefit of Beneficiary pursuant to Section 142.005 of the Texas Property Code, and pursuant to the terms of the trust agreement, a copy of which is attached hereto as Exhibit A; and it is further

ORDERED, that Southwest Guaranty Trust Company N.A., Houston, Texas, is hereby appointed sole Trustee of the Trust; and, upon the Trustee's acceptance of such Trust, the Defendants are hereby ORDERED to pay to the Trustee for the benefit of Beneficiary all sums awarded herein in the above entitled and numbered cause; and it is further

ORDERED, that approval is hereby granted to the Trustee to charge a reasonable fee for its trust services at the rates and in the manner provided for in the Trust Agreement.

SIGNED this the 9th day of December, 1995.


JUDGE PRESIDING

APPROVED:



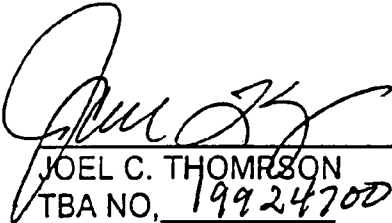
LINDA ESTRADA
P. O. Box 705
SANTA FE, TEXAS 77517

AN/F OF CLIFFORD COX



TIMOTHY FERGUSON
TBA NO. 06929500
ATTORNEY AT LAW
1122 ORLEANS STREET
BEAUMONT, TEXAS 77701
TEL: 409-832-9900
FAX: 409-838-6337

GUARDIAN AD LITEM



JOEL C. THOMPSON
TBA NO. 19924700
ATTORNEY AT LAW
BERRY & THOMPSON L.L.P.
2727 ALLEN PARKWAY SUITE 800
HOUSTON, TEXAS 77019
TEL: 713-520-2500
FAX: 713-520-2525

ATTORNEY FOR PLAINTIFF

Scanned

Exhibit A
TRUST AGREEMENT UNDER SECTION 142.005
OF THE TEXAS PROPERTY CODE

This instrument establishes the terms of a trust (herein called the "Trust") created for the benefit of CLIFFORD COX, an incapacitated person, pursuant to the order of the 58TH DISTRICT COURT of JEFFERSON County, Texas, (herein called the "Court") under the authority of Section 142.005 of the Texas Property Code.

1. Trustee. The trustee of the Trust is and shall be Southwest Guaranty Trust Company N.A., Houston, Texas, (hereinafter called the "Trustee"). Upon receipt from the Defendant of the funds constituting the corpus of this Trust, the Trustee's duties shall commence in accordance with the terms hereof. No bond or other security is required of the Trustee or of any successor trustee.

2. Beneficiary. The sole and only beneficiary of the Trust is CLIFFORD COX, (hereinafter called the "Beneficiary"), who was born on January 24, 1950 and whose Social Security number is 195-42-7643.

3. Trust Estate. The Trust shall be funded with the sum of \$264,602.04 which is or has been awarded to the Beneficiary as a result of a settlement or final judgment in Cause No. A-0157378 styled LINDA ESTRADA, AS NEXT FRIEND OF CLIFFORD COX, ET. AL. VS. BO-MAC CONSTRUCTORS INC., ET. AL. in the 58TH DISTRICT COURT, JEFFERSON County, Texas. Such sum of money together with the following sums of money which will hereafter be acquired by the Trust and all income therefrom, shall constitute the trust estate of the Trust:

Guaranteed Monthly Payments:

\$4,677.27 PER MONTH, GUARANTEED FOR 10 YEARS CERTAIN AND LIFE THEREAFTER, WHICHEVER IS LONGER, WITH PAYMENTS BEGINNING 12/01/1999.

4. Distributions from the Trust. The Trustee shall pay to or apply for the benefit of the Beneficiary such amounts out of the net income and principal (if income is insufficient) of the Trust as are reasonably necessary in the sole discretion of the Trustee to provide for the health, education, support, or maintenance of the Beneficiary. Any income not so distributed shall be added to the principal of the Trust.

The Trustee is ORDERED to make a distribution to LINDA ESTRADA in the amount of \$35,000.00 for reimbursement of living expenses for CLIFFORD COX.

Additionally, Trustee is ORDERED to make a distribution to the attorneys for CLIFFORD COX in the amount of \$25,000.00 in order to pay for his defense of criminal charges pending against him.

In making any discretionary payments to the Beneficiary, the Trustee shall consider (i) the standard of living to which the Beneficiary shall have been accustomed prior to the creation of the Trust; (ii) any known resources of the Beneficiary; (iii) the ability of any person who is legally obligated to support the Beneficiary to do so.

No distribution from the Trust shall be made to the Beneficiary to satisfy any obligation if such obligation would otherwise be met from any federal or state assistance program if the Trust had not been created; provided, however, that the Trustee shall not be responsible for making such a determination nor shall the Trustee be held liable for any

distribution made in good faith which results in the loss of any federal or state assistance.

The Trustee may make any distribution required or permitted hereunder, without the intervention of any guardian or other legal representative, in any of the following ways: (i) to the Beneficiary directly; (ii) to the legal or natural guardian of the Beneficiary; (iii) to any person having custody of the Beneficiary; or (iv) by utilizing the distribution directly for the Beneficiary's benefit.

5. Termination. The Trust shall terminate when the beneficiary regains his capacity, or upon the Beneficiary's death. Upon termination, the Trustee shall pay all of the then remaining trust estate of the Trust to the Beneficiary free of any further trust; or, if the Beneficiary is then deceased, to the personal representative of the Beneficiary's estate.

6. Revocability. This Trust shall not be amended, altered or revoked by the Beneficiary or any guardian or other legal representative of the Beneficiary, but it shall remain subject to amendment, modification, or revocation by the Court at any time prior to the termination of the Trust. If the Court revokes the Trust prior to the time that the Beneficiary attains the age of eighteen (18) years, the Court may enter such further or additional orders concerning the trust estate as may be authorized by Section 142.005 of the Texas Property Code. If the Court revokes the Trust after the Beneficiary attains the age of eighteen (18) years, the trust estate shall be paid and delivered to the Beneficiary free of this Trust.

7. Spendthrift Provision. Prior to the actual receipt of any distribution of any portion of the trust estate by the Beneficiary, no property (whether income or principal) of

the Trust shall be subject to anticipation or assignment by the Beneficiary, or to attachment by or the interference or control of any creditor or assignee of the Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of the Beneficiary. Any attempted transfer or encumbrance of any interest in the trust estate of the Trust by the Beneficiary prior to the actual distribution thereof to the Beneficiary shall be wholly void. In addition to being applicable to the Beneficiary, the preceding provisions of this paragraph shall also apply to anyone else, other than the beneficiary, who may be entitled to any portion of the trust estate upon termination of the Trust.

8. Trustee's Investment Authority. The Trustee shall invest the trust estate in accordance with the standards now or hereafter set forth in the Texas Property Code (or any subsequent applicable law), and the Trustee may also invest all or any part of the trust estate in a common trust fund now or hereafter established by the Trustee pursuant to the Texas Property Code.

9. Trustee's Compensation and Expenses. The Trustee shall be entitled to receive for the Trustee's services hereunder a fair and reasonable compensation determined in accordance with the then customary and prevailing charges for similar services charged by corporate fiduciaries in Houston, Harris County, Texas; but the Trustee's compensation shall not exceed the Trustee's then published fee schedule for such services. The Trustee shall also be reimbursed for all reasonable expenses incurred by the Trustee in connection with the Trust. The fees and expenses heretofore incurred hereunder by the Trustee have been approved by the Court at the inception of the Trust, but the Court may review any future fees and expenses in excess of the then customary

and prevailing charges for similar services by corporate fiduciaries in Houston, Harris County, Texas, at any time on the Court's own motion or at the instance of the Trustee or any other party interested in the welfare of the Beneficiary, and upon a hearing of the matter, the Court shall take any action with respect to such fees and expenses as the Court may deem appropriate. The Trustee shall reimburse the Trust for any fees previously paid to the Trustee by the Trust in the event of a final Court order that the Trustee do so.

10. Administrative Provisions. In the administration of the Trust, the Trustee shall be authorized and empowered:

(i) To exercise all of the powers now or hereafter granted to trustees of express trusts by the Texas Trust Code or any corresponding statutes, except that in any instance in which the Texas Trust Code or other statutory provision may conflict with the express provisions of this trust instrument, the provisions of this trust instrument shall control.

(ii) To adjust, arbitrate, compromise, abandon, sue on or defend, and otherwise deal with and settle all claims in favor of or against the Trust; to engage and retain attorneys or accountants at any time when it may be reasonably necessary to do so in order to provide for the prudent management and preservation of the Trust.

(iii) To continue to act as Trustee of the Trust regardless of any change of name of the Trustee and regardless of any reorganization, merger or consolidation of the Trustee.

11. Miscellaneous. The Trust shall also be held and administered pursuant to the following terms and conditions:

(i) This trust shall be governed in all respects by the laws of the State of Texas in which State jurisdiction and venue lie in any and all matters involving the Trust estate and those persons acting in connection with the Trust estate.

(ii) The Trustee shall keep books of account respecting the Trust and all transactions involving the Trust, and shall furnish to the Beneficiary, or to the person having the care and custody of the Beneficiary if the Beneficiary is then under a legal disability, statements at least quarterly showing receipts and disbursements of income and corpus of the Trust, and a list of assets held in the Trust. Such statements shall also be furnished to the Court on request of the Court. The Trustee shall not be responsible or liable to the Beneficiary or any other person on account of any actions that the Trustee may take or fail to take in Trustee's good faith reliance on any order or proceeding of the Court.

(iii) No person or entity dealing with the Trustee hereunder shall be obliged to see to the application of any money or property paid or delivered to the Trustee, and no such person or entity shall be obliged to inquire into the expediency or propriety of any transaction or the authority of the Trustee to enter into and consummate the same upon such terms as the Trustee may deem reasonably appropriate.

(iv) The Trustee may not resign as Trustee of the Trust without receiving prior authority from the Court to do so.

(v) The headings appearing in this instrument are for convenience only and do not purport to define or limit the scope or intent of the provisions to which they refer.

12. Inception of the Trust. This Trust shall become effective upon (i) the entry of

the decree to which this trust indenture is attached, (ii) the transfer of the above stated sum of money to the Trustee, (iii) the execution of this instrument by the guardian ad litem of the Beneficiary, and (iv) the Trustee's acceptance of the Trust which shall be evidenced by the signature below of the appropriate representative of the Trustee.

SIGNED on this the ____ day of _____, 19 ____.

SOUTHWEST GUARANTY TRUST COMPANY N.A.
HOUSTON, TEXAS

By William L. Terry
Title SR. VICE PRESIDENT

10411 Westheimer Road
Houston, Texas 77042

TRUSTEE

The form and content of this trust instrument is hereby approved.

Date: Nov. 9, 1999

Donald J. Floyd
JUDGE PRESIDING

Date: 11-05-'99

Linda Estrada
LINDA ESTRADA

Date: 11-09-99

Timothy Ferguson
TIMOTHY FERGUSON
TBA NO. 06929500
ATTORNEY AT LAW
1122 ORLEANS STREET
BEAUMONT, TEXAS 77701
TEL: 409-832-9900
FAX: 409-838-6337

GUARDIAN AD LITEM

Date: 11/8/99

Joel C. Thompson
JOEL C. THOMPSON
TBA NO. 19924700
BERRY & THOMPSON L.L.P.
2727 ALLEN PARKWAY SUITE 800
HOUSTON, TEXAS 77019
TEL: 713-520-2500
FAX: 713-520-2525

ATTORNEY FOR PLAINTIFF

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

March 14, 2000

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Southwest Guaranty Trust Co. N.A.
10411 Westheimer Road
Houston, Texas, 77042

Attention: William L. Terry,
Senior Vice President

Dear Mr. Terry:

Please be advised that I have been retained to represent the interest of Kay Churner, individually and as Executrix of the Estate of John Dimmick, late of the Borough of Ramey, Clearfield County, Pennsylvania. On May 10, 1999, John Dimmick was shot and killed by one, Clifford Cox, who is now charged with criminal homicide and is incarcerated in the Clearfield County Prison. At the time of this incident, Mr. Cox was involved in a personal injury suit filed to No. A157378 in the District Court of Jefferson County located in Beaumont, Texas, as a result of which he received a substantial cash settlement.

A lawsuit was initiated by the plaintiff in August of 1999 and the writ of summons was served on Ms. Estrada on September 1, 1999. Notwithstanding the institution of this suit to recover damages for personal injuries under the Pennsylvania Wrongful Death and Survival Statutes, and the notice to Estrada of the pendency of the claim, Estrada, upon receipt of the settlement proceeds in the Texas lawsuit, saw to the creation of a trust for the benefit of Clifford Cox which trust is currently being administered by your bank.

I have retrieved copies of the trust and have reviewed the spendthrift provisions of the trust so as to become familiar with the same in the event that a judgment is entered on behalf of my clients here in the Commonwealth of Pennsylvania.

I believe that the trust res constitutes an asset by which an award for damages to the plaintiff may be partially satisfied and would request that the Trustee voluntarily defer from any further distributions which tend to dissipate the trust estate. We are not asking that the trustee restrict disposition for routine expenditures such as trustee's fees or the like, however, any distribution to Cox and/or to Estrada or any other party for his or their benefit could result in legal action to secure a court order

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
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(2)

which would include relief in the form of an order of avoidance of the transfer, an attachment or other provisional remedy against the asset transfer, an injunction against further disposition of the asset or other property and/or the appointment of a receiver to further administer the asset.

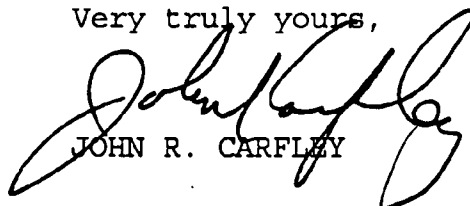
We believe that the original transfer of the settlement proceeds into a trust with spendthrift provisions constituted a fraudulent transfer under the Uniform Fraudulent Transfer Act which has been adopted by the Commonwealth of Pennsylvania and the State of Texas (V.T.C.A. Bus. & C. §§ 24.001 to 24.012). It is my opinion that the intent of the settlors, Cox and Estrada, was to hinder, delay and defraud a legitimate creditor to wit: the John Dimmick Estate in the pursuit of its claim.

I would hope that we would be able to work together in this matter since the damages which we are seeking in the suit in Pennsylvania, are in excess of \$1,000,000.00 as established by our economist. The Uniform Fraudulent Transfer Act specifies that the claim need not be liquidated in order to be asserted, particularly where the intent of the settlor was to defraud the creditor and the transfer effectively created an insolvency in the debtor. I believe all of these requirements are present in the principal case and that a court would issue an injunction if we choose to proceed in that manner.

We would simply ask that the trust res be sequestered until further notice pending the outcome of the litigation in Pennsylvania. Our concern is that the trust res will be dissipated by Cox and Estrada prior to the completion of the personal injury litigation here in Pennsylvania unless some action is taken to prevent it. If you cannot assist us without formal court action, please so advise. If I do not hear from you by week's end, I will assume that a formal petition for injunctive relief will be required and will proceed accordingly.

Please review this matter and then contact me or have your attorney contact me with respect to your position on the matter.

Very truly yours,


JOHN R. CARFLEY

JRC:sm

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

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March 14, 2000

Southwest Guaranty Trust Co. N.A.
10411 Westheimer Road
Houston, Texas, 77042

Attention: William L. Terry,
Senior Vice President

Dear Mr. Terry:

Please be advised that I have been retained to represent the interest of Kay Churner, individually and as Executrix of the Estate of John Dimmick, late of the Borough of Ramey, Clearfield County, Pennsylvania. On May 10, 1999, John Dimmick was shot and killed by one, Clifford Cox, who is now charged with criminal homicide and is incarcerated in the Clearfield County Prison. At the time of this incident, Mr. Cox was involved in a personal injury suit filed to No. A157378 in the District Court of Jefferson County located in Beaumont, Texas, as a result of which he received a substantial cash settlement.

A lawsuit was initiated by the plaintiff in August of 1999 and the writ of summons was served on Ms. Estrada on September 1, 1999. Notwithstanding the institution of this suit to recover damages for personal injuries under the Pennsylvania Wrongful Death and Survival Statutes, and the notice to Estrada of the pendency of the claim, Estrada, upon receipt of the settlement proceeds in the Texas lawsuit, saw to the creation of a trust for the benefit of Clifford Cox which trust is currently being administered by your bank.

I have retrieved copies of the trust and have reviewed the spendthrift provisions of the trust so as to become familiar with the same in the event that a judgment is entered on behalf of my clients here in the Commonwealth of Pennsylvania.

I believe that the trust res constitutes an asset by which an award for damages to the plaintiff may be partially satisfied and would request that the Trustee voluntarily defer from any further distributions which tend to dissipate the trust estate. We are not asking that the trustee restrict disposition for routine expenditures such as trustee's fees or the like, however, any distribution to Cox and/or to Estrada or any other party for his or their benefit could result in legal action to secure a court order

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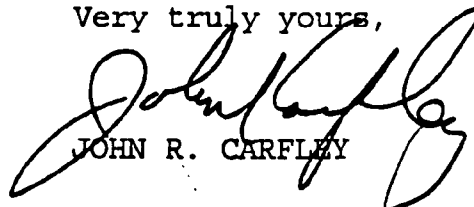
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I would hope that we would be able to work together in this matter since the damages which we are seeking in the suit in Pennsylvania, are in excess of \$1,000,000.00 as established by our economist. The Uniform Fraudulent Transfer Act specifies that the claim need not be liquidated in order to be asserted, particularly where the intent of the settlor was to defraud the creditor and the transfer effectively created an insolvency in the debtor. I believe all of these requirements are present in the principal case and that a court would issue an injunction if we choose to proceed in that manner.

We would simply ask that the trust res be sequestered until further notice pending the outcome of the litigation in Pennsylvania. Our concern is that the trust res will be dissipated by Cox and Estrada prior to the completion of the personal injury litigation here in Pennsylvania unless some action is taken to prevent it. If you cannot assist us without formal court action, please so advise. If I do not hear from you by week's end, I will assume that a formal petition for injunctive relief will be required and will proceed accordingly.

Please review this matter and then contact me or have your attorney contact me with respect to your position on the matter.

Very truly yours,


JOHN R. CARFLEY

JRC:sm

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

March 16, 2000

Bo-Mac Contractors, Inc.
c/o James R. Old, Jr.
GERMER & GERTZ, L.L.P.
805 Park Street
Beaumont, Texas, 77701

Dear Mr. Old:

Please be advised that I have been retained to represent the interest of Kay Churner, as an individual and as Executrix of the Estate of John Dimmick, late of the Borough of Ramey, Clearfield County, Pennsylvania. On May 10, 1999, John Dimmick was shot and killed by Clifford Cox, who is now charged with criminal homicide and other related crimes and is incarcerated in the Clearfield County Prison. At the time of this assault, Mr. Cox was involved in a personal injury suit filed to No. A157378 in the District Court of Jefferson County located in Beaumont, Texas, as a result of which he received a substantial cash settlement from among others, your client, Bo-Mac Contractors, Inc.

A lawsuit was initiated by the plaintiff in Clearfield County, Pennsylvania, on August 10, 1999 and a writ of summons was served on Linda Estrada as next friend of Clifford Cox on September 1, 1999. Notwithstanding the institution of this suit to recover damages for personal injuries under the Pennsylvania Wrongful Death and Survival Statutes, and the notice to Cox and Estrada of the pendency of the claim, Estrada, upon receipt of the settlement proceeds in the Texas lawsuit, saw to the creation of a trust for the benefit of Clifford Cox which trust is currently being administered by Southwest Guaranty Trust Co., N.A.

I have retrieved and reviewed the settlement documents and the trust instrument and I believe that I am correct in assuming, that, in addition to the initial lump sum settlement paid by Bo-Mac, Bo-Mac is contributing certain sums each month into a trust fund by way of a structured settlement. I have reviewed the spendthrift provisions of the trust so as to become familiar with the same in the event that a judgment is entered on behalf of my clients here in Pennsylvania and it becomes necessary for us to execute on the judgment and garnish the trust res.

Exhibit C

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
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FAX 342-1127

(2)

I believe that the trust and the contribution your client is making each month to the trust constitute assets from which an award for damages to my client may be partially satisfied. I would, therefore, ask that your client voluntarily desist from any further distributions which tend to dissipate Cox's estate.

I realize that your client is under Court Order to pay this settlement. I believe, however, that the creation of the trust by Estrada constituted a fraudulent transfer and the deposits being made are a continuing fraud on Cox's creditors. Therefore these transfers and distribution to Cox and/or to Estrada or any other party for his or their benefit could result in legal action to secure a court order which would include relief in the form of an order of avoidance of the transfer, an attachment or other provisional remedy against the asset transfer, an injunction against further disposition of the asset or other property and/or the appointment of a receiver to further administer the asset.

As stated I believe that the original transfer of the settlement proceeds into a trust with spendthrift provisions constituted a fraudulent transfer under the Uniform Fraudulent Transfer Act which has been adopted by the Commonwealth of Pennsylvania and the State of Texas (V.T.C.A. Bus. & C. §§ 24.001 to 24.012). It is my opinion that the intent of the settlors, Cox and Estrada, was to hinder, delay and defraud a legitimate creditor to wit: the John Dimmick Estate in the pursuit of its claim.

I would hope that we would be able to work together in this matter since the damages which we are seeking in the personal injury suit in Pennsylvania, are in excess of \$1,000,000.00 as established by our economist. The Uniform Fraudulent Transfer Act specifies that a claim need not be liquidated in order to be asserted, particularly where the intent of the settlor was to defraud the creditor and the transfer effectively created an insolvency in the debtor. I believe all of these requirements are present in the principal case and that a court would issue an injunction if we chose to proceed in that manner.

The psychological profile of Cox prepared by Dr. Robert H. Davis seems to connect the injuries sustained by Cox in the motor vehicle accident to the conduct which resulted in the shooting of my client here in Pennsylvania. If, in fact, there is a nexus between the alleged negligence of your client and the ultimate actions of Cox, my client obviously was the innocent victim of the negligence and should rightfully be compensated for the loss. I really do not wish to undertake any direct action against your client in an attempt to recover damages even though I believe that

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
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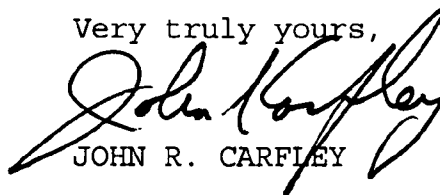
a cause of action might lie against your client if the conclusions of the psychological profile can be sustained.

I do, however, believe that it is in the best interest of both of our clients to cooperate and attempt to insure that the additional funds being paid Mr. Cox as a result of his injuries are ultimately channeled to the proper party, in this case the innocent victim of Cox's actions so that the estate can be compensated monetarily for the loss which the family has sustained and will continue to sustain in the future. Please understand that I do not intend to imply that any of the attorneys or any individuals other than Estrada and Cox intended to commit fraud by establishing this trust. However, the factual circumstances surrounding the creation of the trust and the knowledge of these individuals at the time of the settlement that a lawsuit was pending in Pennsylvania for the recovery of personal injuries, makes it difficult to believe that the creation of the trust with spendthrift provisions was for any other purpose than to hinder, delay and/or ultimately defraud a legitimate creditor. For that reason I will not hesitate to undertake whatever actions are necessary in order to protect my client's interest and see that they are justly compensated in this claim.

Would you please review this matter and advise if you would be willing to agree to voluntarily deposit the remaining settlement proceeds into Court or into some other secure fund for the benefit of the plaintiffs in the personal injury suit filed in Clearfield County, Pennsylvania?

If I do not hear from you by Friday, March 24, 2000, I will assume that a formal petition for injunctive relief will be required and will proceed accordingly here in Pennsylvania against Cox, Estrada, and Southwest.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

March 16, 2000

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

Uretek, U.S.A., Inc.
c/o Robert A. Black, Esq.
MEHAFFY & WEBER
P. O. Box 16
Beaumont, Texas, 77704

Dear Mr. Black:

Please be advised that I have been retained to represent the interest of Kay Churner, as an individual and as Executrix of the Estate of John Dimmick, late of the Borough of Ramey, Clearfield County, Pennsylvania. On May 10, 1999, John Dimmick was shot and killed by Clifford Cox, who is now charged with criminal homicide and other related crimes and is incarcerated in the Clearfield County Prison. At the time of this assault, Mr. Cox was involved in a personal injury suit filed to No. A157378 in the District Court of Jefferson County located in Beaumont, Texas, as a result of which he received a substantial cash settlement from among others, your client, Uretek, U.S.A., Inc.

A lawsuit was initiated by the plaintiff in Clearfield County, Pennsylvania, on August 10, 1999 and a writ of summons was served on Linda Estrada as next friend of Clifford Cox on September 1, 1999. Notwithstanding the institution of this suit to recover damages for personal injuries under the Pennsylvania Wrongful Death and Survival Statutes, and the notice to Cox and Estrada of the pendency of the claim, Estrada, upon receipt of the settlement proceeds in the Texas lawsuit, saw to the creation of a trust for the benefit of Clifford Cox which trust is currently being administered by Southwest Guaranty Trust Co., N.A.

I have retrieved and reviewed the settlement documents and the trust instrument and I believe that I am correct in assuming, that, in addition to the initial lump sum settlement paid by Uretek, Uretek is contributing certain sums each month into a trust fund by way of a structured settlement. I have reviewed the spendthrift provisions of the trust so as to become familiar with the same in the event that a judgment is entered on behalf of my clients here in Pennsylvania and it becomes necessary for us to execute on the judgment and garnish the trust res.

Exhibit D

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
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I would hope that we would be able to work together in this matter since the damages which we are seeking in the personal injury suit in Pennsylvania, are in excess of \$1,000,000.00 as established by our economist. The Uniform Fraudulent Transfer Act specifies that a claim need not be liquidated in order to be asserted, particularly where the intent of the settlor was to defraud the creditor and the transfer effectively created an insolvency in the debtor. I believe all of these requirements are present in the principal case and that a court would issue an injunction if we chose to proceed in that manner.

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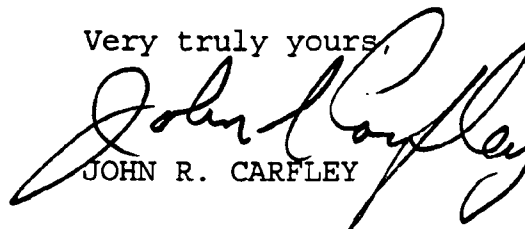
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If I do not hear from you by Friday, March 24, 2000, I will assume that a formal petition for injunctive relief will be required and will proceed accordingly here in Pennsylvania against Cox, Estrada, and Southwest.

Very truly yours,


JOHN R. CARFLEY

JRC:sm

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA, :
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

CERTIFICATE OF SERVICE

I do certify that I made service of the Petition for Preliminary Injunction by priority mail, postage prepaid upon defendants by depositing the same in the United States mail, this 23rd day of March, 2000 as follows:

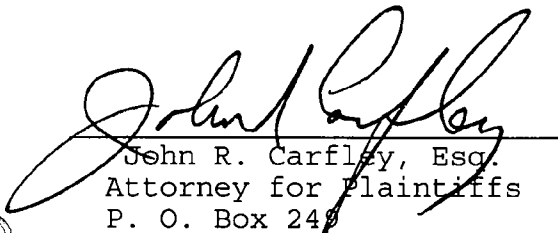
Linda Estrada, Individually	Clifford Cox
and ANF of Clifford Cox	Clearfield County Prison
P. O. Box 705	420 21st Street
Santa Fe, Texas, 77517	Clearfield, Pa., 16830

Southwest Guaranty Trust Co. N.A.
Attention: S. Brady Whitaker, Esq.
10411 Westheimer Road
Suite 200
Houston, TX 77042

FILED

MAR 24 2000

William A. Shaw
Prothonotary


John R. Carfley, Esq.
Attorney for Plaintiffs
P. O. Box 240
Philipsburg, Pa., 16866
(814) 342-5581

5
UP

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

KAY CHURNER, individually and as :
EXECUTRIX OF THE ESTATE OF :
JOHN DIMMICK :
vs. : No. 00-328-CD

CLIFFORD COX, LINDA ESTRADA, :
individually and as next friend (ANF) :
of Clifford Cox, and SOUTHWEST :
GUARANTY TRUST CO., N.A. :

ORDER

NOW, this 4th day of April, 2000, upon consideration of
Plaintiff's Petition for Preliminary Injunction, a Rule is hereby issued upon
Defendants to Appear and Show Cause why the Petition should not be granted. Rule
Returnable the 17th day of April, 2000, at 1:30 P.M. in
Courtroom No. 1.

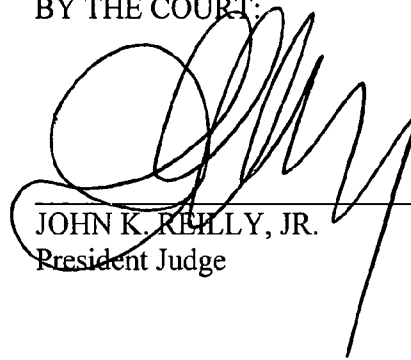
Notice shall be given to Defendants five (5) days prior to hearing.

FILED

APR 04 2000

William A. Shaw
Prothonotary

BY THE COURT:



JOHN K. KELLY, JR.
President Judge

FILED

APR 04 2000

09:2915
William A. Shaw

Prothonotary

KEY

cc Cathy Conley

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

KAY CHURNER, individually and as :
EXECUTRIX OF THE ESTATE OF :
JOHN DIMMICK :

vs : NO. 00-328-CD

:
CLIFFORD COX, LINDA ESTRADA, :
individually and as next friend (ANF) :
of Clifford Cox, and SOUTHWEST :
GUARANTY TRUST CO., N.A. :

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S PETITION
FOR PRELIMINARY INJUNCTION

FILED

APR 05 2009

William A. Shaw
Prothonotary

AFFIDAVIT

Personally appeared before me, the undersigned, KAY CHURNER, individually, and as Executrix of the Estate of John Dimmick, late of the Borough of Ramey, Clearfield County, Pennsylvania, who being duly sworn according to law, deposes and states as follows:

1. I am the personal representative of the Estate of John Dimmick and, in that capacity, filed a personal injury suit under the wrongful death and survival statutes of the Commonwealth of Pennsylvania.
2. I caused said complaint to be served on various individuals including, but not limited to, Clifford Cox and Linda Estrada, individually and as next friend of Clifford Cox. pursuant to applicable Rules of Civil Procedure governing service of process both within and outside the Commonwealth of Pennsylvania.
3. A Default Judgment has been entered against Clifford Cox and Linda Estrada, individually, and as next friend (ANF) of Clifford Cox for failure to file an answer to the complaint in a timely fashion. True and correct copies of said judgments are attached hereto as Exhibits A and B.
4. As a result of personal injuries sustained in an automobile accident in the state of Texas, Clifford Cox was awarded the sum of 1.375 million dollars as damages, which settlement was deposited

into a Spendthrift Trust currently being administered by Southwest Guaranty, one of the defendants named in this suit. Linda Estrada continues to act as next friend (ANF) for Clifford Cox in this proceeding and in the administrations of the trust.

5. From the trust res, the defendants, Clifford Cox and Linda Estrada have already withdrawn the following sums which have been applied and/or paid for the benefit of Clifford Cox.

- a. Attorneys fees incurred in the settlement of personal injury suit in Texas, \$543,975.50;
- b. Attorneys fees for Attorney Ad Litem, \$37,000.00;
- c. Attorneys fees, criminal defense, Clearfield County, \$25,000.00;
- d. Linda Estrada, reimbursement of household and living expenses in the care of Clifford Cox, \$35,000.00.

6. At the present time, there remains less than \$200,000.00 in the trust res, but said sum will be enhanced by payments of \$4,677.27 per month pursuant to a structured settlement which will be paid by two (2) corporate entities joined as defendants in the litigation in the state of Texas.

7. It is believed and, therefore averred, that the personal injury suit brought on behalf of the Estate of John Dimmick for damages sustained under the Wrongful Death and Survival Statutes will be successful and could result in an award in excess of one (1) million dollars based on an economist's report which has calculated the compensatory damages due the Estate within that range.

8. The likelihood of success in this suit is extremely high given the factual scenario surrounding the incident and given the entry of Default Judgments against two (2) of the defendants named therein.

9. It is believed that the transfer by Linda Estrada of the settlement proceeds in the Texas suit into a Spendthrift Trust was fraudulent under the Uniform Fraudulent Transfer Act and will be set aside by this Court when litigation on the underlying complaint filed in this matter is completed.


10. Defendant Estrada has resisted service of process in all the litigation filed by the plaintiff and has attempted to conceal her whereabouts and has refused to deal responsibly with the situation at hand by refusing to respond to correspondence from plaintiff's counsel and from counsel for South West Guaranty, the Trustee named to administer the trust on behalf of Clifford Cox.

11. It is believed and, therefore averred that, without an order levying upon the assets currently in the trust and to be deposited by the defendants pursuant to the structured settlement, Linda Estrada will make every effort to dissipate the trust by withdrawing sums on behalf of Clifford Cox either by way of payment of defense costs or for living expenses incurred in an attempt to rehabilitate Clifford Cox from his alleged incapacity.

12. It is believed and, therefore averred, that the defendants should not be permitted to further benefit from Clifford Cox's wrongdoing, and, as a result, an order should be entered

garnishing and or otherwise attaching the proceeds of this trust and all contributions to be made to the trust hereafter.

IN WITNESS WHEREOF the party hereto has set her hand and seal the 4th day of April, 2000.

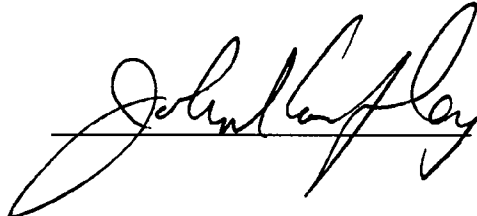

Kay Churner

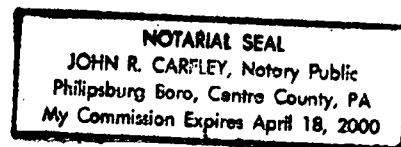
STATE OF PENNSYLVANIA

COUNTY OF CLEARFIELD

On this 4th day of April, 2000, before me, the undersigned officer, personally appeared Kay Churner, individually and as Executrix of the Estate of John Dimmick, who signed and acknowledged the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.





NOTICE OF ENTRY OF DEFAULT JUDGMENT

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
ROOM
CLEARFIELD, PA., 16830

TO: CLIFFORD COX
c/o Clearfield County Prison
Clearfield, Pa., 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :

vs. : No.99-825-CD

CLIFFORD COX; LINDA ESTRATA, : Jury Trial Demanded
individually and as next friend
(ANF) of Clifford Cox, RESTA
JENE GREGORI and DARLENE A. GREGORI:
individually and T/D/B/A
JENE'S GUNSHOP, INC and UNISYS :
CORPORATION :
Defendants :

NOTICE

Pursuant to Pa. R.C.P. 236, you are hereby notified that
a JUDGMENT BY DEFAULT has been entered against you in the above
proceeding. March 28, 2000

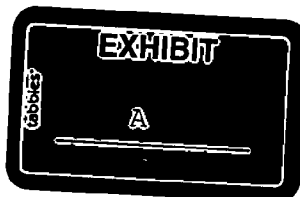
I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR X 3 2000

PROTHONOTARY

Attest.

William L. Han
Prothonetary



NOTICE OF ENTRY OF DEFAULT JUDGMENT

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
ROOM
CLEARFIELD, PA 16830

TO: LINDA ESTRADA
P.O. BOX 705
SANTA FE, TX 77517

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :

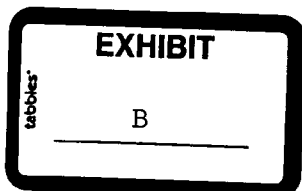
vs. : No.99-825-CD

CLIFFORD COX; LINDA ESTRATA, : Jury Trial Demanded
individually and as next friend
(ANF) of Clifford Cox, RESTA
JENE GREGORI and DARLENE A. GREGORI:
individually and T/D/B/A
JENE'S GUNSHOP, INC. and UNISYS :
CORPORATION
Defendants :

NOTICE

Pursuant to Pa. R.C.F. 236, you are hereby notified that
a JUDGMENT BY DEFAULT has been entered against you in the above
proceeding, April 4, 2000.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.



APR 04 2000

Attest:

William L. H. H.
Prothonotary

[Signature]
Prothonotary

FILED

APR 05 2000
0/12:40 (us
William A. Shaw
Prothonotary

SENT TO ATTY

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

:

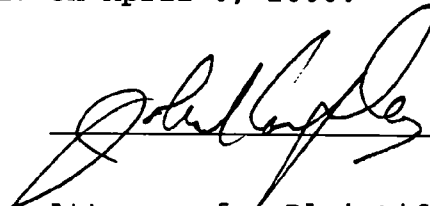
NO. 00-328-CD

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:

CERTIFICATE OF SERVICE

I, John R. Carfley, Esquire, do hereby certify that service of the Court's Scheduling Order of April 4, 2000 and Plaintiff's Affidavit in support of the Petition for Preliminary Injunction filed April 5, 2000 was made upon Linda Estrata by mailing, first class, postage prepaid, a true copy to above named defendant, at P.O. Box 705, Santa Fe, Texas 77517 on April 6, 2000.



Attorney for Plaintiff

FILED

APR 07 2000

William A. Shaw
Prothonotary

FILED

APR 07 2000

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William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

NO. 00-328-CD

:

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
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:

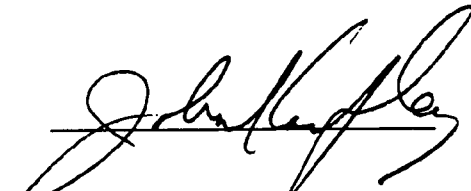
CERTIFICATE OF SERVICE

I, John R. Carfley, Esquire, do hereby certify that service of the Court's Scheduling Order of April 4, 2000 and Plaintiff's Affidavit in support of the Petition for Preliminary Injunction filed April 5, 2000 was made upon Linda Estrata by mailing, first class, postage prepaid, a true copy to above named defendant, at 1003 Pirtle Street, Apartment 3, La Marque, Texas 77568 on April 6, 2000.

FILED

APR 07 2000

William A. Shaw
Prothonotary


Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : NO. 00-328-CD
CLIFFORD COX; LINDA ESTRATA, :
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

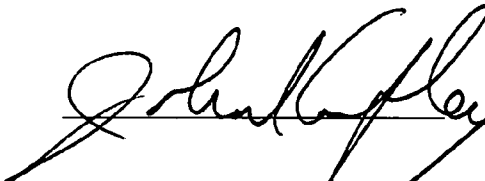
CERTIFICATE OF SERVICE

I, John R. Carfley, Esquire, do hereby certify that service of the Court's Scheduling Order of April 4, 2000 and Plaintiff's Affidavit in support of the Petition for Preliminary Injunction filed April 5, 2000 was made upon S. Brady Whitaker, Esquire, the attorney for Southwest Guaranty Trust Company by mailing, first class, postage prepaid, a true copy to the named attorney at 10411 Westheimer Road, Houston, Texas 77042 on April 6, 2000.

FILED

APR 07 2000

William A. Shaw
Prothonotary


Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	NO. 00-328-CD
CLIFFORD COX; LINDA ESTRATA,	:	
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO., N.A.	:	
Defendants	:	

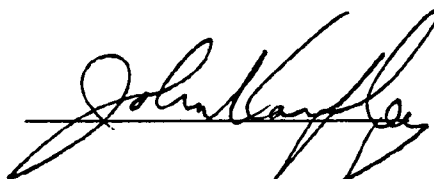
CERTIFICATE OF SERVICE

I, John R. Carfley, Esquire, do hereby certify that service of the Court's Scheduling Order of April 4, 2000 and Plaintiff's Affidavit in support of the Petition for Preliminary Injunction filed April 5, 2000 was made upon Clifford Cox by mailing, first class, postage prepaid, a true copy to above named defendant, at c/o Clearfield County Prison, Clearfield, Pennsylvania on April 5, 2000.

FILED

APR 07 2000

William A. Shaw
Prothonotary



Attorney for Plaintiff

FILED

APR 07 2000

William A. Shaw
Prothonotary

City
Carter
2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :

vs. :

No. 00-328-CD

CLIFFORD COX, LINDA ESTRADA, :
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

TO: Clifford Cox
c/o Clearfield County Prison
Clearfield, PA 16830

IMPORTANT NOTICE

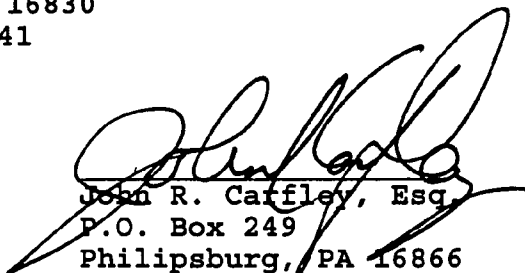
YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641

FILED

APR 12 2000

William A. Shaw
Prothonotary

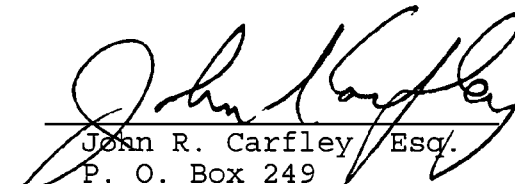

John R. Caffley, Esq.
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Dated: April 4, 2000

CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the within document was served upon the following party at the following address on April 5, 2000, by ordinary mail, first class, postage prepaid.

Clifford Cox
Clearfield County Prison
Clearfield, Pa., 16830



John R. Carfley Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

FILED

APR 12 2000
9/12:03 P.M.
William A. Shaw
Prothonotary

She O'Call to Bill
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KAY CHURNER, et. al.

vs.

CLIFFORD COX, et.:al.

No. 00-328-CD

CONSTABLE'S RETURN

CAME TO HAND ON THE 3rd DAY OF April 2000 AT 9

O'CLOCK A.M. AND EXECUTED ON THE 4th DAY OF APRIL.

2000, AT 5:45 O'CLOCK P.M. BY DELIVERING TO THE

WITHIN NAMED DEFENDANT Clifford Cox, Linda ESTRADA, individually ANE of Clifford Cox and

SOUTHWEST GUARANTY TRUST CO., NA. IN PERSON, A TRUE COPY OF THE NOTICE AND

INTERROGATORIES AND A TRUE COPY OF THIS PROCESS. DEFENDANT LOCATED

AT 1001 Pirtle ST. APARTMENT 3, LA MARQUE GALVESTON

County Texas (77568)

IN _____ COUNTY, TEXAS.

ADDITIONAL INFORMATION: _____

CONSTABLE EARL TOTTENHAM
PCT. #3, GALVESTON COUNTY

CONSTABLE
PCT. _____

DEPUTY NAME Don Jordan COUNTY, TX 3-C-15
UNIT#

SERVICE ATTEMPTS

DATE

TIME

LOCATION

DEPUTY


FILED

APR 12 2000

William A. Shaw
Prothonotary

FILED

APR 12 2000
8/12:25
William A. Shaw
Prothonotary

The Cat City


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

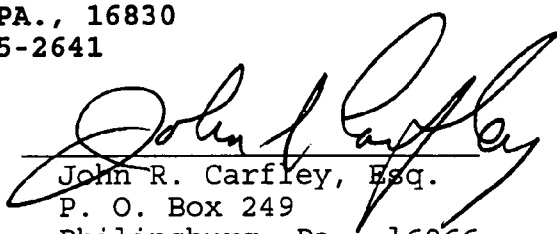
: Jury Trial Demanded
:
:

TO: Southwest Guaranty Trust Co.
c/o Mark Weaver, Esq.
211½ E. Locust Street
Clearfield, PA 16830

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 13, 2000

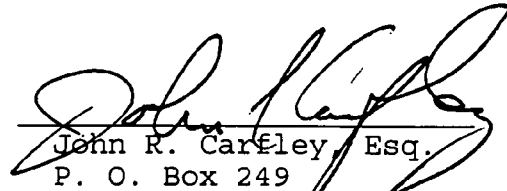
FILED

APR 14 2000

CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the within document was served upon the following party at the following address on April 13, 2000, by ordinary mail, first class, postage prepaid and by fax to (814) 768-7605 on April 13, 2000.

Southwest Guaranty Trust Co., N.A.
c/o Mark Weaver, Esq.
211½ E. Locust Street
Clearfield, Pa., 16830


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

FILED

APR 14 2000

William A. Shaw
Prothonotary

011:30/15 - eth Caylor
EKB

MARK S. WEAVER
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 170
CLEARFIELD, PA 16830

COMMERCIAL PRINTING CO., ORLANDO, FLA

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,

Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
PRELIMINARY OBJECTION OF
DEFENDANT SOUTHWEST GUARANTY
COURT TRUST TO PLAINTIFF'S
COMPLAINT

Filed on Behalf of:
DEFENDANT

Counsel of Record for
DEFENDANT

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

APR 13 2000

William A. Shaw
Prothonotary

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

KAY CHURNER, individually and as	:	
EXECUTRIX OF THE ESTATE OF	:	
JOHN DIMMICK,	:	
Plaintiff	:	
	:	
vs.	:	No. 00-328-CD
	:	
CLIFFORD COX, LINDA ESTRADA,	:	
individually and as next friend (ANF) of	:	
Clifford Cox, and SOUTHWEST	:	
GUARANTY TRUST CO., N.A.,	:	
Defendants	:	

**PRELIMINARY OBJECTION OF DEFENDANT SOUTHWEST
GUARANTY COURT TRUST TO PLAINTIFF'S COMPLAINT**

Defendant, Southwest Guaranty Court Trust, by and through its undersigned counsel,
preliminary objects to Plaintiff's Complaint as follows:

1. The cause of action asserted herein allegedly arose in Beaumont, Jefferson County,
Texas.
2. Defendant, Southwest Guaranty Court Trust, a Texas corporation, (hereinafter
"Southwest") maintains its principal office at 10411 Westheimer, Suite 200, Houston, Texas 77042-
3500.
3. Defendant, Southwest, has not had the minimum contact sufficient for in personam
jurisdiction under the Pennsylvania long-arm statute, 42 Pa. Com. Stat. 5322 based upon the
following:
 - A. Defendant Southwest is incorporated in Texas;
 - B. Defendant Southwest is not registered to do business in Pennsylvania;


- C. Defendant Southwest has no employees, agents or places of business in Pennsylvania;
- D. Defendant Southwest does not market or sell any financial services or products in Pennsylvania; and
- E. The only distributions made by Defendant Southwest from the Court ordered trust established for Clifford Cox was a Court ordered payment to the Defendant Clifford Cox's attorney in Pennsylvania.

4. There are insufficient contacts for this Court to exercise general jurisdiction over the person of Defendant Southwest or specific jurisdiction with respect to the alleged liability of the Defendant Southwest.

5. The Affidavit of Defendant Southwest in support of the facts alleged herein is attached herein as Exhibit "A".

WHEREFORE, Defendant Southwest respectfully requests that Plaintiff's Complaint be dismissed against it for lack of personal jurisdiction.

Submitted by,



Mark S. Weaver, Esquire
Attorney for Defendant
Supreme Court I.D. 63044
211 ½ East Locust Street
P.O. Box 170
Clearfield, PA 16830
(814) 768-9696

COMMERCIAL PRINTING CO., DELAWARE, PA

MARK S. WEAVER
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 170
CLEARFIELD, PA 16830

7-10

14 2000

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A. Shaw

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Waller

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,

Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
AFFIDAVIT IN SUPPORT OF DEFENDANT
SOUTHWEST GUARANTY COURT TRUST
PRELIMINARY OBJECTION TO
PLAINTIFF'S COMPLAINT

Filed on Behalf of:
DEFENDANT

Counsel of Record for
DEFENDANT

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

APR 14 2000

William A. Shaw
Prothonotary

AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS

:
:
:

WILLIAM TERRY, being first duly sworn, deposes and says:

1. I am a citizen and resident of the State of Texas. I am the Senior Vice President of Southwest Guaranty Court Trust, a Texas Corporation, which at all relevant times, had its principal place of business in Houston, Texas and was engaged in the business of banking and trust services.
2. Southwest Guaranty Court Trust has never transacted any business in the Commonwealth of Pennsylvania, nor owned any property, maintained an office, agents or telephone listings or has been registered to do business in the Commonwealth of Pennsylvania.
3. Southwest Guaranty Court Trust has never purposely availed itself of the privilege of conducting activities with the Commonwealth of Pennsylvania nor invoked the benefits and protections of its laws.
4. On or about November 9, 1999, Southwest Guaranty Court Trust was appointed trustee for a Section 142.005 trust under the Texas Property Code by the District Court of Jefferson County, Texas for the benefit of Clifford Cox, an incapacitated person.
5. The purpose of the trust was to provide for the reasonably necessary health, education, support or maintenance expenses of the beneficiary, Clifford Cox, who was deemed

EXHIBIT "A"

incapable of managing funds received as a result of a lawsuit initiated on July 9, 1997 at Cause No. A-0157378 on Mr. Cox's behalf as a result of an automobile accident in which Mr. Cox received significant and substantial head injuries.

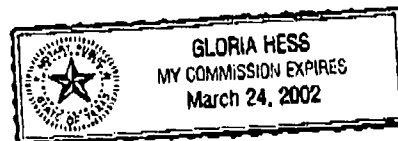
6. The only contact which Southwest Guaranty Court Trust has had with any person or entity in Pennsylvania related to Clifford Cox was a Court ordered disbursement to Mr. Cox's defense attorney in Pennsylvania.

7. There has been minimal telephone contact with Mr. Cox's defense attorney and with local counsel for Southwest Guaranty Court Trust in the above matter.

William Terry
William Terry
Sr. Vice President for Southwest Guaranty
Court Trust

Sworn and subscribed before me this
_ 13th _ day of _ APRIL _ , 2000.

Gloria Hess
Notary Public



MARK S. WEAVER

Attorney at Law

211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

(814) 768-9696
(814) 768-7605 facsimile

Please respond to:
☒ Clearfield
☐ State College

e-mail: attysw@penn.com

1315 South Allen Street
Suite 302
State College, PA 16801

(814) 234-4681
(814) 237-5752 facsimile

April 19, 2000

HAND-DELIVERED

Marcy Kelley, Deputy Court Administrator
Clearfield Courthouse
Clearfield, PA 16830

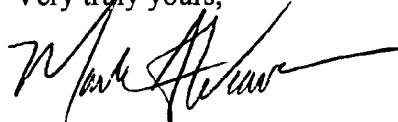
Re: John Dimmick Estate vs. Clifford Cox, et al.
No. 00-328-CD

Dear Marcy:

I filed Preliminary Objections in the above matter on behalf of the Defendant Southwest Guaranty Trust Company on April 13, 2000. The Plaintiff's attorney, John R. Carfley, filed Preliminary Objections to my Preliminary Objections on April 17, 2000. At the hearing on the Plaintiff's Petition for Preliminary Injunction on April 17, 2000, the court indicated that it would dispose of the above Preliminary Objections at a subsequent hearing. Consequently, I write to request that a hearing be scheduled on both sets of Preliminary Objections as soon as possible.

Thank you for your attention to this matter. Please contact me if you require further information or if you have any questions.

Very truly yours,



Mark S. Weaver

MSW/slh

cc: John R. Carfley, Esquire
Southwest Guaranty Trust Company

JOHN R. CARFLEY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHURNER, KAY, INDIVIDUALLY &

00-328-CD

VS

COX, CLIFFORD

COMPLAINT

SHERIFF RETURNS

NOW MARCH 15, 2000 AT 3:05 PM DST SERVED THE WITHIN COMPLAINT ON CLIFFORD COX, DEFENDANT AT CLEARFIELD COUNTY PRISON, 410 21 ST ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CLIFFORD COX A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: SNYDER

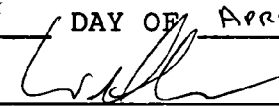
NOW MARCH 20, 2000 SERVED THE WITHIN COMPLAINT ON SOUTHWEST GUARANTY TRUST CO., DEFENDANT BY CERT. MAIL #Z296 062 152 AT 10411 WESTHEIMER ROAD, HOUSTON, TX. 77042 BEING THEIR LAST KNOWN ADDRESS. THE RETURN RECEIPT IS HERETO ATTACHED AND MADE A PART OF THIS RETURN ENDORSED BY AGENT FOR DEFENDANT.

NOW MARCH 15, 2000 MAILED THE WITHIN COMPLAINT TO LINDA ESTRADA, IND., DEFENDANT BY CERT. MAIL # Z296 062 150 AT P.O. BOX 705, SANTA FE, TEXAS 77517 BEING HER LAST KNOWN ADDRESS. THE LETTER WAS RETURNED MARKED "UNCLAIMED". THE LETTER WAS SENT MARKED "ADDRESSEE ONLY".

NOW MARCH 15, 2000 MAILED THE WITHIN COMPLAINT TO LINDA ESTRADA, ANF, DEFENDANT BY CERT. MAIL # Z 296 062 151 AT P.O. BOX 705, SANTA FE, TEXAS 77517 BEING HER LAST KNOWN ADDRESS. THE LETTER WAS RETURNED MARKED "UNCLAIMED". THE LETTER WAS SENT MARKED "ADDRESSEE ONLY".

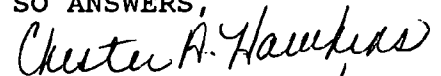
53.07 SHFF. HAWKINS PAID BY: ATTY.
40.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

14TH DAY OF April 2000


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

SO ANSWERS,





CHESTER A. HAWKINS
SHERIFF

FILE

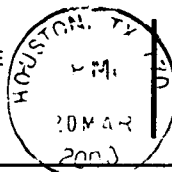
APR 14 2000

William A. Shaw
Prothonotary



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>▲ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by (Please Print Clearly) <i>Clint LaCaze</i> B. Date of Delivery <i>3-20-00</i></p>	
<p>1. Article Addressed to:</p> <p>SOUTHWEST GUARANTY TRUST CO. 10411 Westheimer Road Houston TX 77042</p>		<p>C. Signature <i>Clint LaCaze</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. Article Number (Copy from service label)</p> <p>Z 296 062 152</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

CHESTER A HAWKINS
Sheriff of Clearfield County
1 N. 2nd St. Suite 116
Clearfield, Pa. 16830

C.9376

16830+2333

7 296 062 152

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (*See reverse*)

Sent to	
SOUTHWEST GUARANTY TRUST CO	
Street & Number	
10411 Westheimer Road	
Post Office, State, & ZIP Code	
Houston, TX. 77042	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 4.08
Postmark or Date	
USPS	

PS Form 3800, April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (no extra charge).

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make an inquiry.

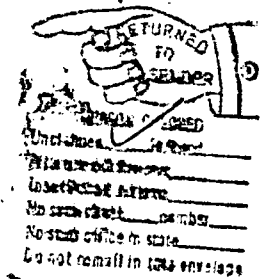
CHESTER A HAWKINS
Sheriff of Clearfield County
1 N. 2nd St.
Suite 116
Clearfield, PA. 16830

Fold at the overlap of this type to
the right of the return address

CERTIFIED

Z 296 062 151

MAIL



**RESTRICTED
DELIVERY**

**ADDRESSEE
ONLY**

LINDA ESTRADA, (ANF)
P.O. Box 705
[Redacted Address]

3-17
3-22
4-1

**ADDRESSEE
ONLY**

SENDER - COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Received by (Please Print Clearly) B. Date of Delivery</p> <p>C. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
1. Article Addressed to: LINDA ESTRADA, (ANF) P.O. Box 705 [Redacted Address]		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Copy from service label) Z 296 062 151		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

Z 296 062 151

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to LINDA ESTRADA, (ANF)	
Street & Number P.O. Box 705	
Post Office, State, & ZIP Code Santa Fe, Texas 77517	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ 6.83
Postmark or Date	

Form 3800, April 1995

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1

CHESTER A. HAWKINS
Sheriff of Clearfield County
1 N. 2nd St.
Suite 116
Clearfield, Pa. 16830

Postage and Insurance on this envelope to be paid by the addressee

CERTIFIED

Z 296 062 150

MAIL

ADDRESSEE
ONLY

RESTRICTED
DELIVERY

LINDA ESTRADA, Ind.
P.O. Box 705

3-17
3-22
4-1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
LINDA ESTRADA, Ind.
P.O. Box 705

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature
X ☐ Agent ☐ Address

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)

Z 296 062 150

PS Form 3811, July 1999

Domestic Return Receipt

102505-00-01-171

Z 296 062 150

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
LINDA ESTRADA, Ind.	
Street & Number	
P.O. Box 705	
Post Office, State, & ZIP Code	
Santa Fe, TX. 77517	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
Signature of Addressee	

(17) *LA*

*specific
not general*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

: Jury Trial Demanded
:
:

PLAINTIFF'S PRELIMINARY OBJECTIONS TO THE DEFENDANT,
SOUTHWEST GUARANTY TRUST CO., N.A. 'S PRELIMINARY OBJECTIONS

AND NOW comes the plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick, who by and through her undersigned counsel objects to the Preliminary Objections filed by defendant in the above matter and in support thereof avers as follows:

1. Rule 1026(a) requires that any pleading subsequent to the filing of a complaint shall be filed within 20 days after service of the preceding pleading.

2. Preliminary objections are considered to be a pleading within the definition of Rule 1026 and Rule 1017 of the Pennsylvania Rules of Civil Procedure.

3. The complaint filed by the plaintiff was served on the defendant by the Sheriff of Clearfield County on March 20, 2000, and as a result a responsive pleading was required on or before

FILED

APR 17 2000

William A. Shaw
Prothonotary

April 9, 2000.

4. Telephonic and written correspondence between counsel for the plaintiff and counsel for the defendant resulted in a contract requiring the defendant to file an answer and not preliminary objections to plaintiff's complaint. (Reference plaintiff's counsel's affidavit filed in support of of these preliminary objections.

5. When plaintiff's counsel was apprised of the fact that defense counsel intended to file preliminary objections plaintiff's counsel forwarded a ten day letter of default by facsimile and by regular mail which notice was transmitted to counsel on Thursday, April 13, 2000.

6. It now appears that defense counsel filed preliminary objections on April 13, 2000, and transmitted copies of the same by facsimile and by regular mail to plaintiff under cover letter of April 14, 2000. These documents were received by plaintiff's counsel on Monday, April 17, 2000.

7. It is believed and therefore averred that the preliminary objections filed by the defense subsequent to the transmittal of a ten day letter of default were untimely; therefore the proper procedural manner in which to challenge the untimeliness is by preliminary objections filed to the preliminary objections of the defendant.

8. It is believed and therefore averred that the case of Hahnemann v. Medical College and Hospital v. Hubbard, 267 Pa. Super. 436, 406 A.2d 1120 (1979) is dispositive of this issue where

April 9, 2000.

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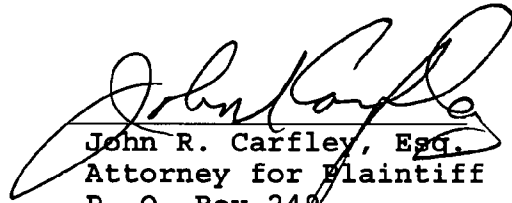
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counsel for the parties have entered into an agreement concerning the filing of an answer rather than any other type of responsive pleading (See Headnotes 1-2-3 of the Hahnemann opinion attached hereto as Appendix A).



John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866

Dated: April 17, 2000

and as noted she comes from a rather dismal, discouraging background. She, herself, has had lots of institutional experiences and considerable stormy and chaotic confrontations with either hearing or being present, I'm not sure. Hearing undoubtedly [sic] of murders of her father being murdered and then this homicide situation in which he's presently involved. Her personal relationships always seemed to be disappointing and rejecting. With respect to this incident as she described and as I put down here I felt she was driven into an hysterical frenzy of threats that were directed at her by her most recent paramour. I felt that what she did was extrinsic reaction. Impulsive, short-sightedness, but that *basically she didn't mean to harm the infant*.
Id., at 9-10 (emphasis supplied).

On cross-examination the doctor testified as follows:

Q You stated in your report that "I do not feel that she basically meant harm to the infant but was driven to a state of hysterical despair."

Do you see where Miss Jackson would be any danger to the child that she doesn't mean to harm the child even under the most severe stress?

A *I can't answer that question. I think under a considerable stress with her personality makeup, it's possible.*

Q But under this particular circumstance that didn't happen because it was on your opinion that she didn't mean to harm the child?

A Basic inclination was not to harm the child, but I put in here—carried away—driven into a state of hysterical despair. *She could have been capable, might have been capable.*

Q But she was—

A Of carrying—

Q But she was driven to that hysterical despair. That's what you wrote?

A Yes, I know but it's fortunate that she didn't. But you're asking me theoret-

4. The lower court's disposition of Kyiah suggests that after all, neither did it find the evidence clear and convincing. The court ordered Kyiah placed in the joint custody of appellant

ical questions, and I can't guarantee. I would say that *under these terribly traumatic, emotional conditions* to which she was exposed, *perhaps the scales were very close one way or the other*.
Id., at 16-17 (emphasis supplied).

We cannot say that this testimony meets the requirement of clear and convincing evidence.⁴

The order of the lower court adjudging Kyiah dependent is reversed.

LIPEZ, J., files a dissenting opinion.

LIPEZ, Judge, dissenting:

I dissent and would affirm on the able opinion of Judge Stern for the court below. I believe he properly applied the "clear necessity" test and found dependency from "clear and convincing evidence." Having made that finding Judge Stern fashioned a sensible remedy which provided for joint custody by the mother and the maternal grandmother, with provisions for proper supervision and neuro-psychiatric counseling of the mother, with review in three months. I think the majority fails to accord the deference due to the trial judge's findings, a result which I fear in this case is fraught with danger.



HAHNEMANN MEDICAL COLLEGE
 AND HOSPITAL OF
 PHILADELPHIA

v.

Charles HUBBARD, Appellant.

Superior Court of Pennsylvania.

Submitted Dec. 5, 1978.

Decided June 29, 1979.

Defendant appealed from judgment of the Court of Common Pleas, Philadelphia

and appellant's mother. Since appellant lives with her mother, this order did not put Kyiah out of the danger her mother was supposed to represent to her.

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HAHNEMANN MEDICAL COLLEGE AND HOSPITAL OF PHILADELPHIA

v.

Charles HUBBARD, Appellant.

Superior Court of Pennsylvania.

Submitted Dec. 5, 1978.

Decided June 29, 1979.

Defendant appealed from judgment of the Court of Common Pleas, Philadelphia

and appellant's mother. Since appellant lives with her mother, this order did not put Kyiah out of the danger her mother was supposed to represent to her.

County, No. 1290, August Term, 1977, Montemuro, A. J., which struck preliminary objections to the lower court's jurisdiction. The Superior Court, No. 876 October Term, 1978, Spaeth, J., held that where defendant's preliminary objections were untimely, but where plaintiff's objection to the untimeliness was itself untimely, court should have considered the preliminary objections on the merits.

Vacated and remanded.

Price, J., filed a dissenting opinion.

1. Contracts ⇐15

For an agreement to exist, there must be a meeting of the minds; the very essence of an agreement is that the parties mutually assent to do the same thing and without such assent there can be no enforceable agreement.

2. Contracts ⇐16

Principle that a contract is not binding unless there is an offer and an acceptance is to ensure that there will be mutual assent.

3. Pleading ⇐85(4)

Where defendant's counsel asked plaintiff's counsel for more time to reply, and where plaintiff's counsel stated that he would agree to an extension of the time to file an answer but not other responsive pleadings, and where defendant's counsel never explicitly accepted the counteroffer, acceptance of it would not be implied and defendant was not bound by the requirement that his responsive pleading be limited to an answer.

4. Pleading ⇐187

Where plaintiff was under no obligation to grant an extension of the time to answer, when defendant failed to plead to the complaint, plaintiff's proper course was to take default; plaintiff's failure to take default judgment preserved defendant's opportunity to file preliminary objections.

1. Under Rule 1026, appellant was required to file a responsive pleading by Sept. 8, 1977. It

5. Pleading ⇐187

When a party files untimely preliminary objections, the opposing party may object to them as untimely; failure to take default judgment does not preclude a party from objecting to later, untimely preliminary objections.

6. Pleading ⇐187

Where defendant's preliminary objections were untimely, but where plaintiff's objection to the untimeliness was itself untimely, trial court should have considered the preliminary objections on the merits. Pa.R.C.P. Nos. 1026, 1027(1), 42 Pa.C.S.A.

Richard P. Weishaupt, Philadelphia, for appellant.

Jeffrey M. Freedman, Philadelphia, did not file a brief for appellee.

Before PRICE, SPAETH and WATKINS, JJ.

SPAETH, Judge:

This is an appeal from an order striking preliminary objections to the lower court's jurisdiction.

The action was brought by appellee Hahnemann Medical College & Hospital of Pennsylvania to collect fees for medical services rendered to appellant, who is a resident of the State of Delaware. The complaint was served on appellant on August 19, 1977, pursuant to Rule 2077, Pa.R. Civ.P., which provides for service on non-residents "engaged in business in the Commonwealth."

On September 2, 1977, appellant's Philadelphia counsel wrote to appellee's counsel to request a ten-day extension in which to plead to the complaint, stating, "[R]ather than answer before I speak to my client, I would prefer a brief extension." Appellee's counsel did not at once reply to this letter, and both the twenty-day period prescribed by Rule 1026 and the requested ten-day extension expired without appellant filing any pleading.¹ On September 20 appellee's

is unclear whether counsel wanted 10 days from the date of his letter, or 10 days beyond

un't guarantee. I these terribly traumatic to which she the scales were the other. supplied).

testimony meets and convincing

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firm on the able the court below. ed the "clear ne- lendency from dence." Having tern fashioned a ovided for joint nd the maternal ns for proper su- iatric counseling in three months. s to accord the judge's findings, s case is fraught

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AL COLLEGE
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Appellant.

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counsel did not reply to appellant's counsel's letter and granted an extension until September 30, limiting the extension, however, to the filing of an answer, and not any other responsive pleading. Ignoring this letter, appellant's counsel on September 26 filed preliminary objections to the court's jurisdiction over his client.

In accordance with Rule 1027(1), Pa.R. Civ.P., appellant's counsel served the preliminary objections on appellee's counsel by certified mail at the address given by appellee's counsel on the back of the complaint. This was the only address appellee's counsel had supplied; in fact, however, he had moved his offices, without leaving an adequate forwarding address. On September 29, and again on October 4, the postal service sent notices to appellee's counsel to claim the letter; appellee's counsel finally received the preliminary objections on October 20. On November 1, he filed a motion to strike appellant's preliminary objections² on the ground that they were in violation of an agreement between counsel.

The lower court granted appellee's motion to strike, finding that appellant's counsel had agreed to limit himself to an answer in return for an extension of time in which to plead.

The first question presented is whether the record discloses an agreement between counsel regarding an extension of time. We agree with appellant that in answering this question, we should apply contract principles.

[1, 2] It is settled that for an agreement to exist, there must be a "meeting of the minds," *Northwestern Consolidated Mining Co. v. Campbell & Campbell*, 78 Pa.Super. 96 (1921); the very essence of an agreement is that the parties mutually assent to the same thing, *Alcorn Combustion Co. v. M. W. Kellogg Co.*, 311 Pa. 270, 166 A. 862 (1933). Without such assent there can be no enforceable agreement. *Rissmiller v. Evangelical*

Lutheran Congregation, 268 Pa. 41, 110 A. 740 (1920). The principle that a contract is not binding unless there is an offer and an acceptance is to ensure that there will be mutual assent. See *Farren v. McNulty*, 277 Pa. 279, 121 A. 501 (1923).

[3] Here, in asking for an extension of time, appellant's counsel made what was in effect an offer. Appellee's counsel at first did not reply to this offer at all; when he did reply, he did not accept the offer as made, but accepted it contingent upon appellant's submission to a condition that materially altered the offer—that appellant's responsive pleading be limited to an answer. A "reply to an offer purporting to accept it, which adds qualifications or requires performance of conditions is not an acceptance but it is a counter-offer." *Restatement of Contracts*, 60 (1932), cited as representing Pennsylvania Law in *Hedden v. Lupinsky*, 405 Pa. 609, 612, 176 A.2d 406, 408 (1962); accord, *Eastern Electric Sales Co., Inc. v. Provident Tradesmen Bank & Trust Co.*, 400 Pa. 429, 162 A.2d 215 (1960). Appellant's counsel never explicitly accepted this counter-offer, and acceptance of it will not be implied from his failure to speak. *Solis-Cohen v. Phoenix Mutual Life Insurance Co.*, 413 Pa. 633, 198 A.2d 554 (1964); *Howell v. McCloskey*, 375 Pa. 100, 99 A.2d 610 (1953).

Thus, in sum, two offers were made, and neither was accepted. Counsel therefore had no agreement concerning an extension. The question next presented, therefore, is, What is the effect of this conclusion?

[4] Absent any agreement concerning an extension, appellee's counsel was under no obligation to grant an extension. When appellant failed to plead to the complaint, appellee's proper course under the rules was to take a default judgment. See 2 *Goodrich-Amram* 2d 1026:1, 230 (1976). Appellee's failure to take judgment preserved appellant's opportunity to file preliminary

Sept. 8. However, this ambiguity does not affect the resolution of this appeal.

2. The docket entries indicate that the motion was filed on Dec. 1, 1977. The motion itself,

however, is stamped by the prothonotary as having been filed on Nov. 1, 1977, and appellant's counsel has indicated in his brief that he accepts this date as accurate.

38 Pa. 41, 110 A.
that a contract is
an offer and an
that there will be
v. McNulty, 277

an extension of
made what was in
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at all; when he
cept the offer as
ingent upon ap-
condition that ma-
-that appellant's
nited to an an-
er purporting to
ifications or re-
ditions is not an
inter-offer." Re-
(1932), cited as
Law in *Hedden*
12, 176 A.2d 406,
rn *Electric Sales*
ndesmen Bank &
A.2d 215 (1960).
explicitly accept-
acceptance of it
in his failure to
enix Mutual Life
193, 198 A.2d 554
key, 375 Pa. 100,

were made, and
counsel therefore
ing an extension.
ed, therefore, is,
conclusion?

ment concerning
counsel was under
extension. When
to the complaint,
nder the rules was
nt. See 2 Good-
10 (1976). Appel-
gment preserved
o file preliminary

he prothonotary as
1, 1977, and appel-
in his brief that he
te.

objections. *Herre v. Davies*, 51 Westmore-
land L.J. 91 (1969), is a case like this one.
There, counsel were in dispute over the
terms of an agreement regarding an exten-
sion of time in which to plead to a com-
plaint, and preliminary objections were
filed after the twenty-day period prescribed
by Rule 1026 had expired. The court never-
theless heard the objections on their merits,
because the plaintiff had taken no action in
the case during the interim.

[5] When a party, such as appellant
here, files untimely preliminary objections,
the opposing party may object to them as
untimely. In other words, the failure to
take a default judgment does not preclude a
party from objecting to untimely prelimi-
nary objections. However, the procedure
prescribed by the rules must be followed.
Here, appellee's counsel did not follow that
procedure. Appellee's motion to strike ap-
pellant's preliminary objections was itself
untimely, having not been filed until No-
vember 1, 1977, which was after the twen-
ty-day period prescribed by Rule 1026 as the
period within which any pleading subse-
quent to the complaint must be filed; an
objection to preliminary objections as un-
timely is properly characterized as a "pre-
liminary objection to preliminary objec-
tions," and is a pleading, 2 Goodrich-Amram
2d 1017(b):5, 43-44 (1976). Concededly, ap-
pellee's counsel did not actually receive the
preliminary objections until October 20,
1977. This was not in any way the fault of
appellant's counsel, however, as service was
made in accordance with Rule 1027, and
receipt was delayed only because appellee's
counsel failed to provide an adequate for-
warding address when he moved his offices.

[6] In fairness, counsel for both parties
should be held to the same standard. While
appellant's preliminary objections were un-
timely, it was the responsibility of appel-
lee's counsel to file his own timely prelimi-
nary objection to the preliminary objec-
tions. 2 Goodrich-Amram 2d 1026:1, 229
(1976). Appellee's counsel's failure to do so
constituted a waiver of the untimeliness of
appellant's preliminary objections.

The order of the lower court is vacated,
appellant's preliminary objections are rein-
stated, and the case is remanded to the
lower court for disposition of the prelimi-
nary objections on their merits.

PRICE, J. files a dissenting statement.

PRICE, Judge, dissenting.

Appellant's attorney wrote "Rather than
answer before I have spoken to my client, I
would prefer a brief extension." Appellee's
attorney agreed to an extension limited to
the filing of an answer. If one looks at the
situation in this light, stripped of the con-
fusing dates and passage of various time
periods, this is the exact sequence of the
written communications. To me, it is a
classic situation of offer and acceptance
within the majority's framework of the law.

The letters were not the work of laymen,
but rather of attorneys presumably skilled
in the art and use of words. In this case,
the word *answer* has a definite, absolute
legal meaning. I cannot subscribe to the
majority's conclusion that the letters con-
tain an offer and counter-offer. In legal
language these communications are clearly
an agreement binding upon the parties, and
that agreement was breached by the filing
of preliminary objections.

I would affirm the order dismissing the
appellant's preliminary objections.



COMMONWEALTH of Pennsylvania,
Appellant,

v.

Gerhard STEPPKE

Superior Court of Pennsylvania.

Submitted Sept. 15, 1978.

Decided June 29, 1979.

Following police captain's acquittal on
charges of solicitation and attempt to tam-

0121712662417

FILED

RECEIVED

MARK S. WEAVER
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 170
CLEARFIELD, PA 16830

CLEARBROOK PRINTING CO., CLEARFELD, PA

COMMERCIAL PRINTING CO., GAITHERSBURG, MD

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,

Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
DEFENDANT

Counsel of Record for
DEFENDANT

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

APR 18 2000

William A. Shaw
Prothonotary

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,
Defendants

No. 00-328-CD

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CERTIFICATE OF SERVICE

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Counsel of Record for
DEFENDANT

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
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FILED

APR 18 2000

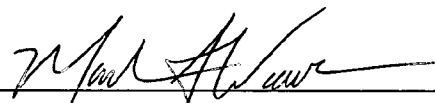
William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I, Mark S. Weaver, Esquire, attorney for the Defendant Southwest Guaranty Court Trust,, hereby certify that I sent a certified copy of the Defendant's Preliminary Objection to Plaintiff's Complaint together with a certified copy of Defendant's Supporting Affidavit to the following party on April 14, 2000, by United States First Class Mail, postage prepaid, at the address listed below:

John R. Carfly
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Date: 4-14-00

By: 
Mark S. Weaver, Esquire
I.D. 63044
P.O. Box 170
211 1/2 East Locust Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

ORDER

AND NOW this 18th day of April, 2000, upon consideration of the plaintiff's petition for preliminary injunctive relief, the plaintiff and defendant, Southwest Guaranty Trust Co., N.A., having appeared by their respective counsel and it appearing to the court that the defendants, Clifford Cox and Linda Estrada were properly served with the pleadings and the said defendants having failed to appear either personally or by counsel,

IT IS HEREBY ORDERED AND DECREED:

1. That defendants, Clifford Cox, and Linda Estrada, and/or any other person, firm or entity acting on their behalf are hereby ENJOINED and PROHIBITED from spending, utilizing, withdrawing or otherwise disbursing any of the funds on deposit with Southwest Guaranty Trust Co., N.A. and/or held in trust by the said company for the benefit of Cox or any of the proceeds deposited or to be deposited into the said trust pursuant to the structured settlement. or otherwise;

FILED

APR 18 2000

William A. Shaw
Prothonotary

FILED

WAS
APR 18 2000
O/2:30 PM
William A. Shaw
Prothonotary

CANT. TO CARLEIGH
+
WEAVER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

ORDER

AND NOW this 18th day of April, 2000, upon consideration of the plaintiff's petition for preliminary injunctive relief, the plaintiff and defendant, Southwest Guaranty Trust Co., N.A., having appeared by their respective counsel and it appearing to the court that the defendants, Clifford Cox and Linda Estrada were properly served with the pleadings and the said defendants having failed to appear either personally or by counsel,

IT IS HEREBY ORDERED AND DECREED:

1. That defendants, Clifford Cox, and Linda Estrada, and/or any other person, firm or entity acting on their behalf are hereby ENJOINED and PROHIBITED from spending, utilizing, withdrawing or otherwise disbursing any of the funds on deposit with Southwest Guaranty Trust Co., N.A. and/or held in trust by the said company for the benefit of Cox or any of the proceeds deposited or to be deposited into the said trust pursuant to the structured settlement. or otherwise;

FILED

APR 18 2000

William A. Shaw
Prothonotary

2. That Defendants, Cox and Estrada and/or anyone acting on their behalf are further ENJOINED and PROHIBITED from presenting any requests for the withdrawal of funds currently in the said trust or any of the proceeds to be deposited into the said trust pursuant to the structured settlement by check, or any other instrument of withdrawal;

3. That Defendants, Cox and Estrada are ENJOINED from doing any acts which violate the Uniform Fraudulent Transfer Act (12 Pa. C.S.A. §5101 et. seq; V.T.C.A. Bus. & C. §§24.001 to 24.012);

THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL SUCH TIME AS MODIFIED OR VACATED BY THIS COURT.

BY THE COURT:

A large, stylized handwritten signature in black ink is written over the signature line and extends upwards into the text area. The signature is cursive and appears to be a single name, possibly "J. [unclear]".

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA, : Jury Trial Demanded
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A. :

PRAECIPE FOR ENTRY OF DEFAULT OF JUDGMENT

TO THE PROTHONOTARY:

PURSUANT to Rule 237.1 and 1037(b) of the Pennsylvania Rules of Civil Procedure please enter judgment of default in favor of plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick and against defendant, Clifford Cox, for his failure to plead to the complaint in this action within the required time.

The complaint contains a notice to defend within twenty days from the date of service thereof. Defendant was served with the complaint on the 15th day of March, 2000; his answer was due to be filed on April 4, 2000.

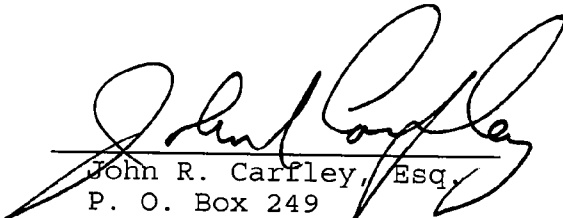
Attached as Exhibit "A" is a copy of Plaintiff's written Notice of Intention to File Praecipe for Entry of Default Judgment which I certify was mailed by regular mail to the defendant at his known address on April 5, 2000, which is at least ten days prior to the filing of this Praecipe.

FILED

APR 19 2000

William A. Shaw
Prothonotary

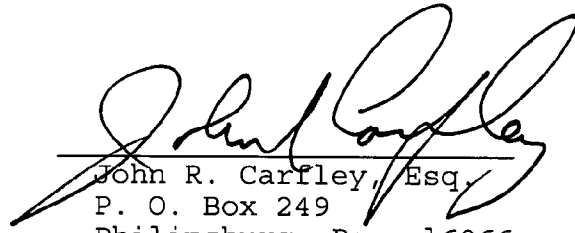
JUDGMENT shall be entered on liability only as provided by the Rules of Civil Procedure; Damages herein shall be assessed at time of trial.



John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 17, 2000

JUDGMENT shall be entered on liability only as provided by the Rules of Civil Procedure; Damages herein shall be assessed at time of trial.



John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 17, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

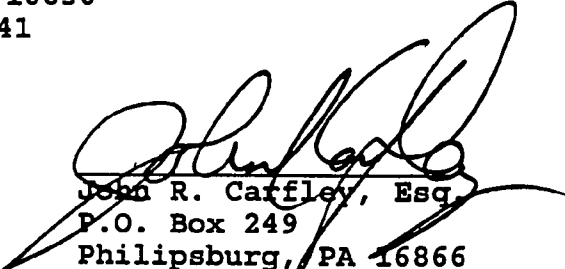
No. 00-328-CD

TO: Clifford Cox
c/o Clearfield County Prison
Clearfield, PA 16830

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641

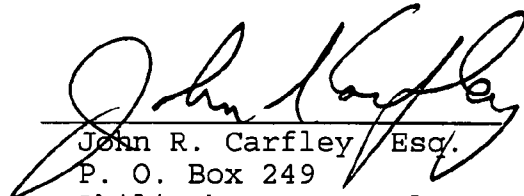

John R. Carfley, Esq.
P.O. Box 249
Philipsburg, PA 16866
Attorney for Plaintiff

Dated: April 4, 2000

CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the within document was served upon the following party at the following address on April 5, 2000, by ordinary mail, first class, postage prepaid.

Clifford Cox
Clearfield County Prison
Clearfield, Pa., 16830


John R. Carfley Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

FILED

APR 19 2000

William A. Shaw PP
Prothonotary 20- BY MT

~~2 CERT TO ATT~~
1 CERT TO ATT

NOTICES TO ~~ATT~~
DEFG/
MAILED

NOTICE OF ENTRY OF DEFAULT JUDGMENT

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
ROOM
CLEARFIELD, PA 16830

TO: Clifford Cox
c/o Clearfield County Prison
Clearfield, Pa., 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :

vs. : No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA, : Jury Trial Demanded
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :

NOTICE

Pursuant to Pa. R.C.F. 236, you are hereby notified that
a JUDGMENT BY DEFAULT has been entered against you in the above
proceeding, April 19, 2000.



Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:

: No. 00-328-CD

: Jury Trial Demanded

: Document filed: Petition
for Appointment of Guardian
:
: Filed on behalf of:
Plaintiff

: Counsel for this Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

FILED

APR 19 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:

:

:

vs.

:

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:

:

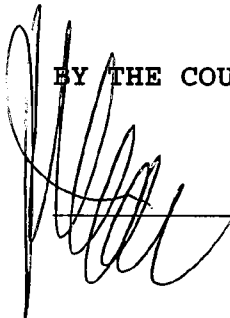
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RULE TO SHOW CAUSE

AND NOW, this 20th day of April, 2000, a Rule is granted upon those interested parties hereinafter named to show cause, if any there be, why John R. Ryan, Esquire should not be appointed to serve in the within action as Guardian ad Litem for Clifford Cox, defendant.

RULE RETURNABLE AND HEARING THEREON the 4th day of May, 2000, at 9:00 o'clock A.M., in Courtroom No. 1, at Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



FILED

APR 20 2000

0/2100/00
William A. Shaw
Notary

9 CMT TO ATTORNEY
200

Interested Parties:

Clifford Cox
c/o Clearfield County Prison
410 21st Street
Clearfield, Pa., 16830

Linda Estrada
Apt. #3
1003 Pirtle Steet
La Marque, Tx 77568

Southwest Guaranty Trust Co.
c/o Mark Weaver
211½ Locust Street
Clearfield, Pa., 16830

Linda Estrada
P. O. Box 705
Santa Fe. Texas, 77517

Mr. Brady Whitaker
Southwest Guaranty Trust Co.
10411 Westheimer Road
Suite 200
Houston, Texas, 77042

Paul Cherry, Esquire
District Attorney
Clearfield County Courthouse
Clearfield, Pa., 16830

Steven P. Passarello, Esq
1216 Pleasant Valley Boulevard
Altoona, Pa., 16603

Samuel Lombardo, Warden
Clearfield County Prison
410 21st Street
Clearfield, Pa., 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA,	:	
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO., N.A.	:	
Defendants	:	

NOTICE

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following pages, you must take action on or before May 4, 2000 by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the court without further notice for relief requested by the petitioner or movant. You may lose rights important to you.

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

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PENNSYLVANIA, 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA,	:	
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO., N.A.	:	
Defendants	:	

PETITION OF JOHN R. CARFLEY, ESQUIRE, FOR APPOINTMENT OF
GUARDIAN AD LITEM FOR DEFENDANT, CLIFFORD COX

Petitioner, John R. Carfley, Esquire, as attorney for Kay Churner, individually and as Executrix of the Estate of John Dimmick, petitions this Court pursuant to Pa. R.C.P. 2056(a) for the appointment of a guardian ad litem for defendant, Clifford Cox, and in support thereof respectfully represents:

1. Petitioner, John R. Carfley, Esquire, is an adult individual and an attorney with offices located at 222 Presqueisle Street, Philipsburg, Pennsylvania, and in that capacity represents the plaintiff in the above matter.

2. While the psychiatric and/or mental condition of the defendant, Clifford Cox, at present has not been adjudicated, or confirmed, counsel for the plaintiff has been advised that the defendant, Clifford Cox, may require the appointment of a guardian ad litem to represent his personal and financial interests in the

proceedings which are currently pending before this Honorable Court. (See Psychiatric report and supporting documents attached hereto as Exhibit A)

4. At the present time the defendant is incarcerated in the Clearfield County Prison which is located at 410 21st Street, Clearfield, Pennsylvania. This incarceration stems from the criminal actions which he committed on or about May 10, 1999. As a result he is within the care, custody and control of Samuel Lombardo the warden of said prison.

5. Defendant is not represented in this action by a guardian ad litem nor is defendant represented in the action filed to No. 99-825-CD by a guardian ad litem.

6. To the best of Petitioner's knowledge, information and belief no guardian of the person or estate of the defendant incompetent has been appointed in this or any other jurisdiction.

7. Your petitioner has confirmed that John Ryan, Esquire, an attorney in Clearfield, Pennsylvania, would be willing to serve as the guardian ad litem of defendant in these actions and has signed a consent to his appointment which instrument will be introduced as evidence at time of hearing.

8. The only relative of the defendant known to petitioner who has had substantial personal involvement and/or contacts with the defendant is Linda Estrada who currently resides at Apartment #3, 1003 Pirtle Street, La Marque, Texas, 77568.

9. The defendant is presently represented in the criminal proceedings filed in Clearfield County, Pennsylvania, by Steven P.

Passarello, Esquire, whose offices are located at 1216 Pleasant Valley Boulevard, Altoona, Pennsylvania.

10. The defendant, Clifford Cox, has failed to enter an appearance either individually and/or through an attorney in this proceeding and in the proceedings filed to No. 99-825-CD. As a result default judgments have been entered against him.

11. As a result of a personal injury settlement received by the defendant, Clifford Cox, in the State of Texas, a trust fund was established with Southwest Guaranty Trust Co., N.A. At the request of Cox's counsel in Texas, his attorney ad litem and Linda Estrada, Southwest was appointed as the Trustee for the trust by the 58th Judicial District Court located in Beaumont, Texas. (See Court documents affixed hereto as Exhibit B)

12. Although a trustee was appointed by the court for the management and investment of the trust res no guardian or other representative has been appointed to request the disbursement or distribution of defendant's estate or otherwise deal with the management of the fund to meet the economic needs and demands of the defendant and/or his legitimate creditors including the plaintiff herein.

13. The settlement reached by the defendant Cox consisted of a cash settlement and a structured settlement which totalled \$1,375,000.00.

14. At the present time approximately \$200,000.00 remains in the trust fund under the care and control of Southwest Guaranty with additional cash contributions of approximately \$4,700.00 per

Passarello, Esquire, whose offices are located at 1216 Pleasant Valley Boulevard, Altoona, Pennsylvania.

10. The defendant, Clifford Cox, has failed to enter an appearance either individually and/or through an attorney in this proceeding and in the proceedings filed to No. 99-825-CD. As a result default judgments have been entered against him.

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12. Although a trustee was appointed by the court for the management and investment of the trust res no guardian or other representative has been appointed to request the disbursement or distribution of defendant's estate or otherwise deal with the management of the fund to meet the economic needs and demands of the defendant and/or his legitimate creditors including the plaintiff herein.

13. The settlement reached by the defendant Cox consisted of a cash settlement and a structured settlement which totalled \$1,375,000.00.

14. At the present time approximately \$200,000.00 remains in the trust fund under the care and control of Southwest Guaranty with additional cash contributions of approximately \$4,700.00 per

month to be made for a guaranteed ten year certain or for the life of the defendant whichever shall be greater.

15. As a result of this settlement defendant Cox will have at his disposal over \$750,000.00 which it is believed and therefore averred he is presently incapable of administering.

16. It is believed and therefore averred that the following individuals may have an interest in this proceeding and in the appointment of a guardian and as a result notice has been provided to these individuals and/or entities as required by the Pennsylvania Rules of Civil Procedure:

Clifford Cox
Clearfield County Prison
410 21st Street
Clearfield, Pa., 16830

Linda Estrada
P. O. Box 705
Santa Fe, Texas, 77517

Linda Estrada
1003 Pirtle Street
Apt. #3
La Marque, TX 77568

Southwest Guaranty Trust Co. N.A.
c/o Mark Weaver
211½ Locust Street
Clearfield, Pa., 16830

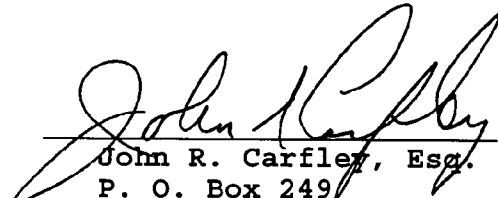
Mr. Brady Whitaker
Southwest Guaranty Trust Co., N.A.
10411 Westheimer Road
Suite 200
Houston, Texas, 77042

Steven P. Passarello, Esq
1216 Pleasant Valley Boulevard
Altoona, Pa., 16603

Samuel Lombardo, Warden
Clearfield County Prison
410 21st Street
Clearfield, Pa., 16830

WHEREFORE, Petitioner requests that a rule returnable be

directed to Clifford Cox and all those individuals and/or entities hereinabove identified to appear and show cause why John Ryan, Esquire or some other competent person should not be appointed the guardian ad litem of defendant, Clifford Cox, in this action due to his incapacity.


John R. Carfile, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: April 19, 2000

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Kay L Churner

Dated: April 17, 2000

FILED FOR RECORD
of _____ o'clock _____ M.

OCT 21 1999

JOHN S. APPLEMAN, CLERK,
District Courts of Jefferson County, Texas
By _____ Deputy

NO. A-157,378

LINDA ESTRADA, ANF OF CLIFFORD \$ IN THE DISTRICT COURT OF
COX, SANDY GIL and CINDY \$
ANDERSON \$
VS. \$ JEFFERSON COUNTY, TEXAS
\$
BO-MAC CONTRACTORS, INC., B.G. \$
ANDREW, AND URETEK, U.S.A., INC. \$ 58th JUDICIAL DISTRICT

REPORT FROM TIMOTHY W. FERGUSON
ATTORNEY AD LITEM FOR CLIFFORD COX

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Timothy W. Ferguson, Court appointed Attorney Ad Litem for Clifford Cox, and files this report and shows as follows:

I.

Attorney ad litem recommends the Court approve the proposed settlement between the parties. More specifically, Attorney Ad Litem recommends that the portion of settlement due to Clifford Cox be invested, in part, in a trust under the statutory authority of the State of Texas for the use and benefit of Clifford Cox, and that a suitable trustee be approved.

II.

FACTS

The underlying claim arises from a serious motor vehicle accident occurring in Jefferson County, Texas on or about May 18, 1997. While the liability of the parties is disputed, it appears clear that a vehicle operated by Mr. Clifford Cox was struck in the rear by another vehicle. Plaintiffs alleged, in part, that certain

EXHIBIT

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Defendants were legally culpable due to the ongoing construction work on Interstate 10 in the Beaumont area.

Timothy W. Ferguson was appointed Attorney Ad Litem by the Court on or about December 8, 1998, and has actively remained cognizant of the status of the claim. Shortly after a mediation conducted in July, 1999, the parties reached a tentative settlement consisting of the following:

1. Payment of \$1,375,000.00 to Clifford Cox and his attorneys;
2. Payment of \$360,000.00 to Cindy Anderson and her attorneys;
3. Payment of \$360,000.00 to Sandy Gil and her attorneys;

Pertinent to Mr. Cox, a lien of approximately \$67,221.46 is outstanding to Medicaid. The remaining funds, not including attorney's fees, are designated to be placed in a trust and structure. Four entities are participating in the payment to Mr Cox, including BoMac/Uretek, B.G. Andrews, State Farm and Progressive Insurance. SEE EXHIBIT A "SETTLEMENT LETTER".

III.

BACKGROUND INFORMATION

Mr. Clifford Cox is a 49 year old male currently residing in the Clearfield County Prison. He is incarcerated

upon charges stemming from the shooting death of a Mr. J. Dimmick occurring on May 10, 1999. It is the ad litem's understanding that part of the criminal defense stems from Mr. Cox's inability to understand the nature and quality of his act when he shot and killed the deceased because he was laboring under a defect of reason from disease of the mind.

Mr. Cox has never married and has no children. According to prior IQ tests performed before the accident, he fell within an average range. His work history can be described as sporadic, and a significant part of his adult life he has resided with family members.

As a result of the impact with the Cox vehicle, Mr. Cox sustained a closed head injury and multiple burns. According to multiple health care providers, Mr. Cox suffered a severe brain injury related to the accident resulting in major behavioral deficits. Due to a recent criminal indictment for murder, Mr. Cox underwent a rigorous psychological evaluation by Dr. Robert H. Davis, M.D., located in Pennsylvania where the criminal case is pending. According to Dr. Davis, Mr. Cox suffers from Dementia Due to Head Trauma, and was determined to be incapable of "making decisions about his medical care, finances, or legal or business affairs". Additionally, Mr. Cox was considered to be incompetent to stand trial, and felt that he suffered brain damage due to head trauma resulting from the underlying accident. Notably, Mr. Cox will require some type of supervised living in the future. SEE EXHIBIT B "DAVIS REPORT".

It is the Attorney Ad Litem's understanding that the proposed gross settlement to Mr. Cox is in the amount of \$1,375,000.00 as further reflected on Exhibit A to this report.

It is the Attorney Ad Litem's understanding that the law firm of Berry & Thompson have a 40% contingency fee agreement with Mr. Cox and his representative(s).

It is also Attorney Ad Litem's understanding that out of the B&T disbursement set forth in Exhibit A, B&T will take care of any and all outstanding case expenses.

IV.

WORK PERFORMED

Attorney Ad Litem has worked on this case for 140 hours and plans to spend an additional 7-10 hours to assist in the coordination of the proposed trust on behalf of Mr. Cox. See Exhibit C.

V.

RECOMMENDATION

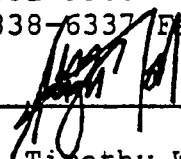
Attorney Ad Litem recommends the Court approve the settlement as proposed by the parties. Attorney Ad Litem further recommends that the funds for Clifford Cox be placed, in part, in an approved trust for his exclusive use and benefit.

WHEREFORE, Attorney Ad Litem prays this Honorable Court to consider this report and attachments.

Respectfully submitted,

FERGUSON FIRM
1122 Orleans Street
Beaumont, Texas 77701
409-832-9900
409-838-6337 Facsimile

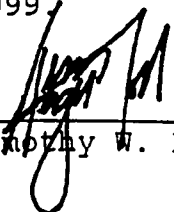
By


Timothy W. Ferguson
TBSAA #06929500

ATTORNEY AD LITEM

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument has been forwarded to all counsel of record, by hand delivery, on this the 21st day of October, 1999.


Timothy W. Ferguson

BERRY & THOMPSON, LLP

ATTORNEYS AT LAW
WORTHAM TOWER
2727 ALLEN PARKWAY
SUITE 800

HOUSTON, TEXAS 77019
(713) 520-2500
FAX (713) 520-2525

JOEL C. THOMPSON
BOARD CERTIFIED PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

October 18, 1999

VIA FACSIMILE

Mr. William S. Jackson
Lueders & Boanerges
9432 Old Katy Road, Suite 100
Houston, Texas 77055

VIA FACSIMILE

Mr. Robert A. Black
Mehaffy & Weber
P. O. Box 16
Beaumont, Texas 77704

VIA FACSIMILE

Mr. M. Joseph Meynier, IV
Law Office of M. Joseph Meynier, IV
440 Louisiana, Suite 2050
Houston, Texas 77002

VIA FACSIMILE

Mr. James R. Old, Jr.
Germer & Gertz, L.L.P.
805 Park Street
Beaumont, Texas 77701

VIA FACSIMILE

Mr. Timothy Ferguson
The Ferguson Firm
1122 Orleans
Beaumont, Texas 77701

VIA FACSIMILE

Mr. Brady Whitaker
Attorney at Law
800 Taft Street
Houston, Texas 77019

Re: *Cause No. A-0157378; LINDA ESTRADA, ANF OF CLIFFORD COX, SANDY GIL and CINDY ANDERSON VS. BO-MAC CONTRACTORS, INC. and B. G. ANDREW; In the 58th Judicial District Court of Jefferson County, Texas*

Gentlemen:

As you know, our settlement hearing in the above referenced case is Thursday, October 21. The settlement scenario is rather complicated and, as such, I wanted to make each of you aware of what we will be asking the Judge to approve. The total gross settlement is as follows:

Cindy Anderson.....	\$360,000
Sandy Gill.....	\$360,000
Clifford Cox.....	\$1,375,000

I reach these figures using the following breakdown:

EXHIBIT

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All counsel
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BoMac/Uretek

Anderson.....\$350,000
Gill.....\$350,000
Cox.....\$1,300,000

B.G. Andrews

Anderson.....\$10,000
Gill.....\$10,000
Cox.....\$20,000

State Farm (Cox's carrier)

Cox.....\$30,000

Progressive (Nolet U/M carrier)

Cox.....\$25,000

The settlement regarding Cindy and Sandy is relatively simple. BoMac/Uretek will issue each of them a check in the amount of \$350,000. Mr. Andrews' Insurance carrier will do likewise, in the amount of \$10,000.00 each.

Clifford's disbursement becomes somewhat problematic in that we are creating a Trust and a structure, as well as paying fees, costs, and reimbursing Medicaid. We will be asking the Judge to approve the disbursement of settlement funds in the following manner:

From BoMac/Uretek

NHIC (Medicaid).....\$67,221.46
Cox's Trust.....\$179,601.04
Cox's structure.....\$509,202.00
B & T.....\$543,975.50
Anderson & B & T.....\$350,000.00
Gil & B & T.....\$350,000.00

From Andrews

Cox's Trust.....\$20,000.00
Anderson & B & T.....\$10,000.00
Gill & B & T.....\$10,000.00

From State Farm

Cox's Trust.....\$30,000.00

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From Progressive
Cox's Trust.....\$25,000.00

These numbers are tentative and may change only in regard to the respective amount divided between the Trust and structure. If you have any questions or comments, please let me know.

Very truly yours,

BERRY & THOMPSON, L.L.P.


Joel C. Thompson

JCT:kg

Robert H. Davis, M.D.
6125 Stephen's Crossing
Mechanicsburg, PA 17055
717-766-6537

October 18, 1999

Joel Thompson, Esquire
Berry and Thompson
Wortham Tower
2727 Allen Parkway, Suite 800
Houston, TX 77019

Re: Clifford Cox

Dear Mr. Thompson:

At the request of Steven Passerello, Esquire of Altoona, Pennsylvania, Clifford Cox was seen for a psychiatric evaluation in Clearfield County Prison on October 2, 1999. The purpose of this evaluation was to determine whether Mr. Cox suffers from a psychiatric condition, and if so, whether this psychiatric condition affects his competency to stand trial or his criminal responsibility for the charges filed against him. In preparation for this report, the following documents were reviewed:

1. Medical records from the University of Texas Medical Branch, 5/18/97-8/25/97 hospitalization of Clifford Cox,
2. Medical records from St. Elizabeth Hospital, Beaumont, Texas, documenting the emergency medical care provided to Clifford Cox on 5/18/97,
3. Neuropsychological evaluation report from Corwin Bonke, Ph.D., University of Texas, dated 4/8/99,
4. Transcript of preliminary hearing, dated 7/8/99,
5. Copy of police reports including interviews with witnesses,
6. Autopsy report on John Dimnick,
7. Copy of the Criminal Complaint.

In addition, Mr. Cox was seen for a two hour psychiatric evaluation and clinical interview at the Clearfield County Prison. His sister Linda Estrada was also interviewed by telephone for an hour and one-half on October 14, 1999. Based on the information gathered and reviewed, the following report is offered.

Clifford Cox is a forty-nine year old (d.o.b. - 1/24/50) white, single male who is charged with

1--Cox

EXHIBIT

B

FROM :

criminal homicide, aggravated assault, criminal trespass, and simple assault as a result of a shooting incident that occurred on May 10, 1999. This incident resulted in the death of John Dimmick. Mr. Cox had no known previous contact with Mr. Dimmick. Mr. Dimmick had purchased at an auction property that was formerly owned by Mr. Cox's family. In the past, Mr. Cox had lived in a trailer that was placed on this property.

The only witness to the shooting was Mr. John Williams, and he only witnessed part of the shooting and events that occurred after the shooting. Apparently, Mr. Williams was mowing his grass when he heard shots. He was the first to call police to report the incident. He did not see anything that transpired between Mr. Cox and Mr. Dimmick. After Mr. Cox had shot the victim, Mr. Williams observed him shaking the post on which Mr. Dimmick's mailbox was located. Apparently after he knocked over the mailbox, Mr. Cox went into Mr. Dimmick's trailer looking for items belonging to himself that he thought might be there.

When the police came to the scene, Mr. Cox was sitting in his van. He got out of the van at their command. He had his gun in its holster in his hand. When he was asked to drop it, he put it in the van. They asked Mr. Cox to drop to the ground, but he walked forward. They used mace at that time and then subdued him.

In the interview recorded by the police, Mr. Cox states, "My lawyer he was suppose to meet me. He told me that I could go there and that I could stay there on the property anytime I want. But when I pulled up, the guy was there mowing the lawn there. I don't know his exact name. All I know is he stole everything I 'fucking' owned and shoved my trailer out of the way and put another one there and he told me to get the hell off his property." (sic) Furthermore, Mr. Cox said, "I just started shooting. I shot three times. And I'd do it again. Over and over and over again. Anything to fight for my property."

Mr. Cox has insisted repeatedly that he had a lawyer from the area who was working with him to obtain the property. This delusion regarding the attorney was repeated by him both before and after the homicide. He is unable to name this attorney. There have been many attempts to identify this attorney, and there is no information to confirm that Mr. Cox's allegation that he had contact with an attorney regarding the return of the property.

Mr. Cox indicated, "I kept driving by and when I saw she was gone I thought it was a good sign. I thought he was going to offer me the trailer and make up for the one he destroyed." Mr. Cox explained that, when he saw that the woman who had been living with Mr. Dimmick was no longer there, he thought that was an indication that they were moving off the land; and his attorney had been successful in getting the property back for him.

Mr. Cox was born and raised in Beulah, a small village in Bigler Township, Clearfield County, Pennsylvania. He was one of a sibship of four. He had three sisters. At this time, only one is living. She resides in Houston, Texas. According to the information I received from Mr. Cox and his sister, his father was an alcoholic and played little or no role in the lives of the children. The

father was hospitalized in Warren State Hospital during the fifties. Neither Mr. Cox nor his sister is sure of the reasons for the hospitalization, however, it is thought to have been a result of his alcoholism. Mr. Cox's sister understands that her father was paranoid and was hospitalized for approximately a year at Warren.

Mr. Cox graduated from Moshannon Valley High School in 1968. He reports that he had average grades. He was apparently in the vocational education program; he stated, "I took shop courses." His educational history was confirmed by Dr. Boake as part of his neuropsychological evaluation. Mr. Cox had no further training or education beyond high school. He worked odd jobs most of his life; he never was continuously employed at one location. In the past, he had a commercial driver's license and drove tractor trailer trucks. He also did carpentry, plumbing, and some electrical work. Frequently, he would do odd jobs at a junk yard near his home in Pennsylvania as well as at a sawmill in that area. He consistently worked at one job or another and was able to support himself and obtain some possessions of value.

Mr. Cox was described as a loner. He never married. He has no children. He has had no girlfriends in the recent past. Mr. Cox was an avid hunter. He apparently had a collection of guns at the trailer on the property in Beulah. The alleged loss of the gun collection as well as the property were among the key things that upset him.

Mr. Cox had no history of any psychiatric hospitalizations. He does not and has never used alcoholic beverages. Additionally, he has no history of any drug usage.

Although considered an eccentric loner, Mr. Cox functioned normally until he was involved in a motor vehicle accident near Houston, Texas, on May 18, 1997. Mr. Cox was the driver of a car that was owned by his sister and brother in law. They were passengers in the car when it was struck from behind by a truck. Apparently, the impact of the accident caused an explosion of the gas tank in the vehicle operated by Mr. Cox. His sister and brother in law were killed. Mr. Cox had severe burns and head trauma as a consequence of the accident. He was initially treated in the emergency room of St. Elizabeth Hospital and then transferred to the University of Texas Medical Branch Hospital in Galveston. He was hospitalized from 5/18/97 - 8/25/97. According to the records from the University of Texas Hospital, he had burns over 20% of his body surface. In addition, he suffered a closed head injury and renal failure. He had extensive skin grafting. In addition, he underwent hemodialysis. As a consequence of the accident, Mr. Cox has permanent physical damage to his body as well as his brain.

Immediately after the accident, Mr. Cox was comatose. The records indicate that for some period of time his condition varied between his being comatose or semi-comatose. As he became more alert, it was noted that he was confused and at times agitated. Medication was needed at times to control his behavior during the hospitalization. Psychiatric consultation was obtained. Gradually, his physical condition improved to the point he was able to function outside the hospital. However, his mental condition remained problematic. The psychiatric progress notes indicate, "Confused about dreams and reality," when he was seen on August 15, 1997, approximately ten

FROM :

days before his release. He was having a difficult time distinguishing between dreams and reality.

When Mr. Cox was released from the University of Texas Hospital, he was to be placed in a residential facility for the treatment and rehabilitation of patients with brain trauma. He was taken to that facility by his sister but he stayed there less than 24 hours. Apparently, he left this facility and returned to the hospital; there, he insisted on being placed back in his room. His sister was called, and she took him home with her. He remained with his sister for most of the time after the accident.

According to the information provided by his sister, Linda Estrada, and the information in the neuropsychological evaluation by Dr. Boake, Mr. Cox continued to have difficulty distinguishing between his dreams and reality. He would often report that various things had occurred. Later his family would learn that in fact that there was no reality to his report. Occasionally, some of his stories were bizarre enough that the family readily realized that there was no likelihood of any reality. For example at one point, he talked about living with a family of bears for some period of time. While living with his sister he spent most of his time either watching television or working on his van which he was able to repair(it had not been working).

According to Mrs. Estrada, the property in Pennsylvania where the incident occurred had been the family homestead; however, Mr. Cox never owned the property. After their mother died, no one paid the taxes on the property. When the oldest sister learned that the property would be sold for taxes, she made arrangements to pay the taxes and obtain it. She was the one who owned the property. She allowed Mr. Cox to live there in a trailer he had placed on the property.

According to Mrs. Estrada, the sister who owned the property died of cancer in January 1997. She had always indicated that she would make provisions for Clifford, however, she had not done so by the time of her death. When her sister's estate was being settled, the accident had already occurred. Mr. Cox was hospitalized, in a coma, and not expected to live. As a consequence, the sister's family sold the property at an auction. Some of Mr. Cox's personal property was removed and stored by his niece. There is some question whether some things were stolen from the property while it was vacant.

According to Mrs. Estrada, Mr. Cox was not particularly preoccupied with the property. She indicates that because of his 'memory gaps' he would often forget that his oldest sister had died and that the property had been sold at an auction. She states on the occasions that he did talk about the property and realized that it had been sold, he said that he wouldn't worry about it because he would buy other property in Clearfield County with money he hoped to receive from the motor vehicle accident settlement.

It had been Mr. Cox's history to live in Texas during the winter with his one sister. During the winter, he would do construction work and other odd jobs. In addition, he would assist his sister and brother in law in maintaining their household. According to Mrs. Estrada, Mr. Cox had come to Texas before Christmas 1996. When he left the hospital in August 1997, he stayed with her

throughout the fall and winter. He returned to Pennsylvania in the summer of 1998. During that time, he slept in his van and stayed on the property of a former neighbor. Apparently this neighbor and her husband were close friends of the family and Mr. Cox had often done work for them. Nothing occurred during his stay in Clearfield county during the summer of 1998. According to his Mrs. Estrada, he made no contact with Mr. Dimmick in the summer of 1998 despite being very close; the records from interviews of witnesses support this. Although there are some statements from witnesses that suggest that during that time period, he may have taken some things from a shed on the property.

In October 1998, Mr. Cox returned to Texas. His sister reports, "He walked in the house and sat in his chair like he had just been gone for a few hours." He remained with his sister until May 1999. He left abruptly and returned to Pennsylvania. According to his sister, he gave no indication that he planned to return to Pennsylvania. She and her husband returned one day to discover that he was gone; in fact, he left their front door wide open. The next thing they learned was that he had been arrested because of the homicide. When Mrs. Estrada talked to her brother on the telephone after his arrest, he said that he "shot the trespasser because his lawyer told him he could shoot trespassers."

Mr. Cox did not have a valid driver's license during the time he was driving his van both in Texas and Pennsylvania. According to his sister, when his Texas license had expired, he got into an argument with personnel at the Texas Department of Transportation. At one time he had a commercial license in Texas. He had dropped it because of the cost prior to the accident. He had no memory of that and argued with the transportation personnel about their taking his commercial license without his knowledge. Apparently, he became so agitated that his brother in law had to escort him out of the office to avoid the police being called.

On examination, Mr. Cox presents as a mildly, obese, large individual who has a noticeable burn scar over the right area of his scalp, face, and shoulder. His right ear is missing. He has a noticeable gait disturbance. His eye contact was good. He did indicate that he has trouble with double vision. His speech was spontaneous and goal directed. His affect showed a normal range of emotion. His mood was unremarkable. He did not seem particularly depressed. This was remarkable considering his circumstances; that is being incarcerated with charges of murder. He denied hallucinations, and there was no evidence of hallucinations. Clearly, there is evidence of delusional thinking that has been persistent since his physical recovery from the motor vehicle accident. These delusions would be more correctly characterized as confabulation. Confabulation is the unconscious filling of memory gaps by imagined experiences; that is, the brain makes up delusional information to fill the gaps in memory caused by the lost brain matter.

Mr. Cox was oriented to the month, day, date, and year. However, when he was asked to identify the President of the United States, he indicated that it was Carter. When asked to identify the Vice-President, he said it was Agnew. He was asked whether he could identify the Governor of Texas and responded, "It's a black man, I believe." He was able to spell world backwards. He was able to do serial sevens, i.e. he was able to subtract 7 from 100, and then seven from 93, then

seven from 86, etc. He easily said there were twenty nickels in a dollar. He was able to identify objects. He was able to remember three objects he was asked to remember over a five minute period, suggesting immediate recall is fairly good. Clearly his recent and remote memory ability is grossly impaired. His judgment is impaired. This is shown repeatedly in his behavior since his recovery from the accident.

In my opinion, Mr. Cox suffers from Dementia Due to Head Trauma. The records from the University of Texas show clear evidence on brain scans of their being brain damage. The neuropsychological evaluation by Corwin Boake, Ph.D., describes the functional limitations that have resulted because of his head trauma. According to Dr. Boake's report, "Mr. Cox exhibits major behavioral problems which include unawareness of deficits, lack of insight into his situation, paranoia, grandiose thinking, and anger." He clearly has suffered memory deficits. Although his immediate recall is good, there are gaps in his remote memory. It appears that he fills these gaps with imagined experiences that are delusional in nature. Dr. Boake also states that, "Regarding Mr. Cox's competency, I think he is not capable of making decisions about his medical care, finances, or legal or business affairs." Again, it is noted that this report was issued on 4/8/99 based on a 3/14/99 evaluation.

In my opinion, although Clifford Cox has some limited comprehension that he is accused of certain crimes, he is not able to participate in his defense. His memory deficits coupled with his confabulation make it impossible for him to cooperate with his attorney in planning and participating in his defense. His delusions or confabulations about the events result in his frequently changing the information he provides. Neither he nor anyone working with him can distinguish what is fact and what is delusion. In my opinion, within a reasonable degree of medical certainty, this meets the criteria to be considered incompetent to stand trial in Pennsylvania.

It is also my opinion that on May 10, 1999, when he gave his recorded statement to Trooper Richard E. Crain, he was not competent to understand his rights and make a statement to the police. In the transcript, after Mr. Cox is explained his Miranda rights, he is asked by Trooper Crain if he understands these rights. His response is, "I have no idea." He was then asked, "Do you understand them?" He responded, "Yes, it's ok." Given Mr. Cox's memory, judgment, and comprehension deficits, it is clear that his first response is accurate; he did not understand.

Lastly, it is my opinion that Clifford Cox was laboring under such defect of reason from disease of the mind as not to know the nature and quality of his act when he shot and killed John Dimmick. Additionally, it is my opinion that he did not know that this act was wrong. Clearly, Clifford Cox has suffered brain damage due to head trauma. His dementia due to the head trauma has resulted in significant problems with memory and judgment. He fills the memory gaps with imagined ideas or delusions. Clearly, his memory of the facts regarding the ownership of the property which his family once owned was impaired. This problem with memory was clearly compounded by the fact that the ownership of the property was transferred during the time he was hospitalized. He believes that the property belonged to him and was unjustly taken from him. He has consistently told the story of his belief that he had communicated with an attorney who was arranging for the

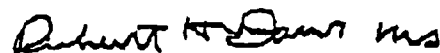
return of this property to him. This belief was communicated before the homicide occurred as well as afterward.

Because of Mr. Cox's severe memory problems and because there are no witnesses to all of the events that transpired that day, it is impossible to reconstruct what occurred in the interaction between him and Mr. Dimmick. In a telephone conversation with his sister, he indicated that he had a right to shoot a trespasser because he was told this by his attorney. He did not flee the scene after shooting Mr. Dimmick. In fact, he was sitting calmly in his van when the police arrived to arrest him. At this point in time, he is still focused on obtaining this property and has expectations that he will be able to return and live on this property as he had in the past. Based on the above, it is my opinion, within a reasonable degree of medical certainty, that Clifford Cox meets the Commonwealth's definition of Not Guilty by Reason of Insanity.

It is my opinion that Mr. Cox should be committed to a state forensic psychiatric hospital for further evaluation and treatment and be maintained there until the physicians treating him and the Court feel it is safe to move him to a less restrictive setting. It is my expectation, that he will progress from a state forensic psychiatric hospital to a regular state psychiatric hospital, and from there, to a community placement. It is also my opinion, that Mr. Cox will always require some type of supervised living. There are group homes that provide 24 hour supervision and serve individuals with mental and behavioral deficits due to head trauma. In my experience, these facilities are not publicly funded and require private financing.

If I can provide any additional information, please do not hesitate to contact me.

Very truly yours,



Robert H. Davis, M.D.

AFFIDAVIT OF TIMOTHY W. FERGUSON

THE STATE OF TEXAS

§

COUNTY OF JEFFERSON

§

BEFORE ME, the undersigned authority, personally appeared,
TIMOTHY W. FERGUSON, who, being by me duly sworn, deposed and said:

"My name is Timothy W. Ferguson. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it. I have been a licensed attorney in the State of Texas since 1984. I am the managing lawyer for Ferguson Firm with offices in Jefferson and Jasper counties. At all times pertinent to the Clifford Cox case, I have been admitted to practice law before the U.S. Court of appeals (5th Circuit), U.S. District Court (Southern and Eastern District), and the State of Texas. I am board certified in personal injury law by the Texas Board of Legal Specialization (1989). I am a certified civil trial advocate by the National Board of Trial Advocacy (1992). I am a Diplomat of the American Board of Professional Liability Attorneys (1993). I have met the CLE requirements to serve as an attorney ad litem in the Cox case.

On the Clifford Cox case, I have been involved in the progress of the claim for over ten (10) months since I was appointed attorney ad litem. I have spent at least 140 hours in the analysis, research, review and work on this case to date. In probability, I will spend an additions 7-10 hours of attorney time in finalizing the trust regarding Mr. Cox's recovery. I am familiar with the following regarding my appointed service on this claim:

(1.) *The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly.* This case required knowledge and analysis of a traumatic brain injury case sustained by an adult. In addition to file materials, I conducted review and research into the area of traumatic brain injury, including studying Concussional

EXHIBIT

Injuries and adopted practice guidelines for neurologists and neurosurgeons, diagnostic techniques for TBI (traumatic brain injury), and the sequella of TBI. I felt that this was critical information to review in assessing monies offered vs. extent of injury claimed by Mr. Cox in light of the liability facts.

(2.) *The likelihood that the acceptance of employment will preclude other employment by the attorney.* In light of the hours spent on this case, I was limited in my acceptance and/or work on other legal matters in my office. Essentially, I dedicated approximately two weeks of my usual attorney time to this matter.

(3.) *The fee customarily charged in the area for similar legal services.* This case was unique from a typical minor settlement in multiple ways. In Cox we are dealing with an adult male who has over 20 years of future life expectancy who is currently incarcerated. Mr. Cox sustained personal injuries of the nature requiring an ad litem to be familiar with a complicated medical and psychological scenario. It is my opinion based upon my experience and abilities that a fee in the amount of \$250 per hour is a reasonable fee.

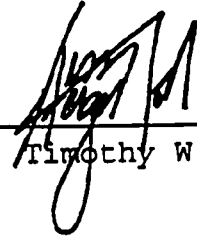
(4.) *The amount involved and the results obtained.* Mr. Cox received \$1,375,000.00 gross in a claim which was vigorously contested on both a liability and damage grounds. I worked closely with his outstanding attorneys who are primarily responsible for the significant recovery.

(5.) *The time limitations imposed by the client.* In light of Mr. Cox's arrest and indictment for murder, it was imperative that this case be finalized prior to a final criminal resolution. The lawyers for Mr. Cox, assisted, in part, by myself were working under an inordinate deadline.

(6.) *The experience, reputation, and ability of the lawyer performing the services.* I have handled many construction and brain injury cases in my 15 years of practice. I am fortunate to having been awarded an AV rating by Martindale Hubbard based upon assessment by my peers. In approximately the last 5 years, I have obtained over 16 million dollar or multi-million dollar settlement/verdicts on behalf of my firm's clients. AND

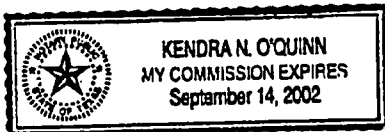
(7.) *The nature and length of the professional relationship with the client.* I was appointed ad litem in December, 1998.

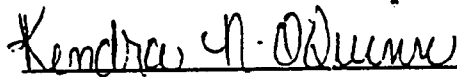
I am familiar with the reasonable and customary charges in Jefferson County, Texas for matters which are substantially similar to the Cox matter. I ask the Court to approve the total attorney's fees in the amounts between \$36,750 and \$37,500.00 as a reasonable fee for the representation provided by myself as the attorney ad litem on this matter.



Timothy W. Ferguson

SUBSCRIBED AND SWORN TO BEFORE ME on the 21st day of October
1999, to certify which witness by hand and official seal.





NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Cmm

No. A-0157378

LINDA ESTRADA,
As Next Friend of
CLIFFORD COX, et. al.

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IN THE DISTRICT COURT

VS.

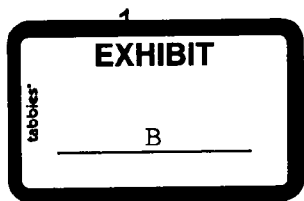
JEFFERSON COUNTY, TEXAS

BO-MAC CONSTRUCTORS, INC.,
et. al.

58th JUDICIAL DISTRICT

ORDER CREATING TRUST FOR
THE BENEFIT OF CLIFFORD COX
UNDER SECTION 142.005 OF THE TEXAS PROPERTY CODE

On this day came to be heard the Application LINDA ESTRADA, as next friend of CLIFFORD COX an incapacitated person (the "Beneficiary"), requesting that the Court establish a trust for the Beneficiary pursuant to Section 142.005 of the Texas Property Code, and due and proper notice of such application and hearing thereon having been given to all necessary and interested persons, and all persons necessary for jurisdiction having appeared in person or by attorney, and the Court having considered the evidence presented, the argument of counsel, and the terms of the trust agreement attached to this Order as Exhibit A which is incorporated herein for all purposes by this reference, the Court hereby finds that the Beneficiary is an incapacitated person as defined by Section 142.005 of the Texas Property Code, and such trust is in the best interest of the Beneficiary and should be created under the authority of Section 142.005 of the Texas Property Code; it is therefore

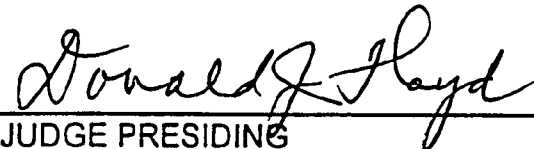


ORDERED, that the funds awarded to the Beneficiary pursuant to the Final Judgement in the above entitled and numbered cause shall be held in trust for the benefit of Beneficiary pursuant to Section 142.005 of the Texas Property Code, and pursuant to the terms of the trust agreement, a copy of which is attached hereto as Exhibit A; and it is further

ORDERED, that Southwest Guaranty Trust Company N.A., Houston, Texas, is hereby appointed sole Trustee of the Trust; and, upon the Trustee's acceptance of such Trust, the Defendants are hereby ORDERED to pay to the Trustee for the benefit of Beneficiary all sums awarded herein in the above entitled and numbered cause; and it is further

ORDERED, that approval is hereby granted to the Trustee to charge a reasonable fee for its trust services at the rates and in the manner provided for in the Trust Agreement.

SIGNED this the 9th day of December, 1999.


JUDGE PRESIDING

APPROVED:



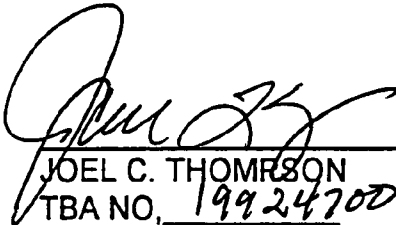
LINDA ESTRADA
P. O. Box 705
SANTA FE, TEXAS 77517

A/N/F OF CLIFFORD COX



TIMOTHY FERGUSON
TBA NO. 06929500
ATTORNEY AT LAW
1122 ORLEANS STREET
BEAUMONT, TEXAS 77701
TEL: 409-832-9900
FAX: 409-838-6337

GUARDIAN AD LITEM



JOEL C. THOMPSON
TBA NO. 19924700
ATTORNEY AT LAW
BERRY & THOMPSON L.L.P.
2727 ALLEN PARKWAY SUITE 800
HOUSTON, TEXAS 77019
TEL: 713-520-2500
FAX: 713-520-2525

ATTORNEY FOR PLAINTIFF

AK
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Exhibit A
TRUST AGREEMENT UNDER SECTION 142.005
OF THE TEXAS PROPERTY CODE

This instrument establishes the terms of a trust (herein called the "Trust") created for the benefit of CLIFFORD COX, an incapacitated person, pursuant to the order of the 58TH DISTRICT COURT of JEFFERSON County, Texas, (herein called the "Court") under the authority of Section 142.005 of the Texas Property Code.

1. Trustee. The trustee of the Trust is and shall be Southwest Guaranty Trust Company N.A., Houston, Texas, (hereinafter called the "Trustee"). Upon receipt from the Defendant of the funds constituting the corpus of this Trust, the Trustee's duties shall commence in accordance with the terms hereof. No bond or other security is required of the Trustee or of any successor trustee.

2. Beneficiary. The sole and only beneficiary of the Trust is CLIFFORD COX, (hereinafter called the "Beneficiary"), who was born on January 24, 1950 and whose Social Security number is 195-42-7643.

3. Trust Estate. The Trust shall be funded with the sum of \$264,602.04 which is or has been awarded to the Beneficiary as a result of a settlement or final judgment in Cause No. A-0157378 styled LINDA ESTRADA, AS NEXT FRIEND OF CLIFFORD COX, ET. AL. VS. BO-MAC CONSTRUCTORS INC., ET. AL. in the 58TH DISTRICT COURT, JEFFERSON County, Texas. Such sum of money together with the following sums of money which will hereafter be acquired by the Trust and all income therefrom, shall constitute the trust estate of the Trust:

Guaranteed Monthly Payments:

\$4,677.27 PER MONTH, GUARANTEED FOR 10 YEARS CERTAIN AND LIFE THEREAFTER, WHICHEVER IS LONGER, WITH PAYMENTS BEGINNING 12/01/1999.

4. Distributions from the Trust. The Trustee shall pay to or apply for the benefit of the Beneficiary such amounts out of the net income and principal (if income is insufficient) of the Trust as are reasonably necessary in the sole discretion of the Trustee to provide for the health, education, support, or maintenance of the Beneficiary. Any income not so distributed shall be added to the principal of the Trust.

The Trustee is ORDERED to make a distribution to LINDA ESTRADA in the amount of \$35,000.00 for reimbursement of living expenses for CLIFFORD COX.

Additionally, Trustee is ORDERED to make a distribution to the attorneys for CLIFFORD COX in the amount of \$25,000.00 in order to pay for his defense of criminal charges pending against him.

In making any discretionary payments to the Beneficiary, the Trustee shall consider (i) the standard of living to which the Beneficiary shall have been accustomed prior to the creation of the Trust; (ii) any known resources of the Beneficiary; (iii) the ability of any person who is legally obligated to support the Beneficiary to do so.

No distribution from the Trust shall be made to the Beneficiary to satisfy any obligation if such obligation would otherwise be met from any federal or state assistance program if the Trust had not been created; provided, however, that the Trustee shall not be responsible for making such a determination nor shall the Trustee be held liable for any

Guaranteed Monthly Payments:

\$4,677.27 PER MONTH, GUARANTEED FOR 10 YEARS CERTAIN AND LIFE THEREAFTER, WHICHEVER IS LONGER, WITH PAYMENTS BEGINNING 12/01/1999.

4. Distributions from the Trust. The Trustee shall pay to or apply for the benefit of the Beneficiary such amounts out of the net income and principal (if income is insufficient) of the Trust as are reasonably necessary in the sole discretion of the Trustee to provide for the health, education, support, or maintenance of the Beneficiary. Any income not so distributed shall be added to the principal of the Trust.

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No distribution from the Trust shall be made to the Beneficiary to satisfy any obligation if such obligation would otherwise be met from any federal or state assistance program if the Trust had not been created; provided, however, that the Trustee shall not be responsible for making such a determination nor shall the Trustee be held liable for any

distribution made in good faith which results in the loss of any federal or state assistance.

The Trustee may make any distribution required or permitted hereunder, without the intervention of any guardian or other legal representative, in any of the following ways:

(i) to the Beneficiary directly; (ii) to the legal or natural guardian of the Beneficiary; (iii) to any person having custody of the Beneficiary; or (iv) by utilizing the distribution directly for the Beneficiary's benefit.

5. Termination. The Trust shall terminate when the beneficiary regains his capacity, or upon the Beneficiary's death. Upon termination, the Trustee shall pay all of the then remaining trust estate of the Trust to the Beneficiary free of any further trust; or, if the Beneficiary is then deceased, to the personal representative of the Beneficiary's estate.

6. Revocability. This Trust shall not be amended, altered or revoked by the Beneficiary or any guardian or other legal representative of the Beneficiary, but it shall remain subject to amendment, modification, or revocation by the Court at any time prior to the termination of the Trust. If the Court revokes the Trust prior to the time that the Beneficiary attains the age of eighteen (18) years, the Court may enter such further or additional orders concerning the trust estate as may be authorized by Section 142.005 of the Texas Property Code. If the Court revokes the Trust after the Beneficiary attains the age of eighteen (18) years, the trust estate shall be paid and delivered to the Beneficiary free of this Trust.

7. Spendthrift Provision. Prior to the actual receipt of any distribution of any portion of the trust estate by the Beneficiary, no property (whether income or principal) of

the Trust shall be subject to anticipation or assignment by the Beneficiary, or to attachment by or the interference or control of any creditor or assignee of the Beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of the Beneficiary. Any attempted transfer or encumbrance of any interest in the trust estate of the Trust by the Beneficiary prior to the actual distribution thereof to the Beneficiary shall be wholly void. In addition to being applicable to the Beneficiary, the preceding provisions of this paragraph shall also apply to anyone else, other than the beneficiary, who may be entitled to any portion of the trust estate upon termination of the Trust.

8. Trustee's Investment Authority. The Trustee shall invest the trust estate in accordance with the standards now or hereafter set forth in the Texas Property Code (or any subsequent applicable law), and the Trustee may also invest all or any part of the trust estate in a common trust fund now or hereafter established by the Trustee pursuant to the Texas Property Code.

9. Trustee's Compensation and Expenses. The Trustee shall be entitled to receive for the Trustee's services hereunder a fair and reasonable compensation determined in accordance with the then customary and prevailing charges for similar services charged by corporate fiduciaries in Houston, Harris County, Texas; but the Trustee's compensation shall not exceed the Trustee's then published fee schedule for such services. The Trustee shall also be reimbursed for all reasonable expenses incurred by the Trustee in connection with the Trust. The fees and expenses heretofore incurred hereunder by the Trustee have been approved by the Court at the inception of the Trust, but the Court may review any future fees and expenses in excess of the then customary

and prevailing charges for similar services by corporate fiduciaries in Houston, Harris County, Texas, at any time on the Court's own motion or at the instance of the Trustee or any other party interested in the welfare of the Beneficiary, and upon a hearing of the matter, the Court shall take any action with respect to such fees and expenses as the Court may deem appropriate. The Trustee shall reimburse the Trust for any fees previously paid to the Trustee by the Trust in the event of a final Court order that the Trustee do so.

10. Administrative Provisions. In the administration of the Trust, the Trustee shall be authorized and empowered:

(i) To exercise all of the powers now or hereafter granted to trustees of express trusts by the Texas Trust Code or any corresponding statutes, except that in any instance in which the Texas Trust Code or other statutory provision may conflict with the express provisions of this trust instrument, the provisions of this trust instrument shall control.

(ii) To adjust, arbitrate, compromise, abandon, sue on or defend, and otherwise deal with and settle all claims in favor of or against the Trust; to engage and retain attorneys or accountants at any time when it may be reasonably necessary to do so in order to provide for the prudent management and preservation of the Trust.

(iii) To continue to act as Trustee of the Trust regardless of any change of name of the Trustee and regardless of any reorganization, merger or consolidation of the Trustee.

11. Miscellaneous. The Trust shall also be held and administered pursuant to the following terms and conditions:

(i) This trust shall be governed in all respects by the laws of the State of Texas in which State jurisdiction and venue lie in any and all matters involving the Trust estate and those persons acting in connection with the Trust estate.

(ii) The Trustee shall keep books of account respecting the Trust and all transactions involving the Trust, and shall furnish to the Beneficiary, or to the person having the care and custody of the Beneficiary if the Beneficiary is then under a legal disability, statements at least quarterly showing receipts and disbursements of income and corpus of the Trust, and a list of assets held in the Trust. Such statements shall also be furnished to the Court on request of the Court. The Trustee shall not be responsible or liable to the Beneficiary or any other person on account of any actions that the Trustee may take or fail to take in Trustee's good faith reliance on any order or proceeding of the Court.

(iii) No person or entity dealing with the Trustee hereunder shall be obliged to see to the application of any money or property paid or delivered to the Trustee, and no such person or entity shall be obliged to inquire into the expediency or propriety of any transaction or the authority of the Trustee to enter into and consummate the same upon such terms as the Trustee may deem reasonably appropriate.

(iv) The Trustee may not resign as Trustee of the Trust without receiving prior authority from the Court to do so.

(v) The headings appearing in this instrument are for convenience only and do not purport to define or limit the scope or intent of the provisions to which they refer.

12. Inception of the Trust. This Trust shall become effective upon (i) the entry of

the decree to which this trust indenture is attached, (ii) the transfer of the above stated sum of money to the Trustee, (iii) the execution of this instrument by the guardian ad litem of the Beneficiary, and (iv) the Trustee's acceptance of the Trust which shall be evidenced by the signature below of the appropriate representative of the Trustee.

SIGNED on this the ____ day of _____, 19 ____.

SOUTHWEST GUARANTY TRUST COMPANY N.A.
HOUSTON, TEXAS

By William L. Terry
Title SR. VICE PRESIDENT

10411 Westheimer Road
Houston, Texas 77042

TRUSTEE

The form and content of this trust instrument is hereby approved.

Date: Nov. 9, 1999

Donald J. Floyd
JUDGE PRESIDING

Date: 11-05-'99

Linda Estrada
LINDA ESTRADA

Date: 11-09-99

Timothy Ferguson
TIMOTHY FERGUSON
TBA NO. 06929500
ATTORNEY AT LAW
1122 ORLEANS STREET
BEAUMONT, TEXAS 77701
TEL: 409-832-9900
FAX: 409-838-6337

GUARDIAN AD LITEM

Date: 11/8/99

Joel C. Thompson
JOEL C. THOMPSON
TBA NO. 19924700
BERRY & THOMPSON L.L.P.
2727 ALLEN PARKWAY SUITE 800
HOUSTON, TEXAS 77019
TEL: 713-520-2500
FAX: 713-520-2525

ATTORNEY FOR PLAINTIFF

FILED

APR 19 2000

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William A. Shaw

Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:

ORDER DIRECTING NOTICE TO INTERESTED PERSONS
IN THE MATTER OF CLIFFORD COX, AN ALLEGED INCAPACITATED PERSON

AND NOW, this 20th day of April, 2000, the court having reviewed the pleadings filed in this matter and Plaintiff's Petition for the Appointment of a Guardian ad Litem for Clifford Cox, an alleged incapacitated person, and it appearing to the court that the defendant, Clifford Cox, may be incapacitated to the extent that he is and/or may be unable to deal with his personal affairs, his business affairs, and other economic matters relating to this case, and is in further need of representation in these matters by a Guardian ad Litem to be appointed by the court, IT IS HEREBY ORDERED that said Clifford Cox or those acting for him or on his behalf shall seek the appointment of a Guardian ad Litem on or before May 4, 2000, or shall answer this petition and appear at the hearing scheduled in this matter to show cause why the court should not appoint John R. Ryan, Esquire, as his Guardian ad Litem, as requested in plaintiff's petition.

FILED

APR 20 2000

William A. Shaw
Prothonotary

IT IS FURTHER ORDERED that notice of this hearing shall be given to the following persons by the attorney for plaintiff:

Clifford Cox
Clearfield County Prison
410 21st Street
Clearfield, Pa., 16830

Linda Estrada
P. O. Box 705
Santa Fe, Texas, 77517

Linda Estrada
1003 Pirtle Street
Apt. #3
La Marque, TX 77568

Paul Cherry, Esq.
District Attorney
Clearfield County Courthouse
Clearfield, Pa., 16830

Southwest Guaranty Trust Co. N.A.
c/o Mark Weaver
211½ Locust Street
Clearfield, Pa., 16830

Mr. Brady Whitaker
Southwest Guaranty Trust Co., N.A.
10411 Westheimer Road
Suite 200
Houston, Texas, 77042

Steven P. Passarello, Esq
1216 Pleasant Valley Boulevard
Altoona, Pa., 16603

Samuel Lombardo, Warden
Clearfield County Prison
410 21st Street
Clearfield, Pa., 16830

Attorney for plaintiff shall file with this Court, before the scheduled hearing date, an affidavit indicating service of the notice on the above named individuals and/or corporations by mail, personal service or by other means appropriate under the Pennsylvania Rules of Civil Procedure.

BY THE COURT:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA, :
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO.,N.A. :

AFFIDAVIT OF SERVICE OF PETITION/NOTICE TO INTERESTED PERSONS

JOHN R. CARFLEY, ESQUIRE, being duly sworn according to law, deposes and says that he is the attorney for plaintiff in this action and that pursuant to the order of Court dated April 20, 2000, he caused to be mailed and/or delivered by personal service as indicated below, copies of the petition/notice/rule returnable, to the following persons designated in the Order:

Clifford Cox (Hand delivered on 4/20/00 by
Clearfield County Prison David Carfley)
410 21st Street
Clearfield, Pa., 16830

Linda Estrada (Mailed Priority Mail on 4/20/00)
P. O. Box 705
Santa Fe, Texas, 77517

Linda Estrada (Mailed Priority Mail on 4/20/00)
1003 Pirtle Street
Apt. #3
La Marque, TX 77568

FILED

APR 24 2000

William A. Shaw
Prothonotary

Southwest Guaranty Trust Co. N.A.
c/o Mark Weaver
211½ Locust Street
Clearfield, Pa., 16830

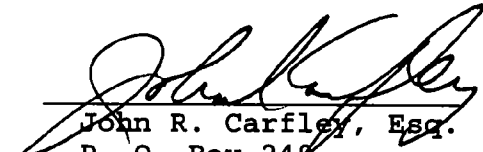
(Hand delivered -4/20/00
by David Carfley)

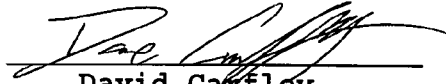
Mr. Brady Whitaker (Mailed Priority Mail on 4/20/00)
Southwest Guaranty Trust Co., N.A.
10411 Westheimer Road
Suite 200
Houston, Texas, 77042

Steven P. Passarello, Esq (Mailed Priority Mail on 4/20/00)
1216 Pleasant Valley Boulevard
Altoona, Pa., 16603

Samuel Lumbardo, Warden (Hand delivered - 4/20/00 by
Clearfield County Prison David Carfley)
410 21st Street
Clearfield, Pa., 16830

Paul Cherry, Esquire (Hand delivered - 4/20/00 by
District Attorney David Carfley)
Clearfield County Courthouse
Clearfield, Pa., 16830


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581


David Carfley
P. O. Box 249
Philipsburg, Pa., 16866

Dated: April 24, 2000

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11:57 AM
Jed

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:

:

:

vs.

:

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:

Jury Trial Demanded

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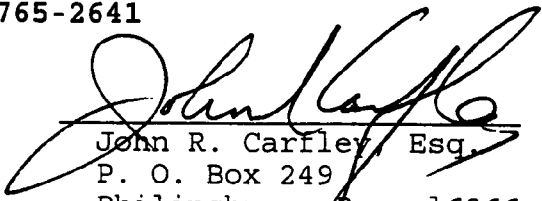
TO: Linda Estrada, Ind.
and ANF
P. O. Box 705
Santa Fe, TX 77517

and Linda Estrada, Ind.
and ANF
1003 Pirtle Street
Apt. #3
La Marque, TX 77568

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 25, 2000

FILED

APR 25 2000

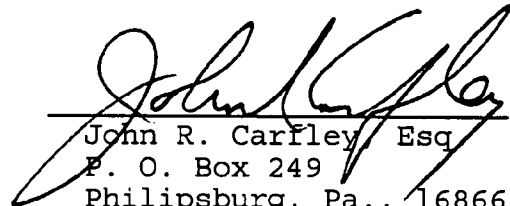
William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the within document was served upon the following party at the following address on April 25, 2000, by ordinary mail, first class, postage prepaid.

Linda Estrada
P. O. Box 705
Santa Fe, TX 77517

and Linda Estrada
1003 Pirtle Street
Apt. #3
La Marque, TX 77568


John R. Carfley, Esq
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

10

FILED
APR 25 2000
William A. Shaw
Prothonotary
10.13.87
City
County
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

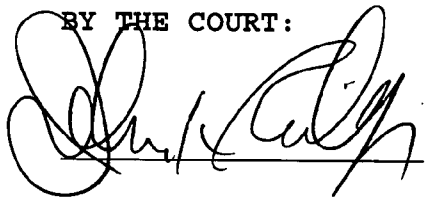
KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA, :
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

ORDER DETERMINING DEFENDANT'S MENTAL CAPACITY AND
APPOINTING GUARDIAN AD LITEM ON HIS BEHALF

AND NOW, this May 4, 2000, it appearing that
CLIFFORD COX, the defendant in this action, is incapacitated and as
a result thereof is unable to manage his business affairs and
financial resources and/or protect himself and his estate from his
own improvident acts, IT IS ORDERED that JOHN R. RYAN, ESQUIRE, of
221 East Market Street, Clearfield, Pennsylvania, is hereby
appointed guardian ad litem for him in this action.

IT IS FURTHER ORDERED that the caption of this action is
amended to read KAY CHURNER, individually and as Executrix of the
Estate of JOHN DIMMICK v. CLIFFORD COX, an incompetent, by John R.
Ryan, Esquire, his Guardian ad litem, LINDA ESTRATA, individually
and as next friend (ANF) of Clifford Cox, and SOUTHWEST GUARANTY
TRUST CO., N.A., Defendants.

BY THE COURT:



FILED

MAY 04 2000

William A. Shaw
Prothonotary

FILED

0193588
MAY 04 2007

VIA JIM A. SNOW
Prothonotary

cc
Atty Corfley
Ked

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No. 00-328-CD
CLIFFORD COX, an incompetent ;
by JOHN R. RYAN, ESQUIRE, his ;
Guardian ad Litem, LINDA ESTRADA, : Jury Trial Demanded
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants

PRAECIPE FOR ENTRY OF DEFAULT OF JUDGMENT

TO THE PROTHONOTARY:

PURSUANT to Rule 237.1 and 1037(b) of the Pennsylvania Rules of Civil Procedure please enter judgment of default in favor of plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick and against defendant, Linda Estrada, individually and as next friend (ANF) of Clifford Cox, for her failure to plead to the complaint in this action within the required time.

The complaint contains a notice to defend within twenty days from the date of service thereof. Defendant was served with the complaint on the 3rd day of April, 2000; her answer was due to be filed on April 23, 2000.

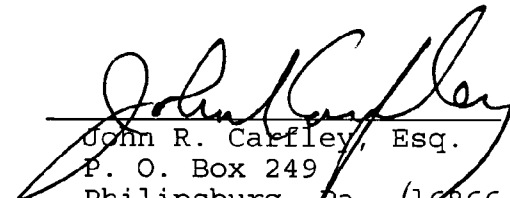
Attached as Exhibit "A" is a copy of Plaintiff's written Notice of Intention to File Praecipe for Entry of Default Judgment which I certify was mailed by regular mail to the defendant at her last known address on April 25, 2000, which is at least ten days prior to the filing of this Praecipe.

FILED

MAY 09 2000

William A. Shaw
Prothonotary

JUDGMENT shall be entered on liability only as provided by the Rules of Civil Procedure; Damages herein shall be assessed at time of trial.



John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: May 5, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:

:

:

vs.

:

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:

Jury Trial Demanded

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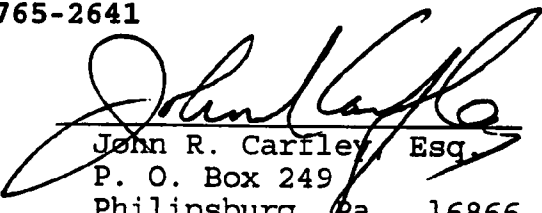
TO: Linda Estrada, Ind.
and ANF
P. O. Box 705
Santa Fe, TX 77517

and Linda Estrada, Ind.
and ANF
1003 Pirtle Street
Apt. #3
La Marque, TX 77568

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 25, 2000

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

APR 25 2000

Attest.

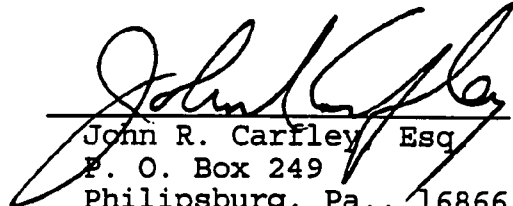

Prothonotary

CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the within document was served upon the following party at the following address on April 25, 2000, by ordinary mail, first class, postage prepaid.

Linda Estrada
P. O. Box 705
Santa Fe, TX 77517

and Linda Estrada
1003 Pirtle Street
Apt. #3
La Marque, TX 77568


John R. Carfley Esq
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
CLEARFIELD, PA 16830

and LINDA ESTRADA
1003 Pirtle Street
Apt. #3
La Marque, TX 77568

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

: No. 00-328-CD

CLIFFORD COX, an incompetent ;
by JOHN R. RYAN, ESQUIRE, his
Guardian ad Litem, LINDA ESTRADA, : Jury Trial Demanded
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants

Pursuant to Pa. R.C.F. 236, you are hereby notified that a JUDGMENT BY DEFAULT has been entered against you in the above proceeding, on May 9, 2000.

JUDGMENT shall be entered on liability only as provided by the Rules of Civil Procedure; Damages herein shall be assessed at time of trial.

Dated:

0135413ccatg
8026 clear

MARK S. WEAVER
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 170
CLEARFIELD, PA 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA

of time was limited for the specific purpose of filing an answer only nor did I understand the

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK,
Plaintiff

vs.

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANI) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.,
Defendants

AFFIDAVIT IN SUPPORT OF THE DEFENDANT
SOUTHWEST GUARANTY TRUST CO.'S BRIEF

STATE OF TEXAS :

SS:

COUNTY OF HARRIS

Personally appeared before me the undersigned, S. Brady Whitaker, Esquire, who being
duly sworn according to law deposes and states as follows:

1. I am an attorney duly licensed to practice law within the State of Texas.
2. In my capacity as trust counsel for Southwest Guaranty Trust Co., N.A. (now
Southwest Guaranty Court Trust, hereinafter "Southwest"), I received service of Plaintiff's
Complaint filed in the above matter on March 20, 2000.
3. Acting in the above capacity, I contacted Plaintiff's counsel, John R. Carfley, Esquire
by telephone on or about March 21, 2000. After a discussion regarding the underlying merits of
the above matter, Plaintiff's counsel assured me that a default judgment would not be entered so
that Southwest could obtain local counsel to file a responsive pleading which sets forth
Southwest's position to Plaintiff's complaint.
4. During the above conversation, Plaintiff's counsel never indicated that the extension

FILED

MAY 15 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK,
Plaintiff

vs.

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
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SOUTHWEST GUARANTY TRUST CO., N.A.,
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FILED

MAY 15 2000

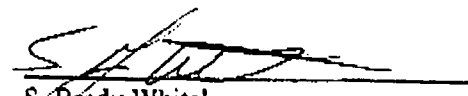
William A. Shaw
Prothonotary

of time was limited for the specific purpose of filing an answer only nor did I understand the extension to be limited for the above purpose. Indeed, the letter received from Plaintiff's counsel dated March 21, 2000 indicated that the extension of time was for the purpose of filing an answer "which sets forth the position of Southwest Guaranty in this matter."

5. I received Plaintiff's Petition for Preliminary Injunction on or about 3/28/00  together with a letter dated March 23, 2000 from Plaintiff's counsel. The above letter advised that a hearing on the above petition was scheduled for April 5, 2000.

6. I spoke with Plaintiff's counsel on or about 3/29/00  regarding the rescheduling of the above hearing. As a result, the hearing was rescheduled and Plaintiff's counsel sent a confirmation letter to me on April 6, 2000. Said letter also confirmed our conversations that I was in the process of retaining local counsel for the purpose of appearing and defending against Plaintiff's complaint. Once again, Plaintiff's counsel never stated that the extension of time granted to Southwest was for the limited purpose of filing an answer nor did I interpret our discussion to limit Southwest in any way.

7. After speaking with Mark S. Weaver, Esquire on April 3, 2000 regarding local representation in the above matter, I sent the pleadings served on Southwest and related correspondence to Attorney Weaver by overnight mail on the same date. It was my specific intention that Attorney Weaver prepare and file an appropriate written response to Plaintiff's complaint without limitation to filing an answer only.

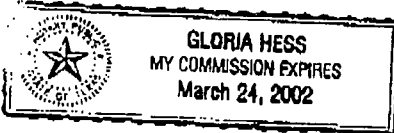

S. Brady Whitaker
Trust Counsel for
Southwest Guaranty Court Trust

ACKNOWLEDGMENT

State of Texas

County of Harris

This document was sworn to and acknowledged before me on May 15, 2000
(date) by S. Brady Whitaker
Trust Counsel for
Southwest Guaranty Court Trust



Seal

Gloria Hess

Notary Public in and for the State of Texas

Lap over margin

FILED

MAY 15 2000

DI35413000
WILLIAM A. GILBERT

PROBATIONARY

Mark S. Weaver

MARK S. WEAVER
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 170
CLEARFIELD, PA 16830

CORRECTION PRINTING CO., CLEARFIELD, PA

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

KAY CHURNER, individually
and as EXECUTRIX OF THE ESTATE
OF JOHN DIMMICK,
Plaintiff

vs.

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,
Defendants

**AFFIDAVIT IN SUPPORT OF DEFENDANT SOUTHWEST
GUARANTY TRUST CO., N.A.'S BRIEF**

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

:
:
: ss
:

Personally appeared before me the undersigned, Mark S. Weaver, Esquire,
who being duly sworn according to law deposes and states as follows:

1. I am an attorney duly licensed to practice law within the Commonwealth of Pennsylvania.
2. In my capacity as an attorney I was retained by Southwest Guaranty Trust Co., N.A. for representation in the above matter on or about April 4, 2000.
3. On or about April 6, 2000, I telephoned plaintiff's counsel, John R. Carfley, Esquire, to advise him of my retention as local counsel.

FILED

MAY 15 2000

William A. Shaw
Prothonotary

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

KAY CHURNER, individually
and as EXECUTRIX OF THE ESTATE
OF JOHN DIMMICK,
Plaintiff

vs.

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,
Defendants

**AFFIDAVIT IN SUPPORT OF DEFENDANT SOUTHWEST
GUARANTY TRUST CO., N.A.'S BRIEF**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

:
:
: ss
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2. In my capacity as an attorney I was retained by Southwest Guaranty Trust Co., N.A. for representation in the above matter on or about April 4, 2000.
3. On or about April 6, 2000, I telephoned plaintiff's counsel, John R. Carfley, Esquire, to advise him of my retention as local counsel.

FILED


MAY 15 2000

William A. Shaw
Prothonotary

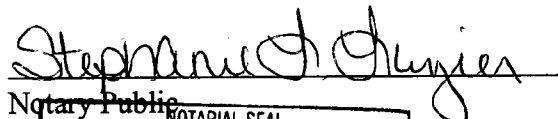
4. As a result of the above conversation, I was under the impression that an agreement was reached regarding an extension of time for filing a written response on behalf of my client. I was not aware of any restriction placed upon the extension by Plaintiff's counsel. I confirmed the above conversation in writing to plaintiff's counsel by letter dated April 10, 2000 which contained my understanding of the extension of time afforded to my client. A true and correct copy of the above letter dated April 10, 2000 is attached hereto as Exhibit "A".

5. On or about April 13, 2000, plaintiff's counsel placed a telephone call to me to discuss the hearing on plaintiff's petition for preliminary injunction on April 17, 2000. During the above conversation, I advised plaintiff's counsel that I would be filing Preliminary Objections on behalf of my client. Plaintiff's counsel advised me for the first time that the extension of time granted was for the specific purpose of filing an answer only. I disagreed with the above interpretation of the extension of time and proceeded to file a Preliminary Objection on behalf of my client with the Court directly thereafter.

6. On the same day following the above conversation, Plaintiff's counsel forwarded by facsimile a ten day notice of intent to take a default judgment for failure to plead.


Mark S. Weaver, Esquire

Sworn to and subscribed before me this
15th day of MAY, 2000.


Notary Public

NOTARIAL SEAL
STEPHANIE L. LUZIER, NOTARY PUBLIC
CLEARFIELD BORO., CLEARFIELD CO., PA.
MY COMMISSION EXPIRES SEPT. 16, 2002

MARK S. WEAVER

Attorney at Law

211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

(814) 768-9696
(814) 768-7605 facsimile

Please respond to:
☒ Clearfield
☐ State College

e-mail: attymaw@penn.com

1315 South Allen Street
Suite 302
State College, PA 16801

(814) 234-4681
(814) 237-5752 facsimile

April 10, 2000

John R. Carfley, Esquire
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866

Re: Kay Churner, et al. vs. Clifford Cox, et al.
No. 00-328-CD

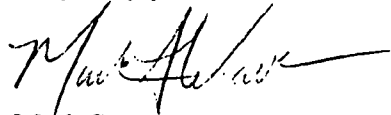
Dear John:

I write to confirm our telephone conversation on April 6, 2000 regarding the above matter.

I indicated that I would be entering my appearance as local counsel for Southwest Guaranty Trust Company which is the court appointed trustee for Clifford Cox. Thank you for the extension of time to file an Answer to the Complaint which you filed on March 15, 2000. I will file a written response before the hearing on the Petition for Preliminary Injunction which you indicated was rescheduled for April 17, 2000.

If you should have any questions regarding the above matter, please do not hesitate to contact me. Thank you again for your courtesies and considerations.

Very truly yours,



Mark S. Weaver

MSW/slh

cc: S. Brady Whitaker, Esquire

EXHIBIT "A"

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MARK S. WEAVER
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 170
CLEARFIELD, PA 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,

Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
DEFENDANT, SOUTHWEST GUARANTY
TRUST CO., N.A.

Counsel of Record for
DEFENDANT, SOUTHWEST GUARANTY
TRUST CO., N.A.:

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

MAY 16 2000

William A. Shaw
Prothonotary

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,
Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
DEFENDANT, SOUTHWEST GUARANTY
TRUST CO., N.A.

Counsel of Record for
DEFENDANT, SOUTHWEST GUARANTY
TRUST CO., N.A.:

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

MAY 16 2000

William A. Shaw
Prothonotary

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

KAY CHURNER, individually
and as EXECUTRIX OF THE ESTATE
OF JOHN DIMMICK,

Plaintiff

vs.

No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend (ANF) of
Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,

Defendants

CERTIFICATE OF SERVICE

I, Mark S. Weaver, Esquire, attorney for the Defendant, Southwest Guaranty Trust Co., N.A., hereby certify that I sent a copy of the Brief In Support of Preliminary Objection to Plaintiff's Complaint Filed By Defendant Southwest Guaranty Trust Co., N.A. together with certified copies of the Affidavit in Support of the Defendant's Brief by S. Brady Whitaker, Esquire and Mark S. Weaver, Esquire upon the following individuals on May 15, 2000 by U.S. First Class Mail, as follows:

John R. Carfley, Esquire
222 Presqueisle Street
Philipsburg, PA 16866

S. Brady Whitaker, Esquire
Southwest Guaranty Court Trust
10411 Westheimer, Suite 200
Houston, TX 77084

Date: 5-15-00

By: 

Mark S. Weaver, Esquire
Attorney for Southwest Guaranty Trust
Company, N.A.
I.D. 63044
P.O. Box 170
Clearfield, PA 16830
(814) 768-9696

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 00 - 328 - CD

KAY CHURNER, INDIVIDUALLY AND
AS EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,

PLAINTIFF

vs.

CLIFFORD COX, LINDA ESTRADA,
INDIVIDUALLY AND AS NEXT FRIEND
(AND) OF CLIFFORD COX, AND
SOUTHWEST GUARANTY TRUST CO.,
N.A.
DEFENDANTS

PETITION FOR TRANSFER OF TRUST
ASSETS FILED ON BEHALF OF
DEFENDANT, CLIFFORD COX

FILED 4cc
01/12/04
AUG 04 2000
William A. Shaw
Prothonotary

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
ACROSS FROM COURTHOUSE
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, Individually and as
Executrix of the Estate of John
Dimmick,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
Individually and as next friend
(ANF) of Clifford Cox, and
Southwest Guaranty Trust Co., N.A.,
Defendants

CIVIL DIVISION

No. 00 - 328 - CD

PETITION FOR TRANSFER
OF TRUST ASSETS FILED
ON BEHALF OF DEFENDANT,
CLIFFORD COX

Filed on behalf of:

DEFENDANT, CLIFFORD COX

Counsel of Record
For Said Party:

JOHN R. RYAN, ESQUIRE
PA I.D. 38739

COLAVECCHI RYAN &
COLAVECCHI

221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED

AUG 04 2000

William A. Shaw
Prothonotary

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

KAY CHURNER, Individually and as :
Executrix of the Estate of John :
Dimmick, :
Plaintiff :
vs. : No. 00 - 328 - CD
CLIFFORD COX, LINDA ESTRADA, :
Individually and as next friend :
(ANF) of Clifford Cox, and :
Southwest Guaranty Trust Co., N.A., :
Defendants :

PETITION FOR TRANSFER OF TRUST ASSETS
FILED ON BEHALF OF DEFENDANT, CLIFFORD COX

NOW COMES, John R. Ryan, Esquire, Guardian Ad Litem for
Clifford Cox, Defendant above named, and petitions the Honorable
Court as follows:

1. Your Petitioner, John R. Ryan, Esquire, is the Guardian
Ad Litem for Clifford Cox, Defendant above named, having been
appointed Guardian Ad Litem by Order of this Court dated May 4,
2000.

2. As a result of a personal injury settlement received by
the Defendant, Clifford Cox, in the State of Texas, a Trust Fund
was established with Southwest Guaranty Trust Co., N.A. as Trustee.

3. Clifford Cox is a resident of the Commonwealth of Pennsylvania and is believed to be presently a patient at the State Mental Health Facility in Warren, Pennsylvania. Said Clifford Cox has recently been adjudicated incompetent to stand trial arising from a criminal prosecution filed in Clearfield County, Pennsylvania.

4. It is believed and therefore averred that Clifford Cox, at least for the foreseeable future, will remain a resident of the Commonwealth of Pennsylvania.

5. Your Petitioner believes it would be in the best interest and permanent welfare of Clifford Cox to have the trust assets which presently are situated in the State of Texas transferred to the Commonwealth of Pennsylvania in light of Mr. Cox' residence being in Clearfield County, Pennsylvania and due to the litigation filed here in Clearfield County to the above term and number and also to Number 99-825-CD.

6. Your Petitioner has obtained the consent of County National Bank to act as Trustee should the trust assets be transferred to Clearfield County, Pennsylvania. Attached hereto as Exhibit "A" is a true and correct copy of the consent executed by Donald E. Shawley, Vice President and Trust Officer of County National Bank, confirming that the bank has agreed to serve as Trustee of the trust assets held for the benefit of Clifford Cox.

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WHEREFORE, Petitioner respectfully requests that this Court issue an Order directing that the assets of the trust currently held by Southwest Guaranty Trust Co., N.A. in Texas be transferred to a trust to be established with County National Bank of Clearfield, Pennsylvania, acting as Trustee, subject to such terms and conditions as the Court believes appropriate for the benefit of Clifford Cox.

Respectfully submitted:



JOHN R. RYAN, ESQUIRE
Guardian Ad Litem for
Clifford Cox, Defendant

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

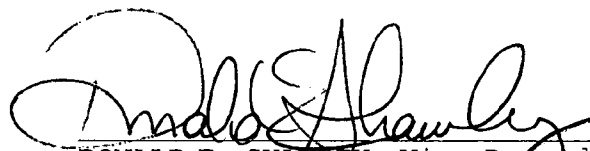
KAY CHURNER, Individually and as :
Executrix of the Estate of John :
Dimmick, :
Plaintiff :

vs. : No. 00 - 328 - CD

CLIFFORD COX, LINDA ESTRADA, :
Individually and as next friend :
(ANF) of Clifford Cox, and :
Southwest Guaranty Trust Co., N.A., :
Defendants :

CONSENT TO BE APPOINTED AS TRUSTEE

Donald E. Shawley, Vice President and Trust Officer of County National Bank, being duly sworn according to law, deposes and says that County National Bank agrees to serve as Trustee for the trust created for the benefit of Clifford Cox, the Defendant herein.



DONALD E. SHAWLEY, Vice President and
Trust Officer for County National
Bank

7-24-00
DATE

COMMONWEALTH OF PENNSYLVANIA

:

: SS.

COUNTY OF

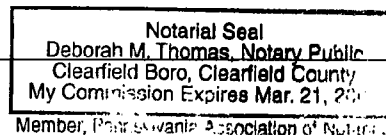
:

On this the 24th day of July, 2000,
before me, the undersigned officer, personally appeared DONALD E.
SHAWLEY, who acknowledged himself to be Vice President and Trust
Officer of County National Bank, and that he as such Vice President
and Trust Officer, being authorized to do so, executed the
foregoing instrument for the purpose therein contained by signing
the name of the corporation by himself as Vice President and Trust
Officer..

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Deborah M. Thomas

(SEAL)



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

CIVIL DIVISION

No. 00 - 328 - CD

KAY CHURNER, Individually and
as Executrix fo the Estate of
John Dimmick,

Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
Individually and as next friend
(ANF) of Clifford Cox, and
Southwest Guaranty Trust Co.,
N.A.,

Defendants

RULE

FILED

AUG 08 2000

0131014cc a H
William A. Shaw
Prothonotary
Ryan
Bice

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, Individually and
as Executrix of the Estate of
John Dimmick,
Plaintiff

Vs.

CLIFFORD COX, LINDA ESTRADA,
Individually and as next friend
(ANF) of Clifford Cox, and
Southwest Guaranty Trust
Co., N.A.,
Defendants

CIVIL DIVISION

No. 00 - 328 - CD

RULE

Filed on Behalf of:

Defendant, CLIFFORD COX

Counsel of Record for This
Party:

JOHN R. RYAN, ESQUIRE
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

AUG 08 2000

William A. Shaw
Prothonotary

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

KAY CHURNER, Individually and as :
Executrix of the Estate of John : No. 00 - 328 - CD
Dimmick, :
Plaintiff :
Vs. :
CLIFFORD COX, LINDA ESTRADA, :
Individually and as next friend :
(ANF) of Clifford Cox, and :
Southwest Guaranty Trust Co., N.A., :
Defendants:

RULE

AND NOW, this 8th day of August,
2000, upon consideration of the foregoing Petition, it is Ordered
that Southwest Guaranty Trust Co., N.A., appear and show cause why
the relief requested therein should not be granted.

Rule made Returnable the 6th day of
October, 2000, at 2:00 P.M., Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

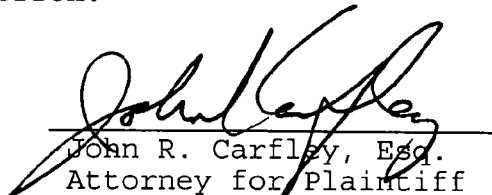
KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No. 00-328-CD
CLIFFORD COX, an incompetent :
by John R. Ryan, Esquire, his :
Guardian ad Litem, LINDA ESTRATA, : Jury Trial Demanded
individually and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

PRAECIPE

TO THE PROTHONOTARY:

PLEASE Exemplify certified copies of the following documents
filed in the above captioned matter to the 58th Judicial District
Court of Jefferson County, Texas, to the attention of John S.
Appleman, Clerk, whose office is located at P. O. Box 3307,
Beaumont, Texas, 77704, to be filed in Cause No. A-0157378, Linda
Estrada, anf of Clifford Cox et. al. vs. Bo-Mac Contractors, Inc.
et. al. These documents are:


1. Petition for the appointment of a guardian ad litem.
2. Order appointing guardian ad litem for Clifford Cox,
an incapacitated person.


John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866

Dated: August 22, 2000

FILED

AUG 22 2000

0/1:30 LHR
William A. Shaw PP
Prothonotary 20-
CENT + EXMP. OF
REQUIRE TO TX 

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

OFFICE [REDACTED] AND CLERK OF COURTS

CLEARFIELD COUNTY



P. O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330

DAVID S. AMMERMAN
SOLICITOR

AUGUST 22, 2000

JOHN S. APPLEMAN, CLERK
58th JUDICIAL DISTRICT COURT OF
JEFFERSON COUNTY, TX
P. O. BOX 3307
BEAUMONT, TX 77704

DEAR MR. APPLEMAN:

ENCLOSED PLEASE FIND EXEMPLIFIED CERTIFIED COPIES OF THE
FOLLOWING:

- A. PETITION FOR THE APPOINTMENT OF A GUARDIAN AD LITEM.
- B. ORDER APPOINTING GUARDIAN AD LITEM FOR CLIFFORD COX,
AN INCAPACITATED PERSON

BOTH RECORDS PERTAIN TO CASE # 00-328-CD, KAY CHURNER, ETAL
VS CLIFFORD COX, ETAL, AND TO BE FILED IN CAUSE NO. A-0157378, LINDA
ESTRADA, ANF OF CLIFFORD COX ET.AL VS BO-MAC CONTRACTORS, INC.
ET.AL.

SINCERELY,

WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

ENCLOSURES

ATTESTATION

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF CLEARFIELD)

I, **John K. Reilly, Jr., President Judge** of the Court of Common Pleas of Clearfield County, in the Commonwealth of Pennsylvania, do hereby certify that the said **William A. Shaw**, by whom the attached **Petition of John R. Carfley, Esq., for Appointment of Guardian Ad Litem for Defendant, Clifford Cox and Order Determining Defendant's Mental Capacity and Appointing Guardian Ad Litem on His Behalf** was made, was, at the time of so making the same, and is now the Prothonotary/Clerk of Court, duly commissioned and qualified; to all whose acts as such, full faith and credit are and ought to be given, as well as in courts of judicature as elsewhere; that the Seal thereto annexed is the Seal of said Court; and that the said **William A. Shaw** is in due form of law, and made by the proper officer.

Dated this 23rd day of
August, A.D. 2000

/s/JOHN K. REILLY, JR.

President Judge

COMMONWEALTH OF PENNSYLVANIA)
) **SS:**
COUNTY OF CLEARFIELD)

I, **William A. Shaw, Prothonotary/Clerk of the Court of Common Pleas**, in and for said Court, do certify that the **Honorable John K. Reilly, Jr., P.J.**, by whom the foregoing attestation was made, and who has thereunto subscribed his name was, at the time of making thereof, and still is, President Judge of the Court of Common Pleas, Clearfield County, duly commissioned and qualified; to all whose acts as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, this 23rd day of August, A.D., 2000.

s/way

Prothonotary/Clerk of Courts

FILED

AUG 25 2000
5/8:30 / us
William A. Shaw
Prothonotary

99-825-cd
00-328-cd

7000 0600 0023 6399 4562

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:
JOHN S. APPALANAN
BEAUMONT TX 77704

Postage \$ 3.20
Certified Fee 1.40
Return Receipt Fee (Endorsement Required) 1.25
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ 5.85

Postmark Here
AUG 23 2000

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Street, Apt. No.; or PO Box No.
City, State, ZIP+4

PS Form 3800, July 1999 See Reverse for Instructions

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

CLIFFORD COX, an incapacitated
person, by John R. Ryan, Esquire,
Guardian ad Litem, LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:
:
:
:
:

No. 00-328-CD

Jury Trial Demanded

FILED

AUG 25 2000

William A. Shaw
Prothonotary

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

:

COUNTY OF CENTRE

:

Personally appeared before me the undersigned, John R. Carfley, Esquire, who being duly sworn according to law deposes and states as follows:

1. I am an attorney duly licensed to practice law in the Commonwealth of Pennsylvania.

2. I currently represent the Estate of John Dimmick in several matters including a personal injury suit claiming damages under the Wrongful Death and Survival statutes which suit is filed to No. 99-825-CD in the Court of Common Pleas of Clearfield County, Pennsylvania, and a suit filed to No. 00-328-CD alleging a cause of action under the Uniform Fraudulent Transfer Act.

3. A guardian ad litem has been appointed for the defendant,

Clifford Cox, in both of the above proceedings, that guardian being John R. Ryan, Esquire, an attorney, duly licensed to practice law in the Commonwealth of Pennsylvania, with offices at P. O. Box 131 Clearfield, Pa., 16830.

4. Said guardian ad litem was appointed by the Court of Common Pleas of Clearfield County, Pennsylvania, by Orders dated the 4th day of May, 2000. Copies of said Orders are attached hereto as Exhibits A and B.

5. The subject of the competency of the defendant Cox has been raised in the criminal proceeding involving him, however, the issue of competency to stand trial in the criminal matter and the issue of this individual's competency at the time of the commission of the criminal acts on May 10, 1999, are separate and distinct and are issues which are disputed by the respective experts hired by the prosecution and defense to evaluate Clifford Cox.

6. The defense asserts that Cox was incompetent at the time of the incident based upon the report of Dr. Robert H. Davis, M.D. which report is attached hereto as Exhibit C.

7. The prosecution conversely claims that Cox was competent at or about the time of the incident based upon the report of Dr. Phillip J. Resnick, M.D. of Case Western Reserve University a true and correct copy of which report is attached hereto as Exhibit D.

8. Based on the opinion of both experts the defendant has at present been deemed incompetent to stand trial in the criminal matter by the court and is currently housed in a mental institution at Warren State Hospital in Warren, Pennsylvania.

9. It is believed and therefore averred that pending an evaluation which deems the defendant competent to stand trial in the criminal matter he will continue to remain incarcerated and/or hospitalized at Warren or a similar facility where he will be provided with medical care by the Commonwealth for his psychiatric illness.

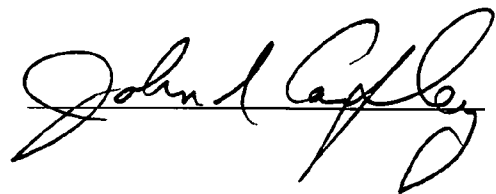
10. Notwithstanding the current status of the criminal matter involving Cox, the civil cases which were instituted on behalf of the Dimmick Estate have been proceeding in the Court of Common Pleas of Clearfield County, Pennsylvania. It is anticipated that additional suits will be filed in the State and Federal Courts in Texas and in the Federal Court system in the Commonwealth of Pennsylvania.

11. The issue of competency and/or incapacity of the defendant Cox is generally anticipated to be raised in each of these proceedings for which psychiatric reports will be required and/or necessary for evaluation by the respective courts.

12. It is believed and therefore averred that these documents will need to be made a part of the record in each of these proceedings so as to permit ready access by all parties, counsel and courts in their evaluation of this individual and those issues which are raised in these various proceedings.

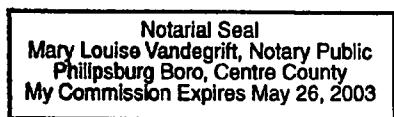
13. It is further believed that these reports should be filed in the instant proceeding in order to support the court's finding of incapacity and to further support the appointment of Attorney Ryan as the Guardian ad litem.

14. It is believed that these reports are relevant to this proceeding because funds are currently being administered as part of a trust established for Cox in Texas and the competency of Cox may become an issue even as to right of others to create the trust, to include spendthrift provisions in the trust, as well as to provide for the continued administration of the trust for the benefit of an individual who is, and presumably will remain, a citizen of the Commonwealth of Pennsylvania, by Southwest Guaranty, a banking institution incorporated in, and with a physical presence only in the State of Texas or the Southwest region of the country, thousands of miles away from the domicile of the beneficiary and having, according to the statements of its agents, not even minimal contacts with the domiciliary state, and having therefore, no recognizable duty to answer to that state or its court system.



Sworn to and subscribed
before me this 24 day of
August, 2000.

Mary Louise Vandegrift
N. P.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

:
:
: No.99-825-CD

CLIFFORD COX; LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, RESTA
JENE GREGORI and DARLENE A. GREGORI:
individually and T/D/B/A
JENE'S GUNSHOP, INC and UNISYS
CORPORATION

Defendants

: Jury Trial Demanded
:
:

ORDER DETERMINING DEFENDANT'S MENTAL CAPACITY AND
APPOINTING GUARDIAN AD LITEM ON HIS BEHALF

AND NOW, this May 4, 2000, it appearing that

CLIFFORD COX, the defendant in this action, is incapacitated and as
a result thereof is unable to manage his business affairs and
financial resources and/or protect himself and his estate from his
own improvident acts, IT IS ORDERED that JOHN R. RYAN, ESQUIRE, of
221 East Market Street, Clearfield, Pennsylvania, is hereby
appointed guardian ad litem for him in this action.

IT IS FURTHER ORDERED that the caption of this action is
amended to read KAY CHURNER, individually and as Executrix of the
Estate of JOHN DIMMICK v. CLIFFORD COX, an incompetent, by John R.
Ryan, Esquire, his Guardian ad litem, LINDA ESTRATA, individually
and as next friend (ANF) of Clifford Cox, RESTA JENE GREGORI and
DARLENE A. GREGORI, individually and T/D/B/A JENE'S GUNSHOP, INC.
and UNISYS CORPORATION, Defendants.

BY THE COURT:

/s/JOHN K. REILLY, JR.

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

VS.

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

No. 00-328-CD

ORDER DETERMINING DEFENDANT'S MENTAL CAPACITY AND
APPOINTING GUARDIAN AD LITEM ON HIS BEHALF

AND NOW, this May 4, 2000, it appearing that
CLIFFORD COX, the defendant in this action, is incapacitated and as
a result thereof is unable to manage his business affairs and
financial resources and/or protect himself and his estate from his
own improvident acts, IT IS ORDERED that JOHN R. RYAN, ESQUIRE, of
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Estate of JOHN DIMMICK v. CLIFFORD COX, an incompetent, by John R.
Ryan, Esquire, his Guardian ad litem, LINDA ESTRATA, individually
and as next friend (ANF) of Clifford Cox, and SOUTHWEST GUARANTY
TRUST CO., N.A., Defendants.

BY THE COURT:

JOHN K. REILLY, JR.

EXHIBIT

B

Robert H. Davis, M.D.
6125 Stephen's Crossing
Mechanicsburg, PA 17055
717-768-6537

October 18, 1999

Joel Thompson, Esquire
Berry and Thompson
Worham Tower
2727 Allen Parkway, Suite 800
Houston, TX 77019

Re: Clifford Cox

Dear Mr. Thompson:

At the request of Steven Passerello, Esquire of Altoona, Pennsylvania, Clifford Cox was seen for a psychiatric evaluation in Clearfield County Prison on October 2, 1999. The purpose of this evaluation was to determine whether Mr. Cox suffers from a psychiatric condition, and if so, whether this psychiatric condition affects his competency to stand trial or his criminal responsibility for the charges filed against him. In preparation for this report, the following documents were reviewed:

1. Medical records from the University of Texas Medical Branch, 5/18/97-8/25/97 hospitalization of Clifford Cox,
2. Medical records from St. Elizabeth Hospital, Beaumont, Texas, documenting the emergency medical care provided to Clifford Cox on 5/18/97,
3. Neuropsychological evaluation report from Corwin Boake, Ph.D., University of Texas, dated 4/8/99,
4. Transcript of preliminary hearing, dated 7/8/99,
5. Copy of police reports including interviews with witnesses,
6. Autopsy report on John Dimmick,
7. Copy of the Criminal Complaint.

In addition, Mr. Cox was seen for a two hour psychiatric evaluation and clinical interview at the Clearfield County Prison. His sister Linda Estrada was also interviewed by telephone for an hour and one-half on October 14, 1999. Based on the information gathered and reviewed, the following report is offered.

Clifford Cox is a forty-nine year old (d.o.b. - 1/24/50) white, single male who is charged with

1--Cox

EXHIBIT

C

criminal homicide, aggravated assault, criminal trespass, and simple assault as a result of a shooting incident that occurred on May 10, 1999. This incident resulted in the death of John Dimmick. Mr. Cox had no known previous contact with Mr. Dimmick. Mr. Dimmick had purchased at an auction property that was formerly owned by Mr. Cox's family. In the past, Mr. Cox had lived in a trailer that was placed on this property.

The only witness to the shooting was Mr. John Williams, and he only witnessed part of the shooting and events that occurred after the shooting. Apparently, Mr. Williams was mowing his grass when he heard shots. He was the first to call police to report the incident. He did not see anything that transpired between Mr. Cox and Mr. Dimmick. After Mr. Cox had shot the victim, Mr. Williams observed him shaking the post on which Mr. Dimmick's mailbox was located. Apparently after he knocked over the mailbox, Mr. Cox went into Mr. Dimmick's trailer looking for items belonging to himself that he thought might be there.

When the police came to the scene, Mr. Cox was sitting in his van. He got out of the van at their command. He had his gun in its holster in his hand. When he was asked to drop it, he put it in the van. They asked Mr. Cox to drop to the ground, but he walked forward. They used mace at that time and then subdued him.

In the interview recorded by the police, Mr. Cox states, "My lawyer he was suppose to meet me. He told me that I could go there and that I could stay there on the property anytime I want. But when I pulled up, the guy was there mowing the lawn there. I don't know his exact name. All I know is he stole everything I 'fucking' owned and shoved my trailer out of the way and put another one there and he told me to get the hell off his property." (sic) Furthermore, Mr. Cox said, "I just started shooting. I shot three times. And I'd do it again. Over and over and over again. Anything to fight for my property."

Mr. Cox has insisted repeatedly that he had a lawyer from the area who was working with him to obtain the property. This delusion regarding the attorney was repeated by him both before and after the homicide. He is unable to name this attorney. There have been many attempts to identify this attorney, and there is no information to confirm that Mr. Cox's allegation that he had contact with an attorney regarding the return of the property.

Mr. Cox indicated, "I kept driving by and when I saw she was gone I thought it was a good sign. I thought he was going to offer me the trailer and make up for the one he destroyed." Mr. Cox explained that, when he saw that the woman who had been living with Mr. Dimmick was no longer there, he thought that was an indication that they were moving off the land; and his attorney had been successful in getting the property back for him.

Mr. Cox was born and raised in Beulah, a small village in Bigler Township, Clearfield County, Pennsylvania. He was one of a sibship of four. He had three sisters. At this time, only one is living. She resides in Houston, Texas. According to the information I received from Mr. Cox and his sister, his father was an alcoholic and played little or no role in the lives of the children. The

FROM :

father was hospitalized in Warren State Hospital during the fifties. Neither Mr. Cox nor his sister is sure of the reasons for the hospitalization, however, it is thought to have been a result of his alcoholism. Mr. Cox's sister understands that her father was paranoid and was hospitalized for approximately a year at Warren.

Mr. Cox graduated from Moshannon Valley High School in 1968. He reports that he had average grades. He was apparently in the vocational education program; he stated, "I took shop courses." His educational history was confirmed by Dr. Boake as part of his neuropsychological evaluation. Mr. Cox had no further training or education beyond high school. He worked odd jobs most of his life; he never was continuously employed at one location. In the past, he had a commercial driver's license and drove tractor trailer trucks. He also did carpentry, plumbing, and some electrical work. Frequently, he would do odd jobs at a junk yard near his home in Pennsylvania as well as at a sawmill in that area. He consistently worked at one job or another and was able to support himself and obtain some possessions of value.

Mr. Cox was described as a loner. He never married. He has no children. He has had no girlfriends in the recent past. Mr. Cox was an avid hunter. He apparently had a collection of guns at the trailer on the property in Beulah. The alleged loss of the gun collection as well as the property were among the key things that upset him.

Mr. Cox had no history of any psychiatric hospitalizations. He does not and has never used alcoholic beverages. Additionally, he has no history of any drug usage.

Although considered an eccentric loner, Mr. Cox functioned normally until he was involved in a motor vehicle accident near Houston, Texas, on May 18, 1997. Mr. Cox was the driver of a car that was owned by his sister and brother in law. They were passengers in the car when it was struck from behind by a truck. Apparently, the impact of the accident caused an explosion of the gas tank in the vehicle operated by Mr. Cox. His sister and brother in law were killed. Mr. Cox had severe burns and head trauma as a consequence of the accident. He was initially treated in the emergency room of St. Elizabeth Hospital and then transferred to the University of Texas Medical Branch Hospital in Galveston. He was hospitalized from 5/18/97 - 8/25/97. According to the records from the University of Texas Hospital, he had burns over 20% of his body surface. In addition, he suffered a closed head injury and renal failure. He had extensive skin grafting. In addition, he underwent hemodialysis. As a consequence of the accident, Mr. Cox has permanent physical damage to his body as well as his brain.

Immediately after the accident, Mr. Cox was comatose. The records indicate that for some period of time his condition varied between his being comatose or semi-comatose. As he became more alert, it was noted that he was confused and at times agitated. Medication was needed at times to control his behavior during the hospitalization. Psychiatric consultation was obtained. Gradually, his physical condition improved to the point he was able to function outside the hospital. However, his mental condition remained problematic. The psychiatric progress notes indicate, "Confused about dreams and reality," when he was seen on August 15, 1997, approximately ten

FROM :

days before his release. He was having a difficult time distinguishing between dreams and reality.

When Mr. Cox was released from the University of Texas Hospital, he was to be placed in a residential facility for the treatment and rehabilitation of patients with brain trauma. He was taken to that facility by his sister but he stayed there less than 24 hours. Apparently, he left this facility and returned to the hospital; there, he insisted on being placed back in his room. His sister was called, and she took him home with her. He remained with his sister for most of the time after the accident.

According to the information provided by his sister, Linda Estrada, and the information in the neuropsychological evaluation by Dr. Boake, Mr. Cox continued to have difficulty distinguishing between his dreams and reality. He would often report that various things had occurred. Later his family would learn that in fact that there was no reality to his report. Occasionally, some of his stories were bizarre enough that the family readily realized that there was no likelihood of any reality. For example at one point, he talked about living with a family of bears for some period of time. While living with his sister he spent most of his time either watching television or working on his van which he was able to repair(it had not been working).

According to Mrs. Estrada, the property in Pennsylvania where the incident occurred had been the family homestead; however, Mr. Cox never owned the property. After their mother died, no one paid the taxes on the property. When the oldest sister learned that the property would be sold for taxes, she made arrangements to pay the taxes and obtain it. She was the one who owned the property. She allowed Mr. Cox to live there in a trailer he had placed on the property.

According to Mrs. Estrada, the sister who owned the property died of cancer in January 1997. She had always indicated that she would make provisions for Clifford, however, she had not done so by the time of her death. When her sister's estate was being settled, the accident had already occurred. Mr. Cox was hospitalized, in a coma, and not expected to live. As a consequence, the sister's family sold the property at an auction. Some of Mr. Cox's personal property was removed and stored by his niece. There is some question whether some things were stolen from the property while it was vacant.

According to Mrs. Estrada, Mr. Cox was not particularly preoccupied with the property. She indicates that because of his 'memory gaps' he would often forget that his oldest sister had died and that the property had been sold at an auction. She states on the occasions that he did talk about the property and realized that it had been sold, he said that he wouldn't worry about it because he would buy other property in Clearfield County with money he hoped to receive from the motor vehicle accident settlement.

It had been Mr. Cox's history to live in Texas during the winter with his one sister. During the winter, he would do construction work and other odd jobs. In addition, he would assist his sister and brother in law in maintaining their household. According to Mrs. Estrada, Mr. Cox had come to Texas before Christmas 1996. When he left the hospital in August 1997, he stayed with her

throughout the fall and winter. He returned to Pennsylvania in the summer of 1998. During that time, he slept in his van and stayed on the property of a former neighbor. Apparently this neighbor and her husband were close friends of the family and Mr. Cox had often done work for them. Nothing occurred during his stay in Clearfield county during the summer of 1998. According to his Mrs. Estrada, he made no contact with Mr. Dimmick in the summer of 1998 despite being very close; the records from interviews of witnesses support this. Although there are some statements from witnesses that suggest that during that time period, he may have taken some things from a shed on the property.

In October 1998, Mr. Cox returned to Texas. His sister reports, "He walked in the house and sat in his chair like he had just been gone for a few hours." He remained with his sister until May 1999. He left abruptly and returned to Pennsylvania. According to his sister, he gave no indication that he planned to return to Pennsylvania. She and her husband returned one day to discover that he was gone; in fact, he left their front door wide open. The next thing they learned was that he had been arrested because of the homicide. When Mrs. Estrada talked to her brother on the telephone after his arrest, he said that he "shot the trespasser because his lawyer told him he could shoot trespassers."

Mr. Cox did not have a valid driver's license during the time he was driving his van both in Texas and Pennsylvania. According to his sister, when his Texas license had expired, he got into an argument with personnel at the Texas Department of Transportation. At one time he had a commercial license in Texas. He had dropped it because of the cost prior to the accident. He had no memory of that and argued with the transportation personnel about their taking his commercial license without his knowledge. Apparently, he became so agitated that his brother in law had to escort him out of the office to avoid the police being called.

On examination, Mr. Cox presents as a mildly, obese, large individual who has a noticeable burn scar over the right area of his scalp, face, and shoulder. His right ear is missing. He has a noticeable gait disturbance. His eye contact was good. He did indicate that he has trouble with double vision. His speech was spontaneous and goal directed. His affect showed a normal range of emotion. His mood was unremarkable. He did not seem particularly depressed. This was remarkable considering his circumstances; that is being incarcerated with charges of murder. He denied hallucinations, and there was no evidence of hallucinations. Clearly, there is evidence of delusional thinking that has been persistent since his physical recovery from the motor vehicle accident. These delusions would be more correctly characterized as confabulation. Confabulation is the unconscious filling of memory gaps by imagined experiences; that is, the brain makes up delusional information to fill the gaps in memory caused by the lost brain matter.

Mr. Cox was oriented to the month, day, date, and year. However, when he was asked to identify the President of the United States, he indicated that it was Carter. When asked to identify the Vice-President, he said it was Agnew. He was asked whether he could identify the Governor of Texas and responded, "It's a black man, I believe." He was able to spell world backwards. He was able to do serial sevens, i.e. he was able to subtract 7 from 100, and then seven from 93, then

seven from 86, etc. He easily said there were twenty nickels in a dollar. He was able to identify objects. He was able to remember three objects he was asked to remember over a five minute period, suggesting immediate recall is fairly good. Clearly his recent and remote memory ability is grossly impaired. His judgment is impaired. This is shown repeatedly in his behavior since his recovery from the accident.

In my opinion, Mr. Cox suffers from Dementia Due to Head Trauma. The records from the University of Texas show clear evidence on brain scans of their being brain damage. The neuropsychological evaluation by Corwin Boake, Ph.D., describes the functional limitations that have resulted because of his head trauma. According to Dr. Boake's report, "Mr. Cox exhibits major behavioral problems which include unawareness of deficits, lack of insight into his situation, paranoia, grandiose thinking, and anger." He clearly has suffered memory deficits. Although his immediate recall is good, there are gaps in his remote memory. It appears that he fills these gaps with imagined experiences that are delusional in nature. Dr. Boake also states that, "Regarding Mr. Cox's competency, I think he is not capable of making decisions about his medical care, finances, or legal or business affairs." Again, it is noted that this report was issued on 4/8/99 based on a 3/14/99 evaluation.

In my opinion, although Clifford Cox has some limited comprehension that he is accused of certain crimes, he is not able to participate in his defense. His memory deficits coupled with his confabulation make it impossible for him to cooperate with his attorney in planning and participating in his defense. His delusions or confabulations about the events result in his frequently changing the information he provides. Neither he nor anyone working with him can distinguish what is fact and what is delusion. In my opinion, within a reasonable degree of medical certainty, this meets the criteria to be considered incompetent to stand trial in Pennsylvania.

It is also my opinion that on May 10, 1999, when he gave his recorded statement to Trooper Richard E. Crain, he was not competent to understand his rights and make a statement to the police. In the transcript, after Mr. Cox is explained his Miranda rights, he is asked by Trooper Crain if he understands these rights. His response is, "I have no idea." He was then asked, "Do you understand them?" He responded, "Yes, it's ok." Given Mr. Cox's memory, judgment, and comprehension deficits, it is clear that his first response is accurate; he did not understand.

Lastly, it is my opinion that Clifford Cox was laboring under such defect of reason from disease of the mind as not to know the nature and quality of his act when he shot and killed John Dimmick. Additionally, it is my opinion that he did not know that this act was wrong. Clearly, Clifford Cox has suffered brain damage due to head trauma. His dementia due to the head trauma has resulted in significant problems with memory and judgment. He fills the memory gaps with imagined ideas or delusions. Clearly, his memory of the facts regarding the ownership of the property which his family once owned was impaired. This problem with memory was clearly compounded by the fact that the ownership of the property was transferred during the time he was hospitalized. He believes that the property belonged to him and was unjustly taken from him. He has consistently told the story of his belief that he had communicated with an attorney who was arranging for the

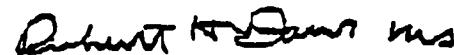
return of this property to him. This belief was communicated before the homicide occurred as well as afterward.

Because of Mr. Cox's severe memory problems and because there are no witnesses to all of the events that transpired that day, it is impossible to reconstruct what occurred in the interaction between him and Mr. Dimmick. In a telephone conversation with his sister, he indicated that he had a right to shoot a trespasser because he was told this by his attorney. He did not flee the scene after shooting Mr. Dimmick. In fact, he was sitting calmly in his van when the police arrived to arrest him. At this point in time, he is still focused on obtaining this property and has expectations that he will be able to return and live on this property as he had in the past. Based on the above, it is my opinion, within a reasonable degree of medical certainty, that Clifford Cox meets the Commonwealth's definition of Not Guilty by Reason of Insanity.

It is my opinion that Mr. Cox should be committed to a state forensic psychiatric hospital for further evaluation and treatment and be maintained there until the physicians treating him and the Court feel it is safe to move him to a less restrictive setting. It is my expectation, that he will progress from a state forensic psychiatric hospital to a regular state psychiatric hospital, and from there, to a community placement. It is also my opinion, that Mr. Cox will always require some type of supervised living. There are group homes that provide 24 hour supervision and serve individuals with mental and behavioral deficits due to head trauma. In my experience, these facilities are not publicly funded and require private financing.

If I can provide any additional information, please do not hesitate to contact me.

Very truly yours,



Robert H. Davis, M.D.



CASE WESTERN RESERVE UNIVERSITY

January 5, 2000

Mr. William Shaw
Office of the District Attorney
230 East Market St.
Clearfield, PA 16830

RE: Commonwealth v. Clifford J. Cox
No. 99-475-CRA

Dear Mr. Shaw:

Pursuant to your request, I performed a psychiatric examination of Mr. Clifford Cox for the purpose of forming an opinion about (1) his competence to stand trial; (2) his sanity at the time of the acts with which he is charged on May 10, 1999; (3) whether he qualifies for Guilty But Mentally Ill under Pennsylvania law; (4) whether he understood the Miranda rights given to him on May 10, 1999. Mr. Cox is a 49 year old single white man who was transported to my office at University Hospitals of Cleveland by deputies for the examination on December 29, 1999.

Sources of Information:

1. Interview with Mr. Cox on December 29, 1999 for 5-1/2 hours.
2. Telephone conversation with the defendant's sister, Linda Estrada on December 28, 1999 for 45 minutes.
3. Telephone conversation with Mr. Steven Passarello (defense attorney) for 23 minutes on December 30, 1999.
4. The following records were reviewed:
 - a. Police Criminal Complaint filed by Trooper Richard E. Crain of the Pennsylvania State Police.
 - b. Transcript of proceedings of Preliminary Hearing held on July 8, 1999.
 - c. Information filed by the Commonwealth.
 - d. 911 telephone tape of conversation between State Police PCO Kavelak and Mr. John Williams, neighbor of the deceased.

Phillip J. Resnick, M.D.

Director of Forensic Psychiatry

MAILING ADDRESS
University Hospitals
11100 Euclid Avenue
Cleveland, Ohio 44106

Phone 216-844-3415
Fax 216-844-1703
E-Mail pxrs@po.cwru.edu

EXHIBIT

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- e. Interview between Trooper Richard E. Crain, Pennsylvania State Police and Mr. John Williams, neighbor of the deceased. Death Certificate of deceased, John Clair Dimmick.
- f. Death Certificate of deceased, John Clair Dimmick.
- g. Autopsy checklist.
- h. Autopsy Report submitted by Harold R. Cottle, M.D., forensic pathologist.
- i. Toxicology Report of the deceased, John Clair Dimmick.
- j. Report of Robert H. Davis, M.D., prepared at the request of defense attorney, Steven P. Passarello, Esquire.
- k. Miscellaneous investigation reports and information submitted by Pennsylvania State Police.
- l. Neuropsychological Evaluation dated 4/8/99 by Corwin Boake, Ph.D.
- m. Emergency medical services of Beaumont dated 5/18/97.
- n. Hospital records from University of Texas Medical Branch, Galveston, Texas from admission 5/18/97.
- o. Records from St. Elizabeth's hospital dated 5/18/97.

Qualifications of the Examiner: I am enclosing a copy of my curriculum vitae which states my qualifications to perform this examination.

Statement of Non-confidentiality: Mr. Cox understood that I was a psychiatrist employed by the prosecutor. He understood that what he told me was not confidential and that I would be preparing a report for the court. He agreed to proceed.

Past Personal History: Mr. Cox reported that he was born in Beulah, Pennsylvania on January 24, 1950. He reported that he had several brothers and sisters. Two died as toddlers and one died at birth. He has a brother, James, who lives in California; and a sister, Linda Estrada, who lives in Texas. His sister, Joyce, died in an auto accident while he was driving in 1997. Another sister, Betty, who lived in Massachusetts died in April 1998.

Mr. Cox reported that his father was an alcoholic who was put out of the house by his mother when the defendant was four years old. He reunited with his father in the early 1990s. His father died of a heart attack. He reported that his father stopped drinking for the final ten

years of his life. During that time, "he was nice." Mr. Cox reported that his mother died in the mid 1970s at the age of 64 or 65. He described her as "perfect, a pure bred Christian." He lived with his mother in her home on 5 acres of property until her death.

Mr. Cox was born on that property. After his mother died, he tore down the house which he described as a "run down shack." He then lived in a trailer on the property with the permission of his sister, Betty, who died in 1998. He stated, "Betty kept paying the taxes because I watched her trailer for her." He stated that he saw himself as a caretaker of the property. He added, "Naturally, it was mine. My mother told me to take care of the place. It was always the Cox home." He acknowledged that the property was never transferred into his own name. He viewed all of his siblings and himself as the owners of the property. He stated that he had the "say" about the property because "I was the chosen one. My mother on her death bed made me promise to take care of the property for the rest of the children."

Educational History: Mr. Cox reported that he graduated from high school in 1968 with "mostly Cs." He added that he never did homework. He was pretty much a loner in school. He stated that "I was smarter than most of my teachers."

Employment History: Mr. Cox reported that he never had a salaried job for very long. He never earned more than \$5000 a year. He hauled wood and coal and did other odd jobs. He worked on and off in a scrap yard. He also worked in a couple of saw mills.

Relationship History: Mr. Cox reported that he was involved with one woman for eight or nine months but then he found out that she was "whoring with every Tom, Dick, and Harry." He stated that he is a virgin and indicated that he had no homosexual interest. He added that he had waited to meet the right woman to marry, but that he never did.

Legal History: Mr. Cox reported that in the 1970s, a burglary charge was filed against him but it was dismissed. He stated that the police thought he stole something because someone had sold him stolen goods unbeknownst to him.

Substance Use History: Mr. Cox reported that he only occasionally drank alcohol. It had little effect on him so he drinks soda or water. He never had any problems with alcohol, such as black outs, delirium tremens, or charges of driving while intoxicated. He never used any illegal drugs such as marijuana.

Religious History: Mr. Cox reported that he was raised as a Protestant in the Assembly of God. He quit going to church many years ago.

Family History: Mr. Cox reported no psychiatric illness in family members other than his father being an alcoholic.

Military History: None.

Medical History: Mr. Cox reported that he was occasionally told by a physician that he had mildly elevated blood pressure, but he was never placed on medication for it. He had a tonsillectomy at age 7. He reported no other significant medical history until his auto accident on May 18, 1997. Mr. Cox incorrectly stated that the accident was in May 1998, but that is not consistent with medical records.

Mr. Cox reported that he was driving a car containing his sister, Joyce, and his brother-in-law. A truck driver "going 100 mph" drove into their vehicle. He views the accident as a "murder." He stated that the son of the truck driver was in a separate vehicle behind him and he reported that his father (the truck driver) was attempting to kill persons in the vehicle ahead of Mr. Cox. Mr. Cox explained that in the accident his sister and brother-in-law were killed in the fireball. Mr. Cox's skull was "crushed" and he suffered burns on 20% of the surface of his body. He reported that he was in a coma and hospitalized for more than a month. He added that his kidneys were "ruined" and he required hemodialysis.

Mr. Cox indicated that as a result of the accident, he was left with burn scars and lack of feeling in his fingers and lower legs. "My left arm is crippled." He indicated that he was also left with "brain damage" and memory gaps. This caused him to lose memory for part of 1997. Mr. Cox stated that he lost part of his vision. He sees double and can only read well with glasses. He stated that his ability to concentrate and learn were not affected. He did indicate that he had trouble remembering names.

Psychiatric History: Mr. Cox stated he never had any psychiatric symptoms prior to the auto accident. He reported that he never saw a psychiatrist, psychologist, or counselor. Since the accident, he indicated that he tosses and turns in his sleep.

When I asked Mr. Cox to describe how he spent a typical day since the accident, he replied that when he lived in Texas at his sister Linda's apartment, he woke up at 1:00 or 2:00 in the afternoon. He watched TV from 4:00 p.m. to 1:00 or 3:00 a.m. When he needed to work on his van, he sometimes walked two miles to purchase parts. When he spent time in Pennsylvania (summers) he would read *Reader's Digest* books in his van. He also walked around and looked at wild turkeys and deer.

Relevant Background to the May 10, 1999 Homicide: Mr. Cox stated that in 1998 he learned that his niece, Trish, was trying to sell the family property with a "fake title." His niece was the daughter of his sister, Betty, who died of cancer in 1998. He stated that Betty, "on her deathbed had said that I should be sure to get the property." He stated, "It should have been mine. For 65 years it was in the Cox name." When I questioned Mr. Cox about the distinction between him legally owning the property as opposed to being the one who should have owned the property, he became agitated. He pointed out that he planted 30 maple trees, an apple tree, and bushes on the property. He also referred to "the sacred pine trees" which were planted by the graves of his brother and sister, who died in the 1930s. He stated that his father told him to never cut down those pines. He added that only he could sell the property because his mother had told him that

he was "the chosen one" to stay there.

Mr. Cox reported that after he learned in the summer of 1998 that his niece had sold the family property, he visited his niece once in an effort to secure his personal property which she had removed from the family property. He stated that his guns (five rifles and three pistols) were gone. She told him, "I sold your place for \$5,000." He stated that he replied, "We'll see about that."

Mr. Cox reported that about March 1, 1999 he met with an attorney from State College, Pennsylvania in his sister Linda's apartment in Texas. This attorney contact had been arranged by one of his Texas attorneys who was working on the lawsuit against the truck driver who caused his 1997 accident. Mr. Cox said that during this 30 to 60 minute meeting he told the attorney his story about how his niece had sold the property. He said the attorney told him that he could go home immediately to the property. The attorney said that he would go to the county office and tell them the sale was improper. The attorney further advised him that he could sue his niece for all damages for the loss of his personal property. The attorney told him, "I'll put the people living on the land off your property." Mr. Cox added that he waited two and one-half months before going to the property to try to reclaim it. He stated that he never had any further contact with the attorney from State College, Pennsylvania. Mr. Cox stated that he did not recontact the State College attorney because he could not recall his name. After the shooting, he concluded that this attorney must have been killed by his niece or Mr. Dimmick (the shooting victim).

Mr. Cox reported that when he drove his van from Texas to Pennsylvania in early April 1999, he went to a gunsmith to purchase a pistol. He stated that he wanted to buy a 357 magnum "for hunting." Rather than take an inexpensive gun that was available, he chose to order a high quality stainless steel gun that would "last forever." He said he had no intention to use the weapon to shoot a person. He said "I could have got a gun right away to kill him (Mr. Dimmick), but I wanted him around to testify against my niece." He also indicated that he purchased bullets for shooting at a distance of 300 yards rather than hollow point bullets which were better for killing people at closer range. When I mentioned to him that the gun dealer stated that Mr. Cox said he did not yet have the money to initially make the purchase, Mr. Cox replied that he had \$4,000 in his van and certainly could have purchased a gun earlier. (The \$4,000 in cash was discovered in his van by the police at the time he was arrested.)

Mr. Cox reported that he made some inquiry of the gun seller about purchasing a rifle, but he did not purchase one because he believed his attorney might be successful in getting some of his guns back. He added he went up each week to check on his gun order. He stated that the gun came in on May 9, 1999. (According to the gun dealer's records, it was May 10, 1999.)

Mr. Cox said that although the State College attorney had told him he could go the family home immediately, "I wanted to make sure that everybody knew." By this he meant that his niece and "the guy who thought he was buying my property" knew that the property belonged to Mr.

Cox. He said he did not further contact his niece because he was mad at her. Upon inquiry, he stated he never threatened his niece. He said, "I thought I would sue the living ass out of her."

Mr. Cox stated that he had \$50,000 stolen by his niece and the new owner of his family property (Mr. Dimmick, the victim of the homicide). He added that his sister, Joyce's will "disappeared" in which he was mentioned. "An old will was found." He acknowledged that he never saw the will in which he was mentioned, but he was told that he was mentioned in it.

Throughout April and the first ten days of May 1999, Mr. Cox occasionally drove by the family property to take a look at how things were. I asked if he expected to see Mr. Dimmick leave. He replied that he thought he might be gone. He also thought that Mr. Dimmick might be waiting for him to come to the property while he was getting ready to leave.

When I asked Mr. Cox why he did not confront Mr. Dimmick earlier, he replied that he wasn't sure that Mr. Dimmick had been told about Mr. Cox owning the property. Mr. Cox said, "I had every right earlier to tell him to get off the property, but I thought the attorney would; so why should I?"

Defendant's Account of the May 10, 1999 Shooting on December 29, 1999: On May 10, 1999, the day his 357 gun came in, Mr. Cox said that he thought of using it for hunting. He added that he had no intention of hurting the victim, Mr. Dimmick. "I'd rather give him the property first. I don't believe in that junk." He stated that he did not wait for the gun to arrive before he went to the property. He indicated that it was just a coincidence. After leaving the gun shop he drove by the property and saw that "the wife's (actually girlfriend) car was gone." He thought, "that's a good sign. My attorney has probably been here. The guy's probably waiting for me and then he'll leave." Mr. Cox stated that he parked his car in his usual spot on the property. He observed that Mr. Dimmick was mowing the lawn with a push lawn mower. Mr. Cox stated that he wore the gun he had just purchased in a nylon holster because he was proud of it. He said he happened to be wearing the gun in the car. He felt no need to take it because he was "going home" and he thought that "everything would be fine."

Mr. Cox stated that he told Mr. Dimmick his name and stated that his attorney told him he could come "home" at any time. "I asked him if he had heard from my attorney." Mr. Cox reported that Mr. Dimmick said, "Get." Mr. Cox said he paused and thought that he "must be early." He stated that Mr. Dimmick then smacked him twice in the head. He thinks it was probably with his fist because he didn't see Mr. Dimmick holding anything. Mr. Cox said he tried to keep from passing out. Next he reported that he heard the snap of the lock that holds his pistol down. Mr. Cox stated that he grabbed the pistol handle and he saw Mr. Dimmick grab for the pistol. Mr. Cox stated that he then grabbed the pistol and held onto it. "The next thing I knew I came to and he was laying there. I checked the gun out. I thought I must have done it."

Mr. Cox said that he then went back to his van and sat there. He thought that he must have been early (referring to the fact that his attorney had not yet informed Mr. Dimmick to leave

the property). He said that he had no place to go because he was "home."

When I inquired about why he didn't call the police, Mr. Cox stated that he didn't know that he had killed Mr. Dimmick. "I didn't know if he was dead." Mr. Cox reported that he had no recollection of actually shooting Mr. Dimmick. Mr. Cox offered no explanation for not calling an ambulance.

When the police came, Mr. Cox reported that "they drew their guns on me." Mr. Cox said that he told them to "go ahead and shoot." He then put his gun inside his van. "I showed them my hands were empty. They maced me, knocked me down, and broke my wrist on my own property." Mr. Cox stated that he could not shoot at the police because of the code of honor he had since age 7. This required that he not use a gun to shoot anyone, except in self defense. He stated that he could not get the police to shoot. If they did shoot, "I'd have killed every one of them."

I inquired about whether he told the police officers the same version of the facts that he told me. He stated that he did, except that he did not tell them about his code of honor or his thoughts about killing them.

Upon inquiry, Mr. Cox stated that he knew it was wrong to shoot Mr. Dimmick unless it was in self defense. He added, "I'm pretty sure he was trying to kill me. He might have been trying to disarm me. I apparently thought he was trying to kill me." Mr. Cox stated that Mr. Dimmick being on his property would not justify his shooting him. He stated that he knew that the 357 gun was capable of killing a man if he was shot in the head. He added that a 357 was made to shoot through four inches of wood.

I asked Mr. Cox whether he believed he had any choice in whether to shoot Mr. Dimmick or not. He replied, "You would have to ask the hand. I wasn't even there mentally." He added that being angry because Mr. Dimmick was on his property had nothing to do with it. "I was only angry at my niece." Only after the shooting did Mr. Cox conclude that Mr. Dimmick had stole cash or money from his bank account. Only after the shooting did he conclude that Mr. Dimmick had murdered his attorney from State College, Pennsylvania.

Mr. Cox volunteered that he felt financially responsible for taking care of the family of the State College attorney who he is convinced was murdered. Mr. Cox feels responsible because he "waited too long." He said that he was waiting for the gun to come in. When I pointed out to Mr. Cox that he talked of waiting for the gun to go to the property, he changed it to saying that he was waiting for the gun to come in to go hunting. He then disavowed any relationship between waiting for the gun and going to the property.

I shared the transcript of Mr. Cox's recorded statement to the police on May 10, 1999 with Mr. Cox. When I read the part about him knocking down the mail box, Mr. Cox said that he attempted to knock it down because "I don't get my mail there." When I inquired about why his

statement to the police gave such a different version than he had just given to me, he replied, "That was just talk afterward." He insisted he had a very clear recollection of the events. "I can see it so damn clear. I certainly did not want to shoot the guy. I wanted him to testify against my niece." When I pressed him on why the two versions were so different, he replied "I didn't say that stuff that they have written down." When I asked why he didn't tell the police that he shot in self defense, he replied, "I'm not sure. Maybe he was trying to disarm me, rather than kill me."

Assessment of Understanding of Miranda Rights: Upon inquiry, Mr. Cox stated that he watched many television police and lawyer dramas and was aware of Miranda rights before the May 10, 1999 shooting. I read the Miranda Rights from the transcript of what Trooper Crain said to him and I asked him the meaning of each sentence. Mr. Cox said that he understood his rights but he felt no need to remain silent. He understood that he could have stopped speaking, but he said he wasn't worried about it. He understood that he had a right to an attorney, but he did not think that he would need one. He knew he had a right not to talk. He understood that an attorney would be provided to him at no cost if he wanted one. He added that even if he had not heard the rights read to him, he understood them from watching television.

Assessment of Competence to Stand Trial: When I first asked Mr. Cox what he was charged with, he replied "murder." I explained to him the other charges against him and he was able to restate them later in the interview. When I asked Mr. Cox what defenses were possible in his case, he replied "self defense." He understood that he could plead not guilty, but he did not think that was a good idea. He initially suggested he would reject an insanity defense, but after some discussion he said that he would consider it if it were recommended by his attorney.

When I asked Mr. Cox what a plea bargain was, he replied that it was to "agree to something and get a lesser amount." He said he would consider a plea bargain. When I presented him with various plea bargains, he rejected one with a lengthy sentence and considered accepting one with a shorter sentence.

Mr. Cox said that he would be able to follow the rules of the courtroom even if he became furious over false testimony. During his extended interview with me, he did become quite agitated on two occasions, but he was redirectable. When I asked Mr. Cox what he would do if a witness told a lie about him, he replied that he would tell his attorney.

I asked Mr. Cox the roles of different courtroom participants. He stated that a defense attorney was to bring out information "so that he can get you off." He stated that a prosecutor was "to do everything against you." He stated that a judge was "to listen to both sides and make a decision." He said a jury did "the same thing." He stated that witnesses "tell their side of it." He said that the defendant was "nobody but me."

I asked Mr. Cox whether he thought he'd be able to attend to his trial. He said that he believed that he could. I asked him whether he was able to follow what happened in the preliminary hearing. He replied that he did listen to the witnesses. He said that people told lies in

that "they said that I went there to kill him." I asked him what he specifically recalled from the preliminary hearing. He replied that he recalled that his neighbor, Mr. Williams, testified and the coroner testified. He did not recall others who testified until I reminded him about police officers. He then said that he did remember their testimony.

When I asked Mr. Cox about the potential penalties he faced, he said his attorney had not discussed penalties with him. He estimated that he might be facing up to 20 or 25 years if convicted.

I asked Mr. Cox what he expected the outcome of his trial to be. He replied that he was "90% sure I'll get off." He stated he thought his attorney was taking his case lightly because he had not found evidence about Mr. Cox's bank account which may have been stolen and had not found the body of his State College attorney.

Mr. Cox believed he was able to tell his attorney his version of events. He said he had seen his attorney only once for 15 or 20 minutes. He was able to give a detailed account of his version of the shooting to me. Mr. Cox would prefer not to spend time in prison. However, he added, "I'm fed up with this country." He expressed some feelings of being indifferent to what happened to him at his trial.

Mental Status Examination: Mr. Cox was dressed in an orange jump suit and showed adequate personal hygiene. He wore leg chains but his handcuffs were removed during my interview. He was cooperative during the interview. He showed some scarring from his burns and he has only a small piece of his right ear left from his burn injuries. He hobbled in his gait because of his burn injuries. His speech was logical and coherent, but at times he went off on tangents and had to be redirected. He became agitated and raised his voice on two occasions during the interview.

Mr. Cox showed a full range of emotional expression. He cried when describing his upset at being trapped in his burning vehicle in 1997. Mr. Cox indicated that it was Tuesday, December 28, 1999 when in reality it was Wednesday, December 29, 1999. He knew that he was in Cleveland at a hospital. He gave his social security number as 195-42-7643. In subtracting serial sevens from one hundred, he made two errors. He was able to repeat six digits forward and four digits backward. He could recall three out of three objects after five minutes. When asked to name the current president and the last few backward, he replied, "Clinton, Mondale, and the smiley one from Georgia." When asked to identify the Great Lakes, he could recall only Lake Erie and Lake Superior.

When asked if he ever had any hallucinations, Mr. Cox replied that he heard his deceased mother "a couple of times." Mr. Cox stated that he did not believe there were any conspiracies to harm him. He did express delusional ideas that his May 1997 accident was a murder and that his earlier attorney had been murdered by his niece or Mr. Dimmick. When I asked if he believed he had special powers, he stated that he has had ESP and was able to foresee things all his life. He also indicated that he had "supreme strength." He stated that through sheer will he could lift 600

pounds by "talking himself into it."

Mr. Cox's judgment was tested by asking him what he would do in certain common situations. He stated that if he found a stamped addressed letter on the street, he would put it in a mail box. When I asked what he would do if he were the first person to discover a small fire in a theater, he replied that he would not yell, but would help people out. When asked to interpret proverbs, he was able to explain the abstract meaning of some but he was concrete on others. When asked to name common objects that I pointed to, he was able to name a pen, a watch, and other objects. When some objects were put in his hand with his eyes closed to see if he could identify them, he was able to correctly identify a pen, a paperclip, and a leaf from a plant. He was able to correctly carry out a three step command. When asked about suicidal ideas Mr. Cox stated he did not have any suicidal ideas since he was a teenager. He said he attempted to hang himself for 15 minutes as a teenager but he was not successful.

Summary of Tape Recorded Interview Between Mr. Cox and Trooper Richard Crain Dated May 10, 1999: When asked about the crime, Mr. Cox said, "My lawyer, he was supposed to meet me. He told me that I could go there and that I could stay there on the property anytime I want. But when I pulled up the guy there was mowing the lawn there. All I know is he stole everything I fucking owned. He told me to get the hell off his property.....and I started shooting. I shot three times and I'd do it again. Over and over and over again. Anything to fight for my property."

Later in the interview Mr. Cox said "I wanted to have the gun.... because there was somebody already trying to kill me which I blamed on him. But I didn't know him for sure. I didn't know for sure if it was him or not. All I know that he was trying to get me."

When asked what he would have done if somebody else was in the house, Mr. Cox replied, "I probably would have killed them too."

Later Mr. Cox said of Mr. Dimmick, "It was brave of him the way I was standing there with a gun and he was telling me to get the hell off. The guy had a lot of guts."

Trooper Crain said, "So it made you mad when he told you to get the hell off his property? Mr. Cox replied, "Yes, off my property. I was born there." Trooper Crain said, "Okay. So when he said that, you shot him?" Mr. Cox replied, "Yes, I did."

Summary of Neuropsychological Evaluation Dated 4/8/99 by Corwin Boake, Ph.D.: The evaluation was carried out on March 14, 1999 in the home of Linda Estrada because Mr. Cox refused to appear for the examination. Mr. Cox did not cooperate with formal neuropsychological testing, so only a limited mental status examination was done.

A review of the records from University of Texas Medical Branch in Galveston showed that Mr. Cox suffered head trauma as well as burn injuries from the accident on 5/18/97. He

suffered a longitudinal fracture of the left temporal bone of the skull. He suffered loss of sufficient oxygen, and had to be resuscitated. He developed renal failure and was started on dialysis.

Based on the report of Mr. Cox, his sister Linda Estrada, and his brother-in-law, Mr. Estrada, Dr. Boake learned that Mr. Cox is independent in toileting and dressing. He does not bathe or shower because of fear of falling and instead washes himself in the bathroom sink. He does not take any medications or attend any therapies. He had not seen a physician since his discharge from the hospital in 1997.

School transcripts showed that he had group IQ scores ranging from 106 to 96. He earned average grades in an industrial arts curriculum.

Mr. Cox has always lived with relatives and has not rented or owned his own residence or had his own bank account. He has owned a car or other motor vehicles most of his adult life. Mr. Cox drives on an expired Texas driver's license.

In the examination itself, Mr. Cox was moderately restless and agitated. He gave long and tangential answers to questions and made sweeping gestures of the hands and arms. His mood was angry and indignant. He once punched the wall. Mr. Cox exhibited paranoid and grandiose thinking. The paranoia was directed at medical facilities and police. He voiced anger at the local police and threatened violence if they interfered with his driving. He believed the kidney dialysis was all lies and he did not need it. He disagreed with his sister about the number of siblings in the family. Examples of his grandiosity included a belief that he had been a helicopter and an airplane pilot before his injury and that his IQ was 160.

He was oriented to within one day of the date. He denied having any injury related mental deficits. When asked about his feelings, he responded, "I want to hurry up and die and get it over with."

Dr. Boake concluded that Mr. Cox suffered a severe brain injury from either trauma or lack of oxygen to the brain. The evidence included his period of unconsciousness, the weakness on his right side, and the extended period of amnesia after he regained speech. Dr. Boake also concluded that his paranoia, grandiose thinking, and anger were probably aggravations of a preexisting personality disorder because of the history of isolation from family members, limited adult responsibilities, and lack of interpersonal relations. Dr. Boake also concluded that Mr. Cox was not capable of making decisions about his medical care, finances, or legal or business affairs. This was based on his failure to cooperate with recommended medical care since discharge from the hospital, his paranoid beliefs, and his unawareness of his legal and financial affairs. It was recommended that Mr. Cox be treated in a residential rehabilitation facility specializing in brain injured patients with behavior problems for at least six months.

(It should be noted that the report of Dr. Boake suggests that neither Mr. Cox nor his

sister informed Dr. Boake that Mr. Cox had successfully managed on his own in Pennsylvania for the summer of 1998 without supervision.)

Interview with Ms. Linda Estrada: Ms. Estrada reported that her brother, Mr. Cox, would usually stay with his other older sister (Joyce) in Texas before the 1997 vehicular accident. She stated that after the accident, Mr. Cox suffered severely from his burns and was in a coma for six weeks. He showed confusion after he came out of his coma. "His CT scan showed evidence of brain damage." He went into a rehab center in Galveston, but left against advice within 24 hours. He stayed in her apartment until the summer of 1998 which he spent in Pennsylvania. He then stayed with her again from October 1, 1998 until April 1999.

Ms. Estrada stated that Mr. Cox lacked insight into his cognitive deficits. He received Social Security checks in his name but at her address. He did not have a guardian. Ms. Estrada reported that Mr. Cox sometimes got agitated. She would change the subject to avoid his becoming agitated. She never heard him make any threats. He owned guns most of his life because he was a hunter. He had no guns in Texas.

Ms. Estrada stated that Mr. Cox did things on his own schedule. He had difficulty showering because of his physical limitations. He did wear a deodorant, but at times he had a body odor. She described him as not generally irritable or impulsive. However, "he did not accept things the way he did before his injury."

Ms. Estrada stated that before the accident, Mr. Cox was a very good mechanic. He successfully worked on his van to get it running again after the accident. He drove to Pennsylvania from Texas in 1998 in record time.

Upon inquiry, Ms. Estrada stated that Mr. Cox's functioning changed little from the time of the May 18, 1997 accident until April 1999. He tended to sleep late and spend almost all of his time in a recliner chair watching TV. He didn't like others coming over. She did take him out to eat and get him out for a walk. He drove his van to cash his monthly check. She reported that her brother always dealt in cash because he did not trust banks, even before the 1997 accident. She stated that Mr. Cox was always eccentric. After the accident she described him as becoming suspicious and accused her of stealing his cash after he had forgotten he put his cash in a box. Ms. Estrada reported that when her brother went to Pennsylvania for the summers, he lived in his van. He parked by a neighbor named Sophie Colten. He would sometimes use her bathroom and had some meals there.

Ms. Estrada stated that she informed Mr. Cox when their niece, Trisha, sold the Pennsylvania family property. He understood it. She told him that their niece stored all his personal property of value. The first year he returned to Pennsylvania (summer, 1998), he went to examine his vehicles and personal property. When Mr. Cox returned the following fall, he talked of buying the family property back or other property with the money he would get from the lawsuit against the truck driver who struck his car. Mr. Cox told her that it was not fair that the

family property was sold by their niece. He later told Linda Estrada that he thought someone would get the property back for him. She suggested that Mr. Cox may have confused the idea that one of the Texas accident attorneys would help him get the family property back. Ms. Estrada has heard her brother give different versions of what happened at the Pennsylvania shooting.

Interview with Mr. Steven Passarello: Mr. Passarello reported that he had visited with the defendant, Mr. Cox, least five times. On one occasion he spent between one and two hours, and on three occasions between fifteen and thirty minutes. Mr. Passarello spent an hour at the time of the preliminary hearing with the defendant. He was also present when Dr. Davis conducted his two hour interview psychiatric interview. Mr. Passarello believed that he had a "definite problem" getting cooperation from Mr. Cox. Mr. Passarello reported that Mr. Cox was still focused on getting his property back. On one occasion Mr. Cox went into a rage and grabbed Mr. Passarello by the collar insisting that Mr. Passarello recover Mr. Cox's property. Mr. Cox talked of suing the state for millions of dollars due to not getting his property back.

Mr. Passarello stated that he has not been able to find any attorney from State College, Pennsylvania who advised Mr. Cox about getting his property back. He stated that he also could not find any Texas attorney who made such a contact. The defendant's sister, Linda, disconfirmed participating in a meeting with an attorney from State College in her home that Mr. Cox reported to him.

Mr. Passarello reported that the defendant has given him four different versions about how he committed the crime. The most recent one was the self defense version that Mr. Cox told me. Mr. Passarello stated that on occasion Mr. Cox has told him that he purchased the gun for protection before going on to his family property without the intention of using it. On other occasions he had given different versions.

Mr. Passarello stated that Mr. Cox seems to think that the jury will believe his story that he acted properly because he was on his own property. Mr. Passarello said that Mr. Cox does not seem receptive to an insanity defense, but he has not rejected it outright. Mr. Cox does not appear to Mr. Passarello to understand the nature of the competency to stand trial and insanity issues now being explored. Mr. Passarello stated that Mr. Cox did appear to understand the concept of a plea bargain but Mr. Passarello had nothing concrete to offer him from the prosecutor.

Mr. Passarello stated that Mr. Cox appeared quite different on the different days when he visited. Sometimes Mr. Cox did not appear to remember him. Mr. Cox did not recall a discussion of pretrial motions and does not seem to retain various things from their earlier discussions.

Mr. Passarello stated that Mr. Cox understood that he was not faced with the death

penalty but that he could spend life in prison. On some occasions Mr. Cox seems not to care what will happen to him. On other days, he seems to think he will be proved innocent.

~~Mr. Cox's belief that the truck driver that struck his vehicle in 1997 deliberately intended to kill anyone.~~
not confirm Mr. Cox's belief that the truck driver that struck his vehicle in 1997 deliberately intended to kill anyone.

Diagnostic Impression:

1. Cognitive Disorder, not otherwise specified due to head trauma and anoxia (lack of oxygen) from the 5/18/97 vehicular accident.
2. Schizotypal Personality Traits.

The diagnosis of cognitive disorder not otherwise specified is manifested by impaired memory, impaired judgment, emotional lability, impulsivity, difficulty recalling names, irritability, apathy, poor capacity for abstraction, lack of insight, paranoia, grandiosity, decreased coping skills, and neglect of self care.

Mr. Cox's schizotypal personality traits are a life long pervasive pattern of social and interpersonal deficits with reduced capacity for close relationships. Before his injury he showed odd beliefs and magical thinking, odd circumstantial speech, suspiciousness, odd behavior, and a lack of close friends other than first degree relatives. His schizotypal personality traits were exacerbated by the head injury which caused his cognitive disorder.

Opinion Regarding Mr. Cox's Ability to Understand his Miranda Rights: It is my opinion with reasonable medical certainty that Mr. Cox on May 10, 1999 did understand the Miranda rights which were read to him by Trooper Crain. The following evidence supports this opinion:

1. Mr. Cox was able to paraphrase correctly the meaning of different sentences from the Miranda rights. He understood that he had a right to an attorney, at not cost if necessary, but he did not believe that he needed one. He understood that he did not have to answer the questions, but he indicated that he was not trying to hide anything.
2. Although Mr. Cox does have some long term memory deficits, his ability to retain information for at least a few minutes is quite good based upon my mental status examination.
3. Mr. Cox indicated that he had watched many police and lawyer television shows so that he understood what Miranda rights were, even before they were read to him.

Opinion on Competence to Stand Trial: It is my opinion that the defendant does understand the nature and object of the proceedings against him. The following evidence supports this opinion.

- 1 Mr. Cox understood that he was charged with homicide and the meaning of the other charges against him.
- 2 Mr. Cox had a reasonable understanding of the possible penalties against him, although he did not indicate that he could be sentenced to life imprisonment.
- 3 ~~At that time, Mr. Cox understood that there was a possibility of being found not guilty, he~~
- 4 Mr. Cox understood that he could raise self defense or insanity as defenses to the charges against him. Although he was reluctant to consider an insanity defense, he indicated that he would consider it if his attorney recommended it. He did not reject it completely according to his attorney also.
- 5 Mr. Cox had an adequate understanding of the adversarial nature of the court proceedings and the roles of major courtroom participants.
- 6 Mr. Cox understood what a plea bargain was and was appropriate in rejecting hypothetical unfavorable plea bargains and accepting hypothetical favorable ones.

It is my opinion that Mr. Cox is not able to assist his attorney with a reasonable degree of rational understanding. The following evidence supports this opinion.

1. Due to Mr. Cox's emotional disinhibition since his brain injury, Mr. Cox has emotional outbursts. These manifested themselves on two occasions in my interview, were seen by Dr. Boake, and have occurred in Mr. Cox's meetings with his attorney. This may cause difficulty in managing his behavior in the courtroom.
2. Mr. Cox's memory problem interferes with his ability to retain information shared by his attorney with him.
 - (A) Mr. Cox told me that he saw Mr. Passarello on only one occasion for 15 minutes whereas Mr. Passarello indicated that he saw him five times.
 - (B) Mr. Passarello reported that Mr. Cox did not retain information shared with him about preliminary motions and other material they discussed in earlier sessions.
 - (C) Mr. Cox was able to recall only two of the witnesses who testified in his preliminary hearing in my interview with him.
 - (D) Mr. Cox's memory problems will make it hard for him to retain information reported by witnesses, and integrate that information to assist his counsel during

trial.

3. Mr. Cox is sometimes so focused on getting his property back that he does not attend to the critical issues relative to his homicide defense.
4. Mr. Cox's recitation of what happened at the time of the act has been inconsistent in different versions. Although this may be due to intentional lying, it may be also due to memory impairment and confabulation about what actually happened.
5. Mr. Cox's rigidity in his thinking, memory impairment, delusional perception of some events, and unrealistic expectation of the trial outcome do not permit him to rationally plan legal strategy. This may cause him to be unrealistic in assessing plea bargain opportunities and interfere with rationally weighing a decision to raise an insanity defense.
6. Although Mr. Cox is able to give an account of what happened on May 10, 1999, the variability in his accounts and distortion due to delusions may interfere with his ability to testify relevantly. Part of the reason for his different accounts may be conscious lying, which would not interfere with his ability to testify relevantly. If an insanity defense is raised, Mr. Cox's statement of delusional beliefs may be useful to his defense. However, should Mr. Cox plead not guilty, his delusional perception of events may interfere with his ability to give a coherent account.
7. On some occasions, Mr. Cox appeared indifferent to the outcome of his trial. Although he does not have frank self defeating motivation, his apathy about the trial may interfere with giving full cooperation to his attorney.

In conclusion, it is my opinion with reasonable medical certainty that Mr. Cox is not competent to stand trial because although he does have an understanding of the nature and objective of the proceedings against him, his brain injury causes him to lack the capacity to cooperate with his attorney in the preparation of his defense.

It is my opinion with reasonable medical certainty that Mr. Cox has a substantial probability of being restored to competence to stand trial within the foreseeable future if he is given treatment. Mr. Cox did not take advantage of rehabilitation services after his brain injury. Efforts at rehabilitation may assist him in compensating for his memory impairment to some extent. Medication may help reduce his emotional outbursts and reduce his delusional thinking. I recommend that restoration efforts be made in a secure hospital for the protection of the public.

Opinion on Legal Insanity: Mr. Cox is charged with criminal homicide, aggravated assault (two counts), and simple assault. All of these charges refer to the conduct of shooting three bullets into Mr. Dimmick on May 10, 1999. Additionally, Mr. Cox is charged with criminal trespass because he knowingly without permission entered the residence of John Dimmick. In giving my opinion on the insanity issue, I will lump together the charges of criminal homicide, aggravated

assault, and simple assault, since they refer to the same conduct by the defendant. I will separately address the issue of insanity for the criminal trespass charge.

The test for legal insanity in Pennsylvania is whether at the time of the offense, the actor was laboring under such a defect of reason, from disease of the mind, as to not know the nature and quality of the act that he was doing or, if the actor did know the nature and quality of the act, that he did not know that what he was doing was wrong.

Two quite separate versions of the shooting have been given by Mr. Cox. The first is the account he gave to the police and initially to his attorney. The second version is an account of self defense that he told to me and later to his attorney. There are a number of reasons which suggest that the self defense account does not reflect the reality of what happened. These reasons include:

1. Mr. Cox had a rational motive for shooting the victim based on his desire to have him leave his family property because he did not believe that his niece should have sold the family property.
2. Mr. Cox fired three shots at the victim. Two were in the head and one was in the abdomen. The single eye witness account reported that the final shot was fired into the abdomen of Mr. Dimmick after he was lying on the ground. Based on the coroner's report, Mr. Dimmick's heart had already stopped pumping blood before the final shot. The firing of three shots in this fashion militates against the likelihood that the shooting was in self defense.
3. The fact that Mr. Cox did not seek to contact the police or an ambulance suggests that the killing was not in genuine self defense.
4. The fact that Mr. Cox did not tell the police officers on the scene that he shot in self defense casts doubt on it being genuine self defense.

There are two possibilities to explain why Mr. Cox is reporting a self defense version. (1) Mr. Cox may simply be lying in an effort to avoid incarceration; (2) It is possible but less likely, that Mr. Cox's brain injury has caused him to distort his recollection of what happened.

In offering my opinion about Mr. Cox's sanity at the time of the shooting, I will separately address my analysis of each of the two versions of the shooting. The fact finder may then apply whichever analysis is consistent with their belief about what actually happened.

I will first address the sanity issue based upon the self defense account given to me by Mr. Cox on December 29, 1999. It is my opinion that Mr. Cox was suffering from a mental disease (cognitive disorder, not otherwise specified) caused by his brain injury in the May 18, 1997 vehicular accident. The evidence for his mental disease is described under my diagnostic

assault, and simple assault, since they refer to the same conduct by the defendant. I will separately address the issue of insanity for the criminal trespass charge.

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impression.

It is my opinion that Mr. Cox, in spite of his mental disease, knew the nature and quality of firing three shots at Mr. Dimmick. The following evidence supports this opinion:

1. Mr. Cox was knowledgeable about firearms. He was a hunter throughout his life and owned many firearms. He specifically ordered a high quality 357 magnum pistol. He told me that he knew it was designed to penetrate four inches of wood. He was well aware that firing two shots into a man's head and one into his abdomen would cause grievous harm.
2. Although Mr. Cox alleged that he was "out of it mentally" and claimed amnesia for the shooting itself in his self defense account to me, his witnessed behavior suggests that he did know the nature and quality of his act. The fact that he fired two shots in the victim's head and one in the victim's abdomen after the victim was on the ground indicates he knew the nature and quality of his act. Furthermore, his statement to the police that he would shoot the victim again suggests that he knew the nature and quality of the shooting.

It is my opinion based upon Mr. Cox's self defense account, that no mental disease or defect caused Mr. Cox not to know that the shooting was wrong. The following evidence supports this opinion:

1. If Mr. Cox's self defense account is taken at face value, Mr. Dimmick, the victim, was attempting to grab Mr. Cox's gun in a way that caused Mr. Cox to believe that he would be killed. If he shot Mr. Dimmick in an honest and reasonable belief that he would be killed, his killing would be justified. Thus, if Mr. Cox's account is taken at face value, no insanity defense is necessary because the killing was genuinely in self defense rather than a misperception of a need for self defense based upon mental disease. Thus, no mental disease caused him to believe that the shooting was the right thing to do.
2. If Mr. Cox used excessive force to defend himself, it was a product of anger rather than mental disease. Mr. Cox indicated that his own personal code of honor forbade him from firing a gun at someone except in self defense. Thus, Mr. Cox knew it was both legally and morally wrong to shoot Mr. Dimmick if it was not self defense.
3. Mr. Cox indicated he had no delusion which caused him to think that killing outside of legitimate self defense was the right thing to do.
4. Mr. Cox had no hallucination which caused him to think that shooting outside of self defense was the right thing to do.

Next I will discuss Mr. Cox's sanity at the time of the shooting based upon the account he related to the police both at the crime scene and back at the police station. Mr. Cox did suffer

from a mental disease due to his brain injury at the time of the shooting.

If Mr. Cox's initial version of the shooting is taken at face value, it is my opinion that Mr. Cox knew the nature and quality of shooting the victim. The evidence for this is the same as that listed above about his knowledge of firearms and knowledge that a bullet fired from a 357 magnum would cause severe damage.

It is my opinion that if Mr. Cox's initial accounts to the police are taken at face value, Mr. Cox knew that shooting Mr. Dimmick was wrong. The following evidence supports this opinion:

1. Mr. Cox stated in his interview with me on December 29, 1999 that on the day of the shooting, he knew that it was wrong to shoot a person even if he was were on your property. Mr. Cox understood that the family property had been sold by his niece based upon several witness accounts. Mr. Cox reported that a State College attorney told him that he would alter the sale of the property so that Mr. Cox would have a right to go on the family property and take ownership. However, even if Mr. Cox had a delusional misperception that he owned the property, he explicitly stated that he knew this gave him no right to shoot a "trespasser on his property."
2. Mr. Cox had a rational alternative motive for shooting the victim unrelated to any psychotic misperception. The motive was to shoot Mr. Dimmick in anger because he felt that the family property was unjustifiably transferred to a new owner.
3. The fact that Mr. Cox failed to notify the police or call an ambulance after the shooting suggests that he recognized that the shooting was wrong.
4. The fact that Mr. Cox misrepresented to the person who sold him the 357 magnum that he was going to use it for hunting, rather than confronting and/or killing a person on his family property, suggests that he knew that shooting a person was wrong. Mr. Cox stated to me that he was waiting for the gun to come in before going to the property. Although he later denied this, the fact that he also shared this with his attorney suggests that he did wait for the gun before going on the family property.

I will next address Mr. Cox's sanity related to the charge of trespass (by entering the home of Mr. Dimmick). Mr. Cox gave only a single account for why he did this. He stated he did it to see if he could find any of his firearms which were apparently taken from the family property when his niece sold it.

It is my opinion that Mr. Cox was suffering from a mental disease due to his brain injury, at the time he walked into the residence of Mr. Dimmick. It is my opinion that, in spite of his mental disease, he knew the nature and quality of the act of trespassing. Although he personally felt that the family property was improperly sold, he knew that the home of Mr. Dimmick did not belong to him. Mr. Cox was not so impaired by his cognitive disorder that he did not understand

the nature and quality of going into another person's residence without permission.

It is my opinion that Mr. Cox knew that going into the residence of Mr. Dimmick was wrong. The following evidence supports this opinion:

1. Although Mr. Cox may have believed that he had a legal right to be on the family property based upon a delusional idea that a State College attorney had told him that he could do so, he still knew it was wrong to go into the residence of another person.
2. Mr. Cox had no delusion which caused him to believe it was right to go into Mr. Dimmick's residence.
3. Mr. Cox had no hallucination which caused him to think it was right to go into Mr. Dimmick's residence.
4. Mr. Cox was not so confused by his cognitive disorder that he believed it was right to go into another man's residence.
5. Mr. Cox stated a rational motive to the police for going into Mr. Dimmick's residence. That is, he was looking for his own weapons that he thought might be there. He knew it was not lawful to do that without the permission of the owner.

In summary, it is my opinion with reasonable medical certainty that Mr. Cox was suffering from a mental disease (cognitive disorder) at the time of each of the acts with which he is charged. Nonetheless, it is my opinion with reasonable medical certainty that Mr. Cox's disease did not cause him not to know the nature and quality of each of the acts with which he is charged. Furthermore, it is my opinion with reasonable medical certainty that Mr. Cox's mental disease did not cause him to not know that each of the acts he did was wrong.

Opinion on Whether Mr. Cox Was "Guilty But Mental Ill." In Pennsylvania, a person may be found "guilty but mentally ill" if at the time of the offense he met the definition for being "mentally ill." In Pennsylvania "mentally ill" means "One who, as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law."

It is my opinion with reasonable medical certainty that Mr. Cox was suffering from a mental disease due to his brain injury on May 10, 1999.

It is my opinion that Mr. Cox did not lack substantial capacity to appreciate the wrongfulness of his conduct on May 10, 1999. Although the definition in "guilty but mentally ill" provides a more liberal than the test on the issue of wrongfulness, it is still my opinion based on the reasons listed above that Mr. Cox did not lack substantial capacity to appreciate the wrongfulness of his conduct.

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It is my opinion that Mr. Cox knew that going into the residence of Mr. Dimmick was wrong. The following evidence supports this opinion:

1. Although Mr. Cox may have believed that he had a legal right to be on the family property based upon a delusional idea that a State College attorney had told him that he could do so, he still knew it was wrong to go into the residence of another person.
2. Mr. Cox had no delusion which caused him to believe it was right to go into Mr. Dimmick's residence.
3. Mr. Cox had no hallucination which caused him to think it was right to go into Mr. Dimmick's residence.
4. Mr. Cox was not so confused by his cognitive disorder that he believed it was right to go into another man's residence.
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It is my opinion that Mr. Cox did not lack substantial capacity to appreciate the wrongfulness of his conduct on May 10, 1999. Although the definition in "guilty but mentally ill" provides a more liberal than the test on the issue of wrongfulness, it is still my opinion based on the reasons listed above that Mr. Cox did not lack substantial capacity to appreciate the wrongfulness of his conduct.

It is my opinion that Mr. Cox did, as a result of his mental disease, lack substantial capacity to conform his conduct to the requirements of the law at the time he shot Mr. Dimmick. The following evidence supports this opinion:

1. Mr. Cox, due to his brain injury, suffered from impulsivity, irritability, paranoia, poor judgment, grandiosity, and decreased coping skills. When confronted with Mr. Dimmick's refusal to leave the family property and his demand that Mr. Cox leave, Mr. Cox had difficulty thinking through alternative courses of action.
2. Mr. Cox's brain injury left him with rigid thinking patterns, particularly in regard to his ownership of the family property. In fact, Mr. Cox is still focused on regaining control of the family property. He had magical ideas that because he was born on the property and because his mother had told him to look after it, that he was the only rightful owner and decision maker about the property. The fact that the trees he planted and the "sacred pine trees" were cut down by the new owner was especially disturbing to him.
3. Mr. Cox lacked substantial capacity to conform his conduct to the requirements of the law at the time of the shooting because of his paranoid perceptions about Mr. Dimmick. During his interview with Trooper Crain, Mr. Cox said, "I wanted to have the gun....because there was somebody already trying to kill me which I blamed on him....All I know that he was trying to get me."

It is my opinion that Mr. Cox also lacked substantial capacity to conform his conduct to the requirements of the law with respect to the charge of trespass. In my opinion, he lacked substantial capacity to refrain from walking into Mr. Dimmick's residence to search for his own guns. The following evidence supports this opinion:

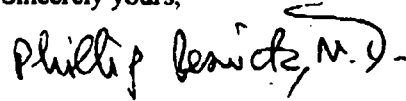
1. The first two reasons noted above for why Mr. Cox lacked substantial capacity to refrain from the shooting also explain why he lacked substantial capacity to refrain from entering Mr. Dimmick's residence..
2. Mr. Cox was quite distressed and felt wronged by having his personal property removed without his permission from the family property. He was particularly upset by the loss of his firearms. He thus lacked substantial capacity to refrain from immediately investigating Mr. Dimmick's residence to see if his firearms were located there.

In summary, it is my opinion with reasonable certainty that Mr. Cox understood his Miranda rights on May 10, 1999. It is my opinion that Mr. Cox is not competent to stand trial. However, there is a substantial probability that Mr. Cox could be restored to competence within the foreseeable future. It is my opinion that Mr. Cox was not legally insane at the time that he shot the victim and at the time he trespassed on the victim's residence. Finally, it is my opinion that Mr. Cox does qualify for "Guilty But Mentally Ill" under Pennsylvania law because his mental

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disease (cognitive disorder) caused him to lack substantial capacity to conform his conduct to the requirements of the law on each of his charges.

Sincerely yours,

A handwritten signature in black ink that reads "Phillip Resnick, M.D.". The signature is written in a cursive style with a large, sweeping "P" and a distinct "M.D." at the end.

Phillip J. Resnick, M.D.

enclosure: (cv and statement)

FILED

3 cc

0/12/13/2011

AUG 25 2011

William A. Shaw
Prothonotary

Atty Casfley
KPL

99-825-60
00-328-60

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly)	
1. Article Addressed to: John S. Appleman, Clerk 58th Judicial District Court of Jefferson Co. TX P. O. Box 3307 Beaumont, TX 77704		B. Date of Delivery 8-25-00	
		C. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Copy from service label) 7000 0600 0023 6399 4562			

99-825-60
00-328-60

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

FILED

AUG 28 2000
11:41 am
William A. Shaw
Prothonotary *[Signature]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:

:

:

vs.

:

No. 00-328-CD

CLIFFORD COX, an incompetent
by John R. Ryan, Esquire, his
Guardian ad Litem, LINDA ESTRATA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:

:

:

:

Jury Trial Demanded

PRAECIPE

TO THE PROTHONOTARY:

PLEASE Exemplify certified copies of the following documents
filed in the above captioned matter to the 58th Judicial District
Court of Jefferson County, Texas, to the attention of John S.
Appleman, Clerk, whose office is located at P. O. Box 3307,
Beaumont, Texas, 77704, to be filed in Cause No. A-0157378, Linda
Estrada, ANF of Clifford Cox et. al. vs. Bo-Mac Contractors, Inc.
et. al. These documents are as follows:

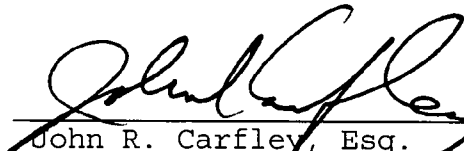
1. Petition for Transfer of Trust Assets Filed on Behalf of
Defendant, Clifford Cox, by his Guardian ad Litem, John R. Ryan,
Esquire.

2. Order dated April 18, 2000, granting plaintiff's Petition
for Injunctive Relief.

FILED

SEP 12 2000

William A. Shaw
Prothonotary


John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866

08
2

FILED

SEP 12 2000

William A. Shaw
Prothonotary

P.M.

Rec'd
9-20-

Check 100 to atty
Cost: Exp. 8.
Reg. to TX

COPY

Dated this 12th day of
September, A.D. 2000

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, this 12th day of September, A.D., 2000.

Prothonotary/Clerk of Courts

September 13, 2000

Cause No. A-0157378

John S. Appleman, Clerk
58th Judicial District Court of
Jefferson County, TX
PO Box 3307
Beaumont, TX 77704

Dear Mr. Appleman:

Enclosed please find exemplified certified copies of the following:

- A. Petition for Transfer of Trust Assets Filed on Behalf of Defendant, Clifford Cox, by his Guardian ad Litem, John R. Ryan, Esquire.
- B. Order dated April 18, 2000, RE: Plaintiff's Petition for Injunctive Relief

Both records pertain to case #00-328-CD, Kay Churner etal vs. Clifford Cox etal. They are to be filed in Cause No. A-0157378, Linda Estrada, ANF of Clifford Cox etal vs. Bo-Mac Contractors, Inc. etal.

Sincerely,

Enclosures (2)

WAS/brh

Willi
Proth

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
Article Sent To: John S. Appleman, Clerk	
Postage	\$ 77
Certified Fee	1.40
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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.42
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Street, Apt. No., or PO Box No. 58th Judicial District Court	
City, State, ZIP+4 Beaumont, TX 77704	

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PO BOX 549
CLEARFIELD, PA 16830

PS Form 3800, July 1999
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00-328-CD

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) <u>9-18-00</u> B. Date of Delivery	
1. Article Addressed to: John S. Appleman, Clerk 58th Judicial District Court of Jefferson County, TX P.O. Box 3307 Beaumont, TX 77704		C. Signature <u>[Signature]</u> <div><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</div>	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <div><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</div>	
2. Article Number (Copy from service label) 7000 0600 0023 6399 4555		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, July 1999		Domestic Return Receipt 102595-99-M-1789	

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SEP 20 2000

m/ 10:30/w

William A. Shaw
Prothonotary

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX, an incapacitated
person, by JOHN R. RYAN, ESQUIRE,
his Guardian ad litem; LINDA
ESTRADA, individually and as next
friend (ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

: Jury Trial Demanded
:
:
:
:

FILED

JAN 08 2001

William A. Shaw
Prothonotary

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

:

SS:

COUNTY OF ~~CENTRE~~ CLEARFIELD

:

Personally appeared before me the undersigned, John R.

Carfley, Esquire, who being duly sworn according to law, deposes
and states as follows:

1. I am an attorney duly licensed to practice law in the
Commonwealth of Pennsylvania with offices at 222 Presqueisle
Street, P. O. Box 249, Philipsburg, Pennsylvania, 16866. My
attorney ID Number is 17621.

2. In my capacity as an Attorney, I was retained by Kay
Churner, individually and as executrix of the Estate of John
Dimmick to represent the interest of the estate in an action filed
under the Uniform Fraudulent Transfer Act to No. 00-328-CD in the
Court of Common Pleas of Clearfield County, Pennsylvania.

3. In my capacity as the attorney for the estate I secured

through discovery in the State of Texas a transcript of a settlement hearing at which representatives of Southwest Guaranty Trust Company appeared and testified as to the formation of a trust under Section 142.005 of the Texas Property Code. A true and correct copy of the transcript of the settlement hearing is attached hereto as Exhibit A with the pertinent portions of the testimony of S. Brady Whitaker, Esquire, in-house counsel for Southwest Guaranty appearing at Pages 17 through 19.

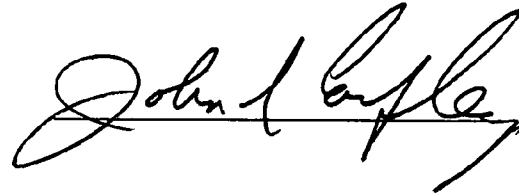
4. Based on the aforesaid it is averred that Southwest Guaranty has in the past and will continue in the future to have minimum contacts with the Commonwealth of Pennsylvania based on the domiciliary of the beneficiary of the trust who is currently incarcerated at the Warren State Hospital, Forensic Unit, pending trial on the charges of criminal homicide, aggravated assault and other miscellaneous violations of the Crimes Code of the Commonwealth of Pennsylvania.

Sworn to and subscribed
before me this 8 day of
January, 2001.



N. P.

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



CAUSE NO. A-157,378

LINDA ESTRADA, ET AL) IN THE DISTRICT COURT
Plaintiff)
VS.) JEFFERSON COUNTY, TEXAS
BO-MAC CONTRACTORS, ET AL)
Defendant) 58TH JUDICIAL DISTRICT

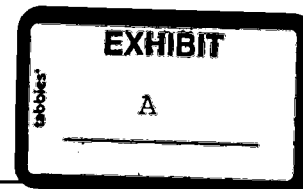
TRANSCRIPT OF REPORTER'S NOTES
SETTLEMENT HEARING
OCTOBER 21, 1999

HON. DONALD J. FLOYD, JUDGE PRESIDING

Reported By:

JERRIE L. BROWN, C.S.R.
OFFICIAL COURT REPORTER
172nd Judicial District Court
1001 Pearl Street
Beaumont, Texas 77701

COPY



Jerrie L. Brown, C.S.R.

1 APPEARANCES:

2 JOEL C. THOMPSON
3 Berry & Thompson
4 2727 Allen Pkwy., Suite 800
Houston, Texas 77019
ATTORNEY FOR THE PLAINTIFFS

5 JAMES R. OLD, JR.
6 Germer & Gertz
805 Park Street
7 Beaumont, Texas 77701
ATTORNEY FOR BO-MAC CONTRACTORS, INC.

8 MICHELLE SMITH
9 Mehaffy & Weber
2615 Calder Ave..
10 Beaumont, Texas 77701
ATTORNEY FOR URETEK, U.S.A.

11 WILLIAM S. JACKSON
12 TIM BALDWIN
Leuders & Boanerges
13 9432 Old Katy Rd., Suite 100
Houston, Texas 77055
14 ATTORNEY FOR PROGRESSIVE INSURANCE and
B.G. ANDREWS

15 TIMOTHY W. FERGUSON
16 Ferguson Firm
1122 Orleans
17 Beaumont, Texas 77701
ATTORNEY AD LITEM FOR PLAINTIFF,
18 CLIFFORD COX

19 BRADY WHITAKER, trust officer
20 Southwest Guaranty Trust

1 OCTOBER 21, 1999:

2 MR. THOMPSON: Judge, my name is Joel Thompson
3 and I represent the plaintiff. And before we begin to offer
4 any evidence, if the Court choose, I could spend about two
5 minutes giving you a little bit of background on this case and
6 what it is we're going to try to do today.

7 THE COURT: Okay.

8 MR. THOMPSON: There's really two things that we
9 want to do today, and that is, the Court to approve the
10 settlement we've reached, and the second thing is for the
11 Court to create a trust that a portion of the money is going
12 to go into. The other portion of the money is going into a
13 structure that is going to pay into the trust, that we'll
14 explain in further detail a little bit later.

15 But this gentleman, the plaintiff, that we're
16 here to talk about, is a gentleman by the name of Clifford
17 Cox. Clifford Cox was injured in an automobile accident made
18 the basis of this lawsuit, and as a result of one of his
19 injuries, so the plaintiffs say, he suffered significant head
20 injuries and trauma to his brain.

21 About several months ago, maybe a year and a
22 half to two years after the accident, Clifford was living in
23 Texas and he left and went to Pennsylvania. And while he was
24 in Pennsylvania he shot and killed an individual -- he
25 allegedly shot and killed an individual, for which he was

1 arrested and now resides in the county jail in a small town in
2 Pennsylvania awaiting trial.

3 As we sit here to ask you to approve this
4 settlement, it's my understanding that his pretrial motions in
5 his criminal case are going to happen today as well.

6 Now, with that background, knowing those facts,
7 we were able to mediate this case and come up with a
8 settlement that is agreeable to all parties. Mr. Cox has no
9 parents and no children and no wife. We brought this case
10 through his sister, Linda Estrada, as next friend, and she is
11 here today to offer evidence as to her understanding of the
12 settlement.

13 And with the Court's permission I'd like to call
14 her to the stand and offer some evidence.

15 THE COURT: Okay. Would you raise your right
16 hand, ma'am.

17 (THE WITNESS WAS SWORN)

18 THE COURT: Thank you. You may have a seat.

19 LINDA COX ESTRADA,
20 having been first duly sworn, testified as follows:

21 EXAMINATION

22 BY MR. THOMPSON:

23 Q. Linda, I need for you first to state your full name
24 for the record, please.

25 A. My name is Linda Cox Estrada.

1 Q. And I take it by your middle name, you are a sister
2 to Clifford Cox, the plaintiff in this case?

3 A. That's correct.

4 Q. And you were aware that in May of '97 Clifford was
5 injured in a car wreck?

6 A. Yes, I'm aware of that.

7 Q. And you brought this lawsuit as his next friend
8 against the defendants that are here today, correct?

9 A. That is correct.

10 Q. You understand that one of the purposes for us being
11 here today is to completely settle any claim that Clifford may
12 have against any of the defendants that are in this lawsuit?

13 A. That is my understanding.

14 Q. Okay. You understand that if we wanted to, I guess,
15 we could try the case to a jury; but you understand you have
16 the right to a jury trial and that if the Court approves this
17 settlement today then there will be no jury trial?

18 A. Yes, that's my understanding.

19 Q. And if you had decided to try this case to a jury,
20 the jury may award Clifford more money than this settlement or
21 less money than this settlement, or no money at all?

22 A. Right. I understand that.

23 Q. You understand also that if the Court approves this
24 settlement, regardless of what happens in the future, Clifford
25 will never be able to, either on his own or through you, come

1 back and try to get any more money from the defendants that
2 are here today or their insurance carriers; that if the Court
3 approves this settlement, this claim that Clifford has is
4 over?

5 A. Yes.

6 Q. Linda, you understand -- and you and I have
7 talked -- that the way the settlement is divided, that the
8 total amount of recovery to Mr. Cox is going to be \$1,375,000,
9 correct?

10 A. Yes, that's right.

11 Q. And you understand that the first thing we have to
12 do is pay Medicaid because they've got a lien in the case on
13 Clifford's medical bills, right?

14 A. Yes, that is right.

15 Q. And it's your understanding that the Medicaid lien
16 is \$67,221.46?

17 A. That's right.

18 Q. Also, you've been made aware that the total case
19 costs on behalf of Clifford are \$20,864.10?

20 A. Yes, that's right.

21 Q. And you know that the attorney's fees in the case
22 are 40 percent?

23 A. Right.

24 Q. Which leaves Clifford a net amount of \$763,803.04?

25 A. That's right.

1 Q. Okay. Now, we've talked about different ways to
2 handle this money, correct?

3 A. Yes, we did.

4 Q. And you understand that what we're going to do is
5 use about two-thirds of that money and purchase a structure,
6 correct?

7 A. That's right.

8 Q. And the other third of that money, approximately, is
9 to go into a trust, a 142 Trust, for Clifford Cox?

10 A. Yes, that's correct.

11 Q. And the structure -- the payments from the structure
12 will be made into the trust?

13 A. Right. Monthly.

14 Q. All right. Are you here today to ask the Court to
15 approve this agreement?

16 A. Yes, that's what I'm here for.

17 MR. THOMPSON: Okay. I'm going to pass the
18 witness for now, Your Honor, as far as the settlement. I may
19 have some more questions -- I will have some more questions
20 for her when we start talking about the trust, but for the
21 purposes of the settlement of the case I'll pass the witness.

22 THE COURT: Okay.

23 MR. OLD: If I can have just a minute with
24 Mr. Thompson to ask one quick question.

25 THE COURT: All right.

EXAMINATION

BY MR. OLD:

Q. Mrs. Estrada, my name is Jay Old and I'm here on behalf of Bo-Mac Contractors, one of the defendants in the lawsuit that you've brought on behalf of Mr. Cox. Okay?

A. How do you do?

Q. Good to see you. We met, actually, once at your house.

A. Yes, that's right.

Q. You remember that?

A. I do remember.

Q. And at that time you were keeping Clifford there at your home and he was living with you, and we came down and interviewed both him and you. Do you remember?

A. I do remember.

Q. Okay. One of the things I gathered through that meeting was that Clifford sort of is his own person, but he was not necessarily all there.

A. That's correct.

Q. Do you agree with that?

A. Yes, I do agree.

Q. I know there have been some evaluations done of Mr. Cox, and you had agreed to have those evaluations done on his behalf; is that right?

A. That is correct.

1 Q. And if you don't mind, I'll just sit back down.

2 MR. OLD: Is that okay, Your Honor?

3 THE COURT: That's fine.

4 Q. As part of that, is it your understanding that the
5 psychiatrists and the neuropsychologist who observed and
6 examined Mr. Cox determined, after visiting with him and you
7 and others, that he's not capable of handling his daily
8 affairs or managing his daily affairs?

9 A. Yes, that is my understanding.

10 Q. Do you agree with that?

11 A. I do agree.

12 Q. In the time that he lived there with you after this
13 accident, did you feel like Clifford was capable of making
14 financial decisions or personal daily care decisions on his
15 own?

16 A. To a degree he can. I mean, he knew he needed to
17 brush his teeth and shave; personal care, he was aware of
18 that.

19 Q. But he was not -- was he capable at the time of
20 making decisions about finances or handling his own monetary
21 needs or perhaps even consulting with Mr. Thompson in handling
22 this lawsuit?

23 A. He was not.

24 Q. He kind of has a little bit of a fantasy world that
25 he zips in and out of at times; is that fair to say?

1 A. That is very true.

2 Q. Now, as I understand it, you've not made an
3 affirmative claim as a party in this lawsuit on your own
4 behalf; is that right? In other words, you're not making --
5 you've not brought a lawsuit on your own in this case?

6 A. No. That is correct.

7 Q. Even though you lost family members in this
8 accident.

9 A. I did lose family members.

10 Q. And I think you've already stated this but I want to
11 make perfectly clear that you understand that there will be no
12 further claim as a result of this settlement brought by or
13 through Mr. Cox against Bo-Mac or the Texas Department of
14 Transportation or its contractors out there, including a
15 company called Crabtree Barricade Services or Uretex, USA. Do
16 you understand that?

17 A. Yes, I do understand that.

18 Q. You're agreeing to extinguish all of those claims
19 that may have been applicable to this accident; is that right?

20 A. I agree to that.

21 Q. Okay. And you also are waiving a right to a jury
22 trial as you mentioned before?

23 A. I am waiving that right.

24 Q. Have you gone over with your attorneys for Mr. Cox
25 the distribution of the funds that we talked about just

1 briefly a minute ago, the trust and the structured settlement?

2 A. Yes, we have gone over those figures.

3 Q. And are you comfortable that that's in Mr. Cox's
4 best interest?

5 A. I believe it is.

6 Q. Now, I understand some of that money may actually be
7 allocated to assisting his defense in the criminal proceeding
8 as well?

9 A. That is correct.

10 Q. And it would be available, should the need arise, to
11 help pay for his future medical costs in the event he is not
12 incarcerated for any period in the future?

13 A. That is also correct. Yes.

14 MR. OLD: Your Honor, that's all I have for this
15 witness. I appreciate it.

16 THE COURT: Okay.

17 EXAMINATION

18 BY MS. SMITH:

19 Q. Mrs. Estrada, my name is Michelle Smith. We've met
20 before?

21 A. Yes. Good morning, Michelle.

22 Q. How are you?

23 A. All right.

24 Q. I just have one quick question for you. To your
25 knowledge your brother is not married currently; is that

1 right?

2 A. He has never been married.

3 MS. SMITH: Thank you.

4 THE WITNESS: You're welcome.

5 EXAMINATION

6 BY MR. FERGUSON:

7 Q. Mrs. Estrada, my name is Tim Ferguson. I'm the
8 appointed ad litem on behalf of Mr. Cox.

9 You know who I am, don't you?

10 A. Yes. Good morning, Mr. Ferguson.

11 Q. Good morning.

12 I want to make sure that you understand, so
13 there is never any confusion in the future, that all of the
14 moneys that have been delegated to Mr. Cox are to be used for
15 his exclusive use and benefit.

16 A. Yes, I agree to that.

17 Q. You understand that you're not going to be
18 compensated in any manner out of the money that's being set
19 aside for Mr. Cox?

20 A. I understand that.

21 MR. THOMPSON: Well, let me say this, Tim.
22 Excuse me for interrupting.

23 Judge, there are going to be -- when we get to
24 the portion about setting up the trust, I believe -- and Brady
25 Whitaker, feel free to interject here -- we're going to ask

1 the Court to, in setting up the trust, allow for certain
2 provisions for that money to be used.

3 And it was my intention today to do two things.
4 And the first one was to allocate money to Mr. Cox's criminal
5 defense attorney in Pennsylvania, who he has had family
6 relatives up there that he hired -- that hired this attorney
7 for him, with the understanding that Clifford would soon be
8 having some money to pay his criminal lawyer's fee.

9 And the second thing I was going to do was to
10 ask the Court to direct the trust to pay Mrs. Estrada. And
11 while Mrs. Estrada does not have a legal claim because she was
12 not a wrongful death beneficiary and was not injured --
13 because she doesn't have a legal claim, she hasn't brought
14 one, but I was going to ask the Court to approve, in the
15 formation of the trust, a payment to her for the two years
16 that she kept her brother in her apartment rent-free, no
17 contributions to food, that kind of thing.

18 I should, perhaps, have brought it up in the
19 settlement. I was -- my purpose was to wait for the trust to
20 do that.

21 THE COURT: Okay. All right.

22 MR. THOMPSON: But there will be no document
23 made or in the trust that provides Linda Estrada with any
24 continuing benefits or provides her with any right to that
25 money.

1 THE COURT: Okay.

2 Q. BY MR. FERGUSON: Mrs. Estrada, all I'm asking is
3 that it's your understanding and your agreement that you will
4 not personally profit out of the moneys that are going to be
5 allocated to Mr. Cox, with the possible exception of being
6 reimbursed for some necessary living expenses?

7 A. That is my understanding, yes.

8 Q. You've been able to be around him for many years
9 since this accident and you've been able to observe him?

10 A. I have.

11 Q. You were asked generally some questions about him
12 and how your perception of him is. And my question to you is,
13 do you agree that Mr. Cox exhibits major behavioral problems?

14 A. Yes, I agree.

15 Q. Do you agree that he appears to be unaware of
16 deficits, lack of insight into his situation, paranoia,
17 grandiose thinking and anger?

18 A. I agree to that as well.

19 Q. Do you agree that in your opinion, based on your
20 observations, Mr. Cox is not capable of making decisions about
21 his medical care, finances, or legal or business affairs?

22 A. I definitely agree to that.

23 Q. Thank you, ma'am.

24 A. You're welcome.

25 MR. FERGUSON: That's all I have.

1 THE COURT: Okay.

2 THE COURT: Mr. Thompson?

3 MR. THOMPSON: I don't have any more questions,
4 Your Honor.

5 MR. OLD: We have one more quick question.

6 EXAMINATION

7 BY MR. OLD:

8 Q. Are you aware of any children that were fathered by
9 Clifford Cox?

10 A. I am not.

11 Q. Or adopted by him?

12 A. No. There are none.

13 MR. OLD: Thank you.

14 THE COURT: You may step down, ma'am. Thank
15 you.

16 MR. THOMPSON: Jay, let's discuss with the Judge
17 about what we want to do about giving him an order to sign.

18 MR. OLD: Sure. But, first of all, I think we
19 ought to offer up these reports from Dr. Davis and Dr. Boake,
20 which --

21 MR. FERGUSON: I've got it attached to my
22 report.

23 MR. OLD: Okay.

24 MR. THOMPSON: Judge, we looked at -- Jay had
25 prepared a judgment and a release this morning that I looked

1 at and had some problems with some of the wording, none of
2 which has an effect on what we've just done.

3 THE COURT: Okay.

4 MR. THOMPSON: And it would be my request, if we
5 could, to maybe go back to Jay's office and redo it in such a
6 way that reflects what the evidence was today, and then bring
7 it back for your signature.

8 THE COURT: That's fine.

9 MR. THOMPSON: Okay. That's fine.

10 MR. OLD: I'd like to tender Dr. Boake's report,
11 as well, as an exhibit if the Court pleases. It's just --
12 it's somewhat supplemental to Dr. Davis's. Dr. Boake did an
13 independent medical examination --

14 (PLAINTIFF'S EXHIBIT 1 WAS MARKED)

15 -- of Mr. Cox and came up with some findings
16 that support and are relied upon by Dr. Davis in the report
17 attached to the ad litem's motion. It just furthers the
18 evidence that Mr. Cox is simply incompetent to manage his
19 affairs and supports the appointment of the ad litem in this
20 case.

21 THE COURT: All right. Any objection to that?

22 MR. THOMPSON: No objections, Your Honor.

23 MR. OLD: This is marked as Exhibit 1, Your
24 Honor.

25 THE COURT: It will be admitted.

1 (PLAINTIFF'S EXHIBIT NO. 2 WAS MARKED)

2 MR. THOMPSON: In addition to the report by Dr.
3 Boake I want to offer into evidence Exhibit Number 2, which is
4 a life care plan, actually it's called a Needs Assessment and
5 Medical Cost Analysis, that was prepared by a nurse at our
6 request, Karen Bobetic. And she had traveled down and visited
7 with Clifford and spent some time with Mrs. Estrada and, as a
8 result, prepared this report that basically details the costs
9 that Clifford has incurred since the accident and will incur
10 in the future as to taking care of his basic needs.

11 And the only reason I offer this, Your Honor,
12 is for evidence relating to the portion of the trust that is
13 reimbursed to Mrs. Estrada. But I'll offer Exhibit Number 2.

14 THE COURT: Okay. It will be admitted.

15 Is there anything else?

16 MR. THOMPSON: One other thing, Your Honor. I
17 would like to -- Brady Whitaker is involved in this case and
18 he's going to be the attorney that is creating the trust
19 documents for us, and I would feel a lot more comfortable if
20 Mr. Whitaker just took about a minute or two and explained to
21 Your Honor how we're setting up the structure and the trust
22 and that type of thing.

23 THE COURT: Okay.

24 MR. WHITAKER: Your Honor, my name is Brady
25 Whitaker. I'm a lawyer here on behalf of Southwest Guaranty

1 Trust. After reviewing a number of options, what is
2 contemplated in this case is a standard Section 142 Trust that
3 tracks the statutory language, in that Mr. Cox certainly
4 qualifies for that.

5 The only two exceptions to tracking the
6 statutory language are, number one, the reimbursement
7 provision for Mrs. Estrada, which we believe clearly falls
8 within the terms of the statutory language, but for purposes
9 of clarity wanted to carve out a specific distribution for
10 that.

11 And secondly, with regard to his attorney's
12 fees, we want to state specifically that the trust is
13 authorized to pay those. Again, I believe that's clearly
14 contemplated in the statute and is in compliance with the
15 statute, but because of the situation wanted a specific
16 provision that indicates that we're authorized to pay his
17 attorney's fees.

18 THE COURT: Okay.

19 MR. WHITAKER: Absent those two issues, there is
20 nothing other than just the statutory language in Section 142
21 of the Texas Property Code. And I'll be happy to answer any
22 questions you have with regard to the trust, the trustee, or
23 what's contemplated.

24 And we will prepare an application, an order and
25 a trust agreement for the Court's entry, setting up and

1 establishing the trust.

2 THE COURT: Okay. That will be fine. I don't
3 have any questions.

4 MR. WHITAKER: Thank you, sir.

5 MR. FERGUSON: Your Honor, I'm Tim Ferguson, and
6 as I mentioned, I'm the appointed attorney ad litem for
7 Mr. Cox. I tendered to the Court a report from Timothy W.
8 Ferguson, Attorney Ad Litem for Clifford Cox.

9 I've served as the ad litem since December 1998,
10 and within my report I think are detailed out the activities
11 that I've conducted, in part, in the ad litem representation
12 of Mr. Cox.

13 Specifically, Judge, Exhibit C is an affidavit
14 from myself setting forth the time and the background that I
15 think qualifies me for the time to be compensated, if at all,
16 from the Court for the activities that I've done on behalf of
17 Mr. Cox.

18 Because I may have a concern in the future about
19 whether or not an affidavit is proper in lieu of live
20 testimony, I guess I would ask all the representatives here if
21 they would stipulate that my affidavit would serve as
22 testimony.

23 Does anyone have an objection to that?

24 MR. OLD: No, Your Honor, we do not.

25 MS. SMITH: No, Your Honor.

1 MR. THOMPSON: No objection.

2 THE COURT: Okay.

3 MR. FERGUSON: And with that, Your Honor, that's
4 my tender. And I'm asking the Court to approve a total ad
5 litem fee in the amounts between \$36,750 and \$37,500 as a
6 reasonable fee for the representation provided to Mr. Cox in
7 this matter.

8 THE COURT: Any objections or any comments on
9 that?

10 MR. OLD: Your Honor, our only -- it's not
11 necessarily an objection. The request is that the ad litem's
12 fee be divided equally between the four parties that are here
13 paying money to settle this case today, that being Progressive
14 Insurance as the UM carrier; B.G. Andrews, the driver who
15 caused this collision and set about the chain of events that
16 brought us here today; Bo-Mac Contractors; and Uretex, USA.

17 THE COURT: Okay. I'll set the fee at --
18 Did you want to say something?

19 MR. BALDWIN: Yes, Your Honor. My name is Tim
20 Baldwin and I'm here for a gentleman who is the attorney of
21 record on behalf of Progressive Insurance. And I would have
22 an objection to splitting the fee on the ad litem's fee
23 equally among four parties, or however.

24 I want to point out to the Court that on behalf
25 of Progressive, I believe -- and Mr. Ferguson can speak to

1 this, he talked to Mr. Magee, I think, yesterday -- I think
2 Progressive is paying out a total of \$25,000, and I don't
3 think even we were actually a party to the initial litigation
4 in this suit. So, it would be wholly unfair for us to pay an
5 equal amount or share of the ad litem's fee considering the
6 \$25,000 of the total that was paid out.

7 MR. OLD: Well, the point is that everyone is
8 paying money, regardless of equality, based upon an effort to
9 resolve the case. They're paying the full limits of their
10 liability policy. My client is certainly not paying the full
11 limits of its insurance but it's paying what it deems to be an
12 appropriate amount.

13 There are any number of ways that one could
14 divide up what would be a, quote, "fair way" to distribute the
15 cost of this ad litem. In fact, Progressive is the one that
16 requested the ad litem at the very start and the Court -- when
17 the Court appointed Mr. Ferguson as the ad litem, did so at
18 the specific insistence of Progressive. And literally, the
19 initial motion to the Court was that he was only to be
20 appointed for the purposes of receiving the funds paid by
21 Progressive. Progressive has not paid those funds yet,
22 although they have been tendered, and they have remained in
23 this matter throughout the pendency of this case to the point
24 that we are today.

25 So, it's fair to equally distribute those funds

1 amongst all the defendants. Mr. Andrews who caused the wreck
2 is not paying that much money either; I don't know if it's 25
3 or \$40,000 that he's paying. It's a lower number. But
4 certainly he bears at least an equal share of the cost of the
5 ad litem fees. I think the Court would agree with that.

6 And, so, it's our position it's only fair to
7 divide it up equally amongst the paying parties.

8 MR. FERGUSON: Your Honor, if I may. My
9 position on that is that Bo-Mac and Uretex, two of the
10 defendants, are paying a total of \$1.3 million dollars to
11 Mr. Cox. B.G. Andrews is paying a total of \$20,000. State
12 Farm, which is Mr. Cox's carrier, is paying \$30,000.
13 Progressive is paying \$25,000. I would suggest to the Court
14 that an equitable division of the ad litem fees should be in
15 proportion to those amounts.

16 MR. OLD: Your Honor, that's just wrong. That's
17 just not fair, and I'll tell you why. We're down here paying
18 money for the fray of other people. And that's just the facts
19 of life and we accept that. But ad litem fees are costs, and
20 the parties who are paying money should be paying the costs of
21 the ad litem's fees.

22 THE COURT: Okay. I will --

23 MR. BILL JACKSON: Excuse me, Judge. I
24 apologize, Your Honor. I'm Bill Jackson and I'm here for
25 Mr. Andrews. And the only thing I would note, Your Honor, is

1 that Mr. Andrews' insurance policy is through Century
2 Insurance Company. They have tendered in this matter every
3 dime of insurance coverage that is available; they have no
4 more money.

5 If Mr. Andrews is assessed any ad litem fees in
6 this case it would come out of Mr. Andrews personally; he
7 would have to be personally responsible for that. He's 72
8 years old and, in essence, doesn't have any assets to speak
9 of.

10 So, basically, that is our problem and our
11 position on the matter. And, obviously, we would be for -- if
12 there is an assessment of ad litem fees against Mr. Andrews,
13 that it be proportional to the amount of money that he paid as
14 it is to the other parties in the case, Your Honor.

15 MR. OLD: For purposes of the record, Your
16 Honor, I think I need to object to the statements made by
17 Mr. Jackson because they are statements by an attorney. I
18 believe they're based on hearsay, without foundation, and they
19 also contain legal conclusions. So I would ask that they be
20 stricken under that basis.

21 And I believe I'm required now --

22 THE COURT: Are you saying that he has no
23 factual basis to support that?

24 MR. OLD: Exactly. And there needs to be
25 briefing and case law brought together. The policy needs to

1 be brought to the Court's attention. Evidence of the
2 financial status of Mr. Andrews needs to be brought to the
3 Court's attention, if indeed he's going to be called upon to
4 pay.

5 My understanding is that costs are taxed and
6 they're paid by insurance companies every today, even though
7 they have tendered their full policy limits. Moreover, they
8 haven't paid their policy limits yet; they have only tendered
9 it. So there is another additional legal distinction there to
10 be addressed by the Court.

11 So, while he may ultimately be correct, he's not
12 brought any evidence to support his testimony, if that's what
13 it's offered as. And so we object to it on that basis.

14 MR. JACKSON: In response, I would also note
15 that Mr. Old's statement that his interpretation is that
16 somehow ad litem fees are set apart from policy, you know --
17 the policy that we're hearing from -- is also likewise a
18 hearsay statement.

19 I have simply come before this Court and have
20 given my client's insurance carrier's position. Their
21 position is, within days of this accident's occurrence they
22 tendered their full policy limits in this case, every dime
23 they had. There was no more money out there.

24 Mr. Andrews, on the other hand, has gone forward
25 in this case as a defendant, and with the settlement of this

1 case has, in fact, been settled out as a defendant for
2 \$20,000 -- actually, a total of \$40,000. 20 as to one
3 defendant and 10 as to the other two plaintiffs.

4 On the other hand, we have Bo-Mac and Uretex
5 that have paid what has been a 7-figure amount. The only
6 equitable way that this can be done is to have a pro rata
7 share as to the ad litem fees as to what was paid in the case.

8 The argument has been made somehow that Bo-Mac
9 is having to bear an unreasonable proportion of the case. It
10 was their decision to settle the case. They could have gone
11 to trial, could have tried the case, but they chose to settle
12 the case for the amount of money they chose to settle it for.

13 I, on the other hand, on behalf of my client,
14 settled my client's case for \$40,000. That's the amount that
15 the plaintiffs accepted in this case.

16 The only equitable way to divvy this up, in
17 essence, is by the percentages of what each one paid.
18 Everyone in this case had the option of defending the case or
19 taking it to trial.

20 Now after the fact, after the case is settled,
21 after they've paid what they felt is the lion's share of the
22 settlement in the case -- but they did so voluntarily -- they
23 want to now come back and say, "Oh, no, we need to have a
24 different distribution of the ad litem fees" after the fact.

25 If they did not feel it was equitable to start

1 with, then they had their option to go to trial, which they
2 chose not no do.

3 MR. OLD: Your Honor, I again object because
4 that's apparently intended to be testimony and it's hearsay
5 and it's flat-out wrong.

6 The truth of the matter is, there was no
7 agreement made as to the division of ad litem fees in this
8 case. Just like Mr. Jackson obtained a settlement to pay the
9 liability issues in this case for a said sum of money, we did
10 the same thing. But there was no agreement made at that time
11 that limited his liability or his payments to ad litem fees.
12 Nobody did.

13 Nobody made any agreement finalizing
14 understandings between the parties as to who paid what ad
15 litem fees or how much. And, so, it's the same exact
16 position, actually, we're in that he's in. We all knew when
17 this case came before the Court for resolution and acceptance
18 of an approval of the settlement agreement, that someone would
19 be assessed ad litem fees as costs, and it would most likely
20 would be all of us, because that's the way it's fair to do it.

21 And there's all kinds of ways to divvy this
22 thing up. The fact that Bo-Mac and Uretex had more insurance
23 than Mr. Andrews shouldn't mean that their carriers pay costs
24 disproportionately, since all the parties in this case are
25 paying money to resolve the issues and resolve the case.

1 And that's all we ask, that it be divvied up
2 between the four parties. It would be \$10,000, roughly,
3 apiece to pay. It's assessed as costs. That is what the
4 rules say, it's what case law says, as the Court is already
5 aware, and that's what we're requesting.

6 And, Your Honor, just for my clarification. I
7 don't know if any of these objections have been approved, but
8 perhaps the Court could at least rule on them and I'll have
9 the record if this needs to go any further.

10 THE COURT: I'll sustain the objection.

11 What I'll do is, I'll set the fee at \$37,500,
12 and require that the fee be divided up equally.

13 MR. FERGUSON: And, Your Honor, is there a time
14 limit that you would order the defendants to tender that ad
15 litem fee?

16 THE COURT: 30 days.

17 Is there anything else?

18 MR. THOMPSON: None from the plaintiffs, Your
19 Honor.

20 THE COURT: Okay.

21
22 (END OF PROCEEDINGS)
23
24
25

1 THE STATE OF TEXAS)

2 COUNTY OF JEFFERSON)

3
4 I, JERRIE L. BROWN, Official Court Reporter in and for
5 the 172nd District Court of Jefferson County, State of Texas,
6 do hereby certify that the above and foregoing contains a true
7 and correct transcription of all portions of evidence and
8 other proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 offered by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ _____ and will
17 be paid by _____.

18 WITNESS MY OFFICIAL HAND this the _____ day of
19 _____, 1999.

20
21
22 JERRIE L. BROWN, Texas CSR #1611
23 Expiration Date: 12-31-2000
24 Official Court Reporter, 172nd District Court
25 Jefferson County, Texas
1001 Pearl Street
Beaumont, Texas
(409) 835-8485

Jerrrie L. Brown, C.S.R.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

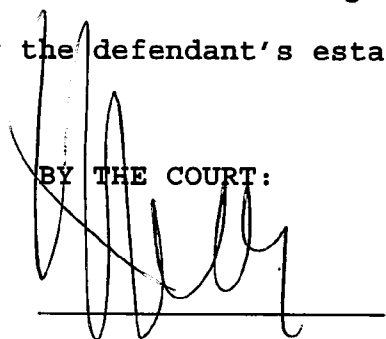
CLIFFORD COX, an incapacitated
person by JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRADA, individually and as next
friend (ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:
:
:

ORDER

AND NOW this 18th day of January, 2001, IT IS THE ORDER OF
THIS COURT that all proceedings in the above captioned matter
including the court's ruling on preliminary objections shall be and
are hereby stayed pending resolution of the legal proceedings in
the State of Texas regarding the defendant's estate.

BY THE COURT:



FILED

JAN 19 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:
: No. 00-328-CD
: Jury Trial Demanded
Document filed:
: Motion for Joinder of
: a Related Party
:
: Filed on behalf of:
Plaintiff
:
: Attorney for Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

FILED

JUL 2 n 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

: Jury Trial Demanded
:
:

RULE TO SHOW CAUSE

AND NOW, this ^{3rd} day of ~~July~~ ^{August}, 2001, upon consideration of Plaintiff's Motion for the Joinder of a Related Party, a Rule is granted upon the following defendants to appear and show cause why the prayer of said Motion should not be granted:

Clifford Cox
c/o John R. Ryan, Esq.
P. O. Box 131
Clearfield, Pa., 16830

Linda Estrada
P. O. Box 705
Santa Fe, Texas, 77517

Southwest Guaranty Bank
c/o Mark Weaver, Esq.
211½ Locust Street
Clearfield, Pa., 16830

Linda Estrada
1003 Pirtle St.
Apt. #3
La Marque, Texas 77568

Rule returnable the ^{9:00} 12th day of ~~September~~ ^{August}, 2001, at
o'clock ⁴ M. in Courtroom No. , Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

FILED

AUG 03 2001
01/108/4cx atty Coryley
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA,	:	Jury Trial Demanded
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO.,N.A.	:	
Defendants	:	

NOTICE

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following pages, you must take action on or before _____ by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the court without further notice for relief requested by the petitioner or movant. You may lose rights important to you.

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

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PENNSYLVANIA, 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-328-CD
CLIFFORD COX; LINDA ESTRADA,	:	Jury Trial Demanded
individually and as next friend	:	
(ANF) of Clifford Cox, and	:	
SOUTHWEST GUARANTY TRUST CO.,N.A.	:	
Defendants	:	

MOTION FOR THE JOINDER OF A RELATED PARTY

AND NOW comes the plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick who by and through her attorney, John R. Carfley, Esquire, respectfully moves this court for the joinder of Clifford Cox as a related party Plaintiff pursuant to Rule 2228 of the Pennsylvania Rules of Civil Procedure and in support thereof avers as follows:

1. Clifford Cox is currently an incapacitated person and is represented in this action by John R. Ryan, Esquire, as his attorney and Guardian ad litem.

2. The said John R. Ryan was appointed as Guardian ad litem pursuant to Rule 2053 et seq of the Rules of Civil Procedure and has acted in that capacity since his appointment on May 5, 2000.

3. The said Clifford Cox was alleged to have shot and killed John Dimmick on or about May 10, 1999, and is currently incarcerated at the Forensic Unit of the Warren State Hospital as

a result of charges having been filed by the Pennsylvania State Police stemming from this shooting.

4. Subsequent to his appointment as Guardian ad litem John R. Ryan negotiated a settlement with the Estate of John Dimmick which settlement was reduced to a written agreement which was presented to and approved by the court and reduced to judgment on October 25, 2000. This judgment was thereafter transferred to the State of Texas pursuant to the Uniform Enforcement of Foreign Judgments Act in an attempt to execute upon a trust fund and an annuity being administered by the Southwest Guaranty Bank on behalf of the beneficiary.

5. The above captioned matter was initially filed by the plaintiff against Clifford Cox, Linda Estrada, and Southwest Guaranty alleging that these parties jointly and severally conspired to defraud the plaintiff by creating a spendthrift trust under Section 142 of the Texas Property Code.

6. It is averred that since the date of the settlement, Cox has acknowledged his role in the wrongful death of the decedent and has sought to compensate the estate from proceeds remaining in his trust.

7. As a result of the settlement negotiated by Attorney Ryan, Cox has retained assets in the trust fund for his own use and benefit which assets are currently in danger of being dissipated as a result of the actions of a Guardian ad litem appointed by the Jefferson County Court in Texas allegedly to consider the propriety of the actions taken on Cox's behalf in the Commonwealth of Pennsylvania.

8. It is believed and therefore averred that the attorney who represented Cox in the underlying personal injury suit in Texas from which he garnered the assets currently being administered in trust, agreed that a portion of said assets would be paid over directly to Cox and his next friend, Linda Estrada, who then purchased an annuity which guaranteed a sum certain to Cox for a period of ten (10) years or for his life whichever was longer.

9. When Cox and/or his next friend, Linda Estrada received the said sums from the personal injury settlement and thereafter transferred said sums into the spendthrift trust and/or the annuity Cox became the settlor of his own trust, thus calling into play the self settlor rule which is recognized in both the Commonwealth of Pennsylvania and the State of Texas as a violation of the Uniform Fraudulent Transfer Act.

10. The self settlor rule which is acknowledged in both Pennsylvania and Texas case law simply stated prevents an individual from creating a spendthrift trust for his own benefit in order to exclude legitimate creditors from seeking enforcement of judgments through execution upon the proceeds of the trust.

11. At present despite all the efforts of Cox's Pennsylvania ad litem and counsel for the Dimmick estate, no progress has been made in the collection and/or enforcement of the judgment from the proceeds of the trust currently being administered by Southwest Bank.

12. To the contrary, the Jefferson County Court which has assumed jurisdiction over the trust has appointed a Guardian ad

litem who under the auspices of that court travelled to the State of Pennsylvania, retained Pennsylvania counsel allegedly for the purpose of securing advice with respect to Pennsylvania law on the underlying validity of the judgment and all other matters coincident to the litigation and upon return to Texas filed an appeal to the Texas Appellate Court challenging the manner in which the judgment was entered for record in the State of Texas. (See copy of Appellate Brief filed by Brian Sutton, Esquire, who was appointed as Guardian ad litem for Cox by the Jefferson County Court in June of 2001 . Said Brief is attached hereto as Exhibit A)

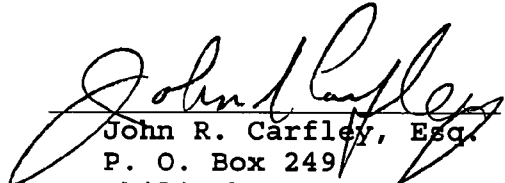
13. It is believed and therefore averred that the ad litem is attempting to secure compensation for his services from the principal of the trust and will further dissipate the trust which has already experienced substantial losses as a result of investments entered into by the Trustee in the stock market. (See accounting of trust recently provided by Attorney John Haught, Counsel for Southwest Guaranty, attached hereto as Exhibit B)

14. It is believed and therefore averred that in this particular instance Clifford Cox and the Dimmick Estate have common goals in preserving the trust res and in securing the release of the funds currently being administered by Southwest Guaranty Bank and in further securing the release of funds being paid into the trust fund by Keyport Insurance without further investment strategy being employed by Southwest Guaranty and without additional payment to the trustee and the Texas ad litem for what can only be

construed as frivolous litigation and/or appeals.

15. It is believed and therefore averred that the court should order the transfer of the Defendant Clifford Cox to the role of co-plaintiff in this action so that Plaintiff if they so choose may thereafter transfer this litigation to the Federal District court for the Western District of Pennsylvania based on diversity of citizenship and based on an amount in controversy in excess of \$75,000.00.

WHEREFORE, your Movant respectfully requests this Honorable Court to enter an Order directed to the parties involved to appear and show cause why Clifford Cox should not be joined as a related Plaintiff under Rule 2228 and/or Rule 2227(b) of the Pennsylvania Rules of Civil Procedure.


John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: July 16, 2001

Rec'd
7-2-01
y

FILE COPY
FILED

CAUSE _____

IN THE COURT OF APPEALS
FOR THE NINTH DISTRICT
BEAUMONT, TEXAS

JUN 28 2001

CAROL ANNE FLORES, CLERK
COURT OF APPEALS
NINTH DISTRICT
Beaumont, Texas

**RESTRICTED APPEAL OF THE JUDGMENT DOMESTICATING A
FOREIGN JUDGMENT UNDER THE UNIFORM ENFORCEMENT OF
FOREIGN JUDGMENTS ACT
OF**

CAUSE NO. E-164,360

KAY CHURNER, individually
and as executrix of the estate of
JOHN DIMMICK

vs.

CLIFFORD COX, individually and
as an incompetent by his
Guardian Ad Litem, JOHN RYAN, Esq.

§
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§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172^d JUDICIAL DISTRICT

Brian D. Sutton
State Bar Number: 19528000

SUTTON & JACOBS, L.L.P.
398 Pearl Street, Suite 915
Beaumont, Texas 77701
409.833.1100
409.835.4527 (fax)

Guardian ad Litem,
Appointed for Clifford Cox,
an incapacitated person

EXHIBIT
tabbles
A

IDENTITY OF THE PARTIES AND RESPECTIVE COUNSEL

Appellant:

Clifford Cox, an incapacitated person
Brian D. Sutton, his Guardian Ad Litem
SUTTON & JACOBS, L.L.P.
398 Pearl Street, Suite 915
Beaumont, Texas 77701
409.833.1100
409.835.4527 (fax)

John R. Ryan, III, Guardian ad litem for Clifford Cox in Pennsylvania
P.O. Box 131
Clearfield, Pennsylvania 16830

Appellee:

Kay Churner, individually and as executrix of the Estate of John Dimmick
Rick Lewis, attorney
BONEAU & LEWIS, L.L.P.
3800 Park Lane
Port Arthur, Texas 77642-5507
409.983.5188
409.983.4171 (fax)

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STATEMENT OF THE CASE

The case before the Court is a cause below initiated under the Uniform Enforcement of Foreign Judgments Act, found in Chapter 35 of the Texas Civil Practice and Remedies Code, that seeks to execute as a Texas judgment an allegedly final Pennsylvania judgment against the Appellant. Appellees sought to have the 172d Judicial District Court of Texas domesticate the Pennsylvania judgment pursuant to the Uniform Enforcement of Foreign Judgments Act. Appellant herein seeks dismissal of the cause and the vacation of the domestication of the Pennsylvania judgment.

ISSUES PRESENTED

- I. Did Appellees improperly comply with the requirements set forth under Chapter 35 of the Texas Civil Practice & Remedies Code entitled the Uniform Enforcement of Foreign Judgments Act?
 - a. Did the Pennsylvania judgment meet the requirement of a final judgment under Chapter 35 of the Texas Civil Practice & Remedies Code entitled the Uniform Enforcement of Foreign Judgments Act in order that full faith and credit may be afforded it under Texas law?
 - b. Did the Appellee satisfy the requirement under Chapter 35 of the Texas Civil Practice & Remedies Code the Uniform Enforcement of Foreign Judgments Act, specifically §35.004(a), the affidavit requirement?
 - c. Did the failure to properly comply with Chapter 35 of the Texas Civil Practice & Remedies Code entitled the Uniform Enforcement of Foreign Judgments Act, specifically §35.004(a), prevent the issuance of proper notice pursuant to §35.004(b) or §35.005(a)?
 - d. Did the failure of the clerk of court to recognize and notice the Guardian ad litem for Clifford Cox offend a basic notation of due process of law?

- II. Should the Trial Court have appointed a Guardian ad litem in Cause E-164,360 for Clifford Cox, an incapacitated person, as required under Rule 173 of the Texas Rules of Civil Procedure?

STATEMENT OF FACTS

On or about May 18, 1997, Clifford Cox was involved in an automobile collision in which he sustained severe injuries. That case was styled and numbered: A-157,378; *Linda Estrada, ANF of Clifford Cox, Sandy Sil, and Cindy Anderson v. Bo-Mac Constructors, Inc., and B.G. Andrew*, in the 58th Judicial District of Texas.¹ On or about November 9, 1999, in compromise to the May 18, 1997, incident a trust was established for the benefit Clifford Cox, an incapacitated person, under the Texas Property code §142.005.²

During the meantime, Mr. Cox was in Pennsylvania where he was involved in another law suit styled and numbered 99-825-CD, *Kay Churner, individually and as Executrix of the Estate of John Dimmick vs. Clifford Cox, an incapacitated person by John Ryan, Esquire, His Guardian Ad Litem, Linda Estrata, Individually and as next friend of Clifford Cox, Resta Jene Gregori and Darlene A. Gregori, individually and T/D/B/A Jene's Gunshop, Inc. and Unisys Corporation*, in the Court of Common

¹ Please see Appendix Exhibit "A," a copy of the Plaintiffs' Original Petition in cause A-157,378.

² Please see Appendix Exhibit "B," a copy of the order creating a Texas Property code §142.005 trust benefiting Clifford Cox, an incapacitated person.

Pleas of Clearfield County, Pennsylvania.³ On or about May 4, 2000, Clifford Cox was adjudicated an incompetent under the Pennsylvania cause and John R. Ryan, Esquire, was appointed guardian ad litem over Mr. Cox.⁴ On October 25, 2000, the Court of Common Pleas of Clearfield County, Pennsylvania entered an alleged⁵ final judgment with assessment of damages and interest for seven hundred fifty-thousand dollars (\$750,000.00).⁶

On or about December 28, 2000, Appellees filed a cause under Chapter 35 of the Texas Civil Practice and Remedies Code seeking full faith and credit in a Pennsylvania judgment against "Clifford Cox, an incapacitated person by John R. Ryan, Esquire, his guardian ad litem."⁷ Appellees sought to invade the §142 trust and execute the judgment from Pennsylvania.⁸ Per the Pennsylvania Court the judgment creditor is Kay Churner, individually and as executrix of the Estate of John Dimmick and

³ Please see Appendix Exhibit "C," a copy of the Pennsylvania cause of action filed by Kay Churner, *et al.*

⁴ Please see Appendix Exhibit "D," a copy of the order adjudicating the need for a guardian ad litem for Clifford Cox and appointing John Ryan to said position.

⁵ The term "alleged" is used because despite the titling of the document as "Final Judgment" it was not a final and appealable judgment, as other parties remained to the cause. Further and more patently, it was not final as evidence by the attached exhibit "E" when on April 16, 2001, after the alleged final judgment it was requested that John Ryan be re-appointed as ad litem in Pennsylvania.

⁶ Please see Appendix Exhibit "E," containing a copy of the Pennsylvania judgment, alleged to be final.

⁷ Please see Appendix Exhibit "E," a copy of the record in cause E-164,360.

⁸ Please see Appendix Exhibit "E," containing a copy of the letter(s) requesting issuance of a Writ of Execution against the §142 Trust benefiting Clifford Cox, an incapacitated person.

the judgment debtor was "*Clifford Cox, an incapacitated person, by John R. Ryan, Esquire, his guardian ad litem.*" (emphasis added).⁹

On or about January 8, 2001, cause B-163,990 was consolidated with A-157,378. cause B-163,990 concerning an effort to invade the §142 Trust created for the benefit of Clifford Cox and is styled: *Kay Churner, individually and as executrix of the Estate of John Dimmick v. Linda Estrada, ANF of Clifford Cox, Keyport Life Insurance and Southwest Guaranty Trust Co., N/K/A National Fiduciary Services, N.A.* in the 60th Judicial District of Texas.¹⁰ On May 11, 2001, Brian D. Sutton was appointed as Clifford Cox's guardian ad litem in cause B-163,990 which had been previously consolidated with cause A-157,378.¹¹

Two days ago, on June 25, 2001, cause E-164,360 was consolidated into the other two; thereby, for the first time ever in the life of the enforcement action (cause E-164,360), providing Clifford Cox, an incapacitated person, a guardian ad litem in Texas.¹²

SUMMARY OF THE ARGUMENT

The failure by the clerk of court to properly comply with the requirements set forth under Chapter 35 of the Texas Civil Practice &

⁹ Please see Appendix Exhibit "E," the Pennsylvania judgment, alleged to be final.

¹⁰ Please see Appendix Exhibit "F," a copy of the order consolidating cause B-163,990 with A-157,378.

¹¹ Please see Appendix Exhibit "G," a copy of the order appointing Brian D. Sutton guardian ad litem of Clifford Cox in cause B-163,990.

¹² Please see Appendix Exhibit "H," a copy of the order consolidating causes E-164,360 with B-163,990 and A-157, 378 previously consolidated by Exhibit "F."

Remedies Code prevents any judgment of domestication under the Uniform Enforcement of Foreign Judgments Act to issue from a Texas court. Specifically, in the case at bar, the clerk of court should have issued notice to Clifford Cox, an incapacitated person, by and through his Pennsylvania guardian ad litem, John Ryan, as listed on the affidavit filed by Appellees.

Further, the Pennsylvania judgment proffered by Appellees fails to meet the requirement of a final judgment under Chapter 35 of the Texas Civil Practice & Remedies Code entitled the Uniform Enforcement of Foreign Judgments Act and under Texas law should not be afforded full faith and credit.

The clerk of court failed to properly comply with Chapter 35 of the Texas Civil Practice & Remedies Code, entitled the Uniform Enforcement of Foreign Judgments Act, specifically §35.004(a), by listing Clifford Cox, individually, as the judgment debtor, thus preventing the issuance of proper notice pursuant to Texas Civil Practice and Remedies Code §35.004(b) or §35.005(a) wherein the proper judgment debtor should have been *Clifford Cox, an incapacitated person, by John R. Ryan, Esquire, his guardian ad litem*. This improper notice and failure to comply with the standards set forth in the UEFJA offended a basic notion of due process of law in that proper notice was not issued to proper Pennsylvania judgment debtor.

As an original proceeding subject to the rules of Texas courts, the enforcement action that Appellees seek domestication of below failed to comply with Rule 173 of the Texas Rules of Civil Procedure. Under Rule 173 of the Texas Rules of Civil Procedure, as a defendant in Cause E-164,360, Clifford Cox should have been appointed a Guardian ad litem due to his well known incapacitation.

STATEMENT OF APPELLATE JURISDICTION

This court has jurisdiction to hear Appellant's restricted appeal. In a case in which a restricted appeal to the court of appeals is allowed, the restricted appeal must be filed within six months after the date the final judgment or order is signed. VTCA, CIVIL PRACTICES AND REMEDIES CODE §51.013; TRAP 26.1(c). On December 28, 2000, Kay Churner, *et al*, filed a petition for the enforcement of a foreign judgment.¹³ A timely Petition for Restricted Appeal on cause E-164,360 in the 172d District Court of Texas must be filed with the Ninth Court of Appeals on or before June 28, 2001. TRAP 26.1(c). This petition was filed on June 28, 2001, as evidenced by the file stamp issued at the hand of the Clerk of Court of the Texas Ninth Court of Appeals hereon. Having filed prior to the six month deadline, Clifford Cox timely petitioned this Court for review.

Clifford Cox, an incompetent, with John Ryan as his guardian ad litem, was a Defendant in cause number E-164,360 as illustrated by the attempted service of the suit and text of the petition naming Mr. Cox a defendant in order that a foreign judgment may be executed against him in the State of Texas.¹⁴

As evidenced by the Clerk's record, Defendant Cox has not filed any post judgment motions nor any requests for findings of fact in cause E-

¹³ Please see Exhibit "E."

¹⁴ Please see Exhibit "E."

164,360, save this appeal which is entirely to be expected in light of the facts that (i) improper notice was prepared and thus improperly issued, and (ii) no attorney ad litem was appointed for Mr. Cox in Texas. Further, Defendant Cox in no way participated in cause E-164, 360, save this appeal.

The Trial Court Error is Apparent from the Face of the Record of Cause E-164,360 in that Defendant did not receive notice of the suit, violation a basic notion of due process of law.

Having met the requirements for a restricted appeal under the Texas Rules of Appellate Procedure, this Honorable Court has jurisdiction to hear Appellant's complaints herein.

ARGUMENT

PLAINTIFFS IMPROPERLY SOUGHT ENFORCEMENT OF A FOREIGN JUDGMENT AGAINST DEFENDANT CLIFFORD COX

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” U.S. Const. Art. IV, §1(words capitalized as in original). Generally, under the Texas Civil Practice and Remedies Code §35.001, a “foreign judgment” means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state under the U.S. Constitution. *Omick v. Hoerchler*, 809 S.W.2d 758, 759 (Tex.App.—San Antonio 1991, writ denied). It is well established that a state must give the final judgment of a sister state the same force and effect the judgment would be entitled in the state in which it was rendered. *Id.* In Texas, this principle is enabled in the Uniform Enforcement of Foreign Judgments Act (UEFJA). See TEX. CIV. PRAC. & REM. CODE ANN. §35.001, *et seq.* “The [UEFJA] is an enforcement statute rather than a registration statute....” *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 302, 208 (Tex.App.—Amarillo, writ denied)(emphasis added). The UEFJA required Appellee to (1) file a copy of a foreign *final judgment* with the clerk of the court of competent jurisdiction in Texas, (2) *give the judgment debtor notice of the filing*, and (3) pay the required fees.” *Id.* It is with the finality

of the Pennsylvania judgment and the notice to the judgment debtor that Appellant brings issue.

APPELLEE'S PETITION CREATED ORIGINAL, SEPARATE AND DISTINCT CAUSE OF ACTION SUBJECT TO THE RULES OF THE TEXAS JUDICIAL SYSTEM

Appellees have petitioned a Texas court to enforce a Pennsylvania judgment. Their petition created a separate and distinct cause from the underlying cause in Pennsylvania. "[W]hen a judgment creditor proceeds under the UEFJA in all respects, the filing of the foreign judgment comprises both a plaintiff's original petition and a final judgment." *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285, 286 (Tex.1996).¹⁵ Plainly the UEFJA is a distinct and original cause, separate from the underlying suit. As a cause originated under Texas law, the Texas procedural rules govern its existence.¹⁶

Civil Practice and Remedies Code §35.003 outlines the procedure for domesticating a final judgment of a foreign state. "A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state." CPRC 35.003(a). Once properly filed the clerk shall treat the Pennsylvania judgment in the same manner as a Texas

¹⁵ In *Walnut*, the court noted that Walnut's petition for enforcement of the foreign judgment comprises both the plaintiff's *original petition* and a final judgment. *Walnut*, 920 S.W.2d at 286. The final judgment is a Texas judgment on the UEFJA action to domesticate the foreign judgment, an original action under Texas law. Logically, a Plaintiff in the UEFJA must comply with the requirements mandated for a Texas lawsuit.

¹⁶ It is important to note that Defendant Cox addresses the UEFJA suit, not the underlying cause filed in the Pennsylvania courts. To do so would require the treatment of Pennsylvania law.

judgment. CPRC 35.003(b). Further, a “filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment” as Texas judgment. CPRC 35.003(c).

PLAINTIFF/JUDGMENT CREDITOR'S JUDGMENT ON UNDERLYING SUIT IS NOT A
FINAL JUDGMENT

Pursuant to the Texas Uniform Enforcement of Foreign Judgments Act, the full faith and credit is given to foreign judgments of any court of the United States or any other court entitled to full faith and credit. CPRC §35.001. Under CPRC 35.001, a sister states judgment must be entitled to full faith and credit before a judgment creditor may initiate proceedings under chapter 35 of the CPRC. To be entitled to full faith and credit the Plaintiffs' Pennsylvania judgment must be a final, valid, subsisting judgment in the state of rendition and it must be conclusive of the merits of the case. See *Stine v. Koga*, 790 S.W.2d 412 (Tex.App.—Beaumont, 1990); See also *Roberts v. Hodges*, 401 S.W.2d 332 (Tex.Civ.App.—Amarillo 1966, writ ref'd n.r.e.). A foreign judgment that is not final is not entitled to full faith and credit under the Uniform Enforcement of Foreign Judgments Act as a matter of law. *Stine*, 790 S.W.2d at 415.

Appellee contends that the Pennsylvania judgment is a final judgment and capable of execution.¹⁷ However, upon close inspection of

¹⁷ The Court may discern this from the UEFJA filing for enforcement coupled with the letters seeking writ of execution by the Appellees.

the record, the finality of the Pennsylvania judgment becomes illusory. If the judgment of the Pennsylvania court was final, then the Pennsylvania court reached a legal and factual conclusion in the cause. However, the record of the underlying cause shows otherwise. The Appellees filed their UEFJA cause on December 28, 2000. Yet on April 16, 2001, an order on a rule to show cause was signed in the underlying cause in Pennsylvania.¹⁸ This Rule ordered that the parties appear and show cause as to why the prayer of the petition of John R. Carfley should not be granted. The subsequent request to show cause demonstrates the lack of finality in the Pennsylvania judgment in that the request to re-appoint John Ryan as guardian ad litem constitutes a further action within the same cause that is purported concluded. Accordingly, the judgment Appellees seek enforcement upon fails to qualify under the Texas UEFJA for full faith and credit and should not be receive effect of same.

THE APPELLEE DID NOT COMPLY WITH THE NOTICE PROVISIONS OF THE UEFJA

At the time of filing with the Texas Court, the judgment creditor shall file with the clerk of the court an affidavit showing the name and last known address of the judgment debtor and judgment creditor. CPRC §35.004(a). The UEFJA further provides two methods of noticing a judgment debtor a primary method and an alternative thereto. The first is contained in CPRC §35.004 (b) wherein the Texas Court clerk shall promptly mail notice to the

¹⁸ Please see appendix Exhibit "I," a copy of the Rule to Show Cause.

judgment debtor of the filing based upon the affidavit filed under §35.004(a). CPRC §35.004(b).

The alternative method, read in conjunction with its primary, provides that instead of the clerk mailing notice, the judgment creditor himself/herself/itself shall promptly mail notice. §35.005(a). The creditor may then file notice of the mailing with the clerk of court. *Id.* If the creditor has filed proof of mailing then the clerk's lack of mailing has no affect. §35.005(b). The notice must include the name and address of the judgment creditor and, if represented by an attorney in Texas, his/her/its attorney's name and address.

The judgment debtor in the present case is "Clifford Cox, an incapacitated person by John R. Ryan, Esquire, his guardian ad litem."¹⁹ Appellee's 35.004(a) affidavit listed Clifford Cox as the judgment debtor and John Ryan as his guardian ad litem. However, the clerk of court failed to issue notice to the proper judgment debtor. By failing to so issue notice under the correct identify and address the correct judgment debtor, proper compliance with the notice provisions of the §35.004(a) became impossible. Thus, the notice of filing incorrectly sent to Clifford Cox as Clifford Cox; not Clifford Cox, an incapacitated person by John R. Ryan, Esquire, his guardian ad litem, was a nullity.²⁰ Further, to date, Appellant

¹⁹ See judgment listing stating same, Exhibit "E."

²⁰ A copy of the Notice of Filing of Foreign Judgment is attached hereto as Exhibit "E."

has not received a §35.005(a) notice. Thus, the Appellee's notice requirement to the judgment debtor remains unsatisfied under either the 35.004(b) or the 35.005(a) method of notice.

CLIFFORD COX SHOULD HAVE HAD A GUARDIAN AD LITEM APPOINTED IN CAUSE
E-164,360

As a "filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment" as Texas judgment. CPRC 35.003(c). Thus, the rules of Texas procedure logically apply thereto. CPRC 35.003(c). Pursuant to the Texas Rules of Civil Procedure, when a minor, lunatic, idiot, or person *non-compos mentis* may be a defendant to a suit and has no guardian in Texas, or where such a person is a party to a suit and is represented by a next friend or a guardian who appears to have an adverse interest, the court shall appoint a guardian ad litem. TRCP Rule 173. Further, the representation of an as litem is limited to matters related to the suit for which he or she is appointed ad litem. See *American Gen. Fire & Cas. Co. v. Gamez*, 907 S.W.2d 491, 493 n.2(Tex. 1995)(The guardian ad litem participates in the case to the extent necessary to protect the minor or incompetent).

Under Rule 173, there are two situations in which a guardian ad litem must be appointed. The first requires: 1.) incapacitation; 2.) defendant party status; and 3.) no guardian in Texas. TRCP Rule 173.

In the present case, it is undisputed that Mr. Cox suffers from a mental incapacitation. Further, the Appellees were well aware of Mr. Cox's incapacitation; as well as, the adjudication of same in May of 2000. In fact that very judgment they seek to enforce states "defendant Clifford Cox, an incapacitated person..."²¹. Additionally, the defective notice mailed to Mr. Cox was addressed to Clifford Cox at a state psychiatric hospital.²² Additionally, it should be noted that the affidavit filed by Appellees markedly demonstrates their knowledge of the Pennsylvania guardian ad litem, John Ryan.

Further, Mr. Clifford was plainly a defendant to the enforcement action, filed as cause E-164,360, in that the Plaintiffs sought to garnish monies from his §142 Trust.²³ Finally, Mr. Clifford had no guardian in Texas at the time cause E-164,360 was filed. Thus, under Rule 173, the court should have appointed a guardian ad litem for Mr. Cox in the UEFJA enforcement proceeding.

The second clause of TRCP 173, protects those incapacitated persons involved in an existing suit via a guardian or next friend. If the next friend or guardian develops an interest adverse to their "ward" then the court must alleviate that by appointing a new guardian ad litem. Such is not the case in cause E164,360 for it was not an existing cause nor did Mr.

²¹ Copy of judgment attached as Exhibit "E."

²² A certified copy of the Notice of Filing of Foreign Judgment is attached hereto as Exhibit "E."

²³ A certified copy of the letter asking the court for a writ of execution directed to Southwest Guaranty Trust Co., N.A., is attached hereto as Exhibit "E."

Clifford have a Guardian or Next Friend, much less one that developed an adverse interest. Accordingly, the second clause of TRCP 173 is not applicable here.

APPELLANT REQUESTS ADDITIONAL TIME TO SUPPLEMENT HIS APPEAL

In light of the fact that Mr. Sutton was appointed as guardian ad litem two days prior to the deadline for this appeal, Appellant also requests that he be afforded additional time to supplement this appeal, including, but not limited to, certified copies of the exhibits herein attached and additional briefing to the extent necessary to clarify or support the positions herein taken. A certified copy of each of the exhibits to this appeal have been requested.

CONCLUSION

The clerk of court's failure to properly comply with the requirements set forth under UEFJA prevented any domestication of a foreign judgment to issue from a Texas court, specifically the clerk of court should have issued notice to Clifford Cox, an incapacitated person, by and through his Pennsylvania guardian ad litem, John Ryan, as listed on Appellees' affidavit.

Further, the Pennsylvania judgment failed to meet the requirement of a final judgment and thus is not entitled to full faith and credit under the Texas the Uniform Enforcement of Foreign Judgments Act.

The listing of Clifford Cox, individually, as the judgment debtor prevented the issuance of proper notice pursuant to Texas Civil Practice and Remedies Code §35.004(b) or §35.005(a) wherein the proper judgment debtor is *Clifford Cox, an incapacitated person, by John R. Ryan, Esquire, his guardian ad litem*. This improper notice provision and failure to comply with the standards set forth in the UEFJA clearly offended any basic notion of due process of law by not noticing the proper Pennsylvania judgment debtor.

As an original proceeding subject to the rules of Texas courts, under Rule 173 of the Texas Rules of Civil Procedure, as a defendant in Cause E-164,360 Clifford Cox should have been appointed a Guardian ad litem due to his well known incapacitation.

PRAYER

WHEREFORE PREMISES CONSIDERED, Clifford Cox respectfully prays based upon the reasons set forth above that this Honorable Court grant his restricted appeal and vacate the judgment in cause number E-164,360 filed in the 172d District Court of Texas, styled *Kay Churner, et al, vs. Clifford Cox, et al*, and grant Appelant additional time to supplement the appendix with requested materials.

Respectfully submitted,

SUTTON & JACOBS, L.L.P.
Attorneys At Law

398 Pearl Street, Suite 915

Beaumont, TX 77701

Tel: (409) 838-6208

Fax: (409) 835-4527

By:


BRIAN D. SUTTON

State Bar No. 19528000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon each attorney of record by:

_____ REGULAR MAIL

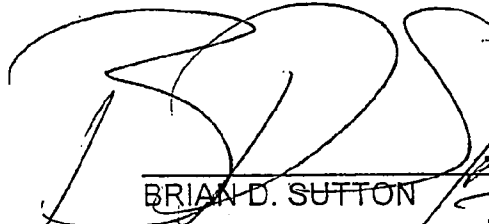
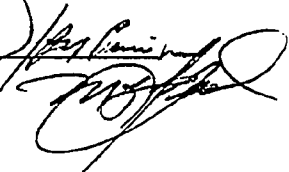
 X CERTIFIED MAIL, RETURN RECEIPT REQUESTED

_____ FEDERAL EXPRESS

_____ HAND DELIVERY

_____ FACSIMILE

on this the 28th day of June, 2001.


BRIAN D. SUTTON 

APPENDIX

Boneau & Lewis, L.L.P.
Attorneys At Law

MELVIN J. BONEAU
RICHARD G. LEWIS
ROBERT P. WALKER
OF COUNSEL

3800 PARK LANE
PORT ARTHUR, TEXAS 77642-5507
PHONE: (409) 983-5188
(409) 980-2200
FAX: (409) 983-4171

July 11, 2001

VIA FACSIMILE (814) 342-1127

Mr. John Carfley
Attorney at Law
P.O. Box 24
Philipsburg, PA 16866

Re: No. E-164,360; Kay Churner, Individually and as Executrix of the Estate of John
Dimmick vs. Clifford Cox, Individually and as an Incompetent by his Guardian Ad Litem,
John Ryan, Esquire

Dear Mr. Carfley:

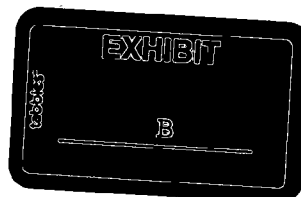
Enclosed for your information is a copy of the information regarding the Cox trust.

Respectfully yours,

BONEAU & LEWIS, L.L.P.

Jeri Wallace
Jeri Wallace, Legal Assistant

jaw
Enclosure



* JUL-06-2001 09:25
8346 CLIFFORD-COX SEC 143

CASH BASIS

SECURITY DESCRIPTION	9	ANNUAL INC/	CURR		
8 SHARES/TV	MARKET VALUE	FEDERAL COST	WMT	UNREAL G/L	YIELD

US TREASURY NOTES & BONDS

U S TREASURY NOTE	5.625% 12/31/02	912627389	1	553	
10,000.0000	10,215.40	9,809.38	4.8	406	3.5
U S TREASURY NOTE	5.750% 6/15/03	912827283	1	876	
10,000.0000	10,281.30	9,792.75	4.8	488	5.6
U S TREASURY NOTE	5.250% 5/15/04	912827595	1	523	
10,000.0000	10,178.10	9,868.78	4.7	609	5.2

MUTUAL FUNDS - EQUITY

JANUS TWENTY FD INC 043		471023404	1	0	
699.6030	30,236.82	55,000.00	14.1	-24,762	0.0
JANUS WORLDWIDE 041		471023309	1	365	
484.2940	23,246.11	38,000.00	10.8	-11,754	1.6
ROWE T FRICH SCIENCE & TECHNOLOGY 61		779579202	1	0	
812.3650	14,361.15	35,000.00	6.7	-20,639	0.0
VANGUARD S&P 500 INDEX FUND 040		822908108	1	237	
188.0850	21,171.29	28,000.00	8.9	-3,829	1.1

MUTUAL FUND - MONEY MARKET

AIM LIQUID ASSETS PORTFOLIO		828251820	1	1,281	
95,239.8500	95,239.85	95,239.85	44.3	0	4.2

INVESTMENTS	216,930.29	274,411.73	100.0	6,246	2.8
				-69,481	
PRINCIPAL CASH	67,406.37	67,406.37			
TOTAL	282,226.64	341,818.10			
INCOME CASH	-67,406.37				
INV. INCOME CASH	0.00				
VERY LIQUID BALANCE		95,239.85			

FILED

JUL 20 2001

019.5314 cc
William A. Shaw
Prothonotary

cc Cathy
for Carley

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, AND
SOUTHWEST GUARANTY TRUST CO. NA
Defendants

: Document Filed:
Petition to Index
: the Judgment filed by
Agreement of the
Parties to No. 99-825-CD

: Filed on behalf of:
Plaintiff

:

Counsel for this Party:
: John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

FILED

AUG 15 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
:
vs. : No. 00-328-CD
:
CLIFFORD COX, an Incapacitated :
person BY JOHN R. RYAN, ESQUIRE, :
HIS GUARDIAN AD LITEM, LINDA :
ESTRATA, Ind. and as next friend :
(ANF) of Clifford Cox, AND :
SOUTHWEST GUARANTY TRUST CO. NA :

RULE TO SHOW CAUSE

AND NOW, this day of August, 2001, upon consideration of Plaintiff's Petition to Index Judgment filed by Agreement of the Parties in the litigation filed to Cause 99-825-CD to Litigation Filed to No. 00-328-CD, a Rule is granted upon the following defendant to appear and show cause why the prayer of said Motion should not be granted:

Clifford Cox	Linda Estrada
c/o John R. Ryan, Esq.	P. O. Box 705
P. O. Box 131	Santa Fe, Texas, 77517
Clearfield, Pa., 16830	

Southwest Guaranty Bank	Linda Estrada
c/o Mark Weaver, Esq.	1003 Pirtle St.
211½ Locust Street	Apt. #3
Clearfield, Pa., 16830	La Marque, Texas, 77568

Rule returnable the day of , 2001, at
o'clock M. in Courtroom No. _____, Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
:
vs. : No. 00-328-CD
:
CLIFFORD COX, an Incapacitated :
person BY JOHN R. RYAN, ESQUIRE, :
HIS GUARDIAN AD LITEM, LINDA :
ESTRATA, Ind. and as next friend :
(ANF) of Clifford Cox, AND :
SOUTHWEST GUARANTY TRUST CO. NA :

NOTICE

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following pages, you must take action on or before _____ by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the court without further notice for relief requested by the petitioner or movant. You may lose rights important to you.

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

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PENNSYLVANIA, 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually	:	
and as EXECUTRIX OF THE	:	
ESTATE OF JOHN DIMMICK	:	
Plaintiff	:	
vs.	:	No. 00-328-CD
CLIFFORD COX, an Incapacitated	:	
person BY JOHN R. RYAN, ESQUIRE,	:	
HIS GUARDIAN AD LITEM, LINDA	:	
ESTRATA, Ind. and as next friend	:	
(ANF) of Clifford Cox, AND	:	
SOUTHWEST GUARANTY TRUST CO. NA	:	

PLAINTIFF'S PETITION TO CROSS-INDEX JUDGMENT FILED BY AGREEMENT
OF THE PARTIES IN LITIGATION FILED TO NO. 99-825-CD IN THE CAUSE
OF ACTION FILED TO THE ABOVE CAPTIONED NUMBER

KAY CHURNER, individually and as Executrix of the Estate of John Dimmick, plaintiff, by and through her undersigned counsel petitions this court to cross-index the judgment filed in Cause 99-825-CD to this action against the defendant, Clifford Cox, an incapacitated person by his Guardian ad litem, John R. Ryan, Esquire, et. al. and in support thereof avers as follows:

1. Judgment was entered in the cause of action to No.99-825-CD in favor of the Plaintiff and against the Defendant, Clifford J. Cox, an incapacitated person by his Guardian ad litem, John R. Ryan, Esquire, et. al. pursuant to a stipulated agreement which was approved by the court on October 26, 2000. A true and correct copy of the stipulated agreement and related documents including the court's approval of the settlement and direction of distribution of proceeds is attached hereto as Exhibit A.

2. In the above cause of action it initially was averred that Clifford J. Cox intended to avoid his responsibility to the plaintiff by fraudulently transferring settlement proceeds from a personal injury case filed in the State of Texas into a spendthrift trust which trust is currently administered by the Southwest Guaranty Trust Company.

3. In the above cause of action the plaintiff averred that Cox and those acting on his behalf diverted the proceeds from the personal injury suit subsequent to the date that Cox shot and killed John Dimmick in the Commonwealth of Pennsylvania, with full knowledge of the existence of the lawsuit which had been filed under the Wrongful Death and Survival Statutes on behalf of the Estate of John Dimmick.

4. It is further averred that this information pertinent to the homicide was not disclosed to the court in Texas by his trial counsel, his next friend, the attorney representing Southwest Guaranty at that time, or the Attorney ad litem appointed by the court to analyze and approve the settlement of the personal injury suit filed on behalf of Cox notwithstanding the fact that all of the parties acting on behalf of Cox including the aforementioned individuals were aware of the existence of the lawsuit as a result of correspondence from Plaintiff's counsel to Cox's representatives, well in advance of the date that the settlement was negotiated and the proceeds were diverted into the subject fund.

5. Since the date of the settlement in the suit filed to No.

99-825-CD, Cox has acknowledged his role in the homicide which resulted in the wrongful death of plaintiff's decedent and has opted to personally satisfy the claim for damages through proceeds of the trust. Certain funds from the trust including a lump sum of \$15,000.00 and \$500.00 per month payable through an annuity currently administered by Keyport Insurance were set aside under the settlement for use by Cox as he or his Guardian should see fit.

6. It is believed and therefore averred that when Cox's attorney settled the personal injury suit in the state of Texas, counsel did so by agreeing that a certain portion of the settlement proceeds would be paid directly to Cox and/or his next friend, Linda Estrada, for their use in purchasing an annuity and for transference into the spendthrift trust.

7. It is believed and therefore averred that this particular decision by counsel resulted in the payment of the settlement proceeds directly to the beneficiary whereupon the said beneficiary utilized the funds to purchase an annuity and create a spendthrift trust thus violating the provisions of the self-settlor rule and those provisions of the Uniform Fraudulent Transfer Act which prohibit the creation of a spendthrift trust by a settlor in order to avoid the claims of his legitimate creditors.

8. All of that notwithstanding Cox, through his ad litem, has recognized his responsibility to the Estate of Dimmick and in conjunction with the plaintiff has sought to collect the funds currently being administered by Southwest Guaranty Bank but has been thwarted in his efforts to secure the release of these assets

by Southwest Guaranty and by the Jefferson County Court which has appointed a Guardian ad litem in Texas to question the entry and the transference of the judgment filed to No. 99-825-CD under the Uniform Enforcement of Foreign Judgments Act, which transfer should have resulted in the accordance of full faith and credit to the judgment and immediate collection thereon in Texas.

9. It is believed that the trust fund is being dissipated by the actions of the Guardian ad litem appointed by the Texas Court in that the ad litem has seen fit to fly to the Commonwealth of Pennsylvania ostensibly to meet with Cox but in reality to question the validity of the court approved settlement. It is further averred that the ad litem retained the services of a Pennsylvania attorney from the City of Philadelphia to provide assistance in analyzing and researching Pennsylvania law all of which further serves to dissipate the trust res from which the fees for this effort must presumably be drawn. To the best of Plaintiff's knowledge, information and belief the ad litem never met personally with Cox nor has he conducted any telephonic or written communication with Cox concerning this case or taken into consideration the wishes of Cox or his Pennsylvania ad litem with respect to the disposition of this trust.

10. The Texas ad litem has, however, filed an appeal to the Texas Appellate Court challenging the underlying basis for the judgment in the Commonwealth of Pennsylvania which Plaintiff believes, is clearly beyond the scope of the ad litem's responsibility and/or authority as is his challenge of the validity

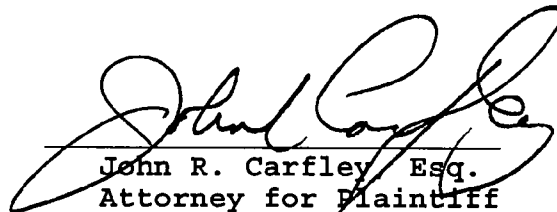
of the judgment, and/or the manner in which it was negotiated and concluded in Pennsylvania.

11. In addition to the dissipation of assets by the ad litem the trust has seen a significant downturn in principal because of the strategy utilized by the Trustee in certain questionable investments in the stock market which have resulted in losses to the corpus of the trust of over \$65,000.00 since the commencement of calendar year, 2000.

12. It is believed and therefore averred that the interest of the defendant Cox and the plaintiff Dimmick are coincident and reconcilable at this juncture and that this judgment should be lodged in the action filed to No. 00-328-CD for purposes of enforcement by the transference of the judgment under the Uniform Enforcement of Foreign Judgments Act to Texas or through the transfer of this action to the Federal District Court for the Western District of Pennsylvania for further disposition.

13. Cox through his ad litem concurs in the prayer of this petition as is evidenced by the signature of John R. Ryan, Esquire, affixed hereto.

WHEREFORE, Petitioner requests this Honorable Court to direct those parties joined in this proceeding to appear and show cause why the said judgment filed to No. 99-825-CD should not be likewise entered for record in the matter filed against Clifford Cox et. al. under the Uniform Fraudulent Transfer Act.



John R. Carfley Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621



John F. Ryan, Esq.
Guardian ad litem

Dated: August 13, 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No.99-825-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

:
:
:
:
:
:
:
:

Defendants

RULE TO SHOW CAUSE

AND NOW, this 23rd day of October, 2000, a rule is granted to
show cause why this action should not be compromised, counsel fees
and expenses allowed and distribution directed.

Rule returnable October 24, 2000, at 1:00 o'clock P.M. in
Courtroom No. 1 of the Clearfield County Courthouse, Clearfield,
Pennsylvania.

All proceedings stay meanwhile.

BY THE COURT:

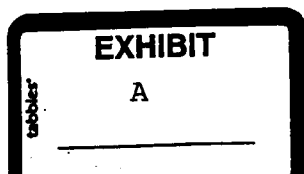
/s/JOHN K. REILLY, JR.

~~Thereby, certify this to be a true
and correct copy of the original
statement filed in this case.~~

OCT 23 2000

Attest:

William L. [Signature]
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

No.99-825-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

Defendants

:
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:
:

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

OCT 20 2000

Attest.

William L. [Signature]
Prothonotary

PETITION TO COMPROMISE ACTION, ALLOW
COUNSEL FEES AND EXPENSES, AND DIRECT
DISTRIBUTION

TO THE JUDGES OF YOUR HONORABLE COURT:

THIS petition, jointly filed by John R. Carfley, Esquire,
Attorney for the Estate of John Dimmick and JOHN R. RYAN,
ESQUIRE, Guardian ad litem for Clifford Cox, an incapacitated
person, respectfully represents:

1. I, JOHN R. RYAN, ESQUIRE, am the Guardian ad litem of
Clifford Cox, an incapacitated person, and one of the defendants
named in this action.

2. I, JOHN R. CARFLEY, ESQUIRE, am the attorney for Kay
Churner, individually and as Executrix of the Estate of John
Dimmick, Plaintiffs in the above captioned matter.

3. The action hereinabove referenced was brought to recover
damages for the Dimmick Estate under the Wrongful Death and
Survival Statues which damages were incurred as a result of the

alleged shooting death of John Dimmick, by the defendant, Clifford Cox on May 10, 1999.

4. The pleadings in this matter aver that the Estate suffered significant economic losses as a result of the death of the decedent all of which losses are supported by the Economist's report which is attached hereto and marked Exhibit A. The estate also claims damages for pain and suffering and punitive damages against all defendants predicated upon the gross negligence of the defendants and the heinous nature of the crime.

5. While there are questions of law and fact to be decided in the action with respect to other defendants named herein, the circumstances surrounding Cox's involvement in the incident are clear, unquestioned and supported by an eyewitness account, and by Cox's own admissions of culpability to police, to his sister and to the psychiatrists retained by the Commonwealth and by the defense to determine his competency. The liability of this individual, therefore, is not in question and leaves as the only issue to be determined the amount of damages which would be sufficient to compensate the estate for the losses sustained.

6. Based upon the uncontroverted facts surrounding Cox's involvement in the shooting, the parties to this action are willing to enter into a compromise of this case upon the following terms and conditions which terms and conditions shall be incorporated into an Order of Court if the court determines that this settlement is appropriate under the circumstances and approves the settlement and distribution as stated:

(a) The trust fund currently being administered on behalf of the defendant, Clifford Cox, by the Southwest Guaranty Trust Company shall be partially dissolved by court order secured through this court and the Jefferson County, Texas, Court, or by any other court of competent jurisdiction which exercises jurisdiction over the trust at or about the time this settlement is presented and approved.

(b) A full disclosure of the trust assets will be provided to the plaintiffs by the Guardian ad litem and/or Southwest Guaranty Trust Co., Houston, Texas, the respository and trustee of the trust as a condition precedent to final settlement and the release and discharge of Cox in this suit.

(c) It is believed and therefore averred that at the present time the said trust res consists of approximately \$265,000.00 with payments to be made to the trust pursuant to a structured settlement agreement on a monthly basis by Keystone Life Insurance Company which payments are in the amount of \$4677.24. Said payments are calculated to continue for a period of ten years guaranteed or for the life of Clifford Cox whichever shall be longer.

(d) Under the proposed agreement Cox will receive from the trust res the sum of \$15,000.00 in cash plus \$500.00 per month in annuity to be paid by Keystone for his use and benefit. All interest earned on this portion of the account shall remain the property of Clifford Cox.

(e) The balance of the trust res believed to consist of

approximately \$250,000.00 shall be paid to John R. Carfley, Esquire and Kay Churner as the Executrix of the Estate of John Dimmick. The balance of the structured payments in the amount of \$4177.24 per month shall be likewise payable to John R. Carfley, Esquire and Kay Churner as the Executrix of the Estate of John Dimmick. Said payments shall continue for so long as the annuity is in full force and effect but in no event for less than ten (10) years as guaranteed by the settlement documents.

(f) It is believed by all parties to this agreement and is acknowledged to be a condition percedent to settlement that the total value of the payment to be made by Cox or his agents to the Dimmick Estate shall be in the range of \$500,000.00 to \$750,000.00. Should the amount available for settlement be less than the amount herein specified said offer of settlement may be withdrawn by the plaintiffs. Provided however that should the trust res available at Southwest Guaranty be less than \$250,000.00 as anticipated and/or should the structured settlement be insufficient to create a settlement fund in the amount herein specified as a result of actions by the trustee and/or any other individual, firm, or entity acting for and/or on behalf of the said Cox as an agent, employee or other representative, then Cox may, as additional inducement for settlement, assign to the Dimmick Estate the right to pursue each and all of these individuals, persons and/or corporations. Cox will further subrogate his rights against these entities to the personal representative of the Dimmick Estate. Cox, in addition may assign to the estate whatever rights would accrue to him

against these and/or any other responsible parties. Cox would further cooperate and assist the Dimmick estate in the collection of these moneys by joining in any suit against these parties in this or any other jurisdiction. If the Dimmick Estate agrees to accept this subrogation and assignment by Cox in partial satisfaction of its claim then the said estate in consideration of Cox's agreement to subrogate his rights against the trustee and/or any and all persons and/or entities and in further consideration of the assignment of his rights to the settlement proceeds derived from Cause No. A-0157378 in the Jefferson County Court, Jefferson County, Texas, will execute a joint tortfeasor release in favor of Clifford Cox thus limiting his further exposure to civil liability under the causes of action currently filed or otherwise anticipated.

(g) While the exact amount of the settlement cannot be ascertained with certainty until the complete disclosure of assets is provided by the Trustee and while further recognizing that the amount in the trust may be less than the amount specified for judgment in this paragraph, the parties agree for procedural purposes and in order to provide a liquidated sum for damages and/or for the further purpose of permitting plaintiff to execute on the judgment or issue a writ of attachment against the trust currently being administered on behalf of Cox or against the payments made pursuant to the structured settlement, that the plaintiff will be entitled to praecipe the settlement arrived at herein to final judgment in the amount of \$750,000.00.

(h) To protect the confidentiality of this agreement the parties hereto agree insofar as possible that the terms and conditions of this settlement shall be and shall remain confidential and shall not be disclosed by either party to any other person or firm unless specifically ordered to do so by a court of competent jurisdiction or unless they are required to do so in order to effect the enforcement and/or collection of the judgment herein specified. It is further agreed that any statements or representations made herein shall not be attributable to either of the parties in any other action or proceeding in which they are presently, or may in the future be involved, these statements having been exchanged for purposes of negotiation and settlement only. As a consequence each party represents and acknowledges that these statements exchanged between counsel shall not be attributed to the parties for any other purpose than that contemplated herein.

7. The Guardian ad litem believes that this compromise is in the best interest of the incapacitated person since the facts are uncontroverted, the issue of liability is clear and the economic losses sustained by the estate as referenced in the Economist's report exceed the amount available to the incapacitated person through the trust and all other available assets. It is further anticipated that a trial on the merits would result in a verdict which would be in excess of those sums available to the defendant in the trust thus limiting the guardian's ability to retain and utilize certain funds from the trust for the maintenance, care and

benefit of the incapacitated person. Moreover further investigation by the Dimmick estate into the circumstances surrounding this shooting may be prejudicial to Cox should he regain his competency and be required to stand trial on the charges filed against him.

8. John R. Ryan, Esquire, is the attorney for the incapacitated person and requests payment of attorney's fees and expenses as detailed in Exhibit B attached hereto.

9. Except as otherwise provided herein no guardian of the estate of Clifford Cox has been qualified or appointed to receive any funds. Moreover, it is not anticipated that any person or entity will attempt to secure the appointment of a guardian for the estate of Clifford Cox. Moreover no other persons, firms, corporations or entities to the best of the knowledge, information and belief of the parties has any legal or other right to be apprised of this settlement and/or receive notice of the presentation of this petition to the court for its approval of settlement and distribution of assets.

10. Clifford Cox at present is confined at Warren State Mental Hospital, Warren, Pennsylvania, and is currently maintained and supported by the Commonwealth of Pennsylvania.

11. John R. Ryan, Esquire, is the Guardian ad litem for the said incapacitated person having been appointed on May 5, 2000, in proceedings filed to No. 99-825-CD and No. 00-328-CD.

12. In his capacity as Guardian ad litem the said John R. Ryan, Esquire, now asks that the court:

benefit of the incapacitated person. Moreover further investigation by the Dimmick estate into the circumstances surrounding this shooting may be prejudicial to Cox should he regain his competency and be required to stand trial on the charges filed against him.

8. John R. Ryan, Esquire, is the attorney for the incapacitated person and requests payment of attorney's fees and expenses as detailed in Exhibit B attached hereto.

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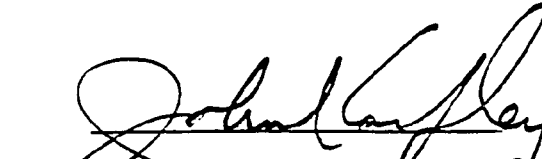
10. Clifford Cox at present is confined at Warren State Mental Hospital, Warren, Pennsylvania, and is currently maintained and supported by the Commonwealth of Pennsylvania.

11. John R. Ryan, Esquire, is the Guardian ad litem for the said incapacitated person having been appointed on May 5, 2000, in proceedings filed to No. 99-825-CD and No. 00-328-CD.


12. In his capacity as Guardian ad litem the said John R. Ryan, Esquire, now asks that the court:

- (a) approve the compromise stated above;
- (b) authorize the payment of the fees and expenses to John R. Ryan, Esquire, as above stated, from the fund due the incapacitated person;
- (c) direct payment of those remaining portions of the fund due the incapacitated person as herein stated to such person or corporation as the court may so decide.
- (d) authorize the payment of the balance of the trust res and the structured settlement as stated above to the attorney and the personal representative for the Estate of John Dimmick;
- (e) stay all proceedings meanwhile.

RESPECTFULLY SUBMITTED,



John R. Carfley, Esq.
Attorney for Plaintiff



John R. Ryan, Esq.
Guardian ad litem for
Clifford Cox

DATED: October 19, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:

:

vs.

:

No.99-825-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

:

:

:

:

:

Defendants

:

APPROVAL OF COMPROMISE, ALLOWANCE, OF
COUNSEL FEES AND EXPENSES, AND DIRECTION
OF DISTRIBUTION

AND NOW this 24th day of October, 2000, the date and time set
for hearing on the joint petition for approval of settlement and
the parties having appeared by their respective counsel who
represent to the court that this settlement is acceptable to their
clients and is in the best interest of those clients, IT IS THE
ORDER OF THIS COURT THAT:

1. The parties be and are hereby authorized to compromise
this action under the terms of the settlement set forth in the
petition filed by John R. Ryan, Esquire, Guardian ad litem for
Clifford Cox and John R. Carfley, Esquire, attorney for the Estate
of John Dimmick, on October 19, 2000, the specific provisions of
which are incorporated herein as follows:

(a) A full disclosure of the trust assets will be provided to
the plaintiffs by the Guardian ad litem and/or Southwest Guaranty

Trust Co., Houston, Texas, the respository and trustee of the trust as a condition precedent to final settlement and the release and discharge of Cox in this suit.

(b) Insofar as the court has such authority, it does hereby order that the trust fund currently being administered on behalf of the defendant, Clifford Cox, by the Southwest Guaranty Trust Company shall be and is hereby dissolved and upon dissolution the trust shall be distributed as hereinafter set forth.

(c) It is the Court's understanding that at the present time the said trust res consists of approximately \$265,000.00 with payments to be made to the trust pursuant to a structured settlement agreement on a monthly basis by Keystone Life Insurance Company which payments are in the amount of \$4677.24. Said payments are calculated to continue for a period of ten years guaranteed or for the life of Clifford Cox whichever shall be longer.

(d) Cox shall retain from the trust res as his respective share of the settlement, the sum of \$15,000.00 in cash plus \$500.00 per month in annuity to be paid by Keystone for his use and benefit. All interest earned on this portion of the account will remain the property of Clifford Cox.

(e) The balance of the trust res believed to consist of approximately \$250,000.00 shall be paid to John R. Carfley, Esquire and Kay Churner as the Executrix of the Estate of John Dimmick. The balance of the structured payments in the amount of \$4177.24 per month shall be likewise payable to John R. Carfley, Esquire and

Kay Churner as the Executrix of the Estate of John Dimmick. Said payments shall continue for so long as the annuity is in full force and effect but in no event for less than the ten (10) years as guaranteed by the settlement documents executed on behalf of Cox in Cause No. A-0157378.

(f) It is recognized by the court as a condition precedent to settlement that the minimum value of the payments to be made by Cox or his agents to the Dimmick Estate shall be in the range of \$500,000.00 to \$750,000.00 based on the 10 year guaranteed life of the annuity and the current estimated trust res on deposit at Southwest Guaranty Trust Company. In the event that Cox survives for more than 10 years said payments under the annuity shall continue to be made to the Dimmick Estate as stated hereunder and this settlement figure will be adjusted accordingly.

Should the amount available for settlement be less than the amount herein specified said offer of settlement may be withdrawn by the plaintiffs. Provided however that should the trust res available at Southwest Guaranty be less than \$250,000.00 as anticipated and/or should the structured settlement be insufficient to create a settlement fund in the amount herein specified as a result of actions by the trustee and/or any other individual, firm, or entity acting for and/or on behalf of the said Cox as an agent, employee or other representative, then Cox may, as additional inducement for settlement, assign to the Dimmick Estate the right to pursue each and all of these individuals, persons and/or corporations. Cox will further subrogate his rights against these

entities to the personal representative of the Dimmick Estate. Cox, in addition will assign to the estate whatever rights would accrue to him against these and/or any other responsible parties, and will cooperate and assist the Dimmick estate in the collection of these moneys by joining in any suit against these parties in this or any other jurisdiction. If the Dimmick Estate agrees to accept this subrogation and assignment by Cox in partial satisfaction of its claim then the representative of the said estate in consideration of Cox's agreement to subrogate and assign his rights against the trustee and/or any and all persons and/or entities and in further consideration of the assignment of his rights to the settlement proceeds derived from Cause No. A-0157378 in the Jefferson County Court, Jefferson County, Texas, will execute a joint tortfeasor release in favor of Clifford Cox thus limiting his further exposure to civil liability under the causes of action currently filed or otherwise anticipated.

(g) While the exact amount of the settlement cannot be ascertained with certainty until a complete disclosure of assets is provided by Cox and/or the Trustee and until the life expectancy of Cox has been finally determined, and while further recognizing that the amount in the trust may be less than the amount specified for judgment in this paragraph, the parties agree, for procedural purposes and in order to provide a liquidated sum as damages and/or for the further purpose of permitting plaintiff to execute on the judgment or issue a writ of attachment against the trust currently being administered on behalf of Cox or against the payments made

pursuant to the structured settlement, that the plaintiff will be entitled to praecipe the settlement arrived at herein to judgment in the amount of \$750,000.00. Nothing herein contained shall prevent the plaintiffs from collecting sums in excess of this amount should said sums be available at present or otherwise be accumulated in the future as a result of payments made pursuant to the structured settlement.

(h) To protect the integrity of this agreement it is the court's intent that, insofar as possible, the terms and conditions of this settlement shall be and shall remain confidential and shall not be disclosed by either party to any other person or firm unless specifically ordered to do so by a court of competent jurisdiction or unless they are required to do so in order to effect the enforcement and/or collection of the judgment herein specified. It is the Court's further order that any statements or representations made herein shall not be attributable to either of the parties in any other action or proceeding in which they are presently, or may in the future be involved, these statements having been made for purposes of negotiation and settlement, and having been exchanged between counsel for only those purposes specified herein.

(i) John R. Ryan, Esquire, Guardian ad litem for Clifford Cox an incapacitated person, is authorized to receive the following counsel fees and expenses from the amount said incapacitated person will retain in his trust account or shall receive pursuant to the structured settlement. The balance of the funds shall remain with the trustee if Southwest Guaranty Trust Co. shall so agree.

\$2,278.75 to John R. Ryan, Esquire, for counsel fees and costs

BY THE COURT:

/s/JOHN K. REILLY, JR.

~~I hereby certify this to be a true~~
and attested copy of the original
statement in this case.

OCT 24 2000

Attest:


Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

No.99-825-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

Defendants

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 1-5 2000

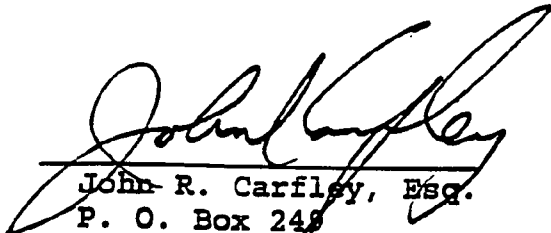
Attest:

Prothonotary

PRAECIPE

TO THE PROTHONOTARY:

PLEASE enter final judgment in the above matter against
Clifford Cox, Defendant, by his Guardian ad litem, John R.
Ryan, Esquire, pursuant to the settlement approved by the Court
this date, a true and correct copy of said order being affixed
hereto as Exhibit A, and award damages against the defendant as
aforesaid in the amount of \$750,000.00.


John R. Carfley, Esq.
P. O. Box 248
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated: October 24, 2000

FILED

OCT 25 2000

Wm. A. Shaw

TO: Clifford Cox Defendant
a/o John R. Ryan, Esq.
Guardian ad litem
Clearfield, Pa., 16830

Be advised that judgment was entered against you in the
amount of \$750,000.00 this 24th day of October, 2000.

s/ William A. Shaw
Prothonotary

Seal

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :
vs. : No.99-825-CD
CLIFFORD COX, an Incapacitated :
person BY JOHN R. RYAN, ESQUIRE, :
HIS GUARDIAN AD LITEM, LINDA :
ESTRATA, Ind. and as next friend :
(ANF) of Clifford Cox, RESTA JENE :
GREGORI and DARLENE A. GREGORI, :
individually and T/D/B/A JENE'S :
GUNSHOP, INC and UNISYS :
CORPORATION :
Defendants :

JUDGMENT WITH ASSESSMENT OF DAMAGES AND INTEREST

AND NOW this 25th day of October, 2000, Judgment is entered in favor of the plaintiff, Kay Churner, individually and as Executrix of the Estate of John Dimmick; that plaintiff have and recover of, and from the defendant Clifford Cox, an incapacitated person by John R. Ryan, Esquire, his Guardian ad litem, the amount of \$750,000.00 together with interest as hereinafter assessed at the maximum rate allowed by law and costs of Court. Judgment is entered pursuant to praecipe filed by Plaintiff's counsel per Rule 227.4(2) of the Pa.R.C.P. and further pursuant to the Agreement and Stipulation of the parties and the Order of Court approving settlement and distribution all of which documents are filed of record in this office as I so attest.


Prothonotary

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

ASSESSMENT OF DAMAGES

Damages are assessed on the judgment in this action effective October 25, 2000, as follows:

Principal Debt \$750,000.00

Interest to be added
from 10/25/00 at the
lawful rate of 6% per
annum, 42 Pa.C.S.A.
§8101

REAL DEBT \$750,000.00

JUDGMENT CREDITOR: KAY CHURNER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF JOHN DIMMICK.

JUDGMENT DEBTOR: CLIFFORD COX, AN INCAPACITATED PERSON, BY JOHN R. RYAN, ESQUIRE, HIS GUARDIAN AD LITEM.


Prothonotary

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

UED FROM PAGE 319, CHURNER vs COX, et al, 99-825-CD		
APR. 26, 2000, REPLY TO DEFENDANTS, GREGORI and JENE'S GUNSHOP'S ANSWER and NEW MATTERS, filed by s/JOHN R. CARFLEY, ESQ.		25
(5) CC ATTY CARFLEY VERIFICATION, s/KAY L. CHURNER CERTIFICATE OF SERVICE, filed.		
MAY 04, 2000, ORDER DETERMINING DEFENDANT'S MENTAL CAPACITY and APPOINTING GUARDIAN AD LITEM ON HIS		26
LF: BY THE COURT, s/JOHN K. REILLY, JR., PRESIDENT JUDGE FIVE (5) CC ATTY CARFLEY		
JUN 21, 2000, DEFENDANT, UNISYS CORPORATION'S REPLY TO THE NEW MATTER CROSSCLAIM OF CO-DEFENDANT RESTA JENE GORI AND DARLENE A. GERGORI, INDIVIDUALLY AND T/D/B/A JENE'S GUNSHOP, INC., filed by s/JAMES N. ZERIS, ESQUIRE NO CC		25
VERIFICATION, s/JAMES N. ZERIS, ESQUIRE		
JUL 07, 2000, INTERROGATORIES PROFOUNDED UPON PLAINTIFF BY DEFENDANTS, ANSWERS TO INTERROGATORIES, filed.		26
JUL 12, 2000, PLAINTIFF'S RESPONSES TO DEFENDANT, UNISYS' INTERROGATORIES, filed by s/JOHN R. CARFLEY, ESQ.		27
AUG. 22, 2000, PRAECIPE TO EXEMPLIFY CERTIFIED COPIES, filed by s/JOHN R. CARFLEY, ESQ.		28
CERT & EXHIB OF DOCUMENTS TO TX.		29
AUG. 25, 2000, CERTIFIED MAIL RECEIPT, filed.		30
AUG. 28, 2000, DOMESTIC RETURN RECEIPT, filed.		31
SEP. 18, 2000, MOTION FOR SANCTIONS UNDER P.A. R.C.P. NO. 4019(a)(1)(i) FOR FAILURE TO ANSWER INTERROGATORIES, filed by s/JOHN R. CARFLEY, ESQUIRE		32
SEP. 19, 2000, ANSWER TO MOTION FOR SANCTIONS, filed by s/JOHN R. RYAN, ESQ.		33
SEP. 25, 2000, RULE, UPON JOHN R. RYAN, ESQ., RETURNABLE OCT. 6, 2000: BY THE COURT: s/JOHN K. REILLY, JR., PRESIDENT JUDGE		34
SEP. 26, 2000, ORDER, re: PLAINTIFF'S MOTION FOR SANCTIONS: BY THE COURT, s/JOHN K. REILLY, JR., P.J.		35
OCT. 20, 2000, PETITION TO COMPROMISE ACTION, ALLOW COUNSEL FEES AND EXPENSES, AND DIRECT DISTRIBUTION, filed by s/JOHN R. CARFLEY, ESQ. s/JOHN R. RYAN, ESQ.		
OCT. 23, 2000, RULE TO SHOW CAUSE, RETURNABLE OCT. 24, 2000: BY THE COURT: s/JOHN K. REILLY, JR., P.J.		
OCT. 24, 2000, APPROVAL OF COMPROMISE, ALLOWANCE OF COUNSEL FEES AND EXPENSES, AND DIRECTION OF DISTRIBUTION, THE COURT, s/JOHN K. REILLY, JR., P.J.		37
OCT. 25, 2000, PRAECIPE, filed.		
PLEASE enter final judgment in the above matter against Clifford Cox, Defendant, by his Guardian ad litem, s/JOHN R. RYAN, Esquire, pursuant to the settlement approved by the Court this date, a true and correct copy of said settlement being affixed hereto as Exhibit A, and awarded damages against the defendant as aforesaid in the amount of \$0.000.00. s/JOHN R. CARFLEY, ESQ.		39
JOINT IS ENTERED IN FAVOR OF THE PLAINTIFF AND AGAINST CLIFFORD COX PER COURT APPROVED SETTLEMENT IN THE AMOUNT OF SEVENTYTHOUSAND FIFTY THOUSAND DOLLARS.		
ENDED ON PAGE 338		
Prothonotary		

I hereby certify this to be a true and attested copy of the original statement filed in this case.

DEC 21 2000

Attest:

Prothonotary

UED FROM PAGE 319, CHURNER vs COX, et al., 99-825-CD		
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VERIFICATION, s/JAMES N. ZERIS, ESQUIRE		
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JUL 12, 2000, PLAINTIFF'S RESPONSES TO DEFENDANT, UNISTS' INTERROGATORIES, filed by s/JOHN R. CARFLEY, ESQ.		24
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CONTINUED ON PAGE 338		
Prothonotary		

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 21 2000

Attest:

Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

No. 99-825-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

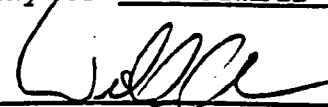
Defendants

CERTIFICATION OF FILING AND
ATTESTATION OF RECORDS

STATE OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, William Shaw, Prothonotary and Clerk of the Court of Common Pleas of Clearfield County, Pennsylvania, (46th Judicial District of Pennsylvania) attest that the foregoing instruments comprised of three (3) pages of typewritten matter and consisting of a Judgment with Assessment of Damages and Interest, and supporting docket entries, is a true and complete copy of the Judgment entered in the Civil Proceedings Docket which contains all docket entries entered in the above captioned matter. Said instruments document the Entry of Judgment in the case of Kay Churner et. al. vs. Clifford Cox, an incapacitated person, by John R. Ryan, Esquire, his Guardian ad litem, et. al., No. 99-825-CD, on October 25, 2000, as the same now appears of record in my office. I further attest that I am in lawful possession of the same as the official custodian of these records.

IN TESTIMONY WHEREOF, witness my official signature together with the seal of the Court this 21st day of December, 2000.

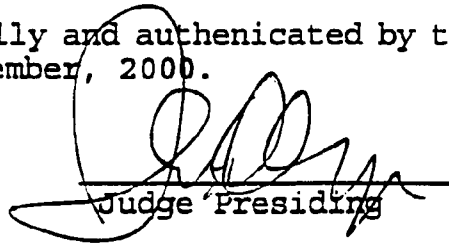

Prothonotary & Clerk of Court
of the Court of Common Pleas
of Clearfield Co., Pa.
(46th Judicial District of Pa.)

STATE OF PENNSYLVANIA
COUNTY OF CLEARFIELD

:
:

I, John K. Reilly, Jr., Judge of the Court of Common Pleas of Clearfield County, Pennsylvania, (46th Judicial District of Pennsylvania) certify that William Shaw, whose name is signed on the above certificate and to the preceding certification of filing and attestation of the records is and was at the time of signing the Clerk of the Court, having custody of its records, and is the person to attest to the foregoing and to make the certificate, and that the same is in due and proper form.

Given under my hand officially and authenticated by the seal of my office this 21ST day of December, 2000.

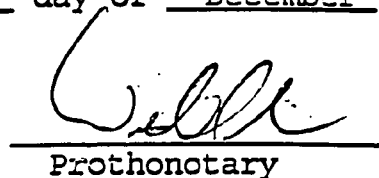

Judge Presiding

STATE OF PENNSYLVANIA
COUNTY OF CLEARFIELD

:
:

I, William Shaw, Prothonotary and Clerk of the Court of Common Pleas of Clearfield County, Pennsylvania, (46th Judicial District of Pennsylvania) certify that John K. Reilly, Jr. whose name is signed to the attached and foregoing certificate, is and was at the time of signing the same the Judge of the Clearfield County Court mentioned, and as such was the proper person to make the certificate, and that the same is in due and proper form.

IN TESTIMONY WHEREOF, witness my official signature together with the seal of the Court this 21ST day of December, 2000.


Prothonotary

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

No.99-825-CD

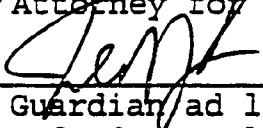
CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

Defendants

AGREEMENT FOR ENTRY OF JUDGMENT

AND NOW, this 24th day of October, 2000, IT IS HEREBY
AGREED between the parties that judgment be entered in this action
in favor of plaintiff, Kay Churner, individually and as Executrix
of the Estate of John Dimmick, and against defendant, CLIFFORD COX,
an incapacitated person by John R. Ryan, Esquire, his Guardian ad
litem for the sum of Seven Hundred Fifty Thousand (\$750,000.00)
Dollars together with interest at the lawful rate of six (6%)
percent per annum. Costs to be paid by defendant.


Attorney for Plaintiff


Guardian ad litem for
Defendant, Clifford Cox

Dated: 10/24/00

Approved by the Court:

/s/ JOHN K. REILLY, JR.

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 12 2000

Attest


Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No.99-825-CD

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION

Defendants

:
:
:
:
:
:
:

Prothonotary
Attest
DEC 1 2 2000
I hereby certify this is a true
and attested copy of the original
statement filed in this case.

ORDER OF COURT

AND NOW THIS 25th day of October, 2000, comes John K.
Reilly, Jr., President Judge of the Court of Common Pleas of
Clearfield County, Pennsylvania, (46th Judicial District) who
hereby directs the Prothonotary of Clearfield County upon praecipe
of counsel, to award judgment in favor of Plaintiff Kay Churner,
et. al. and against the defendant, Clifford J. Cox, an
incapacitated person by his Guardian ad litem, John R. Ryan,
Equire, pursuant to the Stipulation and Agreement of counsel
presented to the Court, the said Stipulation having been approved
by the court and incorporated into an Order this date directing
inter alia the entry of a money judgment in favor of the Plaintiff.

TO THAT END BE IT NOW HEREBY ORDERED AND DECREED that this
Court pursuant to its powers does hereby direct, ratify and affirm

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, RESTA JENE
GREGORI and DARLENE A. GREGORI,
individually and T/D/B/A JENE'S
GUNSHOP, INC and UNISYS
CORPORATION
Defendants

No.99-825-CD

Prothonotary
Arrest
DEC 12 2000
I hereby certify this is a true
and attested copy of the original
statement filed in this case.

ORDER OF COURT

AND NOW THIS 25th day of October, 2000, comes John K.

Reilly, Jr., President Judge of the Court of Common Pleas of Clearfield County, Pennsylvania, (46th Judicial District) who hereby directs the Prothonotary of Clearfield County upon praecipe of counsel, to award judgment in favor of Plaintiff Kay Churner, et. al. and against the defendant, Clifford J. Cox, an incapacitated person by his Guardian ad litem, John R. Ryan, Equire, pursuant to the Stipulation and Agreement of counsel presented to the Court, the said Stipulation having been approved by the court and incorporated into an Order this date directing inter alia the entry of a money judgment in favor of the Plaintiff.

TO THAT END BE IT NOW HEREBY ORDERED AND DECREED that this Court pursuant to its powers does hereby direct, ratify and affirm

the entry of the judgment in this action in favor of the Plaintiff and against the Defendant, Clifford J. Cox, the said judgment to have the same effect as if the court had rendered it as a verdict or award in this matter. Said judgment shall be in the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars with interest at the lawful rate of six (6%) percent per annum from October 25, 2000, with costs to be added.

IT IS FURTHER ORDERED that this judgment amount may, as appropriate, be modified by further Order of this Court, based upon the agreement of counsel. The Court and counsels' inability at this time to fix the precise amount of the judgment with any greater degree of specificity and/or accuracy is due to the uncertainty of the life expectancy of the Defendant, Clifford J. Cox, which controls the duration of the annuity payments with which this settlement is to be funded and the inability of counsel and the Court to determine the precise amount of the trust currently on deposit at the Southwest Guaranty Bank for administration, which trust res also constitutes the source of funding for the settlement. The Court recognizes that it is the intent of the parties to render a final money judgment upon which execution and collection may issue in this or any other jurisdiction after certification and transfer pursuant to the Uniform Enforcement of Foreign Judgments Act, 42 Pa. C.S.A. §4306; 28 USC §1738; the Court, therefore, authorizes as aforesaid, the parties and the Prothonotary to enter judgment pursuant to Rule 227.4(2) of the Pennsylvania Rules of Civil Procedure.

Any additional claims against the remaining defendants in this suit shall not be effected by the entry of this Order and shall be consolidated for trial pursuant to Rule 213 of the Pa. R.C.P. The case shall be listed for trial as the parties deem advisable in accordance with the local Rules and the Pa. R.C.P.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

FILED
AUG 15 2001

William A. Shaw
Prothonotary

3cc-J Ryan
E
KES

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

KAY CHURNER, individually and as :
EXECUTRIX OF THE ESTATE OF :
JOHN DIMMICK :

-vs-

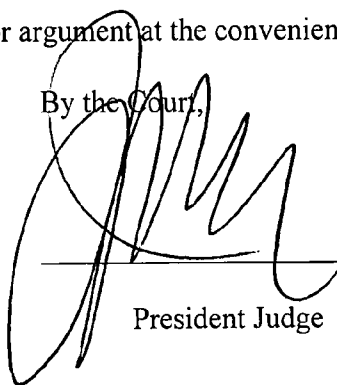
No. 00 - 328 - CD

CLIFFORD COX; LINDA ESTRADA, :
individually and as next friend (ANF) of :
Clifford Cox, and SOUTHWEST :
GUARANTY TRUST CO., N.A. :

ORDER

NOW, this 9th day of October, 2001, following status conference into the
above-captioned matter, and upon agreement of the parties, it is the ORDER of this Court that
Plaintiff shall brief Defendants' Preliminary Objections to jurisdiction within ten days from
date hereof. Upon receipt of said brief, Defendant shall have ten days thereafter to file a reply
brief and this matter shall be scheduled for argument at the convenience of the parties.

By the Court,



President Judge

FILED

OCT 10 2001

William A. Shaw
Prothonotary

FILED

OCT 19 2001

013/09/1cc-ath Conky
William A. Shaw
Prothonotary

1cc ath Ryan

1cc-ath William

1cc with Maddie

~~WAS~~

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually :
and as EXECUTRIX OF THE :
ESTATE OF JOHN DIMMICK :
Plaintiff :

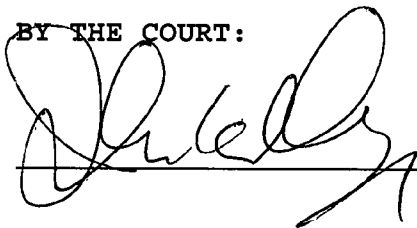
vs. : No. 00-328-CD

CLIFFORD COX, an Incapacitated :
person BY JOHN R. RYAN, ESQUIRE, :
HIS GUARDIAN AD LITEM, LINDA :
ESTRATA, Ind. and as next friend :
(ANF) of Clifford Cox, and :
SOUTHWEST GUARANTY TRUST CO., N.A. :
Defendants :

ORDER OF COURT

AND NOW, this 29 day of October, 2001, upon consideration of Plaintiff's Motion for the transfer of judgment, the defendant Cox having joined in said petition by and through his Guardian ad litem and there being no objection by any other intervening party, IT IS THE ORDER OF THIS COURT that the judgment filed to No. 99-825-CD be and is hereby exemplified to this docket and the Prothonotary is directed to make provisions to file a duplicate judgment in this matter and to enter evidence thereof on the docket entries in this proceeding.

BY THE COURT:



FILED

OCT 29 2001

0113811cc aty Cogley
William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

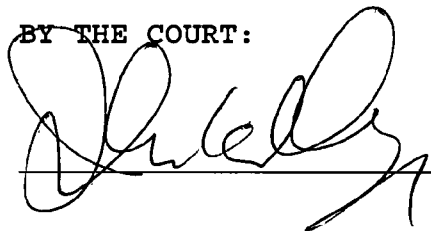
CLIFFORD COX, an Incapacitated
person BY JOHN R. RYAN, ESQUIRE,
HIS GUARDIAN AD LITEM, LINDA
ESTRATA, Ind. and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

:
:
:
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:

ORDER OF COURT

AND NOW, this 29 day of October, 2001, upon consideration of
Plaintiff's Motion for the transfer of judgment, the defendant Cox
having joined in said petition by and through his Guardian ad litem
and there being no objection by any other intervening party, IT IS
THE ORDER OF THIS COURT that the judgment filed to No. 99-825-CD be
and is hereby exemplified to this docket and the Prothonotary is
directed to make provisions to file a duplicate judgment in this
matter and to enter evidence thereof on the docket entries in this
proceeding.

BY THE COURT:



FILED

OCT 29 2001

011381/cc Cathy Conley
William A. Shaw
Prothonotary

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

October 24, 2001

Judge John K. Reilly
Courthouse
Clearfield, Pa., 16830

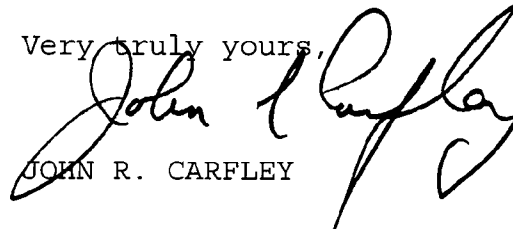
RE: Churner et. al.
vs. Clifford Cox et. al.
No. 00-328-CD

Dear Judge Reilly:

At the status conference and motions court which we attended on October 9, 2001, you suggested that I submit a proposed order which the court would consider providing for the transfer of the judgment currently filed in No. 99-825-CD, at the time plaintiff's brief was submitted. We have now submitted our brief on the issue of jurisdiction so I would ask that you consider executing the enclosed order.

Should any of the other parties to this matter object I am sure they will provide you with their reasoning in the appropriate format.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

Enc. 1

CC: Mark Weaver, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

: Jury Trial Demanded

FILED

FEB 27 2002

0125611ccatty
William A. Shaw
Prothonotary
Carley
Eun

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MEMORANDUM

COMMONWEALTH OF PENNSYLVANIA

:

SS:

COUNTY OF CENTRE

:

Personally appeared before me the undersigned, John R. Carfley, Esquire, who being duly sworn according to law deposes and states as follows:

1. I am an attorney duly licensed to practice law within the Commonwealth of Pennsylvania.

2. In my capacity as an attorney I was retained by the Estate of John Dimmick to institute those actions necessary to assert a claim for damages for personal injuries allegedly sustained by plaintiff's decedent pursuant to the Wrongful Death and Survival Statutes.

3. Acting in that capacity I filed a complaint to No. 99-825-CD and also filed a complaint under the Uniform Fraudulent Transfer Act. The latter document was served on Southwest Guaranty Trust

Co. N.A., a Texas Corporation which allegedly had engaged in business activity with persons residing within the Commonwealth had developed minimal contacts therein and by so doing had subjected itself to personal jurisdiction pursuant to the applicable provisions of the Judicial Code, 42 Pa. C.S.A. 5301 et. seq.

4. As counsel for the plaintiff I secured service of the complaint filed under the Uniform Fraudulent Transfer Act on the other defendants named in that suit to wit: Clifford Cox and Linda Estrada and also served on those defendants the other documents previously filed in this proceeding including the Court's scheduling order for hearing on the petition for injunctive relief.

5. As counsel for the plaintiff in the underlying personal injury suit filed on behalf of John Dimmick (99-825-CD) I have entered default judgment against Clifford Cox and Linda Estrada, individually and as next friend for Clifford Cox.

6. Subsequent to the service of the complaint filed under the Uniform Fraudulent Transfer Act I was contacted by Attorney S. Brady Whitaker, house counsel for Southwest Guaranty who requested a continuance of the scheduled hearing on the petition for injunctive relief. Mr. Whitaker further requested an extension of time within which to retain local counsel and file an answer to the complaint.

7. Based on counsel's assurances that local counsel would be retained, an appearance would be entered, an answer would be filed to the complaint and Southwest would subject itself to the

jurisdiction of this court, I continued the hearing and granted counsel a reasonable extension of time within which to file an answer.

8. The content of the agreement was formalized in letters transmitted from my office to Mr. Whitaker and to local counsel, Mark Weaver, Esquire. (See Exhibits A, B, C. and D. attached hereto)

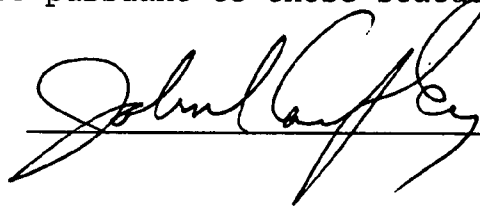
9. Initially no objection was lodged by Messers Whitaker and/or Weaver concerning this arrangement and in fact, Mr. Weaver transmitted a letter dated April 10, 2000, specifically recognizing the responsibility of defendant to file an answer to the complaint. (A true and correct copy of said letter of April 10, 2000 is attached hereto as Exhibit E)

10. In a telephone conversation with Mr. Weaver on Thursday, April 13, 2000, I was advised for the first time that defendant may object to the jurisdiction of the Clearfield County Court and that this issue may be raised by preliminary objections.

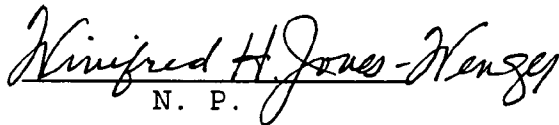
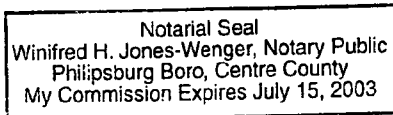
11. Because of this disclosure, I transmitted a ten day notice of default to Mark Weaver, Esquire, as local counsel for the defendant by facsimile and by regular mail on April 13, 2000. A true and correct copy of the certificate of service of this document is attached hereto as Exhibit F.

12. It is anticipated that any judgment including an injunction entered by the court in Pennsylvania will by necessity require an exemplification to the State of Texas to secure enforcement of the order as against the trust.

13. Research has indicated that the State of Texas has adopted the Uniform Fraudulent Transfer Act as well as the Uniform Enforcement of Judgments Act and in all probability would enforce any decision of a sister state pursuant to those statutes.

A handwritten signature in cursive script, appearing to read "John Caffrey", written over a horizontal line.

Sworn to and subscribed
before me this 4th day of
April, 2000.

A handwritten signature in cursive script, appearing to read "Winifred H. Jones-Wenger", written over a horizontal line.
N. P.

March 21, 2000

S. Brady Whitaker, Esq.
Southwest Guaranty Trust
10411 Westheimer Road
Suite 200
Houston, Texas, 77042

RE: Kay Churner et. al.
vs. Clifford Cox et. al.

Dear Mr. Whitaker:

As per our discussion of this date, please find enclosed the relevant Rules of Civil Procedure governing responses to civil actions in the Commonwealth of Pennsylvania. As I indicated I will continue to work with you on this case and will not enter default judgment since you anticipate filing an answer to our pleading which answer will set forth the position of Southwest Guaranty in this matter.

Should you require anything further in this regard, please do not hesitate to contact me.

Very truly yours,

JOHN R. CARFLEY

JRC:sm

Exhibit A.

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

March 23, 2000

S. Brady Whitaker, Esq.
Southwest Guaranty Trust
10411 Westheimer Road
Suite 200
Houston, Texas, 77042

RE: Kay Churner et. al.
vs. Clifford Cox et. al.
No. 00-328-CD

Dear Mr. Whitaker:

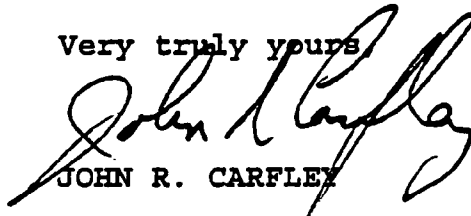
Please find enclosed a Petition for Preliminary Injunction which was filed on behalf of the plaintiffs in the above captioned matter.

You will note that Judge John K. Reilly, Jr. will hear this petition on April 5, 2000, at 9:00 o'clock A.M. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

I realize that this is relatively short notice, however, this is the only free time the court had available the entire month of April. If, however, this date is inconvenient for you because of your need to answer the underlying complaint or to retain local counsel to assist you in this proceeding, please advise and I will contact Judge Reilly and attempt to reschedule the matter.

I really appreciate your cooperation in this matter and would like to continue a good working relationship with your office.

Very truly yours,



JOHN R. CARFLEY

JRC:sm

Enc. 1

Exhibit B

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

April 6, 2000

S. Brady Whitaker, Esquire
Southwest Guaranty Trust
10411 Westheimer Road
Houston, TX 77042

Dear Mr. Whitaker:

This is to confirm the continuance of the hearing on my Petition for Preliminary Injunction originally scheduled for Wednesday, April 5, 2000 and now rescheduled for Monday, April 17, 2000 at 1:30 P.M.

As you know, I continued the hearing on the Injunction based on our conversations and your assurances that you were retaining local counsel to appear and defend against the complaint which I filed under the Uniform Fraudulent Transfer Act.

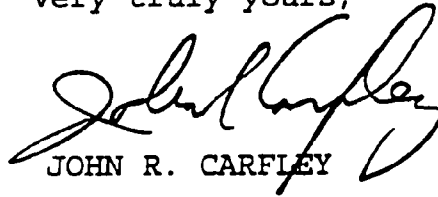
You understand that I am in no way implying that your client's involvement in the original transfer of funds was undertaken in order to defraud legitimate creditors of Mr. Cox. I am, of course, alleging that Ms. Estrada's application to establish a Spendthrift Trust for her brother constitutes one of the "badges of fraud" as defined under the Uniform Fraudulent Transfer Act since she had prior knowledge of the pending litigation against Mr. Cox here in Pennsylvania. As we discussed, however, only the underlying complaint will finally determine whether the original transfer of the proceeds of Mr. Cox's settlement into a Spendthrift Trust was fraudulent and should be set aside. In the meantime, I have no intention of demanding anything of the bank other than to protect the trust res and all future contributions to the trust. It is my opinion, therefore, that your client would not be prejudice by any action of the Court at this preliminary stage.

We are also willing to agree that the normal expenses for maintaining and administering the Trust as well as your reasonable defense costs would be paid without objection. My only goal, as I have reiterated to you on several occasions, is to insure that the proceeds of the Trust remain inviolate for the time being.

Exhibit C

I look forward to continuing to work with you and local counsel to hopefully resolve this matter short of litigation. I assume that local counsel will be instructed to file an answer to the complaint in due course. If you require an extension of time to file an answer, please advise and I will be happy to accommodate you in that regard.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John R. Carfley".

JOHN R. CARFLEY

JRC/mdt

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

April 7, 2000

Mr. Mark Weaver, Esquire
211 1/2 E. Locust Street
Clearfield, PA 16830

Dear Mark:

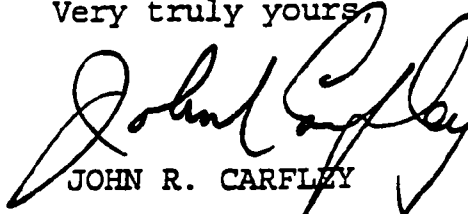
I was pleased to learn yesterday that you would be acting as local counsel for the Southwest Guaranty Trust Company in the action which I filed on behalf of the John Dimmick Estate. I am enclosing a copy of Judge Reilly's most recent Scheduling Order, a copy of the Affidavit in support of the Petition for Injunctive Relief, signed by Kay Churner and the most recent correspondence which I directed to S. Brady Whitaker, Attorney for Southwest Guaranty.

As I advised you yesterday, I was finally able to secure service over Linda Estrada by retaining the services of a process server in the state of Texas. An Affidavit of Service from this individual should be forthcoming in the near future. Hopefully, with Ms. Estrada involved in the case, we will be able to expedite some of the matters presently pending before the Court here in Pennsylvania.

As I indicated to you, I would be willing to extend the time for you to file an answer to my complaint if you need more time to familiarize yourself with the file. I would, however, like to proceed with the hearing on the Petition for Preliminary Injunction unless we can arrive at a stipulation providing for the bank to maintain the integrity of the Trust Fund in the interim between now and the time we are able to litigate the claim under the Uniform Fraudulent Transfer Act.

Please contact me once you have had an opportunity to fully review the file and are prepared to discuss your client's position in this matter.

Very truly yours,



JOHN R. CARFLEY

JRD/mdt
encls

Exhibit D

MARK S. WEAVER

Attorney at Law

211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

(814) 768-9696
(814) 768-7605 facsimile

Please respond to:
☒ Clearfield
☐ State College

e-mail: attymw@penn.com

1315 South Allen Street
Suite 302
State College, PA 16801

(814) 234-4681
(814) 237-5752 facsimile

April 10, 2000

John R. Carfley, Esquire
P.O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866

Re: Kay Churner, et al. vs. Clifford Cox, et al.
No. 00-328-CD

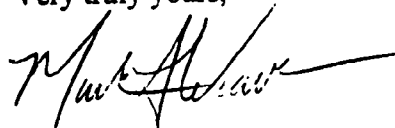
Dear John:

I write to confirm our telephone conversation on April 6, 2000 regarding the above matter.

I indicated that I would be entering my appearance as local counsel for Southwest Guaranty Trust Company which is the court appointed trustee for Clifford Cox. Thank you for the extension of time to file an Answer to the Complaint which you filed on March 15, 2000. I will file a written response before the hearing on the Petition for Preliminary Injunction which you indicated was rescheduled for April 17, 2000.

If you should have any questions regarding the above matter, please do not hesitate to contact me. Thank you again for your courtesies and considerations.

Very truly yours,



Mark S. Weaver

MSW/slh

cc: S. Brady Whitaker, Esquire

Exhibit E

JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

April 13, 2000

Mr. Mark Weaver, Esquire
211½ E. Locust Street
Clearfield, PA 16830

Re: John Dimmick Estate
vs. Clifford Cox et. ux.
No. 00-328-CD

Dear Mark:

Please find enclosed a Ten Day Letter of Default directed to you as counsel for Southwest Guaranty. As I have indicated I have no intention of filing a default against your client but my research indicates that the transmittal of a Ten Day Letter will preclude the filing of preliminary objections. This is in line with my discussions with Brady Whitaker which discussions were memorialized in the letters dated March 21, 2000, and April 6, 2000, wherein I agreed to continue the originally scheduled hearing on the injunction and extend the time for filing a response to the complaint on the condition that he would retain local counsel and file an answer to my complaint. (See letters of March 21, 2000 and April 6, 2000, attached hereto)

There are several lower court cases from Centre County and at least one appellate decision that in my opinion limit the right of a responding party to file anything other than an answer to a complaint once a Ten Day Letter has been transmitted. It is for this reason and this reason alone that I am sending the Ten Day Letter.

You may still take as much time as you require in order to familiarize yourself with the file and prepare your answer. I just want to prevent further delay in the resolution of these preliminary matters. In all probability the actual enforcement of the injunction and/or any judgment will require that the matter be exemplified to Texas and I have retained counsel there to assist me in that regard. Under the circumstances I do not see how your client would be prejudiced by dealing with the situation at this time particularly where I have personal jurisdiction over both Cox and Estrada and have defaulted both in the underlying personal injury suit.

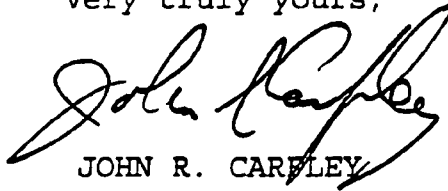
JOHN R. CARFLEY
ATTORNEY AT LAW
222 PRESQUEISLE STREET
P. O. BOX 249
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814
TELEPHONE 342-5581
FAX 342-1127

(2)

Please contact me if you wish to discuss this case in further detail.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John R. Carfley", written over the typed name.

JOHN R. CARFLEY

JRC:sm

Encls.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

:
:
:

vs.

: No. 00-328-CD

CLIFFORD COX; LINDA ESTRADA,
individually and as next friend
(ANF) of Clifford Cox, and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

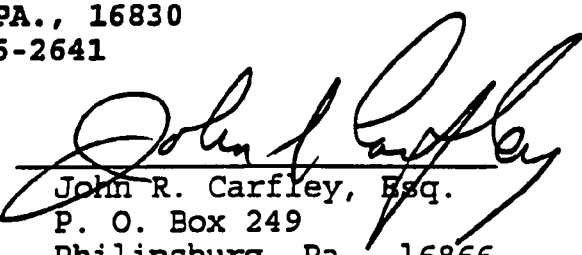
: Jury Trial Demanded
:
:

TO: Southwest Guaranty Trust Co.
c/o Mark Weaver, Esq.
211½ E. Locust Street
Clearfield, PA 16830

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641

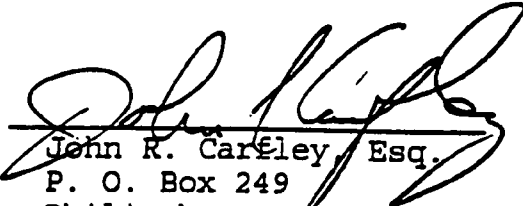

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

Dated: April 13, 2000

CERTIFICATE OF SERVICE

I hereby verify that a true and correct copy of the within document was served upon the following party at the following address on April 13, 2000, by ordinary mail, first class, postage prepaid and by fax to (814) 768-7605 on April 13, 2000.

Southwest Guaranty Trust Co., N.A.
c/o Mark Weaver, Esq.
211½ E. Locust Street
Clearfield, Pa., 16830



John R. Carley, Esq.
P. O. Box 249
Philipsburg, Pa., 16866
Attorney for Plaintiff

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

KAY CHURNER, individually and as :
EXECUTRIX OF THE ESTATE OF :
JOHN DIMMICK :

-vs-

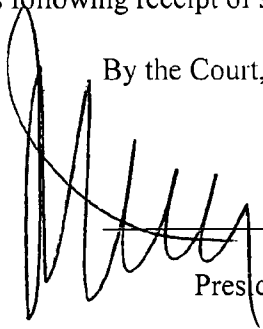
No. 00 -328 - CD

CLIFFORD COX; LINDA ESTRADA, :
individually and as next friend (ANF) of :
Clifford Cox, and SOUTHWEST :
GUARANTY TRUST CO., N.A. :

ORDER

NOW, this 27th day of February, 2002, following argument into Preliminary
Objections challenging jurisdiction filed on behalf of Southwest Guaranty Trust Co., N.A.,
Defendant, and Preliminary Objections filed on behalf of Plaintiff raising the issue of
timeliness of Defendant's Preliminary Objections, it is the ORDER of this Court that counsel
for Defendant shall, within 10 days from date hereof, file a supplementary brief as he may
desire and Plaintiff granted five days following receipt of said brief to file a reply thereto.

By the Court,



President Judge

FILED

FEB 27 2002

William A. Shaw
Prothonotary

FILED

013:55804
FEB 27 2002

rec Cas-fley,

Ryan,

weaver

William A. Shaw
Prothonotary

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,
Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF)
of Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,
Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for Defendants:

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

MAR 11 2002

William A. Shaw
William A. Shaw
Prothonotary

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,
Plaintiff

vs.

CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF)
of Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,
Defendants

No. 00-328-CD

Type of Case: CIVIL

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
PLAINTIFFS

Counsel of Record for Defendants:

Mark S. Weaver, Esq.
PA Supreme Court No. 63044

P.O. Box 170
211 ½ East Locust Street
Clearfield, PA 16830
(814) 768-9696

FILED

MAR 11 2002

William A. Shaw
William A. Shaw
Prothonotary

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

KAY CHURNER, individually and as
EXECUTRIX OF THE ESTATE OF
JOHN DIMMICK,
Plaintiff

vs.

No. 00-328-CD

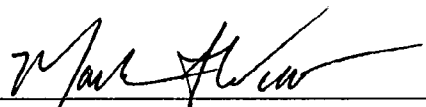
CLIFFORD COX, LINDA ESTRADA,
individually and as next friend (ANF)
of Clifford Cox, and SOUTHWEST
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Supplementary Brief filed on March 8, 2002 was served on John R. Carfley, Esquire by United States Mail, on March 11, 2002 at the address as follows:

Mr. John R. Carfley, Esquire
222 Presqueisle Street
P.O. Box 249
Philipsburg, PA 16866

Date: 3-11-02

By: 
Mark S. Weaver, Esquire
I.D. 63044
211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

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

KAY CHURNER, individually
And as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK,

Plaintiff

v.

No. 00-328-C.D.

CLIFFORD COX, LINDA ESTRADA,
Individually and as next friend (ANF)
of Clifford Cox, and SOUTHWEST
GUARANTY TRUST CO., N.A.,

Defendants

FILED

APR 16 2002

William A. Shaw
Prothonotary

OPINION AND ORDER

I. Background

Kay Churner, Plaintiff, initiated this action by Complaint filed on March 15, 2000, seeking relief under Pennsylvania's Uniform Fraudulent Transfer Act. In her Complaint, Plaintiff seeks to set aside as void a spendthrift trust established on November 11, 1999 by order of the District Court of Jefferson County, Texas for the benefit of Defendant Clifford Cox, an individual incarcerated in Pennsylvania. The res of such trust is comprised of a personal injury settlement award received on behalf of Defendant Cox. Defendant Southwest Guaranty Trust Co., N.A., was named trustee of such trust pursuant to Section 142 of the Texas Property Code that governs the management of property of incapacitated persons. On March 22, 2000, Plaintiff filed a Petition for Preliminary Injunction seeking to enjoin the distribution of or the request for distributions of funds from the trust. A hearing on the injunction was scheduled for April 5, 2000.

Thereafter, counsel for Southwest contacted Plaintiff's counsel to request an extension of time within which to retain local counsel and to respond to the Complaint. The disputed issue is whether the agreed upon response to such Complaint was an answer or other responsive pleading. Plaintiff's counsel indicated in correspondence to Southwest's counsel, Mr. Weaver, that the extension of time was for purposes of filing an answer. Mr. Weaver, in his correspondence confirms an extension of time for purposes of filing an answer or "written response." Mr. Weaver later informed Plaintiff's counsel that he would file preliminary objections challenging personal jurisdiction. On April 13, 2000, Plaintiff's counsel sent to Mr. Weaver a Notice of Intention to File Praecipe for Entry of Default Judgment, pursuant to Rule 237.1 of the Pennsylvania Rules of Civil Procedure, and Mr. Weaver filed preliminary objections to the Complaint raising the issue of in personam jurisdiction. Plaintiff filed preliminary objections to the untimely filing of Defendant Southwest's preliminary objections. The parties submitted briefs on the issues of whether (1) Defendant Southwest's untimely-filed Preliminary Objections resulted in prejudice to Plaintiff such that they should be stricken; and (2) Defendant Southwest's preliminary objection with respect to this Court's personal jurisdiction over Defendant Southwest should be granted. The issues are now ripe for decision.

II. Opinion

I. Plaintiff's Preliminary Objection that Defendant Southwest's Preliminary Objections be Stricken as Untimely Filed Must be Denied.

Plaintiff asserts that Defendant Southwest's counsel filed the preliminary objection relating to personal jurisdiction in contravention of an agreement between the parties that he would file only an answer to Plaintiff's complaint. Plaintiff claims that

such preliminary objection was untimely filed because it was filed simultaneously with Plaintiff's transmittal of a Notice of Intention to File Praecipe for Entry of Default Judgment. While Plaintiff's counsel's correspondence indicates that his agreement for a time extension related to the filing of answer, the only document from Defendant Southwest's counsel memorializing his understanding of the agreement reached indicates that he intended to file a "written response" to the Complaint. Moreover, only Plaintiff's counsel's final correspondence with Defendant Southwest's counsel documents his understanding that the extension was conditional on the filing of an answer and that the filing of preliminary objections would result in his initiation of default judgment proceedings. Accordingly, the Court finds that there was no agreement with respect to the type of responsive pleading to be filed.

Moreover, the Court finds that the case law cited by Plaintiff for the proposition that the giving of Notice of Intention to File Praecipe for Entry of Default Judgment precludes the filing of preliminary objections is inapposite to the case at bar where Defendant Southwest filed such preliminary objections on the same day that Plaintiff gave the Ten Day Notice. In Hahnemann Medical College & Hospital of Philadelphia v. Hubbard, 406 A.2d 1120 (Pa. Super. 1979), the Superior Court found that where a plaintiff took no action to initiate default judgment proceedings when the defendant failed to file preliminary objections within the 20 day period provided by Pennsylvania Rule of Civil Procedure 1026, the defendant would be permitted to file such preliminary objections almost a month after such deadline. Applying Hahnemann, the Centre County Court of Common Pleas in the case of Genesis Leasing Corp. v. Hipp, et. al (Centre County Civil Docket No. 84-1138) found that where a plaintiff provided a Notice of

Praeceptum for Entry of Default Judgment when the defendant missed the 20-day deadline, that preliminary objections filed some 10 days after such Notice must be stricken. Unlike Genesis Leasing, Plaintiff's Notice was filed the same day that Defendant Southwest's preliminary objections were filed. Moreover, by Plaintiff's counsel's admission, such Notice was filed for purposes of preventing Defendant Southwest from filing preliminary objections rather than for purposes of putting Defendant Southwest on notice of its failure to timely respond to the Complaint. As set forth in Pennsylvania Rule of Civil Procedure 126, this Court shall liberally construe the Rules of Civil Procedure "to secure the just, speedy and inexpensive determination of every action or proceeding" and may "at every stage of any such action or proceeding . . . disregard any error or defective procedure which does not affect the substantial rights of the parties." The Complaint was served on Defendant Southwest on March 20, 2000, and under Rule 1026(a), a response was due by April 9, 2000. Defendant Southwest filed its preliminary objections on April 13, 2000, a mere four days beyond the deadline. This Court does not find that this four-day delay caused any substantial prejudice to Plaintiff. See Fisher v. Hill, 81 A.2d 860 (Pa. 1951)(late pleadings may be filed when the opposing party is not prejudiced and justice so requires within the discretion of the lower court). Indeed, while Plaintiff asserts that she has been prejudiced by the untimely filing, she has not explained how she has been prejudiced. Moreover, due to the fact that Defendant Southwest's preliminary objections relate to the pivotal issue of the jurisdiction of this Court, justice requires that this Court disregard Defendant Southwest's failure to comply with the filing deadline and deny Plaintiff's Preliminary Objections. See Goldsborough v. City of Philadelphia, 455 A.2d 643 (Pa. Super. 1982)(preliminary objections filed four days beyond statutory period

permissible under Rule 126 where no prejudice existed and justice required that preliminary objection not be stricken).

II. Defendant Southwest's Preliminary Objection Relating to Personal Jurisdiction.

The exercise of in personam jurisdiction over a non-resident defendant must be measured against both the Pennsylvania long-arm statute and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Kubik v. Letteri, 614 A.2d 1110 (Pa. 1992); 42 Pa. Cons. Stat. Ann. §5322(b)(personal jurisdiction over a non-resident defendant may be exercised "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States"). Section §5322(a) enumerates several circumstances in which the exercise of in personam jurisdiction over non-resident defendants is appropriate, including the following bases which have been asserted by the Plaintiff herein:

(1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in the Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph: .

..
(ii) the doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts.

(iv) the engaging in any business or profession within this Commonwealth whether or not such business requires a license or approval by any government unit in this Commonwealth.

(4) Causing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth.

(7) Accepting election or appointment or exercising powers under the authority of this Commonwealth as a:

(iii) Trustee or other fiduciary.

In this case, Plaintiff alleges that Defendant Southwest has engaged in the following activities which constitute “transacting business” in Pennsylvania: (1) the acceptance of appointment as trustee of the trust set up for the benefit of Clifford Cox, an individual incarcerated in Pennsylvania; (2) retaining defense counsel for Mr. Cox, and making a single payment to said counsel, as well as anticipated future payments to counsel; (3) realizing pecuniary benefit by virtue of Defendant Southwest’s appointment as trustee, as well as sending funds for payment to “Pennsylvania businesses” on Mr. Cox’s behalf. The Court finds that none of these activities falls within the confines of the Pennsylvania statute.

First, the Court disagrees with Plaintiff’s contention that Defendant Southwest’s acceptance of appointment of trustee for a person incarcerated in Pennsylvania constitutes the transaction of business in Pennsylvania. Kubik, 614 A.2d at 1114 (contacts with the forum that are “random,” “fortuitous” or “attenuated” are not sufficient for the assertion of personal jurisdiction nor is the unilateral activity in the forum by others who claim some relationship with the defendant). Such connection to this forum is attenuated at best. Moreover, the Court does not agree that Defendant Southwest’s retention of counsel for Mr. Cox, and the single payment of legal fees, constitute a “single act” for purposes of realizing pecuniary benefit, or for purposes of accomplishing an object or “the engaging in any business” within the Commonwealth, as contemplated by the statute. 42 Pa. Cons. Stat. Ann. § 5322 (a)(1)(ii) and (iv). These activities, while incidental to Defendant Southwest’s role as trustee, were clearly not for the purpose of pecuniary benefit to Defendant Southwest, nor do they constitute “engaging in business” as provided in the statute. Furthermore, the Court does not agree that these activities

caused “harm or tortious injury” in the Commonwealth. While the retention of defense counsel for Mr. Cox was certainly not to Plaintiff’s advantage, it did not result in legal harm or tortious injury to Plaintiff or Plaintiff’s interests. Moreover, as admitted by Plaintiff in her brief, Defendant Southwest did not commit the alleged harm of attempting to intentionally defraud any of Mr. Cox’s creditors. Finally, the Court rejects Plaintiff’s assertion that Defendant Southwest’s acceptance of appointment as trustee confers jurisdiction under the Long-Arm Statute. Section 5322 (a)(7) refers to the election, appointment or exercise of powers as trustee “*under the authority of this Commonwealth.*” Defendant Southwest was appointed as trustee by a Texas court, and exercises power as trustee under the auspices of Texas law. In sum, Section 5322 of the Pennsylvania Long-Arm Statute does not confer jurisdiction over Defendant Southwest.

Moreover, even if the Pennsylvania Long-Arm Statute did provide for the exercise of in personam jurisdiction over Defendant Southwest, the Court believes that the exercise of such jurisdiction would violate the standards required by the Due Process Clause of the Fourteenth Amendment. Such standards, as set forth by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945), mandate that a defendant have “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” Kubik, 614 A.2d at 1113, *quoting* International Shoe Co., 326 U.S. at 316.

There are two bases for exercising in personam jurisdiction in compliance with Due Process standard: general or specific jurisdiction. Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino, 983 F.2d 551, 554 (3d Cir. 1993). General jurisdiction requires a showing that the defendant has “‘continuous and systematic’ contacts with the forum state.” *Id.*,

quoting Bane v. Netlink, Inc., 925 F.2d 637, 639 (3d Cir. 1991)(*citing Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984)). Because Defendant Southwest has not had ‘continuous and systematic’ contacts with the Commonwealth of Pennsylvania, there is no basis for the exercise of general jurisdiction.

The exercise of specific jurisdiction is appropriate where the defendant has “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Kubik*, 614 A.2d at 1113, *quoting International Shoe Co.*, 326 U.S. at 316. The exercise of jurisdiction is appropriate where: (1) the nonresident defendant has sufficient contacts with the forum state, and (2) the assertion of in personam jurisdiction comports with fair play and substantial justice. *Id.* at 1114, *citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Sufficient contacts exist where the ‘defendant’s conduct and [his] connection with the forum State are such that he should reasonably anticipate being haled into court there.’ *Id.* Such a finding is based upon whether the defendant “purposefully directed his activities at residents of the forum and purposefully availed himself of the privilege of conducting activities within the forum state.” *Id.*

Defendant Southwest’s retention of counsel in Pennsylvania and the payment of such counsel’s legal fees does not provide the necessary minimum contacts required by the Due Process Clause. *See Mellon Bank*, 983 F.2d 551 (where Plaintiff’s claim did not arise out of deposit of Pennsylvania checks by non-resident and there were no other sufficient minimum contacts between non-resident and the forum, court could not exercise specific jurisdiction over the defendant); *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n.7 (3d Cir. 1984)(mere issuance of check by non-resident

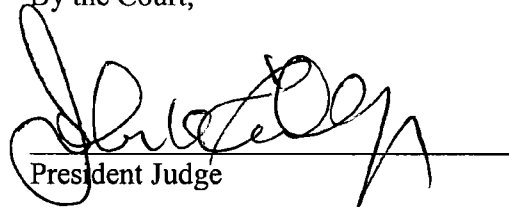
which finds its way to Pennsylvania bank does not provide requisite foreseeability of economic impact in Pennsylvania). This is especially the case given that the claim asserted by the Plaintiff does not arise from and is not connected to the payment of such fees to Mr. Cox's counsel. See Hanson v. Denckla, 357 U.S. 235 (1958)(where plaintiff brought action involving validity of trust instrument, fact that trustee performed bits of trust administration including the payment of trust income to plaintiff in the forum state, did not confer jurisdiction on court where action did not arise from an act done or transaction consummated in the forum state). Defendant Southwest's acceptance of the position of trustee and the duties attendant thereto, involving a person incarcerated in Pennsylvania, are not such that Defendant Southwest should have "reasonably anticipate being haled into court" in Pennsylvania. Defendant Southwest did not "purposefully direct" its activities as trustee to a Pennsylvania resident, and thus "purposefully avail" itself of the privilege of conducting business in Pennsylvania. Rather, Defendant Southwest's conduct was not purposeful: it was appointed trustee by the Court in Texas for a trust involving a person not even a resident of Pennsylvania, but merely incarcerated in this Commonwealth. Kubik, 614 A.2d at 1114, *quoting* Burger King, 471 U.S. at 474. Defendant Southwest did not seek out an opportunity for purposes of conducting business with a Pennsylvania resident. Any such contact with Pennsylvania as a forum was "fortuitous" and is not sufficient to satisfy Due Process standards. Id., *quoting* Burger King, 471 U.S. at 475. As such, the Court finds that the exercise of in personam jurisdiction over Defendant Southwest is not authorized under the Pennsylvania Long-Arm Statute and would be in violation of the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, the Court enters the following Order:

ORDER

NOW, this 15th day of April, 2002, NOW, it is the ORDER of this Court that Plaintiff's Preliminary Objections challenging the timeliness of Defendant Southwest Guaranty Trust Co., N.A.'s Preliminary Objections be and are hereby DENIED. Defendant Southwest Guaranty Trust Co., N.A.'s Preliminary Objections be and are hereby GRANTED.

By the Court,



President Judge

FILED

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APR 16 2002

William A. Shaw
Prothonotary

Ice Amy Casfley.

Atty Madico.

Atty Ryan

Atty Weavers

Atty D. Miseselle

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KAY CHURNER, individually
and as EXECUTRIX OF THE
ESTATE OF JOHN DIMMICK
Plaintiff

vs.

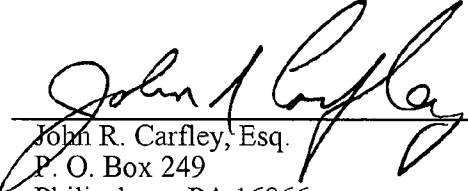
CLIFFORD COX, LINDA ESTRADA, Ind. and
as next friend (ANF) of Clifford and
SOUTHWEST GUARANTY TRUST CO., N.A.
Defendants

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:
No.00-328-CD
:
Jury Trial Demanded
:
:
:

PRAECIPE TO DISCONTINUE

To the Prothonotary:

Please discontinue the above captioned matter and mark the above case settled, discontinued
and ended.



John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581
ID# 17621

Dated: September 22, 2005

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

 **COPY**

CIVIL DIVISION

**Kay Churner
John Dimmick**

Vs.

No. 2000-00328-CD

**Clifford Cox
Linda Estrada
Southwest Guaranty Trust Company**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 23, 2005, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$140.00 have been paid in full by John R. Carfley, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of September A.D. 2005.

William A. Shaw, Prothonotary