

00-217-CD
JANUARY 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 25th 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

0/8:48/1cc atty Thompson
William A. Shaw
Prothonotary

cc atty Heath
KSK

①

94 TAMMY A. MOORE AND JEFF MOORE,
her husband,

VS.

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

[illegible]

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,

Plaintiffs

vs.

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

Defendants

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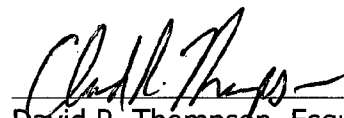
No. 00-

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

Adm

APR 06 2000

0/1:50/133
William A. Shaw
Prothonotary

3 CANT TO ATTY

80
80-
BY
ATTY

2 WANTS 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.

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
ATTESTED 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 ATTESTED 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

3RD DAY OF May 2000
[Signature]

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

SO ANSWERS,

Chester A. Hawkins
by Marilyn Hamr
CHESTER A. HAWKINS
SHERIFF

FILED

MAY 03 2000

3:45
William A. Shaw
Prothonotary

Plaintiffs

V.

Defendants

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

No. 00-417-CD

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

Robert 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

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

FILED

SFP 07 2000
11/4/00
William A. Shaw
Proprietary

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:
:

: Praeceptum for Rule to File Complaint
:

: 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

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

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, 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

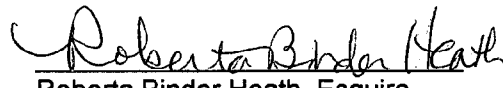
No. 00-417-CD

CERTIFICATE OF SERVICE

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

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

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

FILED

SEP 07 2000
11:52 / Rule to cuty Heath
William A. Shaw
Prothonotary NO cc ~~cc~~

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

CIVIL ACTION - LAW

Defendant

[illegible]

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

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,

Plaintiffs

vs.

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

Defendant

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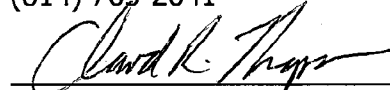
No. 00-417-CD

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.

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 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.

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.

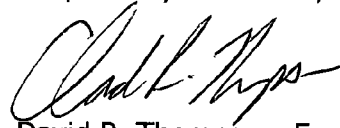
19. At all times referred to in this Complaint, the Plaintiff **JEFF MOORE**, was residing with his wife, **TAMMY A. MOORE**, and continues to reside with her up to the date of this Complaint.

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,

A handwritten signature in black ink, appearing to read "David R. Thompson", written in a cursive style.

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

William A. Shaw
Prothonotary

FILED
of 14584 200
NOV 16 2000
Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION-LAW

TAMMY A. MOORE AND JEFF MOORE,
her husband,

Plaintiff

V

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

Defendant

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No: 00-417-CD

ACCEPTANCE OF SERVICE

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

DATE:

Roberta Binder Heath
Roberta Binder Heath, Esquire

FILED

NOV 15 2000

William A. Shaw
Prothonotary

FILED

NOV 15 2000

WAS
10/33/1000
William A. Shaw
Proprietary

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

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,

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

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

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

FILED

JAN 08 2001

William A. Shaw
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TAMMY A. MOORE AND JEFF MOORE,
his wife,

Plaintiffs

vs.

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

Defendants

No. 00-417-CD

TYPE OF CASE:
Civil Action - Law

TYPE OF PLEADING:
Certificate of Service

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,

Plaintiffs

vs.

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

Defendants

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No. 00-417

CERTIFICATE OF SERVICE

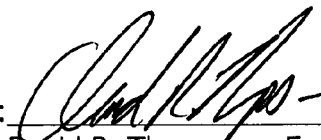
TO THE PROTHONOTARY:

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

FILED

JAN 17 2001

01227116 ath

Sam A. Shaw

Notary Public

Thompson

CA

CIVIL DIVISION - LAW

Defendants

[illegible]

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

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,

Plaintiffs

vs.

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

Defendants

* No. 00-417-CD
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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,

A handwritten signature in black ink, appearing to read "D. R. Thompson", written in a cursive style.

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

FILED

JAN 17 2001

0122711ccatty Thompson

William A. Shaw
Notary

[Signature]

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,

Plaintiffs

v.

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

Defendants

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

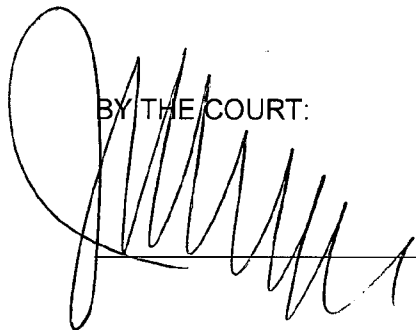
No. 00-417-CD

ORDER

AND NOW, this 26th 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.

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APR 26 2001

William A. Shaw
Prothonotary

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

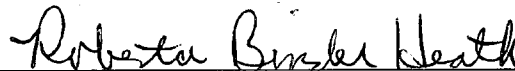
7. At no time prior to the scheduled date of production was any Motion for Protective Order filed on behalf of the Plaintiff as required by Pa. R.C.P. 4011 and 4012.

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

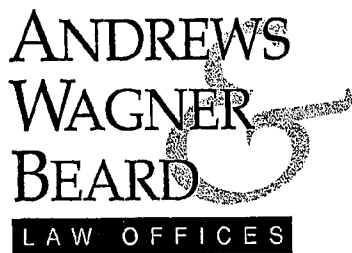
A handwritten signature in cursive script, reading "Roberta Binder Heath", is written over a horizontal line.

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

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

v.

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

Defendants

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

:
: CIVIL DIVISION - LAW

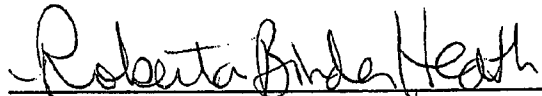
:
: No. 00-417-CD

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, 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

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

FILED

APR 23 2001

M/1:23/16
William A. Shaw
Prothonotary

cc atty Heath
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL ACTION - LAW

TAMMY A. MOORE AND JEFF,
MOORE, her husband
Plaintiffs

vs.

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

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*
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No. 00-417-CD

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

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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

**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 10 2002

mll'22/no cc
William A. Shaw
Prothonotary

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,

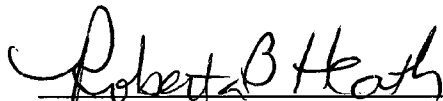
then the landowner has no liability pursuant to Section 342 of the Restatement (Second) of Torts.

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

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 Motion for Summary Judgment, has been served on the following parties of
record via U.S. First Class Mail on this 15th 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"

CIVIL ACTION - LAW

Plaintiffs

VS.

Defendant

**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

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Arrest:

With the
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

TAMMY A. MOORE AND JEFF MOORE,
her husband,

Plaintiffs

vs.

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

Defendant

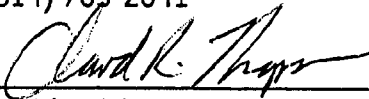
No. 00-417-CD

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.

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 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.

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.

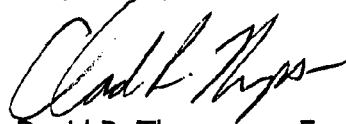
19. At all times referred to in this Complaint, the Plaintiff **JEFF MOORE**, was residing with his wife, **TAMMY A. MOORE**, and continues to reside with her up to the date of this Complaint.

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,

A handwritten signature in cursive script, appearing to read "David R. Thompson".

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
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

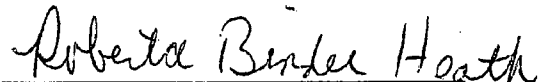
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NOTICE TO PLEAD

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, 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,

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

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

V.

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' 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 **5th** day of **January 2001**.

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

ANDREWS WAGNER & BEARD

Roberta Binder Hath

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
is prohibited without authorization
by the certifying agency.

Page 2

1 DEPOSITION
2 OF
3 TAMMY MOORE, taken on behalf of the
4 Defendants herein, pursuant to the
5 Rules of Civil Procedure, taken
6 before me, the undersigned, Valerie
7 Gregory, a Court Reporter and
8 Commissioner of Deeds in and for the
9 Commonwealth of Pennsylvania, at the
10 law offices of Andrews, Wagner &
11 Beard, 3366 Lynnwood Drive, Altoona,
12 Pennsylvania, on Monday, June 25,
13 2001, beginning at 9:52 a.m.
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Page 3

1 A P P E A R A N C E S
2
3 DAVID R. THOMPSON, ESQUIRE
4 308 Walton Street, Suite 4
5 P.O. Box 587
6 Philipsburg, PA 16866
7 COUNSEL FOR PLAINTIFF
8
9 ROBERTA BINDER-HEATH, ESQUIRE
10 Andrews, Wagner & Beard
11 3366 Lynnwood Drive
12 P.O. Box 1311
13 Altoona, PA 16603
14 COUNSEL FOR DEFENDANT
15
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Page 4

1 I N D E X
2
3 WITNESS: TAMMY MOORE
4 EXAMINATION
5 by Attorney Binder-Heath 7 - 56
6 CERTIFICATE 58
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Page 5

1 EXHIBIT PAGE
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4 NUMBER DESCRIPTION IDENTIFIED
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6 NONE OFFERED
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3 ATTORNEY
4
5 NONE MADE

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

2
3 TAMMY MOORE, HAVING FIRST BEEN DULY
4 SWORN, TESTIFIED AS FOLLOWS:

7 BY ATTORNEY BINDER-HEATH:
8 Q. Good morning, Mrs. Moore. My
9 name is Roberta Binder-Heath. I just
10 met you in the hallway. We're here
11 today to take your deposition. I'm
12 going to give you some preliminary
13 instructions to hopefully make the
14 process go a little bit more
15 smoothly.

16 As you can see, we have a
17 Court Reporter here and she'll be
18 taking down everything that you say,
19 I say, or your attorney says, and
20 later on whatever your husband says.
21 And because she's trying to keep an
22 accurate record, it's important that
23 you wait until I finish asking my
24 question before you answer the
25 question.

1 accommodate you. Okay?
2 A.Okay.
3 QHave you ever had your
4 deposition taken before?
5 A.No.
6 QAnd 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 QAgain, let me finish my
13 question before you answer me. And
14 the answer is no?
15 A.No.
16 QHave you ever been convicted
17 of a crime?
18 A.No.
19 QHave 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 QAnd your Social Security
25 number?

<p style="text-align: right;">Page 10</p> <p>1 A.196-56-0207. 2 Q.And when were you married? 3 A.1988. December 3rd, 1988. 4 Q.And that was to Jeff Moore? 5 A.Yes. 6 Q.And do you currently reside 7 together? 8 A.Yes. 9 Q.On the day of the accident, 10 which would have been April 8th, 11 1998, were you residing together? 12 A.Yes. 13 Q.How many children do you have? 14 A.Three. 15 Q.What are their names and ages? 16 A.Kristin Moore. 17 Q.Her age? 18 A.She's 12. Jeffrey Moore, Jr., 19 and he's 11. And I have Danielle 20 Moore, and she's three. 21 Q.And the date in question, did 22 anyone witness the incident? 23 A.Yes. 24 Q.And let me direct your 25 attention to --- I don't know if your</p>	<p style="text-align: right;">Page 12</p> <p>1 Q.What about Christine Sharpley? 2 A.No. She is witness to what 3 the area was like, that the cover was 4 like. 5 Q.And is she a neighbor? 6 A.She lived in the trailer 7 court. 8 Q.Does she still? 9 A.No, not right now. 10 Q.Do you know her address 11 currently? 12 A.I'm not sure. I know it's a 13 P.O. box. I'm not sure. 14 Q.But you think it's in sandy 15 Ridge? 16 A.Oh, I know she's in Sandy 17 Ridge. 18 Q.And what Jay Hockenberry, does 19 he live still in Morrisdale? 20 A.Yes. 21 Q.But at the time in question, 22 she had lived there, Christine 23 Sharpley? 24 A.Yes. 25 Q.And when did she move?</p>
<p style="text-align: right;">Page 11</p> <p>1 attorney has a copy of the 2 Interrogatory responses. 3 Interrogatory response number 12. I 4 had asked you to identify people that 5 have knowledge of what occurred, and 6 you had listed five people? 7 A.Yes. 8 Q.And can you tell me basically 9 what you believe each of these five 10 individuals is going to say, or what 11 they saw? 12 A.Jay Hockenberry and Jeff Moore 13 both saw --- witnessed me falling 14 into the manhole. 15 Q.And Jeff Moore, you mean your 16 husband or your son? 17 A.Yes. My husband. 18 Q.So he would be an additional 19 person? 20 A.Yes. 21 Q.I'm just asking that because 22 he is not listed here. So Jay 23 Hockenberry and your husband both 24 witnessed you fall into the hole? 25 A.Yeah.</p>	<p style="text-align: right;">Page 13</p> <p>1 A.It was like summer. It was 2 like June or July. 3 Q.Do you still keep in touch? 4 A.Yeah. 5 Q.So you could get me a phone 6 number then at some point? 7 A.Yes. 8 Q.Jay Hockenberry, what about 9 him? What was he doing in the area? 10 A.He was visiting with my 11 husband. They were out talking. 12 Q.Are they still friends? 13 A.Yeah. 14 Q.So again, I could get a phone 15 number to take his deposition if 16 necessary? 17 A.Yes. 18 Q.Barbara Irwin, is that your 19 mother-in-law? 20 A.No. 21 Q.I'm sorry, is that your 22 neighbor? 23 A.She lives in the trailer 24 court, also. 25 Q.Again, she'd have knowledge of</p>

<p style="text-align: right;">Page 14</p> <p>1 the property?</p> <p>2 A.Yes. Her son, in fact, fell in</p> <p>3 the hole before.</p> <p>4 Q.How old is he?</p> <p>5 A.Right now he's 20.</p> <p>6 Q.Do you know when he fell in</p> <p>7 the hole?</p> <p>8 A.He was in kindergarten, so</p> <p>9 he'd be, what, six, seven years old.</p> <p>10 Q.And when did you find out</p> <p>11 about that?</p> <p>12 A.After my incident.</p> <p>13 Q.What about Dolly Petrosky</p> <p>14 (phonetic)?</p> <p>15 A.She has lived there all her</p> <p>16 life. She knows the area, too.</p> <p>17 Q.And what about --- is it Lela</p> <p>18 or Leila Maines (phonetic)?</p> <p>19 A.Lela (correct pronunciation).</p> <p>20 She has knowledge over the years.</p> <p>21 Q.Are you aware that she gave a</p> <p>22 statement on this incident?</p> <p>23 A.Lela? Uh-uh (no).</p> <p>24 Q.Basically, she indicated that</p> <p>25 on the day in question your son had</p>	<p style="text-align: right;">Page 16</p> <p>1 Q.Is there any utility signs</p> <p>2 there or on top of the cover?</p> <p>3 A.Nothing. Nothing. It's just</p> <p>4 a cement slab with a --- like that</p> <p>5 kind of thing with a piece of metal</p> <p>6 over it.</p> <p>7 Q.Is it different now?</p> <p>8 A.Yeah.</p> <p>9 Q.How is it different?</p> <p>10 A.There's a thicker plate on it</p> <p>11 with a handle. It's a lot heavier.</p> <p>12 Q.Do you know who put that on</p> <p>13 there?</p> <p>14 A.Mr. Irwin.</p> <p>15 Q.And how do you know that?</p> <p>16 A.He did it two days after the</p> <p>17 incident.</p> <p>18 Q.Do you know if he paid for</p> <p>19 that himself?</p> <p>20 A.I have no idea.</p> <p>21 Q.Other than the people that are</p> <p>22 listed on the Interrogatory Number</p> <p>23 Five that we talked about and your</p> <p>24 husband, is there anybody else that</p> <p>25 would have knowledge?</p>
<p style="text-align: right;">Page 15</p> <p>1 kicked off the top of the manhole</p> <p>2 cover and was throwing rocks in</p> <p>3 there. Were you aware of that?</p> <p>4 A.No. It's a bus stop for like</p> <p>5 15 kids.</p> <p>6 Q.Did you ever see any kid open</p> <p>7 up the cover and throw rocks in or</p> <p>8 play around the area?</p> <p>9 A.Several kids all the time.</p> <p>10 Q.Lift up the cover?</p> <p>11 A.Oh, yeah. Move it. Vehicles</p> <p>12 going over moved it.</p> <p>13 Q.And is that something you saw</p> <p>14 before you fell or after?</p> <p>15 A.Before. Everybody knew about</p> <p>16 it. We always told the kids stay away</p> <p>17 from it, you know, it's a bus stop.</p> <p>18 They would stand on it. And we were</p> <p>19 always hollering at them, get away</p> <p>20 from it, don't go near it.</p> <p>21 Q.And what is it for?</p> <p>22 A.It's access, I guess, to the</p> <p>23 --- I don't know, for the water</p> <p>24 company to go down in. I'm not even</p> <p>25 sure. I never really looked ---.</p>	<p style="text-align: right;">Page 17</p> <p>1 A.In all truthfulness, everybody</p> <p>2 that lives in that trailer court has</p> <p>3 knowledge of how it was.</p> <p>4 Q.And can you get me those</p> <p>5 people's names and give them to your</p> <p>6 attorney?</p> <p>7 A.Yeah, I can.</p> <p>8 Q.You had indicated that Barbara</p> <p>9 Irwin. Is this the same Irwin that</p> <p>10 owns the property?</p> <p>11 A.She was married to Jack</p> <p>12 Irwin's son.</p> <p>13 Q.So she would be --- how would</p> <p>14 they be related to them?</p> <p>15 A.He was her --- he's her ex-</p> <p>16 father-in-law.</p> <p>17 Q.You had indicated that her son</p> <p>18 had fallen into the manhole as well.</p> <p>19 A.Uh-huh (yes).</p> <p>20 Q.Did you know of anybody else</p> <p>21 that had fallen into the manhole?</p> <p>22 A.She would know more than I</p> <p>23 would. I've only been there ---</p> <p>24 living there for 12 years.</p> <p>25 Q.But in that time, did you ever</p>

<p style="text-align: right;">Page 18</p> <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>	<p style="text-align: right;">Page 20</p> <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>
<p style="text-align: right;">Page 19</p> <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>	<p style="text-align: right;">Page 21</p> <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 22

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?

Page 23

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

Page 24

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

Page 25

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 style="text-align: right;">Page 26</p> <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 style="text-align: right;">Page 28</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 style="text-align: right;">Page 27</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 style="text-align: right;">Page 29</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 style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">Page 34</p> <p>1 A.No. 2 Q.And did you then leave that 3 job on February 8th and never go 4 back, or did you go back after July? 5 A.I never went back. I got a 6 better job. 7 Q.Where did you work then? 8 A.Garbus (phonetic) Excavating. 9 Q.And when did you work there? 10 A.From July 12th to 11 November 7th. 12 Q.Of 2000? 13 A.2000. 14 Q.And then what happened? 15 A.I was laid off. 16 Q.And since that time, have you 17 worked anywhere else? 18 A.No. 19 Q.And you got unemployment 20 compensation benefits from them; 21 right? 22 A.Yes. 23 Q.Do you expect to be called 24 back there, or not? 25 A.No, there was lack of work.</p>	<p style="text-align: right;">Page 36</p> <p>1 school? 2 A.Yes. 3 Q.And where did you go? 4 A.I went to Glendale. 5 Q.When did you graduate? 6 A.In '87. I graduated from 7 Valley (phonetic) Christian Academy. 8 I went to Glendale until 9th grade 9 and 10th through 12th. 10 Q.And did you have any education 11 after that? 12 A.No. 13 Q.Or a technical school or 14 anything? 15 A.No. 16 Q.And do you still live in the 17 same place you lived at the time? 18 A.Yeah. 19 Q.And with the new lid on the 20 manhole, does that seem better? 21 A.I haven't been around. 22 Q.I mean, have you seen any kids 23 picking it up and throwing rocks in 24 it since then? 25 A.No, not that I've witnessed.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q.With regard to working on 2 Electric Avenue during the spring of 3 1988, would you have any information 4 that showed any lost wages, or did 5 you lose any wages? 6 A.I lost a lot of wages. 7 Q.Would you have any information 8 that would show what you had made? 9 A.The regular salary I could. 10 Tips, you can't put a ---. 11 Q.Right. But can you estimate 12 for me what your tips were on a 13 weekly basis? 14 A.Tips on a weekly basis could 15 go anywhere from \$250 to \$300. 16 Q.And was that something you 17 reported to the IRS or no? 18 A.Most of them, yeah. We had to 19 report a percentage. 20 Q.But is that one thing that you 21 can get some information together to 22 estimate for your attorney that he 23 could give me? 24 A.I can. 25 Q.Did you graduate from high</p>	<p style="text-align: right;">Page 37</p> <p>1 Q.At the time of the accident, 2 how old were your kids? 3 A.Jeffrey would have been seven 4 turning eight. Kristin would have 5 been eight turning nine. 6 Q.And do the Irwins have any 7 children? 8 A.Grown. 9 Q.They're all grown? 10 A.Yeah. 11 Q.What about grandchildren? 12 A.Not that I know of. 13 Q.And you said that area was a 14 bus stop for about 15 kids at the 15 time? 16 A.Yes. 17 Q.And you had said that you had 18 warned the kids not to play around 19 there? 20 A.Everybody did. 21 Q.But did they do it anyway? 22 A.All the kids did. It was an 23 attraction for little kids. 24 Q.When your kids would catch the 25 bus, would you stand out there with</p>

<p style="text-align: right;">Page 38</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 style="text-align: right;">Page 40</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 style="text-align: right;">Page 39</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 style="text-align: right;">Page 41</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 style="text-align: right;">Page 42</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.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 style="text-align: right;">Page 44</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 style="text-align: right;">Page 43</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 style="text-align: right;">Page 45</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 style="text-align: right;">Page 46</p> <p>1 A.Oh, yeah.</p> <p>2 Q.Did you have to pay her any</p> <p>3 more money than you normally paid</p> <p>4 her?</p> <p>5 A.Yeah.</p> <p>6 Q.Do you have anything that</p> <p>7 would indicate any records to show</p> <p>8 that?</p> <p>9 A.No, it's just a statement off</p> <p>10 of her.</p> <p>11 Q.You paid her cash?</p> <p>12 A.Yeah.</p> <p>13 Q.Well, you said that today you</p> <p>14 still have problems. Do you have any</p> <p>15 problems with your right shoulder</p> <p>16 today?</p> <p>17 A.No.</p> <p>18 Q.You said you had problems.</p> <p>19 You still have pain when you walk</p> <p>20 upstairs?</p> <p>21 A.Yeah, I'll get pain when I'm</p> <p>22 sleeping. I'll wake up and it's from</p> <p>23 the whole way down I've got numbness.</p> <p>24 I have no feeling.</p> <p>25 Q.From where?</p>	<p style="text-align: right;">Page 48</p> <p>1 A.Right.</p> <p>2 Q--- and your physical therapy</p> <p>3 then, have you treated with anybody</p> <p>4 else for your knee?</p> <p>5 A.No.</p> <p>6 Q.You had had other treatments</p> <p>7 for your elbow and your left</p> <p>8 shoulder; right?</p> <p>9 A.Right.</p> <p>10 Q.But then not you knee. Do you</p> <p>11 have any plans to go to any doctor</p> <p>12 about your knee?</p> <p>13 A.If it continues, yes.</p> <p>14 Q.Would you go back to Doctor</p> <p>15 Fugate, or don't you know?</p> <p>16 A.Doctor Fugate's not there no</p> <p>17 longer.</p> <p>18 Q.So do you have anybody else in</p> <p>19 mind?</p> <p>20 A.Doctor Nartatez.</p> <p>21 Q.Pardon me?</p> <p>22 A.Doctor Nartatez.</p> <p>23 Q.Do you know how to spell that?</p> <p>24 A.N-A-R ---.</p> <p>25 ATTORNEY THOMPSON:</p>
<p style="text-align: right;">Page 47</p> <p>1 A.Right in this area right here.</p> <p>2 Q.I can't see where you're</p> <p>3 meaning.</p> <p>4 A.Right in here.</p> <p>5 Q.In your thigh or above your</p> <p>6 knee?</p> <p>7 A.Thigh, above the knee. I get</p> <p>8 pain in the knee. It goes the whole</p> <p>9 way down through my leg. This is</p> <p>10 just totally numb in here.</p> <p>11 Q.And have you tried to do</p> <p>12 anything other than you said that</p> <p>13 you'd wear your elastic knee brace</p> <p>14 when it bothers you?</p> <p>15 A.Right.</p> <p>16 Q.And then sometimes you'd do</p> <p>17 the elastic bands at home?</p> <p>18 A.Right.</p> <p>19 Q.Have you tried to see any</p> <p>20 other doctor to get any other</p> <p>21 treatment?</p> <p>22 A.I'm just trying to do it on my</p> <p>23 own.</p> <p>24 Q.So other than treating with</p> <p>25 Doctor Fugate ---</p>	<p style="text-align: right;">Page 49</p> <p>1 T-A-T-E-Z.</p> <p>2 N-A-R-T-A-T-E-Z.</p> <p>3 BY ATTORNEY BINDER-HEATH:</p> <p>4 Q.And did he take Doctor</p> <p>5 Fugate's place, or is that someone</p> <p>6 that you treat ---?</p> <p>7 A.Yeah. He worked with Doctor</p> <p>8 Fugate.</p> <p>9 Q.But at this point, you're just</p> <p>10 waiting to see how it progresses?</p> <p>11 A.Right.</p> <p>12 Q.What about kneeling? Do you</p> <p>13 have any problems kneeling?</p> <p>14 A.Oh, yeah.</p> <p>15 Q.And what are those problems?</p> <p>16 A.It will hurt. It shoots pain</p> <p>17 down. Sometimes it will feel like</p> <p>18 the bone on the side is like popping</p> <p>19 out.</p> <p>20 Q.What about lifting any kind of</p> <p>21 weights, does that bother your knee?</p> <p>22 A.You mean lifting weights with</p> <p>23 my leg?</p> <p>24 Q.Let's say you're lifting your</p> <p>25 daughter up or something like that.</p>

<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>

<p style="text-align: right;">Page 54</p> <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</p>	<p style="text-align: right;">Page 56</p> <p>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.</p>
<p style="text-align: right;">Page 55</p> <p>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</p>	<p style="text-align: right;">Page 57</p> <p>1 ATTORNEY THOMPSON: 2 I have nothing. 3 4 5 * * * * * 6 DEPOSITION CONCLUDED AT 10:39 A.M. 7 * * * * * 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

DEFENDANTS'
EXHIBIT "D"

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

* * * * *

TAMMY A. MOCRE, *
and JEFF MOCRE, * 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 I N D E X
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
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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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25	25

<div>Page 6</div> <div>OBJECTION PAGE</div> <div>ATTORNEY PAGE</div> <div>NONE MADE</div>	<div>Page 8</div> <div>attorney may say, keep your responses verbal, and that you wait until I finish asking my question before you answer so we don't have two people sitting here speaking at one time. Again, if you want to take a break, speak with your attorney, or for whatever reason, let me know and we can make sure that we can accommodate you. If you don't understand something that I'm saying or you can't hear me, let me know and I'll repeat or rephrase the question. If I ask a question and you give me an answer, I'll assume you understood. Is that clear?</div> <div>A.That's clear.</div> <div>Q.What is your date of birth, sir?</div> <div>A.November 16th, 1967.</div> <div>Q.And your Social Security number?</div> <div>A.207-48-1971.</div> <div>Q.In the Interrogatory Answers, this was the written questions that I</div>
<div>Page 7</div> <div>PROCEEDINGS</div> <div>JEFF MOORE, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:</div> <div>EXAMINATION</div> <div>BY ATTORNEY BINDER-HEATH:</div> <div>Q.Mr. Moore, you were sitting in the room when I was speaking to your wife earlier and giving her some preliminary instructions, but just let me go over them quickly with you.</div> <div>A.Yes.</div> <div>Q.Again, we're here to get your best recollection of what happened on April 8th, 1998, and the circumstances surrounding this lawsuit including your wife's injuries and what happened afterwards, and also because you have brought a claim in your own name as well.</div> <div>Again, because we have a Court Reporter here taking down everything that you may say, I may say, your</div>	<div>Page 9</div> <div>provided to your Counsel, and you provided responses to, there was an indication that you had been convicted of a misdemeanor in 1988; is that right? Number 50.</div> <div>Q.What were the circumstances of that?</div> <div>A.It's been so long I don't even remember.</div> <div>Q.Do you know what it was about?</div> <div>ATTORNEY THOMPSON:</div> <div>What number was that?</div> <div>ATTORNEY BINDER-HEATH:</div> <div>Fifty (50), I think.</div> <div>ATTORNEY THOMPSON:</div> <div>Forty-eight (48).</div> <div>A.It was just a disorderly conduct is what they got me for.</div> <div>BY ATTORNEY BINDER-HEATH:</div> <div>Q.You don't know what the circumstances were? Was it a fight or something?</div> <div>A.Well, no, it was a lesser charge is basically what that was.</div> <div>Q.But what were the</div>

<p style="text-align: right;">Page 10</p> <p>1 circumstances that led up to ---?</p> <p>2 A.I had my car stolen and they</p> <p>3 had --- and I had been in my car and</p> <p>4 they wrecked my car on Front Street</p> <p>5 in Philipsburg and they dropped it</p> <p>6 down to a lesser charge. I was</p> <p>7 drinking alcohol as a minor.</p> <p>8 Q.As a minor they took your car?</p> <p>9 A.Yes.</p> <p>10 Q.And you would have been how</p> <p>11 old then?</p> <p>12 A.That was '88. I would have</p> <p>13 been 20.</p> <p>14 Q.And how do you know Mr.</p> <p>15 Thompson? Has he been your attorney</p> <p>16 for anything else?</p> <p>17 A.Not before this, no.</p> <p>18 Q.And what led you to contact</p> <p>19 Mr. Thompson?</p> <p>20 A.Well, he is close to my</p> <p>21 residence for one. That makes it</p> <p>22 easy.</p> <p>23 Q.It wasn't like TV, like Edgar</p> <p>24 Snyder and you saw the TV ad?</p> <p>25 A.Right.</p>	<p style="text-align: right;">Page 12</p> <p>X 1 Q.Now, tell me what happened on</p> <p>2 the date of the accident? What did</p> <p>3 you see?</p> <p>4 A.Well, me and my friend, Jay</p> <p>5 Hockenberry, he came up and we were</p> <p>6 changing the tires. We were right</p> <p>7 there in the driveway working. And</p> <p>8 my wife came out of the house, she</p> <p>9 said she was going to take Misty's</p> <p>10 check over to here. And she was</p> <p>11 talking to us and she was walking</p> <p>12 away. And we was talking to her, and</p> <p>13 she was walking backwards. And then</p> <p>14 she went and turned around. Just as</p> <p>15 we turned around to go back to doing</p> <p>16 what we were doing, I heard that</p> <p>17 metal plate flipping. I looked over</p> <p>18 and she was laying down in the hole,</p> <p>19 so we hurried up and ran over and</p> <p>20 picked her back out.</p> <p>21 Q.And was she conscious or</p> <p>22 unconscious at the time?</p> <p>23 A.She was conscious, but she was</p> <p>24 kind of dazed.</p> <p>25 Q.Did she say anything?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q.You had heard about him or</p> <p>2 ---</p> <p>3 A.We just stopped and contacted</p> <p>4 him.</p> <p>5 Q.And you brought a claim in</p> <p>6 your own right in this case; correct?</p> <p>7 A.Correct.</p> <p>8 Q.What is your understanding of</p> <p>9 the nature of that claim?</p> <p>10 A.Well, that I had an extra</p> <p>11 burden put on me taking care of</p> <p>12 everybody else plus having to work</p> <p>13 all day. And my wife said she</p> <p>14 couldn't perform for me and things</p> <p>15 were getting pretty strenuous.</p> <p>16 Q.When you say that she couldn't</p> <p>17 perform, what do you mean?</p> <p>18 A.Well, as far as I guess you'd</p> <p>19 want to say sex or something like</p> <p>20 that. I know she couldn't --- she</p> <p>21 couldn't do anything as far as that</p> <p>22 goes.</p> <p>23 Q.And for how long?</p> <p>24 A.It went on for a few weeks</p> <p>25 anyways.</p>	<p style="text-align: right;">Page 13</p> <p>1 A.Ouch.</p> <p>2 Q.Other than ouch?</p> <p>3 A.She screamed a little bit and</p> <p>4 she was crying.</p> <p>5 Q.Did she scream when you picked</p> <p>6 her up or ---?</p> <p>7 A.Well, she was screaming as we</p> <p>8 were on our way over there.</p> <p>9 Q.So you heard the metal plate</p> <p>10 flip and then you heard her ---?</p> <p>11 A.I heard the metal plate first</p> <p>12 and then I turned, and then that's</p> <p>13 when she started to scream and stuff</p> <p>14 after she was in the hole.</p> <p>15 Q.Now, when you say she's down</p> <p>16 in a hole. Just tell me what that</p> <p>17 looked like. Was her leg down the</p> <p>18 hole?</p> <p>19 A.She had one leg --- well; both</p> <p>20 legs were actually down in the hole</p> <p>21 and her upper body was hanging out</p> <p>22 backwards.</p> <p>23 Q.How was the metal plate then,</p> <p>24 like where was that? Was it flipped?</p> <p>25 Was the hole the whole way opened?</p>

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

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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 12th day of July 2001.

22 *Valerie Gregory*
23
24

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

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