

00547-00  
TAMMY A. MOORE et ux. vs. JOHN P. IRWIN et ux.

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

TAMMY A. MOORE and JEFF MOORE :

-vs- : No. 00-417-CD

JOHN P. IRWIN and VANETTA IRWIN :

**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendants' Motion for Summary Judgment. Upon consideration thereof and brief filed on behalf of Defendants, the Court noting that no brief was filed on behalf of Plaintiffs in opposition to the Motion, the Court finds that Plaintiff Tammy A. Moore was a licensee on the premises of the Plaintiffs at the time of the accident and that under Restatement (Second) of Torts Section 342, Defendants are liable for her injuries only if Defendants knew or had reason to know of the existing condition and should have realized that involved unreasonable risk of harm which Plaintiff would not discover; second, that Defendants failed to exercise reasonable care to make the condition safe or to warn the Plaintiff; and finally, that Plaintiff did not know or have reason to know of the condition and the risk involved. Clearly, in the instant situation Plaintiff was aware of the existing condition and the risk involved as it was an open and obvious danger of which she had been aware in the past. Moreover, the manner in which she approached the known danger clearly indicates that she assumed any risk involved and therefore, the Court enters the following:

**FILED**

JUN 25 2002

William A. Shaw  
Prothonotary

**ORDER**

NOW, this 25<sup>th</sup> day of June, 2002, in accordance with the foregoing Memorandum, this Court does grant Defendants' Motion for Summary Judgment and enters judgment in favor of the Defendants and against the Plaintiffs.

By the Court,

President Judge

**FILED**

JUN 25 2002

018-4811cc atty Thompson  
William A. Shaw  
Prothonotary

cc 1cc atty Heath  
FEB

①  
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL DIVISION - LAW

(P) TAMMY A. MOORE AND JEFF MOORE,  
her husband,

Plaintiffs

vs.

(D) JOHN P. IRWIN AND VANETTA J. IRWIN,  
husband and wife,

Defendants

\*  
\*  
\* Nc. 00- 417-cd  
\*  
\* TYPE OF CASE:  
\* Civil Division - Law  
\*  
\* TYPE OF PLEADING:  
\* Writ of Summons  
\*  
\* FILED ON BEHALF OF:  
\* Plaintiff  
\*  
\* COUNSEL OF RECORD FOR  
\* THIS PARTY:  
\* David R. Thompson, Esquire  
\* Supreme Court I.D. No. 73053  
\* P.O. Box 587  
\* Philipsburg PA 16866  
\* (814) 342-4100  
\*  
\*

FILED

APR 06 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL COURT DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE, her husband,	*
	*
	*
	No. 00-
Plaintiffs	*
	*
	*
vs.	*
	*
	*
JOHN P. IRWIN AND VANETTE J. IRWIN, husband and wife,	*
	*
	*
Defendants	*
	*
	*

**PRAECIPE FOR ISSUANCE OF**

**WRIT OF SUMMONS**

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in the above captioned matter to the Defendants  
above named and return to my office for service.



\_\_\_\_\_  
David R. Thompson, Esquire  
Attorney for Plaintiff

**FILED**

*Recd*  
APR 06 2000

0/1:50/00  
William A. Shaw

Prothonotary

3 CERT TO ATTY <sup>10</sup>  
2 CERTS TO ATTY <sup>80</sup>  
BY <sup>80</sup>  
ATTY

2 CERTS TO ATTY.

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

TAMMY A MOORE AND JEFF MOORE

her husband

Plaintiff(s)

vs.

S U M M O N S  
No: 00-417-CD

JOHN P. IRWIN AND VANETTA J. IRWIN,

husband and wife,

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 April 6, 2000

William A. Shaw, Prothonotary

Issuing Attorney:

David R. Thompson, Esq.  
P. O. Box 587  
Philipsburg, PA 16866

DAVID R. THOMPSON

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MOORE, TAMMY A. & JEFF  
VS  
IRWIN, JOHN P.

00-417-CD

PRAECIPE & SUMMONS

SHERIFF RETURNS

NOW APRIL 11, 2000 AT 10:04 AM DST SERVED THE WITHIN  
PRAECIPE & SUMMONS ON VANETTA J. IRWIN, DEFENDANT AT  
RESIDENCE, RD#1 BOX 503-34, OSCEOLA MILLS, CLEARFIELD COUNTY  
PENNSYLVANIA BY HANDING TO VANETTA J. IRWIN A TRUE AND  
ATTTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE  
KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

NOW APRIL 11, 2000 AT 10:04 AM DST SERVED THE WITHIN  
PRAECIPE & SUMMONS ON JOHN P. IRWIN, DEFENDANT AT RESIDENCE,  
RD#1 BOX 503-34, OSCEOLA MILLS, CLEARFIELD COUNTY,  
PENNSYLVANIA BY HANDING TO VANETTA J. IRWIN, WIFE A TRUE  
AND ATTTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND  
MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

34.73 SHFF. HAWKINS PAID BY: ATTY.  
20.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

3<sup>rd</sup> / DAY OF MAY 2000  
Will

SO ANSWERS,

*Chester A. Hawkins*  
*My Marilyn Ham*  
CHESTER A. HAWKINS  
SHERIFF

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

FILED

MAY 03 2000

3:45

William A. Shaw  
Prothonotary

*EJG*

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

CIVIL DIVISION - LAW

Type of Pleading:  
Entry of Appearance

Counsel for Defendants:  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798

ANDREWS WAGNER & BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**FILED**

SEP 07 2000

William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

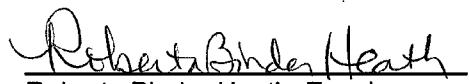
Defendants

**NOTICE OF APPEARANCE**

Please enter the appearance of Roberta Binder Heath, Esquire, ANDREWS AND WAGNER, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311 in the above-captioned matter on behalf of Defendants, John P. Irwin and Vanetta J. Irwin, husband and wife.

Respectfully submitted:

ANDREWS WAGNER & BEARD

  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Attorney for Defendant

3366 Lynnwood Drive  
P. O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

**CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ATTORNEY-AT-LAW, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that a true and correct copy of Defendants' Entry of Appearance has been served on the following parties of record by U.S. Mail, postage prepaid on this 6<sup>th</sup> day of September, 2000.

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866

ANDREWS WAGNER & BEARD

*Roberta Binder Heath*  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Attorney for Defendant

3366 Lynnwood Drive  
P. O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

**FILED**

SFP 97 2000

*W.A. Shad*  
William A. Shad  
Prosecutor

(4)

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

CIVIL DIVISION - LAW

Type of Pleading:

Praecipe for Rule to File Complaint

Counsel for Defendants:

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798

ANDREW S WAGNER & BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**FILED**

SEP 07 2000

William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiffs

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**PRAECIPE FOR RULE TO FILE COMPLAINT**

**TO: THE PROTHONOTARY**

Please enter a Rule upon Plaintiff to file a Complaint within twenty (20) days of service thereof or suffer the entry of a judgment of non pros.

ANDREWS, WAGNER & BEARD

Roberta Binder Heath

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendant

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

**CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ATTORNEY-AT-LAW, hereby certify that a true and correct copy of Defendants' Praeclipe for a Rule to File Complaint has been served on the following parties by U.S. First Class Mail, postage pre-paid on this 6<sup>th</sup> day of September 2000.

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866

ANDREWS WAGNER & BEARD

*Roberta Binder Heath*  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Attorney for Defendant

3366 Lynnwood Drive  
P. O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

FILED

SEP 07 2000  
M 1152 Rule to cite Heath  
William A. Shaw  
Prothonotary  
No cc  
KAS

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

**COPY**

TAMMY A. MOORE and JEFF MOORE,  
her husband,

Plaintiff(s)

vs.

No. 00-417-CD

JOHN P. IRWIN and VANETTA J. IRWIN  
husband and wife,

Defendant

RULE TO FILE COMPLAINT

TO: Plaintiff(s): THE HARTFORD INSURANCE GROUP, INC.

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

\_\_\_\_\_  
William A. Shaw, Prothonotary

Dated: September 7, 2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

TAMMY A. MOORE AND JEFF MOORE,  
her husband,

\* No. 00-417

Plaintiffs

\*

\*

vs.

\* TYPE OF CASE:  
Civil Division - Law

JOHN P. IRWIN AND VANETTA J. IRWIN,  
his wife,

Defendant

\*

\*

\*

\* TYPE OF PLEADING:  
Complaint

\*

\*

\* FILED ON BEHALF OF:  
Plaintiffs

\*

\*

\* COUNSEL OF RECORD  
FOR THIS PARTY:  
\* David R. Thompson, Esquire  
\* Attorney at Law  
\* Supreme Court I.D. 73053  
\* 308 Walton Street, Suite 4  
\* P.O. Box 587  
\* Philipsburg PA 16866  
\* (814) 342-4100

FILED

NOV 06 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE, \*  
her husband, \* No. 00-417-CD  
\*  
Plaintiffs \*  
vs. \*  
\*  
JOHN P. IRWIN AND VANETTA J. \*  
IRWIN, his wife, \*  
\*  
Defendant \*  
\*  
\*

**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 against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator  
Clearfield County Courthouse  
Clearfield PA 16830  
(814) 765-2641

  
\_\_\_\_\_  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE, her husband	*	
	*	No. 00-417-CD
	*	
Plaintiffs	*	
	*	
vs.	*	
	*	
JOHN P. IRWIN AND VANETTA J. IRWIN, his wife,	*	
	*	
	*	
Defendants	*	
	*	
	*	

**COMPLAINT**

AND NOW, comes the Plaintiffs, **TAMMY A. MOORE AND JEFF MOORE**, her husband by and through their attorney, David R. Thompson, Esquire, and files the following Complaint, of which the following is averred:

1. Plaintiff **TAMMY A. MOORE** is an adult individual currently residing at RR 1 Box 508, Osceola Mills, Pennsylvania, 16666.
2. Plaintiff **JEFF MOORE** is an adult individual currently residing at RR 1 Box 508, Osceola Mills, Pennsylvania, 16666.
3. At all relevant times herein, the Plaintiffs were and are husband and wife.
4. Defendants John P. Irwin and Vanetta J. Irwin, his wife, are adult individuals, currently residing at RD #1, Box 508-34, Osceola Mills, Pennsylvania, 16666.
5. The Defendants are the owners of real property situate in Decatur Township, Clearfield County, Pennsylvania, as described in Deed Book Volume 577 at Page 340. By way of further pleading, the Defendants lease portions of said real property to persons for

the placement of residential mobile homes.

6. Plaintiffs own property and live across from the premises owned by the Defendants.

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## **COUNT I**

### **TAMMY A. MOORE VS. JOHN P. AND VANETTA J. IRWIN**

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Paragraph 1 through 6 are incorporated by reference as though the same were set forth at length herein.

7. On or about April 8, 1998, Plaintiff **TAMMY A. MOORE** was walking on the subject premises described in Paragraph 5 herein.

8. On or about the said date, **TAMMY A. MOORE**, on her way to the neighbor's had turned around to speak with her husband, Plaintiff **JEFF MOORE** and a friend. By way of further pleading, she continued walking slowly backwards towards the neighbors while she was talking.

9. Upon the real property of the Defendants, there exists a cement slab which contains a twenty-three (23") inch by twenty-three (23") inch square opening to a four (4') foot deep manhole. The opening is covered by a twenty-four (24") inch by twenty-four (24") inch piece of metal which was 3/8 inch thick.

10. While walking, the Plaintiff **TAMMY A. MOORE** stepped upon the metal covering with her right foot. The metal covering gave way causing her right leg to fall into the four (4') foot deep manhole.

11. The Defendants were guilty of the following negligence, carelessness and recklessness as follows:

- a. Defendants failed to provide adequate support and stability to the manhole cover to prevent the same from falling or giving way.
- b. Defendants failed to provide a safe means of covering the manhole so as to prevent residents and guests from falling into the same.
- c. Defendants failed to warn residents and guests of the unstable and dangerous condition of the manhole and its metal cover.
- d. Defendants failed to correct the unstable and dangerous condition of the manhole and its metal cover when Defendants knew or should have known that the manhole and its metal cover was unsafe and could cause injury to its residents and guests.

12. As a result of the negligence, carelessness and recklessness of the Defendants, the Plaintiff, **TAMMY A. MOORE**, suffered serious injuries which may and probably will be permanent as follows:

- a. Iliotibial band tendinitis to the right knee;
- b. Vastus lateralis irritation;
- c. Sprain and strain to the right knee;
- d. Neurapraxia of the cutaneous nerve of the right lateral distal thigh;
- e. Contusions, bruises and abrasions to the right leg and right shoulder;
- f. Sprain and strain to the right shoulder;
- g. Endurance of various medical procedures and physical therapy.

13. As a result of the injuries referred to in Paragraph 12 hereof which is

incorporated herein by reference, the Plaintiff, **TAMMY A. MOORE**, was wholly unable to perform the regular duties of her occupation as a waitress from April 8, 1998 until April 17, 1998, at which time she returned to light duty until the end of May 1998.

14. As a result of the injuries referred to in Paragraph 12 hereof, which is incorporated by reference herein, the Plaintiff **TAMMY A. MOORE**, has incurred medical expenses totaling approximately \$2,699.45 and will continue to incur medical expenses in an undetermined amount in the future.

15. As a direct result of the injuries referred to in Paragraph 12 hereof which is incorporated by reference herein, the Plaintiff, **TAMMY A. MOORE**, lost income of approximately \$280.00 per week for a total of \$560.00. By way for further pleading, Plaintiff was working only twenty (20) hours per week for a period of six (6) weeks at a loss of \$140.00 per week. By way of further pleading, Plaintiff TAMMY A. MOORE sustained a total loss of wages in the amount of \$1,400.00.

16. The Plaintiff, **TAMMY A. MOORE**, may and probably will be required in the future to spend an indefinite amount to replace household services that she would otherwise perform but for her injuries.

17. The Plaintiff, **TAMMY A. MOORE**, claims a reasonable amount for the following:

- a. Pain and suffering; past, present and future;
- b. Privation and inconvenience; past present and future;
- c. Impairment of earning power; past, present and future;
- d. Future lost wages;

- e. Future medical expenses;
- f. All other damages allowable by law.

WHEREFORE, the Plaintiff, **TAMMY A. MOORE**, respectfully requests damages from the Defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) dollars. A jury trial is demanded.

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## COUNT II

### **JEFF MOORE V. JOHN P. IRWIN AND VANETTA IRWIN**

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Paragraphs 1 through 17 are incorporated by reference as though the same were set forth at length herein.

18. **JEFF MOORE** is the husband of **TAMMY A. MOORE**, having been married to her on December 3, 1998.

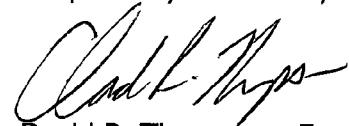
19. At all times referred to in this Complaint, the Plaintiff **JEFF MOORE**, was residing with his wife, **TAMMY A. MOORE**, and continues to reside with her up to the date of this Complaint.

20. As a result of the injuries suffered by the Plaintiff, **TAMMY A. MOORE**, the Plaintiff, **JEFF MOORE**, has been deprived of the services and society of his wife and will continue to be so deprived for an indefinite period of time in the future.

WHEREFORE, the Plaintiff, **JEFF MOORE**, respectfully requests damages from the Defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) dollars. A jury

trial is demanded.

Respectfully submitted,



David R. Thompson, Esquire  
Attorney for Plaintiffs

**VERIFICATION**

Plaintiff hereby verifies that the statements made in this **COMPLAINT** 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

DATE: 11-1-00

Tammy A. Moore  
Tammy A. Moore

FILED  
U.S. DISTRICT COURT  
NOV 06 2000  
ATTY

William A. Shaw  
Prothonotary

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

CIVIL ACTION-LAW

TAMMY A. MOORE AND JEFF MOORE,  
her husband,

Plaintiff

\* No. 00-417-CD

V

JOHN P. IRWIN AND VANETTA J. IRWIN,  
his wife,

Defendant

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\*

ACCEPTANCE OF SERVICE

I, Roberta Binder Heath, Esquire hereby accept service of a true and correct copy of the  
Complaint this 7<sup>th</sup> day of November, 2000.

DATE:

Roberta Binder Heath

Roberta Binder Heath, Esquire

**FILED**

NOV. 15 2000

William A. Shaw  
Prothonotary

**FILED**

NOV 15 2000

331/mcc  
William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

CIVIL DIVISION - LAW

Type of Pleading:

**Answer to Complaint with New Matter**

Counsel for Defendants:

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798

ANDREWS WAGNER & BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**FILED**

JAN 08 2001

William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiffs

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**NOTICE TO PLEAD**

**TO: TAMMY A. MOORE AND JEFF MOORE, HER HUSBAND**

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE  
ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE  
HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

**ANDREWS, WAGNER & BEARD**

*Roberta Binder Heath*

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendant, Sheetz, Inc.

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

**DATE: January 5, 2001**

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

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

Plaintiffs

:No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER**

AND NOW, comes the Defendants, John P. Irwin and Vanetta J. Irwin, husband and wife, by and through their attorney of record, Roberta Binder Heath, Esquire, and files the following Answer and New Matter to Plaintiff's Complaint as follows:

1. Admitted upon information and belief.
2. Admitted upon information and belief.
3. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3, and accordingly, deny same and demand strict proof thereof at the time of trial.
4. Admitted upon information and belief.
5. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 5, and accordingly, deny same and demand strict proof thereof at the time of trial.
6. Admitted.

**COUNT I**  
**TAMMY A. MOORE vs. JOHN P. and VANETTA J. IRWIN**

7. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 7, and accordingly, deny same and demand strict proof thereof at the time of trial.

8. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 8, and accordingly, deny same and demand strict proof thereof at the time of trial.

9. Admitted. By way of further answer, said cement slab is obvious and apparent and the manhole was secure at all times.

10. Denied. After reasonable investigation, Defendants are without knowledge or sufficient information to form a belief as to the truth of the averments contained in Paragraph 10 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

11. The allegations contained in Paragraph 11 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. If any response should be deemed necessary, Defendants state as follows:

a. Denied. It is denied that Defendants failed to provide adequate support and stability to the manhole cover to prevent same from falling or giving way. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, at all times prior to and on the date of the alleged incident, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by Defendants. Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident.

b. Denied. It is denied that Defendants failed to provide a safe means of covering the manhole so as to prevent residents and guests from falling into same. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, not in derogation of the foregoing, at all times prior to and on the date of the alleged incident, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by Defendants. Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident.

c. It is denied that Defendants' failed to warn residents and guests of the unstable and dangerous condition of the manhole and its metal cover. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, and not in derogation of the foregoing, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by Defendants. Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident. Further, the partial opening created by Plaintiff's son was visible to anyone entering the property.

d. It is denied that Defendants knew or should have known that the manhole and its metal cover was unsafe and could cause injury to its residents and guests. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, and not in derogation of the foregoing, at all times prior to and on the date of the alleged incident, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by the Defendants.

Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident. Further, the partial opening created by Plaintiff's son was visible to anyone entering the property.

12. The allegations contained in Paragraph 12 of the Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. By way of further answer, and not in derogation of the foregoing, the allegations contained in Paragraph 12, Subsections a – g of Plaintiff's Complaint regarding the injuries allegedly sustained by Plaintiff as a result of the alleged incident, are denied as Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and accordingly, strict proof thereof is demanded. By way of further answer, Defendants acted in accordance with the law at all times hereto and any injuries sustained by Plaintiff if proven is a result of an act or omission on the part of Plaintiff's son or third party.

13. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 13 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

14. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 14 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

15. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 15 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

16. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 16 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

17. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

**COUNT II**  
**JEFF MOORE v. JOHN P. IRWIN and VANETTA IRWIN**

18. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 18 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

19. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 19 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

20. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 20 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

**NEW MATTER**

21. Defendants hereby incorporate Paragraphs 1 – 20 of its foregoing Answer as if same were fully set forth herein.

22. Defendants preserve the affirmative defenses of contributory negligence, comparative negligence and assumption of risk pursuant to Rule 1030(b) of the Pennsylvania Rules of Civil Procedure.

23. The alleged damages of the Plaintiff are limited by her own failure to take reasonable steps to reduce and/or mitigate their alleged losses.

24. Some or all of the claims stated in Plaintiff's Complaint may be barred by laches, estoppel, unclean hands and want of equity.

25. If it is proven that Plaintiff sustained an injury, that injury was not a result of any act or omission on the part of Defendants, but rather, on the part of Plaintiff's son, or a third party over whom Defendants had no control.

26. Plaintiff's claims are barred in whole or in part by the doctrine of comparative and/or contributory negligence.

Respectfully submitted,

**ANDREWS WAGNER & BEARD**

*Roberta Binder Heath*

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendants

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**VERIFICATION**

I verify that the statements and averments of fact contained in the Answer to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to 18 Pa. C.S.A. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

Jan. 3, 2001  
Date

Vanetta J. Irwin  
Vanetta J. Irwin

**VERIFICATION**

I verify that the statements and averments of fact contained in the Answer to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to 18 Pa. C.S.A. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

Date

1/3/2001

John P. Irwin

*John P. Irwin*

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiffs

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ATTORNEY-AT-LAW, hereby certify that a true and correct copy of Defendants' Answer to Plaintiff's Complaint with New Matter has been served on the following parties by U.S. First Class Mail, postage pre-paid on this 5<sup>th</sup> day of January 2001.

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866

ANDREWS WAGNER & BEARD

*Roberta Binder Heath*  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Attorney for Defendant

3366 Lynnwood Drive  
P. O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

FILED

JAN 08 2001

1/12/01  
William A. Shaw  
Prothonotary

*Ex-Ex*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TAMMY A. MOORE AND JEFF MOORE,  
his wife,

\*  
\* No. 00-417-CD  
\*

Plaintiffs

\* TYPE OF CASE:  
\* Civil Action - Law  
\*

VS.

JOHN P. IRWIN AND VANETTA J. IRWIN,  
his wife,

\*  
\*  
\*  
\* TYPE OF PLEADING:  
\* Certificate of Service  
\*

Defendants

\*  
\* FILED ON BEHALF OF:  
\* Plaintiffs  
\*

\*  
\* COUNSEL OF RECORD FOR  
\* THIS PARTY:  
\* David R. Thompson, Esquire  
\* Attorney at Law  
\* Supreme Court 73053  
\* P.O. Box 587  
\* 308 Walton Street, Suite 4  
\* Philipsburg PA 16866  
\* (814) 342-4100

**FILED**

JAN 17 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE, his wife,	*	
	*	No. 00-417
	*	
Plaintiffs	*	
	*	
vs.	*	
	*	
JOHN P. IRWIN AND VANETTA J. IRWIN, his wife,	*	
	*	
Defendants	*	

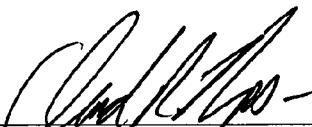
**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **REPLY TO NEW MATTER**, in the above captioned matter on the following by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

Roberta Binder Heath, Esquire  
ANDREWS WAGNER BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona PA 16603

DATE: January 11, 2001

BY:   
\_\_\_\_\_  
David R. Thompson, Esquire

ED

JAN 17 2001  
012327/KC/ath  
Sam A. Shaw  
Prothonotary

Thompson

Co

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE,  
her husband

\*  
\* No. 00-417

Plaintiffs

\* TYPE OF CASE:  
\* Civil Division - Law

vs.

JOHN P. IRWIN AND VANETTA J. IRWIN,  
his wife,

Defendants

\* TYPE OF PLEADING:  
\* Reply to New Matter

\* FILED ON BEHALF OF:  
\* Plaintiffs

\* COUNSEL OF RECORD  
\* FOR THIS PARTY:  
\* David R. Thompson, Esquire  
\* Attorney at Law  
\* Supreme Court I.D. 73053  
\* 308 Walton Street, Suite 4  
\* P.O. Box 587  
\* Philipsburg PA 16866  
\* (814) 342-4100

**FILED**

JAN 17 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE, \* No. 00-417-CD  
her husband, \*

Plaintiffs \*

vs. \*

JOHN P. IRWIN AND VANETTA J. IRWIN, \*  
his wife, \*

Defendants \*

**REPLY TO NEW MATTER**

AND NOW, comes the Plaintiffs, by and through their attorney, David R. Thompson, Esquire, and files the following Reply to Defendant's New Matter:

Paragraphs 1 through 21 of Plaintiff's Complaint are incorporated by reference as though the same were set forth at length herein.

22. To the extent the Defendants are indicating that they are entitled to the listed affirmative defenses, Plaintiffs specifically deny said allegation.

23. Paragraph 23 is specifically denied.

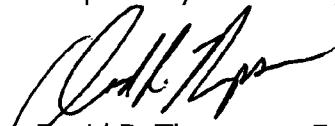
24. Paragraph 24 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is strictly denied and strict proof thereof is demanded at the time of trial.

25. Paragraph 25 is specifically denied.

26. Paragraph 26 is a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, the same is strictly denied and strict proof thereof

is demanded at the time of trial.

Respectfully submitted,



David R. Thompson, Esquire  
Attorney for Plaintiffs

**VERIFICATION**

Plaintiff hereby verifies that the statements made in this **REPLY TO NEW MATTER** 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.

DATE: January 9, 2001

Tammy A. Moore  
Tammy A. Moore

LED

1/17/2001  
0128711ccathy Thompson  
Sam A. Shaw  
Dictionary  
1/17/2001

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

CIVIL DIVISION - LAW

Type of Pleading:

Motion to Compel

Counsel for Defendants:

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798

ANDREWS WAGNER & BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**FILED**

APR 23 2001

William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiffs

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**ORDER**

AND NOW, this 26<sup>th</sup> day of April, 2001, upon consideration of the Motion to Compel, filed by Defendants, hereby issued upon Plaintiff, shall provide full and complete responses to Defendants' First Set of Interrogatories and Request for Production of Documents as set forth in the within Motion.

Upon failure of the Plaintiff to comply with this Order within ten (10) days, Defendants shall be permitted to seek direct and additional relief from the Court.

BY THE COURT:

J.

**FILED**

APR 26 2001

William A. Shaw  
Prothonotary

FILED  
04/26/2001  
APR 26 2001  
K24  
Amy Hatch  
William A. Shaw  
Prothonotary

TAMMY A. MOORE AND JEFF MOORE, her husband,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	No. 00-417-CD
V.	:	
JOHN P. IRWIN AND VANETTA J. IRWIN, husband and wife,	:	
Defendants	:	

**MOTION TO COMPEL**

AND NOW, come the Defendants, John P. Irwin and Vanetta J. Irwin, by and through their attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion to Compel and in support thereof, avers the following:

1. In response to Defendants serving a Rule to File a Complaint, this matter was commenced with the Plaintiff filing a Complaint against Defendants on or about November 6, 2000.
2. Defendants filed an Answer and New Matter to Plaintiff's Complaint on or about January 8, 2001.
3. On February 19, 2001, Defendants served their First Set of Interrogatories and Request for Production of Documents upon counsel for the Plaintiff. (A copy of the Certificate of Service and correspondence to Plaintiff's counsel serving the discovery requests are attached hereto as Exhibits "A" and "B", respectively).
4. After receiving no response or objections from Plaintiff, counsel for Defendants subsequently sent correspondence to counsel for the Plaintiff dated April 6, 2001, requesting a response within ten (10) days to obviate the need to file a Motion to Compel. (A copy of this correspondence is attached hereto as Exhibit "C").
5. The Plaintiffs still have failed to produce the documents or responses to Defendants' discovery requests.

6. The Plaintiff failed to file objections to the discovery request within thirty (30) days pursuant to the Pennsylvania Rules of Civil Procedure.

7. At no time prior to the scheduled date of production was any Motion for Protective Order filed on behalf of the Plaintiff as required by Pa. R.C.P. 4011 and 4012.

8. If no responses are received in a timely manner, Defendants will be prejudiced in its defense of this suit.

WHEREFORE, Defendants, John P. Irwin and Vanetta Irwin, respectfully requests that this Honorable Court order the Plaintiffs to provide full and complete responses to Defendants' First Set of Interrogatories and Request for Production of Documents within ten (10) days of the date of this Motion as set forth in the attached Order.

Respectfully submitted,

**ANDREWS, WAGNER & BEARD**

Roberta Binder Heath

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendants

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

## Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

## Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

## **CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS WAGNER & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants' Motion to Compel was served on this 20<sup>th</sup> day of **APRIL 2001**, via U.S. First Class Mail, postage pre-paid, addressed as follows:

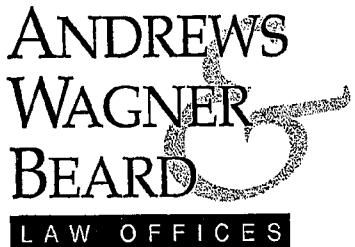
William Shaw, Prothonotary  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866

**ANDREWS & WAGNER**

Roberta Binder Heath  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendants

# **EXHIBIT "A"**



DAVID P. ANDREWS  
MICHAEL J. WAGNER  
CARL P. BEARD

CHRISTINE C. PODRATSKY  
STEPHANIE NYCUM HOOVER  
ROBERTA BINDER HEATH  
GARY L. ZIMMERMAN†  
BENJAMIN L. PRATT  
TRACY L. MYERS\*  
PATRICK J. FANELLI

† ALSO MEMBER OF MD BAR  
\* ALSO MEMBER OF VA BAR

February 19, 2001

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866-0028

**In re: Tammy A. Moore and Jeff Moore v. John P. Irwin and Vanetta Irwin  
No. 00-417-CD**

Dear Mr. Thompson:

Enclosed please find an original and one copy of Defendants' First Set of Interrogatories and Request for Production of Documents relative to the above-referenced matter.

Should you have any questions, please do not hesitate to contact me. My direct dial telephone number is (814) 940-8670.

Very truly yours,

Roberta Binder Heath

RBH/dlg  
Enclosure  
xc: Gretchen Lewis, Technical Specialist (#S9T4623)

# **EXHIBIT "B"**

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

No. 00-417-CD

CIVIL DIVISION - LAW

**CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ESQUIRE, hereby certify that I am this day serving the foregoing Defendants' First Set of Interrogatories and First Request for Production of Documents on the following person by U.S. First Class Mail, postage pre-paid:

David R. Thompson, Esquire  
308 Walton Street, Suite 4  
P.O. Box 587  
Philipsburg, PA 16866

**ANDREWS WAGNER & BEARD**

Roberta Binder Heath  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendants

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

# **EXHIBIT “C”**



DAVID P. ANDREWS  
MICHAEL J. WAGNER  
CARL P. BEARD

CHRISTINE C. PODRATSKY  
STEPHANIE NYCUM HOOVER  
ROBERTA BINDER HEATH  
GARY L. ZIMMERMAN†  
BENJAMIN L. PRATT  
TRACY L. MYERS\*  
PATRICK J. FANELLI

† ALSO MEMBER OF MD BAR  
\* ALSO MEMBER OF VA BAR

April 6, 2001

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866-0028

**In re: Tammy A. Moore and Jeff Moore v. John P. Irwin and Vanetta Irwin**  
**No. 00-417-CD**

Dear Mr. Thompson:

Please be advised that we served you with Defendants' First Set of Interrogatories and Request for Production of Documents on February 19, 2001. To date, we have not received a response to same.

Kindly respond within ten (10) days to obviate the need for a Motion to Compel. Thank you for your attention to this matter.

Very truly yours,

*Roberta Binder Heath*  
Roberta Binder Heath

RBH/dlg  
xc: Gretchen Lewis, Technical Specialist (#S9T4623)

**FILED**

APR 23 2001

1123/ ~~cc~~  
William A. Shaw  
Prothonotary

*gak*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL ACTION-LAW

FILED

MAY 08 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

TAMMY A. MOORE AND JEFF,	*
MOORE, her husband	*
Plaintiffs	No. 00-417-CD
	*
	*
vs.	*
	*
JOHN P. IRWIN AND	*
VANETTA J. IRWIN, his wife	*
	*
Defendants	

**CERTIFICATE OF SERVICE**

TO THE PROTHONOTARY:

I, DAVID R. THOMPSON, ESQUIRE, do hereby certify that I am this day serving one original and one copy of the **ANSWER TO DEFENDANT'S FIRST SET OF INTERROGATORIES**, in the above captioned matter on the following by Prepaid, First Class, United States Mail:

Roberta Binder Heath, Esquire  
ANDREWS WAGNER & BEARD LAW OFFICES  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603

DATE: May 4, 2001

BY:   
\_\_\_\_\_  
David R. Thompson, Esquire

FILED

MAY 08 2001  
J/148/MC  
William A. Shaw  
Prothonotary  
*REB*

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

CIVIL DIVISION - LAW

**MOTION FOR SUMMARY JUDGMENT  
OF DEFENDANTS**

Counsel of Record for Defendants:

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798

ANDREWS WAGNER & BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**FILED**

MAR 18 2002

111:22-nc  
William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

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

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

: No. 00-417-CD

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendants, John P. Irwin and Vanetta J. Irwin, by their undersigned counsel, Roberta Binder Heath, Esquire, respectfully move that this Honorable Court, pursuant to Pennsylvania Rule of Civil Procedure No. 1035.2, enter summary judgment in favor of Defendants and dismiss Plaintiffs' Complaint, with prejudice, for the following reasons:

1. Plaintiffs filed a Complaint against Defendants on or about November 6, 2000, in the Clearfield County Court of Common Pleas at No. 00-417-CD. (A true and correct copy of Plaintiffs' Complaint is attached hereto and marked as Exhibit "A").

2. The Defendants filed an Answer and New Matter to Plaintiffs' Complaint after a brief extension of time had been granted by Plaintiffs' counsel, which pleading was filed on January 8, 2001. In its Answer, the Defendants denied the material allegations of Plaintiffs' Complaint. Further, in the New Matter, Defendants preserved the Affirmative Defenses of contributory negligence, assumption of the risk, and that Plaintiffs had failed to state a claim upon which relief could be granted. (A true and correct copy of Defendants' Answer and New Matter is attached hereto and marked as Exhibit "B").

3. Defendants own property in Decatur Township, parcels of which are leased to persons for placement of mobile homes. Plaintiffs do not live on property owned by Defendant, but rather, own a house located across from Defendants' land. (See Exhibit "A" at Paragraphs 5-6).

4. A cement slab is situate on Defendants' property forming a base around a manhole covered by a thick metal plate. (See Exhibit "A" at Paragraph 9).

5. In this action, Plaintiffs seek damages as a result of a personal injury allegedly sustained by Tammy Moore on or about April 8, 1998. On that date, Plaintiff was walking along Defendants' property, backwards, and purportedly stumbled into the manhole, falling into a space where the metal covering had been pushed aside by unnamed third parties. (See Exhibit "A" at Count I; See Exhibit "B", Response to Count I).

6. In Count II of Plaintiffs' Complaint, Jeff Moore, Tammy Moore's husband, has instituted a loss of consortium claim allegedly related to the personal injuries sustained by his wife due to the incident delineated in Count I of Plaintiffs' Complaint. (See Exhibit "A" at Count II).

7. The response of Defendants specifies, inter alia, that a third party moved the metal plate without Defendants' knowledge or permission and that any danger associated with the manhole was open and obvious. (See Exhibit "B" at Paragraphs 11-12, 22-26). Plaintiffs admit knowledge of third parties moving said manhole cover and further admit to actual knowledge of the open and obvious danger. (See following Paragraphs 9-14 for details).

8. After written discovery had been propounded by Defendants and answered by the Plaintiffs, defense counsel deposed both Tammy and Jeff Moore on June 25, 2001. (True and correct copies of the deposition transcripts of Tammy Moore and Jeff Moore are attached hereto and marked as Exhibit "C" and Exhibit "D", respectively).

9. Tammy Moore testified under oath that she was well aware of the existence of the manhole in question. Additionally, Mrs. Moore specified that about 15 kids play around that area because a bus stop is close by and she personally observed children moving the manhole cover to the side. Mrs. Moore also noted that vehicles passing over the manhole caused the cover to shift position on occasion. (See Exhibit "C", N.T., Tammy Moore at p. 15).

10. Prior to the incident in question, Mrs. Moore believed the manhole was a danger and, consequently, told the children to stay away from the area. She indicated the belief that the area was dangerous was common throughout the trailer park. (See Exhibit "C", N.T., Tammy Moore at pp. 15-18, 37).

11. On the date in question, Mrs. Moore confirmed that the weather had been sunny and nice and that the incident occurred at 5:30 p.m., and it was still light. Thus, according to Tammy Moore, the light did not impede or obstruct in any way her view of the area surrounding the manhole. (See Exhibit "C", N.T., Tammy Moore at pp. 25-26).

12. Mrs. Moore stated under oath that she was walking backwards toward the manhole despite her belief that the area was dangerous. She indicated that she was talking to her husband and was not looking where she was going and, at that point, stumbled into the manhole. (See Exhibit "C", N.T., Tammy Moore at pp. 26-28).

13. Plaintiff, Jeff Moore, verified his wife's account in all respects. Mr. Moore stated that his wife was walking backwards and not looking where she was going when she stumbled into the manhole. (See Exhibit "D", N.T., Jeff Moore at p. 12).

14. Furthermore, Mrs. Moore stated that despite their belief that the area presented an obvious safety hazard, they did not complain to the Defendants until after the incident in question. (See Exhibit "C", N.T., Tammy Moore at p. 53).

15. Because of Plaintiffs' admissions, as a matter of law, liability cannot attach to the Defendants.

16. Tammy Moore is considered to be a public licensee. As such, Defendants' duty to her is limited.

17. Pursuant to Section 342 of the Restatement (Second) of Torts, a possessor of land is only liable for injuries caused by a blatant defect of the premises of which the possessor had knowledge but which could not be readily observed by the injured party (emphasis added). Plaintiffs' own admissions belie that the alleged defect of the property was not open and obvious. Consequently, liability cannot attach as a matter of law.

18. Pennsylvania law does not require a possessor of land to warn of open and obvious dangers. In this regard, the affirmative defenses of assumption of the risk and comparative negligence, even though preserved in their responsive pleading by Defendants, do not even enter into the analysis when the Plaintiff's own conduct relieves the Defendants of their duty. In this regard, if a person knows of a danger and, nevertheless, knowingly and voluntarily proceeds carelessly in the face of said danger,

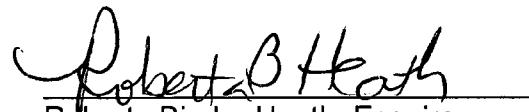
then the landowner has no liability pursuant to Section 342 of the Restatement (Second) of Torts.

19. Because the Defendants are not negligent, and Count I of the Complaint should be dismissed as a matter of law, then the contingent loss of consortium claim at Count II must also fail.

20. Thus, judgment should be granted in its entirety and the Plaintiff's Complaint dismissed with prejudice.

Respectfully submitted,

**ANDREWS WAGNER & BEARD**

  
\_\_\_\_\_  
Roberta Binder Heath, Esquire  
Pa. ID. No. 50798  
Attorney for Defendant

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ATTORNEY-AT-LAW, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that a true and correct copy of Motion for Summary Judgment, has been served on the following parties of record via U.S. First Class Mail on this 15<sup>th</sup> day of **MARCH 2002**.

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866

ANDREWS WAGNER & BEARD



\_\_\_\_\_  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendants

***DEFENDANTS'  
EXHIBIT "A"***

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

TAMMY A. MOORE AND JEFF MOORE,  
her husband,

\* No. 00-417

\*

\*

Plaintiffs

\*

\*

vs.

\*

\*

JOHN P. IRWIN AND VANETTA J. IRWIN,  
his wife,

TYPE OF CASE:  
Civil Division - Law

Defendant

\*

\*

\*

\*

TYPE OF PLEADING:  
Complaint

\*

\*

\*

FILED ON BEHALF OF:  
Plaintiffs

\*

\*

\*

COUNSEL OF RECORD  
FOR THIS PARTY:

\*

David R. Thompson, Esquire

\*

Attorney at Law

\*

Supreme Court I.D. 73053

\*

308 Walton Street, Suite 4

\*

P.O. Box 587

\*

Philipsburg PA 16866

\*

(814) 342-4100

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

NOV 6 2000

Attest:

*William J. Thompson*  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

## CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE,  
her husband, \*  
\* \* No. 00-417-CD

Plaintiffs \*  
\*  
\* vs. \*  
\*  
\* JOHN P. IRWIN AND VANETTA J. \*  
IRWIN, his wife, \*  
\* \*  
\* Defendant \*

## **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 against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator  
Clearfield County Courthouse  
Clearfield PA 16830  
(814) 765-2641

David R. Thompson  
David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE, \*  
her husband \* No. 00-417-CD  
\*  
Plaintiffs \*  
\*  
vs. \*  
\*  
JOHN P. IRWIN AND VANETTA J. \*  
IRWIN, his wife, \*  
\*  
Defendants \*  
\*

COMPLAINT

AND NOW, comes the Plaintiffs, **TAMMY A. MOORE AND JEFF MOORE**, her husband by and through their attorney, David R. Thompson, Esquire, and files the following Complaint, of which the following is averred:

1. Plaintiff **TAMMY A. MOORE** is an adult individual currently residing at RR 1 Box 508, Osceola Mills, Pennsylvania, 16666.
2. Plaintiff **JEFF MOORE** is an adult individual currently residing at RR 1 Box 508, Osceola Mills, Pennsylvania, 16666.
3. At all relevant times herein, the Plaintiffs were and are husband and wife.
4. Defendants John P. Irwin and Vanetta J. Irwin, his wife, are adult individuals, currently residing at RD #1, Box 508-34, Osceola Mills, Pennsylvania, 16666.
5. The Defendants are the owners of real property situate in Decatur Township, Clearfield County, Pennsylvania, as described in Deed Book Volume 577 at Page 340. By way of further pleading, the Defendants lease portions of said real property to persons for

the placement of residential mobile homes.

6. Plaintiffs own property and live across from the premises owned by the Defendants.

---

**COUNT I**

**TAMMY A. MOORE VS. JOHN P. AND VANETTA J. IRWIN**

---

Paragraph 1 through 6 are incorporated by reference as though the same were set forth at length herein.

7. On or about April 8, 1998, Plaintiff **TAMMY A. MOORE** was walking on the subject premises described in Paragraph 5 herein.

8. On or about the said date, **TAMMY A. MOORE**, on her way to the neighbor's had turned around to speak with her husband, Plaintiff **JEFF MOORE** and a friend. By way of further pleading, she continued walking slowly backwards towards the neighbors while she was talking.

9. Upon the real property of the Defendants, there exists a cement slab which contains a twenty-three (23") inch by twenty-three (23") inch square opening to a four (4') foot deep manhole. The opening is covered by a twenty-four (24") inch by twenty-four (24") inch piece of metal which was 3/8 inch thick.

10. While walking, the Plaintiff **TAMMY A. MOORE** stepped upon the metal covering with her right foot. The metal covering gave way causing her right leg to fall into the four (4') foot deep manhole.

11. The Defendants were guilty of the following negligence, carelessness and recklessness as follows:

- a. Defendants failed to provide adequate support and stability to the manhole cover to prevent the same from falling or giving way.
- b. Defendants failed to provide a safe means of covering the manhole so as to prevent residents and guests from falling into the same.
- c. Defendants failed to warn residents and guests of the unstable and dangerous condition of the manhole and its metal cover.
- d. Defendants failed to correct the unstable and dangerous condition of the manhole and its metal cover when Defendants knew or should have known that the manhole and its metal cover was unsafe and could cause injury to its residents and guests.

12. As a result of the negligence, carelessness and recklessness of the Defendants, the Plaintiff, **TAMMY A. MOORE**, suffered serious injuries which may and probably will be permanent as follows:

- a. Iliotibial band tendinitis to the right knee;
- b. Vastus lateralis irritation;
- c. Sprain and strain to the right knee;
- d. Neurapraxia of the cutaneous nerve of the right lateral distal thigh;
- e. Contusions, bruises and abrasions to the right leg and right shoulder;
- f. Sprain and strain to the right shoulder;
- g. Endurance of various medical procedures and physical therapy.

13. As a result of the injuries referred to in Paragraph 12 hereof which is

incorporated herein by reference, the Plaintiff, **TAMMY A. MOORE**, was wholly unable to perform the regular duties of her occupation as a waitress from April 8, 1998 until April 17, 1998, at which time she returned to light duty until the end of May 1998.

14. As a result of the injuries referred to in Paragraph 12 hereof, which is incorporated by reference herein, the Plaintiff **TAMMY A. MOORE**, has incurred medical expenses totaling approximately \$2,699.45 and will continue to incur medical expenses in an undetermined amount in the future.

15. As a direct result of the injuries referred to in Paragraph 12 hereof which is incorporated by reference herein, the Plaintiff, **TAMMY A. MOORE**, lost income of approximately \$280.00 per week for a total of \$560.00. By way of further pleading, Plaintiff was working only twenty (20) hours per week for a period of six (6) weeks at a loss of \$140.00 per week. By way of further pleading, Plaintiff **TAMMY A. MOORE** sustained a total loss of wages in the amount of \$1,400.00.

16. The Plaintiff, **TAMMY A. MOORE**, may and probably will be required in the future to spend an indefinite amount to replace household services that she would otherwise perform but for her injuries.

17. The Plaintiff, **TAMMY A. MOORE**, claims a reasonable amount for the following:

- a. Pain and suffering; past, present and future;
- b. Privation and inconvenience; past present and future;
- c. Impairment of earning power; past, present and future;
- d. Future lost wages;

- e. Future medical expenses;
- f. All other damages allowable by law.

WHEREFORE, the Plaintiff, **TAMMY A. MOORE**, respectfully requests damages from the Defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) dollars. A jury trial is demanded.

---

## **COUNT II**

### **JEFF MOORE V. JOHN P. IRWIN AND VANETTA IRWIN**

---

Paragraphs 1 through 17 are incorporated by reference as though the same were set forth at length herein.

18. **JEFF MOORE** is the husband of **TAMMY A. MOORE**, having been married to her on December 3, 1998.

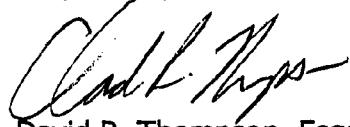
19. At all times referred to in this Complaint, the Plaintiff **JEFF MOORE**, was residing with his wife, **TAMMY A. MOORE**, and continues to reside with her up to the date of this Complaint.

20. As a result of the injuries suffered by the Plaintiff, **TAMMY A. MOORE**, the Plaintiff, **JEFF MOORE**, has been deprived of the services and society of his wife and will continue to be so deprived for an indefinite period of time in the future.

WHEREFORE, the Plaintiff, **JEFF MOORE**, respectfully requests damages from the Defendants in an amount in excess of Twenty-five Thousand (\$25,000.00) dollars. A jury

- trial is demanded.

Respectfully submitted,



David R. Thompson, Esquire  
Attorney for Plaintiffs

## **VERIFICATION**

Plaintiff hereby verifies that the statements made in this **COMPLAINT** 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.

DATE: 11-1-00

Tammy A. Moore  
Tammy A. Moore

*DEFENDANTS'*  
*EXHIBIT "B"*

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

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

No. 00-417-CD

CIVIL DIVISION - LAW

Type of Pleading:

Answer to Complaint with New Matter

Counsel for Defendants:

Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798

ANDREWS WAGNER & BEARD  
3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

FILED  
JAN 08 2001  
m/w/2001  
William A. Shaw  
Prothonotary

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

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

Plaintiffs

:No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**NOTICE TO PLEAD**

**TO: TAMMY A. MOORE AND JEFF MOORE, HER HUSBAND**

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE  
ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE  
HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

ANDREWS, WAGNER & BEARD

*Roberta Binder Heath*

\_\_\_\_\_  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendant, Sheetz, Inc.

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

**DATE: January 5, 2001**

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

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

Plaintiffs

:No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER**

AND NOW, comes the Defendants, John P. Irwin and Vanetta J. Irwin, husband and wife, by and through their attorney of record, Roberta Binder Heath, Esquire, and files the following Answer and New Matter to Plaintiff's Complaint as follows:

1. Admitted upon information and belief.
2. Admitted upon information and belief.
3. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3, and accordingly, deny same and demand strict proof thereof at the time of trial.
4. Admitted upon information and belief.
5. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 5, and accordingly, deny same and demand strict proof thereof at the time of trial.
6. Admitted.

**COUNT I**  
**TAMMY A. MOORE vs. JOHN P. and VANETTA J. IRWIN**

7. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 7, and accordingly, deny same and demand strict proof thereof at the time of trial.

8. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 8, and accordingly, deny same and demand strict proof thereof at the time of trial.

9. Admitted. By way of further answer, said cement slab is obvious and apparent and the manhole was secure at all times.

10. Denied. After reasonable investigation, Defendants are without knowledge or sufficient information to form a belief as to the truth of the averments contained in Paragraph 10 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

11. The allegations contained in Paragraph 11 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. If any response should be deemed necessary, Defendants state as follows:

a. Denied. It is denied that Defendants failed to provide adequate support and stability to the manhole cover to prevent same from falling or giving way. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, at all times prior to and on the date of the alleged incident, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by Defendants. Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident.

b. Denied. It is denied that Defendants failed to provide a safe means of covering the manhole so as to prevent residents and guests from falling into same. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, not in derogation of the foregoing, at all times prior to and on the date of the alleged incident, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by Defendants. Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident.

c. It is denied that Defendants' failed to warn residents and guests of the unstable and dangerous condition of the manhole and its metal cover. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, and not in derogation of the foregoing, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by Defendants. Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident. Further, the partial opening created by Plaintiff's son was visible to anyone entering the property.

d. It is denied that Defendants knew or should have known that the manhole and its metal cover was unsafe and could cause injury to its residents and guests. To the contrary, Defendants acted in accordance with their duty under the law at all times material hereto. By way of further answer, and not in derogation of the foregoing, at all times prior to and on the date of the alleged incident, the manhole was securely covered by a heavy metal plate. This metal plate remained securely over the manhole and was not moved by the Defendants.

Rather, on the morning of the alleged incident at approximately 8:00 a.m., Plaintiff's son, Jeffrey Moore, entered the Defendants' premises without Defendants' knowledge or permission and pushed the metal plate covering the manhole partially open thereby creating the condition which was the cause of the alleged incident. Further, the partial opening created by Plaintiff's son was visible to anyone entering the property.

12. The allegations contained in Paragraph 12 of the Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. By way of further answer, and not in derogation of the foregoing, the allegations contained in Paragraph 12, Subsections a – g of Plaintiff's Complaint regarding the injuries allegedly sustained by Plaintiff as a result of the alleged incident, are denied as Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and accordingly, strict proof thereof is demanded. By way of further answer, Defendants acted in accordance with the law at all times hereto and any injuries sustained by Plaintiff if proven is a result of an act or omission on the part of Plaintiff's son or third party.

13. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 13 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

14. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 14 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

15. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 15 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

16. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 16 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

17. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

**COUNT II**  
**JEFF MOORE v. JOHN P. IRWIN and VANETTA IRWIN**

18. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 18 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

19. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 19 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

20. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 20 of Plaintiff's Complaint, and accordingly, deny same and demand strict proof thereof at the time of trial.

**NEW MATTER**

21. Defendants hereby incorporate Paragraphs 1 – 20 of its foregoing Answer as if same were fully set forth herein.

22. Defendants preserve the affirmative defenses of contributory negligence, comparative negligence and assumption of risk pursuant to Rule 1030(b) of the Pennsylvania Rules of Civil Procedure.

23. The alleged damages of the Plaintiff are limited by her own failure to take reasonable steps to reduce and/or mitigate their alleged losses.

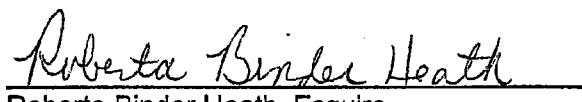
24. Some or all of the claims stated in Plaintiff's Complaint may be barred by laches, estoppel, unclean hands and want of equity.

25. If it is proven that Plaintiff sustained an injury, that injury was not a result of any act or omission on the part of Defendants, but rather, on the part of Plaintiff's son, or a third party over whom Defendants had no control.

26. Plaintiff's claims are barred in whole or in part by the doctrine of comparative and/or contributory negligence.

Respectfully submitted,

**ANDREWS WAGNER & BEARD**

  
\_\_\_\_\_  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Counsel for Defendants

3366 Lynnwood Drive  
P.O. Box 1311  
Altoona, PA 16603  
(814) 940-8670

**VERIFICATION**

I verify that the statements and averments of fact contained in the Answer to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to 18 Pa. C.S.A. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

Jan. 3, 2001

Date

Vanetta J. Irwin

Vanetta J. Irwin

**VERIFICATION**

I verify that the statements and averments of fact contained in the Answer to Plaintiff's Complaint are true and correct to the best of my knowledge, information, and belief.

I understand that my statements are made subject to 18 Pa. C.S.A. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

1/3/2001  
Date

John P. Irwin  
John P. Irwin

TAMMY A. MOORE AND  
JEFF MOORE, her husband,

Plaintiffs

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-417-CD

v.

JOHN P. IRWIN AND  
VANETTA J. IRWIN,  
husband and wife,

Defendants

**CERTIFICATE OF SERVICE**

I, ROBERTA BINDER HEATH, ATTORNEY-AT-LAW, hereby certify that a true and correct copy of Defendants' Answer to Plaintiff's Complaint with New Matter has been served on the following parties by U.S. First Class Mail, postage pre-paid on this 5<sup>th</sup> day of January 2001.

David R. Thompson, Esquire  
P.O. Box 587  
Philipsburg, PA 16866

ANDREWS WAGNER & BEARD

*Roberta Binder Heath*  
Roberta Binder Heath, Esquire  
Pa. I.D. No. 50798  
Attorney for Defendant

3366 Lynnwood Drive  
P. O. Box 1311  
Altoona, PA 16603-1311  
(814) 940-8670

**DEFENDANTS'  
EXHIBIT "C"**

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

\* \* \* \* \*

TAMMY A. MOORE, \*  
and JEFF MOORE, \* Case No.  
her husband, \* 00-417-CD  
Plaintiffs \*  
vs. \*  
JOHN P. IRWIN and \*  
VANETTA J. IRWIN, \*  
husband and wife, \*  
Defendants \*

\* \* \* \* \*

DEPOSITION OF

TAMMY MOORE

JUNE 25, 2001

**COPY**

Any reproduction of this transcript  
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by the certifying agency.

	Page 2	Page 4
1 DEPOSITION	1 INDEX	
2 OF	2	
3 TAMMY MOORE, taken on behalf of the	3 WITNESS: TAMMY MOORE	
4 Defendants herein, pursuant to the	4 EXAMINATION	
5 Rules of Civil Procedure, taken	5 by Attorney Binder-Heath 7 - 56	
6 before me, the undersigned, Valerie	6 CERTIFICATE 58	
7 Gregory, a Court Reporter and	7	
8 Commissioner of Deeds in and for the	8	
9 Commonwealth of Pennsylvania, at the	9	
10 law offices of Andrews, Wagner &	10	
11 Beard, 3366 Lynnwood Drive, Altoona,	11	
12 Pennsylvania, on Monday, June 25,	12	
13 2001, beginning at 9:52 a.m.	13	
14	14	
15	15	
16	16	
17	17	
18	18	
19	19	
20	20	
21	21	
22	22	
23	23	
24	24	
25	25	
	Page 3	Page 5
1 A P P E A R A N C E S	1 EXHIBIT PAGE	
2	2	
3 DAVID R. THOMPSON, ESQUIRE	3 PAGE	
4 308 Walton Street, Suite 4	4 NUMBER DESCRIPTION IDENTIFIED	
5 P.O. Box 587	5	
6 Philipsburg, PA 16866	6 NONE OFFERED	
7 COUNSEL FOR PLAINTIFF	7	
8	8	
9 ROBERTA BINDER-HEATH, ESQUIRE	9	
10 Andrews, Wagner & Beard	10	
11 3366 Lynnwood Drive	11	
12 P.O. Box 1311	12	
13 Altoona, PA 16603	13	
14 COUNSEL FOR DEFENDANT	14	
15	15	
16	16	
17	17	
18	18	
19	19	
20	20	
21	21	
22	22	
23	23	
24	24	
25	25	

1	OBJECTION PAGE	Page 6	1 Also, you need to keep your 2 voice up and your responses verbal. 3 If you shrug your shoulders or 4 something along those lines, she 5 can't take that down. Do you 6 understand that? 7 A.Yes. 8 Q.Basically, what I'm going to 9 be doing today is just asking to get 10 your recollection of what occurred on 11 April 8th, 1998 in an accident that 12 you sustained and what happened 13 afterwards. 14 If you don't understand a 15 question that I ask you or you don't 16 hear me, let me know and I'll be 17 happy to repeat or rephrase the 18 question for you. If you do answer 19 my question, I'll assume you 20 understood the question. 21 A.Okay. 22 Q.Also, if you want to take a 23 break or speak to your attorney, go 24 to the ladies' room, whatever you 25 need to do, let me know and we can
1	PROCEEDINGS	Page 7	1 accommodate you. Okay? 2 A.Okay. 3 Q.Have you ever had your 4 deposition taken before? 5 A.No. 6 Q.And are you taking any 7 medications today that would 8 interfere with your ability to recall 9 what happened on the date of the 10 accident? 11 A.No. 12 Q.Again, let me finish my 13 question before you answer me. And 14 the answer is no? 15 A.No. 16 Q.Have you ever been convicted 17 of a crime? 18 A.No. 19 Q.Have you ever been involved in 20 a lawsuit before this lawsuit? 21 A.No. 22 Q.What is your date of birth? 23 A.December 23rd, 1969. 24 Q.And your Social Security 25 number?

<p>1 A.196-56-0207.</p> <p>2 Q And when were you married?</p> <p>3 A.1988. December 3rd, 1988.</p> <p>4 Q And that was to Jeff Moore?</p> <p>5 A.Yes.</p> <p>6 Q And do you currently reside together?</p> <p>7 A.Yes.</p> <p>8 Q On the day of the accident, which would have been April 8th, 1998, were you residing together?</p> <p>9 A.Yes.</p> <p>10 Q How many children do you have?</p> <p>11 A.Three.</p> <p>12 Q.What are their names and ages?</p> <p>13 A.Kristin Moore.</p> <p>14 Q.Her age?</p> <p>15 A.She's 12. Jeffrey Moore, Jr., and he's 11. And I have Danielle Moore, and she's three.</p> <p>16 QAnd the date in question, did anyone witness the incident?</p> <p>17 A.Yes.</p> <p>18 QAnd let me direct your attention to --- I don't know if your</p>	Page 10	Page 12
	Page 11	Page 13

1 the property?  
 2 A.Yes. Her son, in fact, fell in  
 3 the hole before.  
 4 Q.How old is he?  
 5 A.Right now he's 20.  
 6 Q.Do you know when he fell in  
 7 the hole?  
 8 A.He was in kindergarten, so  
 9 he'd be, what, six, seven years old.  
 10 Q.And when did you find out  
 11 about that?  
 12 A.After my incident.  
 13 Q.What about Dolly Petrosky  
 14 (phonetic)?  
 15 A.She has lived there all her  
 16 life. She knows the area, too.  
 17 Q.And what about --- is it Lela  
 18 or Leila Maines (phonetic)?  
 19 A.Lela (correct pronunciation).  
 20 She has knowledge over the years.  
 21 Q.Are you aware that she gave a  
 22 statement on this incident?  
 23 A.Lela? Uh-uh (no).  
 24 Q.Basically, she indicated that  
 25 on the day in question your son had

1 kicked off the top of the manhole  
 2 cover and was throwing rocks in  
 3 there. Were you aware of that?  
 4 A.No. It's a bus stop for like  
 5 15 kids.  
 6 Q.Did you ever see any kid open  
 7 up the cover and throw rocks in or  
 8 play around the area?  
 9 A.Several kids all the time.  
 10 Q.Lift up the cover?  
 11 A.Oh, yeah. Move it. Vehicles  
 12 going over moved it.  
 13 Q.And is that something you saw  
 14 before you fell or after?  
 15 A.Before. Everybody knew about  
 16 it. We always told the kids stay away  
 17 from it, you know, it's a bus stop.  
 18 They would stand on it. And we were  
 19 always hollering at them, get away  
 20 from it, don't go near it.  
 21 Q.And what is it for?  
 22 A.It's access, I guess, to the  
 23 --- I don't know, for the water  
 24 company to go down in. I'm not even  
 25 sure. I never really looked ---.

1 Q.Is there any utility signs  
 2 there or on top of the cover?  
 3 A.Nothing. Nothing. It's just  
 4 a cement slab with a --- like that  
 5 kind of thing with a piece of metal  
 6 over it.  
 7 Q.Is it different now?  
 8 A.Yeah.  
 9 Q.How is it different?  
 10 A.There's a thicker plate on it  
 11 with a handle. It's a lot heavier.  
 12 Q.Do you know who put that on  
 13 there?  
 14 A.Mr. Irwin.  
 15 Q.And how do you know that?  
 16 A.He did it two days after the  
 17 incident.  
 18 Q.Do you know if he paid for  
 19 that himself?  
 20 A.I have no idea.  
 21 Q.Other than the people that are  
 22 listed on the Interrogatory Number  
 23 Five that we talked about and your  
 24 husband, is there anybody else that  
 25 would have knowledge?

1 A.In all truthfulness, everybody  
 2 that lives in that trailer court has  
 3 knowledge of how it was.  
 4 Q.And can you get me those  
 5 people's names and give them to your  
 6 attorney?  
 7 A.Yeah, I can.  
 8 Q.You had indicated that Barbara  
 9 Irwin. Is this the same Irwin that  
 10 owns the property?  
 11 A.She was married to Jack  
 12 Irwin's son.  
 13 Q.So she would be --- how would  
 14 they be related to them?  
 15 A.He was her --- he's her ex-  
 16 father-in-law.  
 17 Q.You had indicated that her son  
 18 had fallen into the manhole as well.  
 19 A.Uh-huh (yes).  
 20 Q.Did you know of anybody else  
 21 that had fallen into the manhole?  
 22 A.She would know more than I  
 23 would. I've only been there ---  
 24 living there for 12 years.  
 25 Q.But in that time, did you ever

<p>1 know of anyone else that had an 2 accident? 3 A.No, no. Uh-uh (no). 4 Q.Are you currently employed? 5 A.Not right now. 6 Q.And at the time of the 7 accident, where were you employed? 8 A.Electric Avenue, Incorporated. 9 Q.What did you do? 10 A.I was a waitress/bartender 11 full time. 12 Q.And how long had you been 13 there? 14 A.I want to say about five, six 15 months. 16 Q.At the time? 17 A.Yeah. 18 Q.Did you take time off then 19 after the incident? 20 A.Oh, yeah. 21 Q.How long? 22 A.I was off two weeks completely 23 and then they put me back on light 24 duty for a couple more weeks. But 25 even then my hours were limited</p>	Page 18	<p>1 time, did you have a doctor say that 2 that was okay? 3 A.Yes. 4 Q.And who was that? 5 A.Doctor Frigate. 6 Q.And did you go back to him and 7 say, you know, I'm having problems 8 here in my job? 9 A.I went to him. I tried to do 10 what I could do. I didn't want it to 11 get me down. 12 Q.And so did you talk to him 13 about the problems you were having? 14 A.Uh-huh (yes). 15 Q.And what did he tell you? 16 A.He ran me through physical 17 therapy. 18 Q.And did you go to physical 19 therapy? 20 A.Yes. 21 Q.How long? 22 A.I went three times a week for 23 a month. 24 Q.And this was the month after? 25 Like I'm just trying to get a time</p>	Page 20
<p>1 because I just couldn't do the work. 2 Q.For light duty, were your 3 hours limited or did they change what 4 you had to do? 5 A.Changed what I had to do. I'd 6 sit and just run the cash register, 7 you know, sit on the stool. 8 Q.So was it both your hours and 9 your duties were limited? 10 A.Yeah. 11 Q.And then after a couple of 12 weeks what happened? 13 A.Well, the two weeks that I was 14 off, and then I went back to the 15 light duty. And then after that I 16 tried to go into full duty and it was 17 just more or less what I could do. 18 Q.What does that mean? 19 A.There's days that, you know, 20 if I was on my feet too much, it just 21 hurt my knee too much because I was 22 waitress --- bartender, either one, 23 I'm doing a lot of moving. 24 Q.And when you had gone back to 25 work or tried to go back to work full</p>	Page 19	<p>1 frame. 2 A.Okay. Yeah, it would have 3 probably been in June. 4 Q.Because you were off two weeks 5 and then you went back to light duty 6 two weeks? 7 A.Yeah, it was a month. That 8 would have been May. 9 Q.And then sometime after that 10 you went to physical therapy? 11 A.Yes, ma'am. 12 Q.And where did you go to 13 physical therapy? 14 A.Philipsburg Area Hospital. 15 Q.Did that help you? 16 A.Some, but not completely. I 17 still have problems. 18 Q.And why did you stop after a 19 month? 20 A.That's all the doctor 21 requested. 22 Q.Did you tell him you were 23 still having problems? 24 A.Uh-huh (yes). 25 Q.And what did he do, what did</p>	Page 21

1 he tell you?  
 2 A.He just told me to wrap it and  
 3 try to do as much as I could at home  
 4 with bands and just try to ---.  
 5 Q.What did you use, like an Ace  
 6 bandage or elastic knee wrap?  
 7 A.Yeah. Yeah, and then they  
 8 gave me bands for home therapy, like  
 9 elastic bands used to try to  
 10 strengthen it up.  
 11 Q.And do you use them still?  
 12 A.Occasionally.  
 13 Q.Did you use them before?  
 14 A.Uh-huh (yes).  
 15 Q.How often?  
 16 A.Almost every day.  
 17 Q.And do they help you?  
 18 A.Yeah.  
 19 Q.And when do you use them now?  
 20 A.As I need them, when it starts  
 21 hurting or ---.  
 22 Q.So you don't use it every day?  
 23 A.No.  
 24 Q.Do you take any medications  
 25 for pain?

1 were off work?  
 2 A.And sometimes I would use them  
 3 even after that if I needed them.  
 4 Q.And did you then wear the  
 5 elastic wrap also?  
 6 A.Constantly.  
 7 Q.What about now, do you wear  
 8 that?  
 9 A.Yeah, when I need it.  
 10 Q.When it hurts?  
 11 A.Yeah, which is almost every  
 12 day.  
 13 Q.Are you wearing it today?  
 14 A.No.  
 15 Q.And does that help you when  
 16 you wear it?  
 17 A.Yeah.  
 18 Q.Do you have to take Tylenol  
 19 every day?  
 20 A.Pretty much. I try not to  
 21 take any medicine.  
 22 Q.Did you take it today?  
 23 A.Yes.  
 24 Q.Other than the crutches and  
 25 then the elastic wrap, was there

1 A.I take Tylenol.  
 2 Q.Regular Tylenol?  
 3 A.Yeah. I don't take pills.  
 4 Q.Did you ever take anything  
 5 else besides Tylenol?  
 6 A.He did have me on --- I'm  
 7 trying to think what he had me on,  
 8 ibuprofen. He had me on some pain  
 9 medication which I got there.  
 10 Q.But you don't know what it  
 11 was?  
 12 A.No.  
 13 Q.Was it prescription?  
 14 A.Yes.  
 15 Q.And how long did you take  
 16 that, do you remember?  
 17 A.It was a couple months.  
 18 Q.When you first were involved  
 19 in the accident, were you on  
 20 crutches?  
 21 A.Yes.  
 22 Q.And how long were you on  
 23 crutches?  
 24 A.A couple weeks.  
 25 Q.For the two weeks that you

1 anything else? Did they put you in  
 2 any kind of splint or a brace or  
 3 anything along those lines?  
 4 A.No.  
 5 Q.When was your first treatment?  
 6 When did you first go to the  
 7 hospital?  
 8 A.April 8th.  
 9 Q.That night?  
 10 A.That night.  
 11 Q.And was that Philipsburg  
 12 emergency room?  
 13 A.Yes.  
 14 Q.What time did you go there?  
 15 A.I'd say approximately 6:00.  
 16 Q.What time did the accident  
 17 happen?  
 18 A.Approximately around 5:30.  
 19 Q.So right away?  
 20 A.Yeah, I couldn't walk.  
 21 Q.And at the time of the  
 22 accident, what were you doing, where  
 23 were you going?  
 24 A.I was going over to a  
 25 neighbor/co-worker's house to take

<p>1 her her check. She worked with me 2 and it was payday. 3 Q.And what's that neighbor's 4 name? 5 A.Misty Stewart. 6 Q.Did she see anything? 7 A.No. 8 Q.So at the time that this 9 happened, were you on your way over 10 or were you on your way back? 11 A.On my way over. 12 Q.So you still had the check in 13 your hand when it happened? 14 A.Yes, ma'am. 15 Q.And how was the weather that 16 day? 17 A.Sunny, nice. 18 Q.And it was still light out? 19 A.Uh-huh (yes). 20 Q.And what happened? 21 A.I was just walking. I was 22 talking to my husband. Him and Mr. 23 Hockenberry were in the driveway, and 24 they were facing towards the trailer 25 court talking. And I was talking to         </p>	<p>Page 26</p>	<p>1 come across right in here. And like 2 I said, I was just walking, and I 3 turned around and I just --- I mean, 4 I didn't even know what hit me. 5 ATTORNEY BINDER-HEATH: 6 So let the record 7 reflect that I'm showing the 8 witness a picture of the 9 property which depicts a red 10 vehicle parked in a driveway. 11 And she indicated that that's 12 where her husband and the 13 other gentleman were standing. 14 And that she walked across the 15 roadway, as indicated on the 16 picture, and as she turned 17 around, fell into the hole. 18 A.Yeah, right. Yes. ✕ 19 BY ATTORNEY BINDER-HEATH: 20 Q.Let me just ask you a couple 21 of questions about your employment 22 history. You said you had been at 23 Electric Avenue for about five or six 24 months before that accident? 25 A.Right.         </p>	<p>Page 28</p>
<p>1 them, and I was just like, you know, 2 walking across the road. And I 3 turned around to go into the trailer 4 court, and as soon as I turned and 5 took that one step, it just --- I 6 went in and that was it. And I like 7 blacked out and I woke up and I was 8 laying facing back at my house. 9 Q.So right before it happened 10 you had been facing toward your --- 11 A.My husband. 12 Q.--- husband so that you back 13 was towards the hole? 14 A.Right. Exactly. 15 Q.And then you turned around and 16 then you were right there? 17 A.I took one step and ---. 18 Q.Let me just show you a picture 19 and ask you if this is what the 20 property looks like? 21 A.Yes. 22 Q.And can you just show me where 23 you were walking? 24 A.My husband and Mr. Hockenberry 25 were in this area here, and I just         </p>	<p>Page 27</p>	<p>1 Q.Did you work before that? 2 A.I'm trying to think. Before 3 that, I don't think, no. 4 Q.Had you ever worked before 5 that? 6 A.Oh, yeah. 7 Q.And when would that have been? 8 And I know you had children and 9 everything. 10 A.Yeah. '87 to '89 I worked at 11 a clothing factory. 12 Q.Where was that? 13 A.In Madera. 14 Q.And were you ever injured on 15 the job there? 16 A.No. 17 Q.And why did you leave there in 18 1989? 19 A.Pregnancy. 20 Q.And when was the next time 21 that you worked? 22 A.That would have been Electric 23 Avenue. 24 Q.Electric Avenue? 25 A.Yes.         </p>	<p>Page 29</p>

<p>Page 30</p> <p>1 Q.So that would have been 2 probably the end of '97? 3 A.Yeah. 4 Q.And how long did you work 5 there after April of 1998? 6 A.I worked until approximately 7 October, November, end of October, 8 beginning of November. 9 Q.Of 1998? 10 A.Uh-huh (yes). 11 Q.And then what did you do? 12 A.Oh, my. I went to Actuation 13 Products. 14 Q.I'm sorry? 15 A.Actuation Products. 16 Q.Can you spell that? 17 A.A-C-T-U-A-T-I-O-N. 18 Q.And what is that? 19 A.That's another machine shop. 20 It's not a machine shop, but a 21 factory where they do wiring. 22 Q.And what did you do there? 23 A.Ran a drill press, punch 24 press. 25 Q.Why did you leave Electric</p>	<p>Page 32</p> <p>1 A.I dislocated my elbow at home. 2 And I went to work and I worked the 3 whole time with the dislocated elbow. 4 Q.When did you do that? 5 A.I did that in November, '99, 6 two days before I started at 7 Actuation. 8 Q.And then what happened, it was 9 just too much for you? 10 A.No. After they took the cast 11 and everything off my elbow, the 12 machines that we ran, we sat like 13 this constant. And from this it 14 affected my shoulder. 15 Q.Which shoulder was that? 16 A.It was my left shoulder. 17 Q.Now, did you hurt your 18 shoulder in the accident we're 19 talking about today? 20 A.The right one. 21 Q.The right shoulder. We didn't 22 talk about that very much. Did that 23 --- we were mainly talking about your 24 knee. 25 A.Right.</p>
<p>Page 31</p> <p>1 Avenue? 2 A.Well, right at that time it 3 wasn't a better job, but I just 4 stayed home mainly for the kids, and 5 then eventually just went to 6 something that was a little less on 7 my feet all the time. 8 Q.When did you go to Actuation 9 Products? 10 A.In '99. '99, yeah. 11 Q.So you stayed home about a 12 year and then you went there? 13 A.Yeah. 14 Q.And were you injured there? 15 A.No, I was not. 16 Q.How long did you work at 17 Actuation Products? 18 A.November of '99 to February of 19 2000 --- well, February 2000. 20 Q.And did you then receive 21 unemployment compensation benefits or 22 disability benefits starting in 23 February? 24 A.Disability, yeah. 25 Q.What happened?</p>	<p>Page 33</p> <p>1 Q.What happened with your 2 shoulder? What did you ---? 3 A.Just the way I landed. 4 Q.Was it like a bruise, a 5 sprain? 6 A.It was a sprain. 7 Q.And did that get better? 8 A.Yeah. 9 Q.And when did that get better? 10 A.Probably about a month or two 11 after. 12 Q.Now, your youngest daughter is 13 three? 14 A.Right. 15 Q.So that means she was born 16 when? 17 A.July. She'll be four on July 18 11th. 19 Q.And so she was born in '9 ---? 20 A.'97. 21 Q.So then you were receiving 22 disability benefits from February of 23 2000 to July of 2000. And I'm 24 assuming then you were not working at 25 that point?</p>

<p>Page 34</p> <p>1 A.No.</p> <p>2 Q.And did you then leave that</p> <p>3 job on February 8th and never go</p> <p>4 back, or did you go back after July?</p> <p>5 A.I never went back. I got a</p> <p>6 better job.</p> <p>7 Q.Where did you work then?</p> <p>8 A.Garbus (phonetic) Excavating.</p> <p>9 Q.And when did you work there?</p> <p>10 A.From July 12th to</p> <p>11 November 7th.</p> <p>12 Q.Of 2000?</p> <p>13 A.2000.</p> <p>14 Q.And then what happened?</p> <p>15 A.I was laid off.</p> <p>16 Q.And since that time, have you</p> <p>17 worked anywhere else?</p> <p>18 A.No.</p> <p>19 Q.And you got unemployment</p> <p>20 compensation benefits from them;</p> <p>21 right?</p> <p>22 A.Yes.</p> <p>23 Q.Do you expect to be called</p> <p>24 back there, or not?</p> <p>25 A.No, there was lack of work.</p>	<p>Page 36</p> <p>1 school?</p> <p>2 A.Yes.</p> <p>3 Q.And where did you go?</p> <p>4 A.I went to Glendale.</p> <p>5 Q.When did you graduate?</p> <p>6 A.In '87.. I graduated from</p> <p>7 Valley (phonetic) Christian Academy.</p> <p>8 I went to Glendale until 9th grade</p> <p>9 and 10th through 12th.</p> <p>10 Q.And did you have any education</p> <p>11 after that?</p> <p>12 A.No.</p> <p>13 Q.Or a technical school or</p> <p>14 anything?</p> <p>15 A.No.</p> <p>16 Q.And do you still live in the</p> <p>17 same place you lived at the time?</p> <p>18 A.Yeah.</p> <p>19 Q.And with the new lid on the</p> <p>20 manhole, does that seem better?</p> <p>21 A.I haven't been around.</p> <p>22 Q.I mean, have you seen any kids</p> <p>23 picking it up and throwing rocks in</p> <p>24 it since then?</p> <p>25 A.No, not that I've witnessed.</p>
<p>Page 35</p> <p>1 Q.With regard to working on</p> <p>2 Electric Avenue during the spring of</p> <p>3 1988, would you have any information</p> <p>4 that showed any lost wages, or did</p> <p>5 you lose any wages?</p> <p>6 A.I lost a lot of wages.</p> <p>7 Q.Would you have any information</p> <p>8 that would show what you had made?</p> <p>9 A.The regular salary I could.</p> <p>10 Tips, you can't put a ---.</p> <p>11 Q.Right. But can you estimate</p> <p>12 for me what your tips were on a</p> <p>13 weekly basis?</p> <p>14 A.Tips on a weekly basis could</p> <p>15 go anywhere from \$250 to \$300.</p> <p>16 Q.And was that something you</p> <p>17 reported to the IRS or no?</p> <p>18 A.Most of them, yeah. We had to</p> <p>19 report a percentage.</p> <p>20 Q.But is that one thing that you</p> <p>21 can get some information together to</p> <p>22 estimate for your attorney that he</p> <p>23 could give me?</p> <p>24 A.I can.</p> <p>25 Q.Did you graduate from high</p>	<p>Page 37</p> <p>1 Q.At the time of the accident,</p> <p>2 how old were your kids?</p> <p>3 A.Jeffrey would have been seven</p> <p>4 turning eight. Kristin would have</p> <p>5 been eight turning nine.</p> <p>6 Q.And do the Irwins have any</p> <p>7 children?</p> <p>8 A.Grown.</p> <p>9 Q.They're all grown?</p> <p>10 A.Yeah.</p> <p>11 Q.What about grandchildren?</p> <p>12 A.Not that I know of. -</p> <p>13 Q.And you said that area was a</p> <p>14 bus stop for about 15 kids at the</p> <p>15 time?</p> <p>16 A.Yes.</p> <p>17 Q.And you had said that you had</p> <p>18 warned the kids not to play around</p> <p>19 there?</p> <p>20 A.Everybody did.</p> <p>21 Q.But did they do it anyway?</p> <p>22 A.All the kids did. It was an</p> <p>23 attraction for little kids.</p> <p>24 Q.When your kids would catch the</p> <p>25 bus, would you stand out there with</p>

<p>1 them or other parents, were they out  2 there?  3 A.There was parents there. That  4 morning I was at work, I don't know.  5 I couldn't tell you, I worked from  6 morning to night, who was there.  7 Q.Did anybody tell you that that  8 day your son had been playing around  9 the manhole?  10 A.No.  11 Q.Have you ever asked him about  12 that?  13 A.Uh-uh (no). No.  14 Q.Let me just show you this  15 picture again so that I can get a  16 better understanding. Where is the  17 bus stop?  18 A.Right here at the entrance,  19 this whole area.  20 Q.So the whole ---?  21 A.The bus comes right here and  22 it stops.  23 ATTORNEY BINDER-HEATH:  24 So let the record  25 reflect that the witness is</p>	<p>Page 38</p> <p>1 up close or far away?  2 A.Far away.  3 Q.Far away is the opposite of  4 what it would have been.  5 A.Far away. So that would be  6 what, near-sighted?  7 Q.Right.  8 A.Yeah.  9 Q.And do you have to wear  10 glasses? I mean, are they on your  11 license?  12 A.They're on my license, yes.  13 Q.And do you always wear them or  14 contacts?  15 A.Yes.  16 Q.You said that immediately  17 after you fell you went to the  18 emergency room. Were you then  19 treated and released that same day?  20 A.Yes.  21 Q.And did your husband take you?  22 A.Yes.  23 Q.Did anybody else go with you?  24 A.No.  25 Q.What about your kids? Was</p>	<p>Page 40</p>
<p>1 saying that the road that's  2 depicted in the photograph is  3 the road the bus comes up.  4 A.The bus comes down this road  5 here. Kids are all over even over in  6 here.  7 BY ATTORNEY BINDER-HEATH:  8 Q.So the kids would all be aware  9 that the dirt lot is in the front  10 A.Yeah, everywhere.  11 Q.And in the grass?  12 A.Yeah.  13 Q.This is an elementary bus or  14 is it ---?  15 A.No, it's elementary.  16 Q.What school is there?  17 A.Philipsburg-Osceola.  18 Q.And you have glasses on today,  19 I noticed?  20 A.Yes.  21 Q.Were you wearing your glasses  22 or contacts?  23 A.Contacts.  24 Q.Are you near-sighted or far-  25 sighted? Do you have trouble seeing</p>	<p>Page 39</p> <p>1 somebody watching your kids?  2 A.Yes, the babysitter.  3 Q.And who was that?  4 A.Jennifer Six.  5 Q.Six?  6 A.Uh-huh (yes).  7 Q.S-I-X?  8 A.Uh-huh (yes).  9 Q.Was she your normal  10 babysitter?  11 A.Yes.  12 Q.Now, when you were treated and  13 released, what happened, what did  14 they give you? Did they give you the  15 crutches then?  16 A.Yes.  17 Q.And the elastic band?  18 A.Yes.  19 Q.What instructions were you  20 given, if anything? When were you to  21 come back or ---?  22 A.To stay off of it was the main  23 one, and then take medication as  24 needed for the pain.  25 Q.Is that when you got your</p>	<p>Page 41</p>

<p>1 prescription or you don't remember?</p> <p>2 A.I don't remember. And for the</p> <p>3 work they gave me a thing for work.</p> <p>4 Q.An excuse?</p> <p>5 A.Yeah. You know, I wouldn't be</p> <p>6 able to go and just mainly stay off</p> <p>7 of it.</p> <p>8 Q.When did you follow up with</p> <p>9 the doctor?</p> <p>10 A.I want to say a week after.</p> <p>11 Q.Is that Doctor Fugate?</p> <p>12 A.Yes.</p> <p>13 Q.And how many times did you see</p> <p>14 him, do you remember?</p> <p>15 A.No, I don't. I'm sorry.</p> <p>16 Q.Was it more than five, less</p> <p>17 than five, do you know?</p> <p>18 A&gt;About five I think.</p> <p>19 Q.And then you had your physical</p> <p>20 therapy, right?</p> <p>21 A.Yes.</p> <p>22 Q.Was there a particular person</p> <p>23 you dealt with for your physical</p> <p>24 therapy?</p> <p>25 A.Usually when you go in there</p>	<p>Page 42</p>	<p>1 Q.And how long did that last</p> <p>2 for?</p> <p>3 A.It lasted for a couple months.</p> <p>4 And even to this day, like I said, I</p> <p>5 have trouble doing --- you know,</p> <p>6 walking up steps. It will start</p> <p>7 paining me as soon as I hit the top</p> <p>8 of the steps.</p> <p>9 Q.Now, you indicated in your</p> <p>10 answers to Interrogatories again,</p> <p>11 that your mother helped, her husband,</p> <p>12 and your friend Barbara Irwin helped</p> <p>13 you?</p> <p>14 A.My husband helped.</p> <p>15 Q.Your husband and Barbara Irwin</p> <p>16 helped?</p> <p>17 A.Yes.</p> <p>18 Q.Did anybody else come in to</p> <p>19 help you?</p> <p>20 A.Whoever could, but they were</p> <p>21 the main three.</p> <p>22 Q.You didn't pay anybody to come</p> <p>23 in and clean or anything like that?</p> <p>24 A.No, no.</p> <p>25 Q.With regard to taking care of</p>	<p>Page 44</p>
<p>1 for the initial treatment they give</p> <p>2 you Jim Calavene (phonetic). I think</p> <p>3 that's his last name. And then after</p> <p>4 that, when you go in, it's just</p> <p>5 whoever is available does what needs</p> <p>6 to be done.</p> <p>7 Q.Now, there is some indication</p> <p>8 that you couldn't do some chores and</p> <p>9 things at home; is that correct?</p> <p>10 A.Right.</p> <p>11 Q.How long was that for?</p> <p>12 A.It was for a couple months.</p> <p>13 And even to this day, I still have</p> <p>14 trouble.</p> <p>15 Q.Talking about pretty much</p> <p>16 right after the accident, what</p> <p>17 couldn't you do?</p> <p>18 A.For one, I couldn't take care</p> <p>19 of my daughter because I had a baby.</p> <p>20 I couldn't get down to change her</p> <p>21 diaper. I couldn't carry her.</p> <p>22 Q.You have stairs in your house?</p> <p>23 A.Yes, ma'am. I couldn't cook,</p> <p>24 couldn't clean. I couldn't do</p> <p>25 anything.</p>	<p>Page 43</p>	<p>1 your daughter and that kind of thing.</p> <p>2 You said it lasted a couple of</p> <p>3 months?</p> <p>4 A.Yes.</p> <p>5 Q.So even when you went back to</p> <p>6 work, did you still have to have</p> <p>7 someone take care of your daughter</p> <p>8 for you, or could you do that when</p> <p>9 you went back to work?</p> <p>10 A.I had trouble. You know, I</p> <p>11 could walk, you know, somewhat okay</p> <p>12 without the crutches, but I still had</p> <p>13 the trouble kneeling or doing</p> <p>14 anything that you have to do to take</p> <p>15 care of a baby.</p> <p>16 Q.Right. I know. I have a six-</p> <p>17 month old baby at home.</p> <p>18 A.It's hard.</p> <p>19 Q.When you went back to work,</p> <p>20 who watched your kids?</p> <p>21 A.Jennifer Six.</p> <p>22 Q.Jennifer Six?</p> <p>23 A.Yeah.</p> <p>24 Q.And did she help you do extra</p> <p>25 things during the day, too?</p>	<p>Page 45</p>

1 A.Oh, yeah.  
 2 Q.Did you have to pay her any  
 3 more money than you normally paid  
 4 her?  
 5 A.Yeah.  
 6 Q.Do you have anything that  
 7 would indicate any records to show  
 8 that?  
 9 A.No, it's just a statement off  
 10 of her.  
 11 Q.You paid her cash?  
 12 A.Yeah.  
 13 Q.Well, you said that today you  
 14 still have problems. Do you have any  
 15 problems with your right shoulder  
 16 today?  
 17 A.No.  
 18 Q.You said you had problems.  
 19 You still have pain when you walk  
 20 upstairs?  
 21 A.Yeah, I'll get pain when I'm  
 22 sleeping. I'll wake up and it's from  
 23 the whole way down I've got numbness.  
 24 I have no feeling.  
 25 Q.From where?

1 A.Right.  
 2 Q--- and your physical therapy  
 3 then, have you treated with anybody  
 4 else for your knee?  
 5 A.No.  
 6 Q.You had had other treatments  
 7 for your elbow and your left  
 8 shoulder; right?  
 9 A.Right.  
 10 Q.But then not you knee. Do you  
 11 have any plans to go to any doctor  
 12 about your knee?  
 13 A.If it continues, yes.  
 14 Q.Would you go back to Doctor  
 15 Fugate, or don't you know?  
 16 A.Doctor Fugate's not there no  
 17 longer.  
 18 Q.So do you have anybody else in  
 19 mind?  
 20 A.Doctor Nartatez.  
 21 Q.Pardon me?  
 22 A.Doctor Nartatez.  
 23 Q.Do you know how to spell that?  
 24 A.N-A-R ---.  
 25 ATTORNEY THOMPSON:

1 A.Right in this area right here.  
 2 Q.I can't see where you're  
 3 meaning.  
 4 A.Right in here.  
 5 Q.In your thigh or above your  
 6 knee?  
 7 A.Thigh, above the knee. I get  
 8 pain in the knee. It goes the whole  
 9 way down through my leg. This is  
 10 just totally numb in here.  
 11 Q.And have you tried to do  
 12 anything other than you said that  
 13 you'd wear your elastic knee brace  
 14 when it bothers you?  
 15 A.Right.  
 16 Q.And then sometimes you'd do  
 17 the elastic bands at home?  
 18 A.Right.  
 19 Q.Have you tried to see any  
 20 other doctor to get any other  
 21 treatment?  
 22 A.I'm just trying to do it on my  
 23 own.  
 24 Q.So other than treating with  
 25 Doctor Fugate ---

1 T-A-T-E-Z.  
 2 N-A-R-T-A-T-E-Z.  
 3 BY ATTORNEY BINDER-HEATH:  
 4 Q.And did he take Doctor  
 5 Fugate's place, or is that someone  
 6 that you treat ---?  
 7 A.Yeah. He worked with Doctor  
 8 Fugate.  
 9 Q.But at this point, you're just  
 10 waiting to see how it progresses?  
 11 A.Right.  
 12 Q.What about kneeling? Do you  
 13 have any problems kneeling?  
 14 A.Oh, yeah.  
 15 Q.And what are those problems?  
 16 A.It will hurt. It shoots pain  
 17 down. Sometimes it will feel like  
 18 the bone on the side is like popping  
 19 out.  
 20 Q.What about lifting any kind of  
 21 weights, does that bother your knee?  
 22 A.You mean lifting weights with  
 23 my leg?  
 24 Q.Let's say you're lifting your  
 25 daughter up or something like that.

<p style="text-align: right;">Page 50</p> <p>1 A.No.      2 Q.What about any heavier      3 lifting? Have you done any heavier      4 lifting?      5 A.No, I haven't done any.      6 Q.What about walking any      7 distances?      8 A.I can't walk a long distance.      9 Q.How far can you walk?      10 A.I can't put a distance on it.      11 I can go so far and it will just      12 start hurting. Two blocks, three      13 blocks.      14 Q.What about grocery shopping,      15 do you have any problems doing that?      16 A.Yes, if I'm in a store too      17 long.      18 Q.So basically, you have      19 problems being on your feet for too      20 long a time?      21 A.Yeah. On concrete floors, I      22 try to wear good sneakers.      23 Q.Have your knee problems      24 changed your life or affected your      25 life in any way now?</p>	<p style="text-align: right;">Page 52</p> <p>1 other basis for the claim that he      2 brought? Is it your understanding      3 that there's ---?      4 A.I couldn't perform for him. I      5 couldn't take care of him as a wife.      6 He would work all day and he'd come      7 home and have to take care of me.      8 Q.That put a strain on your      9 marriage?      10 A.Yeah.      11 Q.How is the marriage now?      12 A.It's pretty good now.      13 Q.Now, are you friendly with the      14 people that own the property, the      15 Irwins, or not? I mean, do you speak      16 to them?      17 A.They wave. That's --- you      18 know.      19 Q.But you didn't go to their      20 house for dinner or anything like      21 that?      22 A.Oh, no, no.      23 Q.How far away do you live from      24 them?      25 A.500 feet.</p>
<p style="text-align: right;">Page 51</p> <p>1 A.Yeah.      2 Q.And how?      3 A.Just for the fact with the      4 walking. You know, I get pain.      5 Laying at night, I sleep, I wake up      6 with the pain. Even sitting in a      7 recliner.      8 Q.Did you used to walk more? I      9 mean, did you used to like to walk or      10 jog?      11 A.Oh, yeah, I love to walk. I      12 never jogged. I liked to walk.      13 Q.Is there anything else that      14 you used to be able to do that you      15 can't do now because of your knee?      16 A.I'm limited. I can still do      17 things, but I'm limited on what I do.      18 Q.In this lawsuit, are you aware      19 that your husband also has a claim?      20 A.Yes.      21 Q.Can you explain what kind of      22 claim he has brought?      23 A.Only because he had to do      24 everything for me.      25 Q.Do you know if there's any</p>	<p style="text-align: right;">Page 53</p> <p>1 Q.I mean, is it basically next      2 door?      3 A.No.      4 Q.Where is it?      5 A.It's down at the end of our      6 lane.      7 Q.So how many houses are between      8 the two of you?      9 A.With the picture, the way the      10 lane goes, there's the trailer and a      11 road, another trailer, another road      12 and then they're probably another 100      13 feet from that.      14 Q.With a couple properties in      15 between is what you're saying?      16 A.Yeah.      17 Q.Is the bus stop still there?      18 A.Yes.      19 Q.Did you report this accident      20 to anybody, like the city or anything      21 like that?      22 A.No, just to Mr. Irwin.      23 Q.And how did that happen, did      24 you or your husband go over?      25 A.My husband.</p>

1 Q.Now, other than the people  
 2 that we talked about that you said  
 3 would be witnesses that you had  
 4 listed, your husband, Jennifer Six  
 5 and Lorraine Clark, is there anybody  
 6 else --- besides your medical doctors  
 7 and all that, is there anyone else  
 8 that you can think of that would have  
 9 knowledge about this?  
 10 A>About the area?  
 11 Q.Your accident or the injuries  
 12 that you had, problems you had after  
 13 the injuries?  
 14 A>Just about everybody seen me.  
 15 Q>Specifically that you can  
 16 think of that you spent some time  
 17 with or anything like that, a lot of  
 18 time with?  
 19 A>Misty Stewart.  
 20 Q>She was the person you were  
 21 going to take the check to?  
 22 A>Right.  
 23 Q>Did she come out afterwards or  
 24 ---?  
 25 A>No, she didn't --- I don't

1 now.  
 2 Q>Do you know if there had been  
 3 any other incidents similar to what  
 4 happened to you after this?  
 5 A>No, not to my knowledge.  
 6 Q>I'm going to show you the  
 7 complaint that was filed in this  
 8 case. Is that your signature?  
 9 A.Uh-huh (yes).  
 10 Q>Let me just ask you to take a  
 11 look and tell me if you agree with  
 12 the information that's contained in  
 13 there?  
 14 A>Just this part or ---?  
 15 Q>Keep reading. Take your time.  
 16 WITNESS COMPLIES  
 17 BY ATTORNEY BINDER-HEATH:  
 18 Q>You've read this, the  
 19 complaint?  
 20 A>Yes.  
 21 Q>Is that information accurate?  
 22 A>Yes.  
 23 ATTORNEY BINDER-HEATH:  
 24 I have no further  
 25 questions.

1 remember, seriously.  
 2 Q>At the time when you were  
 3 working at Electric Avenue, who was  
 4 your boss or your supervisor?  
 5 A>Amy Herl.  
 6 Q>Do you know, is that place  
 7 still there, I mean is it still open?  
 8 A.Uh-huh (yes).  
 9 Q>Is she still there, do you  
 10 know?  
 11 A>No.  
 12 Q>Is that H-U-R-L?  
 13 ATTORNEY THOMPSON:  
 14 H-E-R-L, Herl.  
 15 BY ATTORNEY BINDER-HEATH:  
 16 Q>And she would be able to say  
 17 when you took off probably; is that  
 18 right?  
 19 A>Yes.  
 20 Q>Anybody else that you can  
 21 think of that would have knowledge?  
 22 A>Just co-workers.  
 23 Q>Anyone in particular besides  
 24 Misty Stewart?  
 25 A>Not that I can think of right

1 ATTORNEY THOMPSON:  
 2 I have nothing.  
 3  
 4  
 5 \* \* \* \* \* \* \*  
 6 DEPOSITION CONCLUDED AT 10:39 A.M.  
 7 \* \* \* \* \* \* \*  
 8  
 9  
 10  
 11  
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***DEFENDANTS'  
EXHIBIT "D"***

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

\* \* \* \* \*  
TAMMY A. MOORE, \*  
and JEFF MOORE, \* Case No.  
her husband, \* 00-417-CD  
Plaintiffs \*  
vs.  
JOHN P. IRWIN and \*  
VANETTA J. IRWIN, \*  
husband and wife, \*  
Defendants \*

\* \* \* \* \*

DEPOSITION OF

JEFF MOORE

JUNE 25, 2001

**COPY**

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	Page 2		Page 4
1 DEPOSITION		1 INDEX	
2 OF		2	
3 JEFF MOORE, taken on behalf of the		3 WITNESS: JEFF MOORE	
4 Defendants herein, pursuant to the		4 EXAMINATION	
5 Rules of Civil Procedure, taken		5 by Attorney Binder-Heath 7 - 21	
6 before me, the undersigned, Valerie		6 CERTIFICATE 22	
7 Gregory, a Court Reporter and		7	
8 Commissioner of Deeds in and for the		8	
9 Commonwealth of Pennsylvania, at the		9	
10 law offices of Andrews, Wagner &		10	
11 Beard, 3366 Lynnwood Drive, Altoona,		11	
12 Pennsylvania, on Monday, June 25,		12	
13 2001, beginning at 10:40 a.m.		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
	Page 3		Page 5
1 A P P E A R A N C E S		1 EXHIBIT PAGE	
2		2	
3 DAVID R. THOMPSON, ESQUIRE		3 PAGE	
4 308 Walton Street, Suite 4		4 NUMBER DESCRIPTION IDENTIFIED	
5 P.O. Box 587		5	
6 Philipsburg, PA 16866		6 NONE OFFERED	
7 COUNSEL FOR PLAINTIFF		7	
8		8	
9 ROBERTA BINDER-HEATH, ESQUIRE		9	
10 Andrews, Wagner & Beard		10	
11 3366 Lynnwood Drive		11	
12 P.O. Box 1311		12	
13 Altoona, PA 16603		13	
14 COUNSEL FOR DEFENDANT		14	
15		15	
16		16	
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1	OBJECTION PAGE	Page 6	1 attorney may say, keep your responses 2 verbal, and that you wait until I 3 finish asking my question before you 4 answer so we don't have two people 5 sitting here speaking at one time. 6 Again, if you want to take a 7 break, speak with your attorney, or 8 for whatever reason, let me know and 9 we can make sure that we can 10 accommodate you. If you don't 11 understand something that I'm saying 12 or you can't hear me, let me know and 13 I'll repeat or rephrase the question. 14 If I ask a question and you give me 15 an answer, I'll assume you 16 understood. Is that clear? 17 A. That's clear. 18 Q. What is your date of birth, 19 sir? 20 A. November 16th, 1967. 21 Q. And your Social Security 22 number? 23 A. 207-48-1971. 24 Q. In the Interrogatory Answers, 25 this was the written questions that I
1	PROCEEDINGS	Page 7	1 provided to your Counsel, and you 2 provided responses to, there was an 3 indication that you had been 4 convicted of a misdemeanor in 1988; 5 is that right? Number 50. 6 Q. What were the circumstances of 7 that? 8 A. It's been so long I don't even 9 remember. 10 Q. Do you know what it was about? 11 ATTORNEY THOMPSON: 12 What number was that? 13 ATTORNEY BINDER-HEATH: 14 Fifty (50), I think. 15 ATTORNEY THOMPSON: 16 Forty-eight (48). 17 A. It was just a disorderly 18 conduct is what they got me for. 19 BY ATTORNEY BINDER-HEATH: 20 Q. You don't know what the 21 circumstances were? Was it a fight 22 or something? 23 A. Well, no, it was a lesser 24 charge is basically what that was. 25 Q. But what were the

1 circumstances that led up to ---?  
 2 A I had my car stolen and they  
 3 had --- and I had been in my car and  
 4 they wrecked my car on Front Street  
 5 in Philipsburg and they dropped it  
 6 down to a lesser charge. I was  
 7 drinking alcohol as a minor.  
 8 Q As a minor they took your car?  
 9 A Yes.  
 10 Q And you would have been how  
 11 old then?  
 12 A That was '88. I would have  
 13 been 20.  
 14 Q And how do you know Mr.  
 15 Thompson? Has he been your attorney  
 16 for anything else?  
 17 A Not before this, no.  
 18 Q And what led you to contact  
 19 Mr. Thompson?  
 20 A Well, he is close to my  
 21 residence for one. That makes it  
 22 easy.  
 23 Q It wasn't like TV, like Edgar  
 24 Snyder and you saw the TV ad?  
 25 A Right.

X  
 1 Q Now, tell me what happened on  
 2 the date of the accident? What did  
 3 you see?  
 4 A Well, me and my friend, Jay  
 5 Hockenberry, he came up and we were  
 6 changing the tires. We were right  
 7 there in the driveway working. And  
 8 my wife came out of the house, she  
 9 said she was going to take Misty's  
 10 check over to here. And she was  
 11 talking to us and she was walking  
 12 away. And we was talking to her, and  
 13 she was walking backwards. And then  
 14 she went and turned around. Just as  
 15 we turned around to go back to doing  
 16 what we were doing, I heard that  
 17 metal plate flipping. I looked over  
 18 and she was laying down in the hole,  
 19 so we hurried up and ran over and  
 20 picked her back out.  
 21 Q And was she conscious or  
 22 unconscious at the time?  
 23 A She was conscious, but she was  
 24 kind of dazed.  
 25 Q Did she say anything?

1 Q You had heard about him or  
 2 ---?  
 3 A We just stopped and contacted  
 4 him.  
 5 Q And you brought a claim in  
 6 your own right in this case; correct?  
 7 A Correct.  
 8 Q What is your understanding of  
 9 the nature of that claim?  
 10 A Well, that I had an extra  
 11 burden put on me taking care of  
 12 everybody else plus having to work  
 13 all day. And my wife said she  
 14 couldn't perform for me and things  
 15 were getting pretty strenuous.  
 16 Q When you say that she couldn't  
 17 perform, what do you mean?  
 18 A Well, as far as I guess you'd  
 19 want to say sex or something like  
 20 that. I know she couldn't --- she  
 21 couldn't do anything as far as that  
 22 goes.  
 23 Q And for how long?  
 24 A It went on for a few weeks  
 25 anyways.

1 A Ouch.  
 2 Q Other than ouch?  
 3 A She screamed a little bit and  
 4 she was crying.  
 5 Q Did she scream when you picked  
 6 her up or ---?  
 7 A Well, she was screaming as we  
 8 were on our way over there.  
 9 Q So you heard the metal plate  
 10 flip and then you heard her ---?  
 11 A I heard the metal plate first  
 12 and then I turned, and then that's  
 13 when she started to scream and stuff  
 14 after she was in the hole.  
 15 Q Now, when you say she's down  
 16 in a hole. Just tell me what that  
 17 looked like. Was her leg down the  
 18 hole?  
 19 A She had one leg --- well; both  
 20 legs were actually down in the hole  
 21 and her upper body was hanging out  
 22 backwards.  
 23 Q How was the metal plate then,  
 24 like where was that? Was it flipped?  
 25 Was the hole the whole way opened?

1 A.Yeah, it was flipped down into  
2 the hole. Flipped down in. So it  
3 was also sticking up.  
4 Q.So basically she stepped on it  
5 and the plate went down in the hole?  
6 A.It just dipped in like this,  
7 yeah.  
8 Q.And so both her legs were in  
9 there, too?  
10 A.Yes.  
11 Q.And where was her upper body?  
12 A.Hanging out of the top of the  
13 hole facing down the road to the  
14 trailer court.  
15 Q.Let me just show you this  
16 picture again. There's the manhole?  
17 A.Right. After she fell down  
18 in, she was actually facing that way,  
19 but her back was facing our way as  
20 she was hanging down over ---.  
21 Q.So she was on her stomach?  
22 A.She was on her back.  
23 Q.Oh, she was on her back.  
24 A.She ended up laying on her  
25 back out over the edge of the hole.

1 Q.And her head was facing  
2 towards that white house?  
3 A.No, towards the trailer court  
4 road, this way.  
5 Q.This way or this way?  
6 A.Coming down towards --- out  
7 this way. Yeah, down this road. And  
8 we're in turn standing like right  
9 here behind the car.  
10 Q.How far is it from that  
11 driveway to the manhole?  
12 A.To the manhole, approximately  
13 30 feet.  
14 Q.And your house is where, down  
15 the road that way?  
16 A.My house is right there.  
17 Q.This is your house?  
18 A.Yes.  
19 Q.I see. And then where is the  
20 Irwin's house?  
21 A.They live down at the end of  
22 this lane going down through the  
23 trailer court. That road goes  
24 straight down through.  
25 Q.And what do they own? What

1 property did they own?  
2 A.Well, they had the whole  
3 trailer court there. As far as that  
4 entrance or anything, I have no idea.  
5 Q.But you think they own the  
6 whole trailer court?  
7 A.I think they do. He charges  
8 rent for it, so ---.  
9 Q.But you don't rent from them,  
10 you've separate ---?  
11 A.No, no. I own a house.  
12 Q.So your wife's head was facing  
13 down that way and both of her legs  
14 were in there?  
15 A.Uh-huh (yes).  
16 Q.Where is that utility pole?  
17 A.It's right alongside that  
18 cement slab. It's about two feet  
19 from that hole.  
20 Q.But she didn't hit that, did  
21 she?  
22 A.She didn't hit the pole, no.  
23 Q.So you went over and you  
24 picked her up, and then what did you  
25 do?

1 A.Well, we assessed her injuries  
2 first to make sure, you know,  
3 nothing's broken then we lifted her  
4 up out of the hole and carried her  
5 across the road. And that's when we  
6 put her in the car and took her to  
7 the emergency room.  
8 Q.What made you think that it  
9 was serious enough to go to the  
10 hospital right away?  
11 A.Well, she didn't know, you  
12 know, with her pain, and then you  
13 can't distinguish pain too well. She  
14 said it hurt. She couldn't move her  
15 leg and it was swelling. And I  
16 wasn't sure what was wrong and I  
17 wasn't going to have her walk on it  
18 to find out.  
19 Q.What did you do about the  
20 kids? Your babysitter, does she live  
21 in the area? What did you do with  
22 the kids?  
23 A.I think I had them with me.  
24 I'm not sure.  
25 Q.When you went to the hospital,

<p style="text-align: right;">Page 18</p> <p>1 did Jay Hockenberry go with you?      2 A.No, he didn't.      3 Q.Is there anything that you      4 notice about your wife's condition      5 that she can't do things today that      6 she could before that are related to      7 her knee, not her shoulder, elbow or      8 anything like that?      9 A.Well, just general doing      10 anything. She used to be able to      11 just up and go anytime she wanted      12 without having any problems, and now      13 she's always complaining about her      14 legs and her knees bothering her,      15 pain going down to her foot. It      16 wakes her up at night sometimes just      17 sleeping.      18 Q.How often would you say she      19 complains about her leg, the pain in      20 her legs?      21 A.Oh, I hear about it at least      22 three, four times a day.      23 Q.What about waking up, do you      24 know how often she wakes up?      25 A.No. She doesn't wake me up.</p>	<p style="text-align: right;">Page 20</p> <p>1 strain on your marriage. Is the      2 marriage okay now?      3 A.It's straightening out, yeah.      4 Q.Did you have any problems when      5 she dislocated her elbow and then      6 hurt her shoulder, her left shoulder?      7 A.Well, yeah. I had to baby her      8 then, too.      9 Q.Anything else you can think of      10 that she really can't do now that she      11 could do before that you noticed?      12 A.Well, she can do pretty much      13 anything other than just not for a      14 long period of time like she did.      15 Q.Other than your sitting here      16 when we were taking your wife's      17 deposition, other than the people we      18 talked about, that would be witnesses      19 who have knowledge about what the      20 property looked like or the accident      21 itself, or what Tammy's condition was      22 afterwards, can you think of anybody      23 else that would knowledge?      24 A.No, not offhand I couldn't      25 think of any others.</p>
<p style="text-align: right;">Page 19</p> <p>1 She tells me.      2 Q.So you're not sure?      3 A.No, I'm not sure.      4 Q.What about household chores,      5 does she still need help with the      6 chores?      7 A.Taking things up and down      8 stairs.      9 Q.Was that something that she      10 did herself before?      11 A.Yeah, she never had to ask for      12 help before.      13 Q.I know I always say anyone who      14 goes up and down stairs carry clothes      15 ---.      16 A.Up and down stairs, out to the      17 clothesline.      18 Q.Does her mother still come      19 over and help?      20 A.Off and on.      21 Q.Did she come over and help      22 before the accident?      23 A.Yes.      24 Q.And you had said that the      25 accident, when it happened, it put a</p>	<p style="text-align: right;">Page 21</p> <p>1 ATTORNEY BINDER-HEATH:      2 I have no further      3 questions. Thank you.      4 ATTORNEY THOMPSON:      5 Nothing.      6      7 * * * * * * * * *      8 DEPOSITION CONCLUDED AT 10:40 A.M.      9 * * * * * * * * *      10      11      12      13      14      15      16      17      18      19      20      21      22      23      24      25</p>

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**-X-**

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF ALLEGHENY )

3 C E R T I F I C A T E

4 I, Valerie Gregory, a Notary Public in and for  
5 the Commonwealth of Pennsylvania, do hereby certify:

6 That the witness was first duly sworn to testify  
7 to the truth, the whole truth, and nothing but the  
8 truth; that the foregoing deposition was taken at the  
9 time and place stated herein; and that the said  
10 deposition was taken stenographically by me and  
11 reduced to typewriting, and constitutes a true and  
12 correct record of the testimony given by the witness.

13 I further certify that the reading and signing  
14 of said depositions were ~~(not)~~ waived by counsel for  
15 the respective parties and by the witness.

16 I further certify that I am not a relative,  
17 employee or attorney of any of the parties, nor a  
18 relative or employee of counsel, and that I am in no  
19 way interested directly or indirectly in this action.

20 IN WITNESS WHEREOF, I have hereunto set my hand  
21 and stamp this 12<sup>th</sup> day of July 2001.

22  
23  
24  
25  
*Valerie Gregory*

VALERIE BETH GREGORY  
Commissioner Of Deeds  
Commonwealth of Pennsylvania  
My Commission Expires May 13, 2003

PITTSBURGH, PA

CLEARFIELD, PA

STATE COLLEGE, PA

HOLLIDAYSBURG, PA

ERIE, PA

OIL CITY, PA

HARRISBURG, PA

SARGENT'S  
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Johnstown, PA 15901

INDIANA, PA

GREENSBURG, PA

CHARLESTON, WV

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## LAWYER'S NOTES

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HARRISBURG, PA  
GREENSBURG, PA  
FRINE, PA

INDIANA, PA  
HOLLIDAYSBURG, PA  
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**\*CHARLESTON, WV\***