

00-1150-CD  
Marcus Swan et al vs Eaton Corporation

00

00-1970-11  
HUGHES SWAN  
1 -vs- BATON CORPORATION et al

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

(63) MARCUS SWAN and THELMA LYNCH,

(93)

Plaintiffs

No. 00-1150-10

ISSUE:  
PRAECIPE FOR WRIT OF SUMMONS

vs.

(15) EATON CORPORATION,  
(33) ELDON YOUNG and  
(85) ROBERT WITHEROW,

Defendants

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

**FILED**

SEP 15 2000

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. \_\_\_\_\_

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

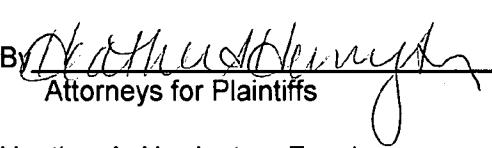
Defendants

**PRAECIPE FOR WRIT OF SUMMONS**

**TO: PROTHONOTARY**

Kindly issue a Writ of Summons against Defendants, Eaton Corporation, Eldon Young and Robert Witherow in the above-captioned action on behalf of Plaintiffs, Marcus Swan and Thelma Lynch.

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT

By   
Attorneys for Plaintiffs

Heather A. Harrington, Esquire  
PA I.D. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

**FILED**

SEP 15 2000  
DUMM CITY HARRINGTON  
William A. Shaw  
Prothonotary

PC 680.00

2 wnts. Shred  
1 writ atty

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

**COPY**

MARCUS SWAN and THELMA LYNCH,

Plaintiff(s)

S U M M O N S  
No: 00-1150-CD

vs.

EATON CORPORATION, ELDON YOUNG and

ROBERT WITHEROW,

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 September 15, 2000

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

Issuing Attorney:

Heather Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10185

SWAN, MARCUS AND THELMA LYNCH

00-1150-CD

VS.

EATON CORPORATION

SUMMONS

**SHERIFF RETURNS**

NOW SEPTEMBER 22, 2000 AT 9:55 AM DST SERVED THE WITHIN SUMMONS ON  
ELDON YOUNG, DEFENDANT AT RESIDENCE RD BOX 581, LAJOSE, CLEARFIELD  
COUNTY, PENNSYLVANIA BY HANDING TO ELDON YOUNG A TRUE AND ATTESTED  
COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS  
THEREOF.

SERVED BY: NEVLING/MARSHALL

NOW OCTOBER 2, 2000 AT 1:55 PM DST SERVED THE WITHIN SUMMONS ON ROBERT  
WITHEROW, DEFENDANT AT RESIDENCE RR 2 BOX 350, CURWENSVILLE,  
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROBERT WITHEROW A TRUE  
AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE  
CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

---

Return Costs

Cost	Description
44.61	SHFF. HAWKINS PAID BY: ATTY
20.00	SURCHARGE PAID BY: ATTY

**FILED**

OCT 09 2000

01340

William A. Shaw  
Prothonotary

Sworn to Before Me This

9th Day Of October 2000

William A. Shaw

WILLIAM A. SHAW

Prothonotary

My Commission Expires

1st Monday in Jan. 2002

Clearfield Co., Clearfield, PA.

So Answers,

Chester A. Hawkins  
by Marilyn Harry

Chester A. Hawkins

Sheriff

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. : 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

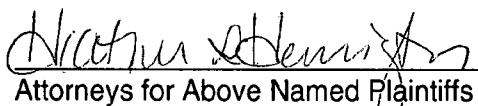
**AFFIDAVIT OF RETURN OF  
SERVICE BY MAIL**

Filed on behalf of Plaintiffs

COUNSEL OF RECORD  
**HEATHER A. HARRINGTON, ESQ.**  
**PA I.D. #: 62977**

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE WITHIN  
WAS MAILED TO ALL PARTIES OF  
RECORD THIS 13th DAY OF OCTOBER,  
2000.

  
Attorneys for Above Named Plaintiffs

**FILED**

OCT 16 2000

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. : 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

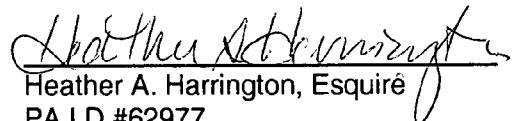
Defendants :

**RETURN OF SERVICE BY MAIL**

On or about October 3, 2000 I mailed a true copy of the Writ of Summons by Certified Mail, Return Receipt Requested, to defendant EATON CORPORATION at its address. The defendant signed the return receipt upon delivery and the receipt attached hereto as Exhibit "A", was returned by the post office on October 10, 2000.

I make these statements pursuant to 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities and understand that false statements may be subject to criminal penalties under that statute.

PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT

  
Heather A. Harrington, Esquire  
PA I.D.#62977  
PO Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

**SENDER: COMPLETE THIS SECTION**

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

## 1. Article Addressed to:

Eaton Corporation  
Eaton Center  
1111 Superior Avenue  
Cleveland, OH 44114

## 2. Article Number (Copy from service label)

7099 3400 000 0 0655 3708

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

**COMPLETE THIS SECTION ON DELIVERY**

## A. Received by (Please Print Clearly)

DANIAL

## B. Date of Delivery

10/3/00

## C. Signature

X DANIAL

 Agent Addressee

## D. Is delivery address different from item 1?

 Yes

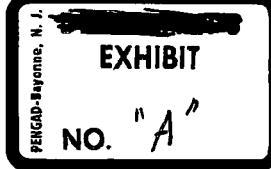
If YES, enter delivery address below:

 No

## 3. Service Type

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

## 4. Restricted Delivery? (Extra Fee)

 Yes

**FILED**

OCT 16 2000  
NOV 19 2011  
William A. Shaw  
Prothonotary

4/2000

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

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

PRAECIPE FOR ENTRY OF APPEARANCE AND RULE TO FILE COMPLAINT

TO WILLIAM A. SHAW, PROTHONOTARY:

Please enter my appearance on behalf of Defendant,  
EATON CORPORATION, in the above-captioned action.

Please enter a Rule upon the Plaintiffs, MARCUS SWAN  
AND THELMA LYNCH, to file a Complaint within twenty (20) days of  
service thereof or suffer the entry of a judgment of non pros.

GATES & SEAMAN  
  
BY: Laurence B. Seaman, Esquire

Date: February 14, 2001

FILED

FEB 14 2001

01335 Rule to  
William A. Shaw  
Prothonotary

Attn: Seaman  
Jeff

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

Marcus Swan and Thelma Lynch  
Plaintiffs

COPY

Case No. 00-1150-CD

Vs.

Eaton Corporation, Eldon Young and  
Robert Witherow  
Defendants

RULE TO FILE COMPLAINT

TO:  
Marcus Swan and Thelma Lynch:

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: 2-14-01

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants

CERTIFICATE OF SERVICE

AND NOW, this 14<sup>th</sup> day of February, 2001, I hereby certify that a true and correct photocopy of the PRAECIPE FOR ENTRY OF APPEARANCE AND RULE TO FILE COMPLAINT and RULE was mailed by regular first class U.S. Mail, postage prepaid, to:  
Heather Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

Eldon Young  
R. D. Box 581  
LaJose, PA 15753

Robert Witherow  
R. R. #2, Box 350  
Curwensville, PA 16833

GATES & SEAMAN

BY:

  
Laurance B. Seaman, Esq.  
Attorney for Defendant,  
Eaton Corporation

FILED

FEB 16 2001  
01208145  
William A. Shaw  
Prothonotary  
No C/C E  
KJL

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**FILED**

FEB 27 2001

**NOTICE**

William A. Shaw  
Prothonotary

You have been sued in the 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 Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. 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.

DAVID S. MEHOLIK, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET  
CLEARFIELD, PA 16830  
814-765-2641, EXT. 5982

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT

  
Shelly Dugas  
Atorneys for PLAINTIFFS

P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

Date: February 26, 2001

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**COMPLAINT**

AND NOW, come plaintiffs MARCUS SWAN and THELMA LYNCH, by and through their counsel, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, and file the within COMPLAINT, averring as follows:

1. Plaintiff Marcus Swan, is an adult individual residing at RD 1, Box 58, Irvona, Clearfield County, Pennsylvania.
2. Plaintiff Thelma Lynch is an adult individual residing at Box 505 Apple Square, Sanford, North Carolina.
3. At all times material hereto, plaintiffs were the owners of real, improved property located t RD 1, Box 58, Irvona, Clearfield County, Pennsylvania, which contained a two-story, frame structure which served as the home of plaintiff Marcus Swan.
4. Pursuant to a Durable Power of Attorney, Charles Kitchen, an adult individual residing at RD 1, Box 123, Hesston, Pennsylvania and William Swan, an adult

individual residing at Box 188, Mount Gilead, North Carolina are the attorneys-in-fact for plaintiff Marcus Swan.

5. Defendant Eaton Corporation (hereafter "Eaton") is an business entity with it principal place of business at Eaton Center, 1111 Superior Avenue, Cleveland, Ohio and which regularly does business in Clearfield County, Pennsylvania.

6. Defendant Eldon Young (hereafter "Young") is an adult individual residing at RD, LaJose, Clearfield County, Pennsylvania.

7. Defendant Robert Witherow (hereafter "Witherow") is an adult individual residing at RR 2, Box 350, Curwensville, Clearfield County, Pennsylvania.

8. Defendant Eaton manufactured and sold a 40 circuit Challenger Model electrical panel known which was installed in the property of the plaintiffs by defendant Young and to which defendant Witherow attached an electrical service meter.

9. On October 4, 1998, a fire broke out at the property of the plaintiffs and destroyed the frame building structure and its contents.

10. The fire was caused by an electrical malfunction in the service panel manufactured by Eaton, installed by Young and worked on by Witherow.

11. As a result of the fire, the plaintiffs sustained damages in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00).

12. The legal and factual cause of the fire was the malfunction of the service panel due to improper manufacturing, installation and electrical work done by the defendants.

**COUNT ONE**

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant

**STRICT LIABILITY**

13. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
14. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by defendant Eaton for residential installation and use.
15. Defendant Eaton improperly manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.
16. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

## COUNT TWO

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant

### STRICT LIABILITY

17. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
18. The legal and factual cause of the plaintiffs damages was the improper design by Eaton of the 40 circuit Challenger electric panel sold by defendant Eaton for residential installation and use.
19. Defendant Eaton improperly designed the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.
20. Defendant Eaton is strictly liable for the malfunction of it's product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

**COUNT THREE**

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant

**NEGLIGENCE**

21. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
22. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by defendant Eaton for residential installation and use.
23. Defendant Eaton negligently manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.
24. Defendant Eaton is liable to the plaintiffs for it's negligent manufacture of it's product and the damages sustained by plaintiffs as a result of that negligence.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

## COUNT FOUR

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ROBERT WITHEROW, defendant

### NEGLIGENCE

25. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
26. The Challenger service panel which failed was installed by defendant Witherow.
27. As part of the installation process, the service panel was attached to a pine board and secured to the wall with wood blocking, thereby allowing a three (3) inch gap between the service panel and the foundation wall.
28. As a result of this gap behind the service panel, when the panel overheated and failed, the heat ignited the board and wood blocking and the fire spread to the exterior sheathing board and floor joists of the home.
29. Defendant Witherow negligently installed the Challenger service panel by not securing the panel directly to the foundation wall.
30. Due to the negligence of defendant Witherow in installing the Challenger service panel, the damages sustained by the plaintiffs were greater than they would have been had the panel been improperly installed.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Witherow, with prejudice.

## COUNT FIVE

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ELDON YOUNG, defendant

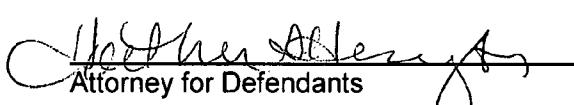
### NEGLIGENCE

31. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
32. The drop line from the main electrical service and electrical service meter were installed by defendant Young.
33. Investigation reveals that the greatest area of heat and damage to the service panel itself was at the drop line connection indicating a failure of the connection which allowed arcing and caused the wooden backing material to ignite.
34. Defendant Young negligently installed the connection between the service panel and the main line by not securing the connection with a service cable connector which allowed the wire to grind against the panel cabinet and/or the backpan adjustment screw wearing away the wire's protective sheath.
35. Due to the negligence of defendant Young in installing the Challenger service cable connector, the plaintiffs incurred the damages described above.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Young, with prejudice.

Respectfully Submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE &  
SCHMITT

  
Heather A. Harrington  
Attorney for Defendants  
Stephen L. Dugas, Esquire  
PA ID.No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

TO THE WITHIN NAMED PARTY

You are hereby notified to plead to the  
enclosed Complaint within twenty (20)  
days of service hereof or a default judgment  
may be entered against you.

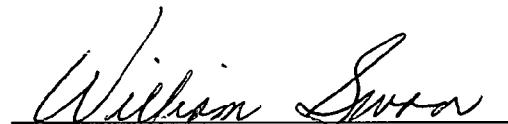
  
Heather A. Harrington  
Attorney for Defendants

ECM 243 SH

**VERIFICATION**

I, WILLIAM SWAN, Attorney-in-Fact for Marcus Swan, do hereby verify that I have read the foregoing **COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



William Swan  
William Swan, Attorney-in-Fact for  
Marcus Swan

Date: Dec. 8, 2000

ECM 243 SH

**VERIFICATION**

I, **THELMA LYNCH**, do hereby verify that I have read the foregoing **COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

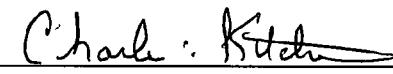
Thelma Lynch  
Thelma Lynch

Date: 12/20/2000

**VERIFICATION**

I, **CHARLES KITCHEN**, do verify that I am one of the two joint Attorneys-In-Fact for MARCUS SWAN under a durable power of attorney dated June 5, 1995 and as such I have read the foregoing **COMPLAINT**. Except for the allegations of ownership by the plaintiffs and the fact that there was a fire that destroyed the premises I have no personal knowledge or information and belief as to the statements contained in the **COMPLAINT**.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

  
\_\_\_\_\_  
Charles Kitchen

Date: 2-15-01

FILED

FEB 27 2001  
M 137100  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 00-1150-CD

MARCUS SWAN AND THELMA  
LYNCH, PLAINTIFFS

-VS-

EATON CORPORATION, ET AL.,  
DEFENDANTS

MOTION FOR SPECIAL ADMISSION  
PRO HAC VICE ON BEHALF OF  
DEFENDANT, EATON  
CORPORATION

FILED

MAR 11 1981  
O. J. Shaw  
William A. Shaw  
Prothonotary

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiff :  
: No. 00-1150-CD  
vs. :  
: Type of Case: Civil  
EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW, :  
Defendants :  
: Type of Pleading: MOTION FOR  
: SPECIAL ADMISSION PRO HAC  
: VICE ON BEHALF OF DEFENDANT,  
: EATON CORPORATION  
: Filed on behalf of:  
: Defendant, Eaton Corporation  
: Counsel of Record for this  
: Party:  
: Harry T. Quick, Esquire  
: Bar No. 0031239  
: BRZYTWA, QUICK & McCRYSTAL, LLC  
: 1660 W. 2nd Street, Suite 900  
: Cleveland, OH 44113-1411  
: (216) 664-6900  
: and Co-Counsel of Record:  
: Laurance B. Seaman, Esquire  
: Supreme Court No.: 19620  
: GATES & SEAMAN  
: Two North Front Street  
: P. O. Box 846  
: Clearfield, PA 16830  
: (814) 765-1766

**FILED**

MAR 07 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

MOTION FOR SPECIAL ADMISSION PRO HAC VICE  
ON BEHALF OF DEFENDANT, EATON CORPORATION

AND NOW, Laurance B. Seaman, Esquire, of Gates & Seaman, Counsel for Defendant, Eaton Corporation, respectfully moves this Court, pursuant to Pennsylvania Bar Admission Rule 301, for the Admission Pro Hac Vice of Harry T. Quick, Esquire, as Co-Counsel in this matter, for purposes limited to this case alone, and in support thereof, represents as follows:

1. I am a member in good standing of the Bar of the Commonwealth of Pennsylvania and am qualified to practice in the Courts of the Commonwealth.
2. I represent Defendant, Eaton Corporation, in this matter and am their counsel of record.
3. This is a strict liability and negligence case involving damages allegedly sustained by the Plaintiffs as a result of various allegations made by the Plaintiffs.
4. Defendant, Eaton Corporation, desires to have Mr. Quick assist in the trial of this matter on its behalf and represent it in all related proceedings before this Court.
5. Mr. Quick has served Defendant, Eaton Corporation, as trial counsel and has been admitted pro hac vice in other

jurisdictions as co-counsel. Mr. Quick's Affidavit in support of this Motion is attached hereto as Exhibit "A".

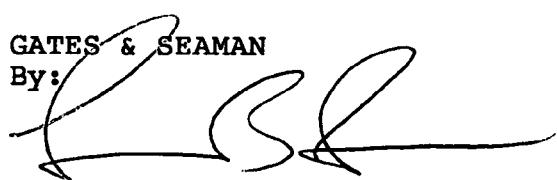
6. Mr. Quick is duly licensed to practice law by the State of Ohio. He was admitted to practice before the Ohio Supreme Court in 1965, and before the United States Supreme Court in 1975. He was admitted as a Fellow in the American College of Trial Lawyers in 1988. He is a member in good standing of the Bar of each of the above-listed Courts and is not under suspension or disbarment by any court.

7. The Plaintiff and Defendants will not be prejudiced in any way if Mr. Quick is admitted to the Bar of this Court pro hac vice.

8. No good cause exists to deny the admission of Mr. Quick pro hac vice.

WHEREFORE, Laurance B. Seaman, Esquire, respectfully requests that this Court enter the attached Order admitting Harry T. Quick, Esquire, pro hac vice to serve as Co-Counsel for Defendant, Eaton Corporation, in this matter.

GATES & SEAMAN  
By:



---

Laurance B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: March 7, 2001

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

MARCUS SWAN, et al., ) CASE NO.: 00-1150-CD

Plaintiff, )

vs. )

EATON CORPORATION, et al., )

Defendant. )

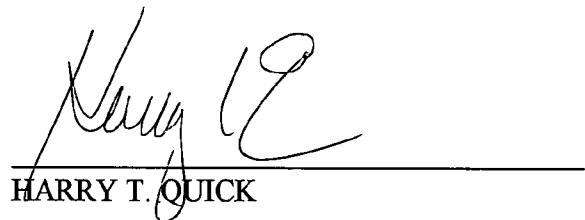
STATE OF OHIO )

COUNTY OF CUYAHOGA ) SS: AFFIDAVIT OF HARRY T. QUICK

COMES NOW Harry T. Quick, after being first duly sworn according to law deposes and says that he is of full age, competent in all respects to make this affidavit and does so on his personal knowledge:

1. Affiant says that he is an attorney at law admitted to practice before the Ohio Supreme Court in 1965. His Bar number is 0031239. Affiant says that he has always been a member in good standing before the Bar of the Ohio Supreme Court and has never been disciplined.
2. Affiant says that he is admitted to practice before the United States Supreme Court having been admitted in 1975. Further Affiant says that he is a Fellow in the American College of Trial Lawyers and was admitted in 1988.

3. Affiant says that if the Motion to Grant Affiant admission pro hac vice is granted, your  
Affiant says that he will in all respects conduct himself in accordance with the  
Pennsylvania Code of Professional Responsibility.
4. FURTHER AFFIANT SAYETH NAUGHT.



HARRY T. QUICK

SWORN TO AND SUBSCRIBED before me this 18<sup>th</sup> day of December, 2000.



CARLEANE MALACHIN

NOTARY PUBLIC

CARLEANE MALACHIN  
NOTARY PUBLIC, State of Ohio  
My Commission Expires Dec. 4, 2002

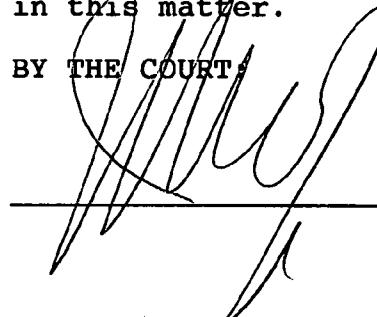
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

O R D E R

AND NOW, this 8th day of March, 2001, it is hereby  
ORDERED and DECREED that Harry T. Quick, Esquire be hereby  
specially admitted to the Bar of this Commonwealth under  
Pennsylvania Bar Admission Rule 301 as Co-Counsel representing  
Defendant, Eaton Corporation, in this matter.

BY THE COURT



Judge

**FILED**

MAR 09 2001

William A. Shaw  
Prothonotary

**FILED**

MAR 09 2001  
O/A/134CC City Seaman  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
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EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

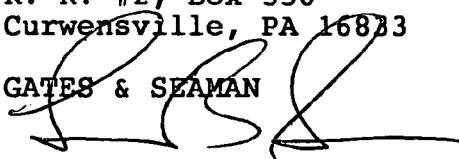
CERTIFICATE OF SERVICE

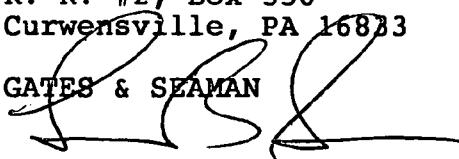
I hereby certify that service was made upon the following individuals, by mailing a true and correct copy of MOTION FOR SPECIAL ADMISSION PRO HAC VICE ON BEHALF OF DEFENDANT, EATON CORPORATION, on March 7, 2001 by regular mail, postage prepaid to:

Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

Eldon Young  
R. D. Box 581  
LaJose, PA 15753

Robert Witherow  
R. R. #2, Box 350  
Curwensville, PA 16833

  
GATES & SEAMAN

  
Laurance B. Seaman, Esquire

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 00-1150-CD

MARCUS SWAN and THELMA LYNCH,  
Plaintiffs

-vs-

EATON CORPORATION, ELDON  
YOUNG and ROBERT WITHEROW,  
Defendants

PRELIMINARY OBJECTIONS

FILED  
m/3/01 NO CC  
MAR 16 2001  
WAS

William A. Shaw  
Prothonotary

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiff :  
vs. : No. 00-1150-CD  
EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW, :  
Defendants : Type of Case: Civil  
: Type of Pleading: PRELIMINARY  
: OBJECTIONS  
: Filed on behalf of:  
: Defendant, Eaton Corporation  
: Counsel of Record for this  
: Party:  
: Laurance B. Seaman, Esquire  
: Supreme Court No.: 19620  
: GATES & SEAMAN  
: Two North Front Street  
: P. O. Box 846  
: Clearfield, PA 16830  
: (814) 765-1766  
: and Co-Counsel of Record:  
: Harry T. Quick, Esquire  
: Bar No. 0031239  
: BRZYTWA, QUICK & McCRYSTAL, LLC  
: 1660 W. 2nd Street, Suite 900  
: Cleveland, OH 44113-1411  
: (216) 664-6900

FILED  
MAR 16 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

N O T I C E

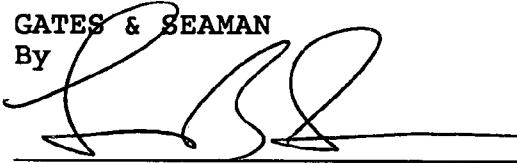
To: Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

Eldon Young  
R. D. Box 581  
LaJose, PA 15753

Robert Witherow  
R. R. #2, Box 350  
Curwensville, PA 16833

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

GATES & SEAMAN  
By



\_\_\_\_\_  
Laurance B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: March 16, 2001

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

PRELIMINARY OBJECTIONS

NOW COMES Defendant, EATON CORPORATION, by and through its counsel, Gates and Seaman and Brzytwa, Quick & McCrystal, and preliminarily objects to Plaintiffs' Complaint as follows:

I. LEGAL INSUFFICIENCY OF COUNTS ONE AND TWO  
OF THE COMPLAINT (DEMURRER)

1. Plaintiffs commenced this action by their filing of a Praecept for the Issuance of a Writ of Summons on or about September 15, 2000, and thereafter filed a Complaint on or about February 27, 2001, pursuant to a Rule to do so.

2. The Complaint contains an introductory twelve (12) paragraphs followed by two counts in strict liability against Defendant, Eaton Corporation, one count in negligence against Defendant, Eaton Corporation, one count in negligence against Defendant, Robert Witherow, and one count in negligence against Defendant, Eldon Young.

3. Paragraph 10 of the Complaint states: "The fire was caused by an electrical malfunction in the service panel manufactured by Eaton, installed by Young and worked on by Witherow.".

4. Paragraph 12 of the Complaint states: "The legal and

factual cause of the fire was the malfunction of the service panel due to improper manufacturing, installation and electrical work done by the Defendants.”.

5. Count One against Defendant, Eaton Corporation, is a claim in strict liability alleging:

“14. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by Defendant Eaton for residential installation and use.

15. Defendant Eaton improperly manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

16. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by Plaintiffs as a result of that malfunction.”.

6. Count Two against Defendant, Eaton Corporation, is a claim in strict liability alleging:

“18. The legal and factual cause of the plaintiffs damages was the improper design by Eaton of the 40 circuit Challenger electric panel sold by defendant Eaton for residential installation and use.

19. Defendant Eaton improperly designed the service panel so as to allow one branch of the service

entrance cable and the breaker to which it was attached to overheat and fail.

20. Defendant Eaton is strictly liable for the malfunction of it's product and the damages sustained by plaintiffs as a result of that malfunction.".

7. Plaintiffs' claim in strict liability is apparently under Section 402A of the Restatement (Second) of Torts, which provides (in part): "(1) one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if (a) the seller is engaged in the business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.".

8. Plaintiffs have made no allegations that the electric service panel allegedly manufactured and sold by Defendant, Eaton Corporation: (1) was in a defective condition; (2) unreasonably dangerous to the user or consumer or to his property; or (3) that the electric service panel reached the Plaintiffs without substantial change in the condition in which it was sold.

9. By failing to make said allegations, Plaintiffs have failed to state a valid cause of action against Defendant, Eaton

Corporation.

10. Plaintiffs have included claims of negligence against Defendant, Eaton Corporation, and against Defendants, Eldon Young and Robert Witherow, which allegedly demonstrate abnormal use and secondary causes, which Plaintiff has the burden of eliminating in order to recover in a strict liability malfunction case.

11. Plaintiffs allege no personal injuries and only claim physical property damage.

12. The theory of strict liability does not apply in cases where the harm is merely physical property.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court grant its Preliminary Objections that Counts One and Two of the Complaint are legally insufficient (demurrer) and dismiss Counts One and Two of Plaintiffs' Complaint.

II. LEGAL INSUFFICIENCY OF COUNT THREE OF THE COMPLAINT (DEMURRER)

13. Paragraphs 1 through 4 hereof are incorporated herein by reference.

14. Count Three against Defendant, Eaton Corporation, is a claim in negligence alleging:

"22. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by

Defendant Eaton for residential installation and use.

23. Defendant Eaton negligently manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

24. Defendant Eaton is liable to the plaintiffs for its negligent manufacture of its product and the damages sustained by plaintiffs as a result of that negligence.".

15. Plaintiff alleges in Paragraph 22 of the Complaint that the cause of the damages was the malfunction of the electric panel, which sounds in strict liability, as there are no allegations of any specific negligent conduct on the part of Defendant, Eaton Corporation.

16. Paragraph 23 of the Complaint alleges only that Defendant, Eaton Corporation, negligently manufactured the electric service panel, which allegations are overly broad, general, and vague and fail to state what conduct or lack thereof constituted negligence on the part of Defendant, Eaton Corporation, in the manufacture of the service panel, and do not set forth sufficient facts upon which Defendant, Eaton Corporation can prepare a defense.

17. These overly broad and general allegations violate the Pennsylvania Rules of Civil Procedure as Plaintiffs have failed

to set forth sufficient facts and provide notice to Defendant, Eaton Corporation, as to what Plaintiffs allege constituted negligence on the part of Defendant, Eaton Corporation, nor what was the malfunction of the electric service panel, nor how it malfunctioned, nor the cause of the malfunction.

18. Plaintiffs have failed to set forth a valid cause of action by the failure to set forth any acts or omissions to act on the part of Defendant, Eaton Corporation, which would constitute negligence in this case.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court grant its Preliminary Objections that Count Three of the Complaint is legally insufficient (demurrer) and dismiss Count Three of Plaintiffs' Complaint.

**III. MOTION TO STRIKE AND/OR FOR A MORE SPECIFIC PLEADING**

19. Paragraphs 1 through 18 hereof are incorporated herein by reference.

20. Pa.R.C.P. §1019(a) provides: "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.".

21. Pa.R.C.P. §1028(a)(3) states: (a) Preliminary Objections may be filed by any party to any pleading and are limited to the following founds: ". . . (3) insufficient specificity in a pleading;".

22. The allegations of Plaintiffs' Complaint as to strict

liability and negligence are overly broad and general and insufficient to provide adequate notice to Defendant, Eaton Corporation, as to exactly what the allegations are so that Defendant, Eaton Corporation, can prepare a defense against the same.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court to strike Paragraphs 10, 12, 14-16, 18-20 and 22-24 and/or require Plaintiffs to plead a more specific pleading.

GATES & SEAMAN  
By: 

---

Laurence B. Seaman, Esquire  
Attorneys for Defendant,  
Eaton Corporation

Date: 3/16/01

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

BRZYTWA, QUICK & McCRYSTAL, LC  
By: 

Date: 3/16/01

---

Harry T. Quick, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation

1660 West 2nd Street, Suite 900  
Cleveland, OH 44113-1411  
(216) 664-6900

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

CERTIFICATE OF SERVICE

16 I hereby certify that I served by regular U. S. Mail on the  
day of March, 2001, a true and correct copy of the  
original of Defendant, Eaton Corporation's Preliminary  
Objections to Complaint to:

Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

Eldon Young  
R. D. Box 581  
LaJose, PA 15753

Robert Witherow  
R. R. #2, Box 350  
Curwensville, PA 16833

GATES & SEAMAN

By

  
Laurance B. Seaman, Esquire,  
Attorney for Defendant,  
Eaton Corporation

**FILED**

MAR 19 2001  
O 10:46/2 CC Cthy Pentz  
William A. Shaw  
Prothonotary  
EPPS

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW  
211 1/2 EAST LOCUST ST. P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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

MARCUS SWAN and  
THELMA LYNCH,  
Plaintiffs

VS

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
Defendants

\* No. 00 - 1150 - C.D.

\* Type of Case: Civil

\* Type of Pleading: Answer to  
\* Complaint and New Matter

\* Filed on Behalf of: Defendant,  
\* Robert Witherow

\* Counsel of Record for this Party:

\* CHRIS A. PENTZ, Esquire

\* Supreme Court I.D. # 39232  
\* 211 1/2 East Locust Street  
\* P. O. Box 552  
\* Clearfield PA 16830  
\* 814 765-4000

**FILED**

MAR 19 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,  
Plaintiffs

\*

vs

\* No. 00-1150-CD

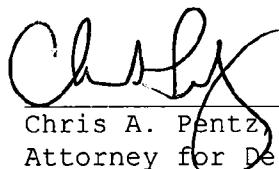
\*

EATON CORPORATION, ELDON YOUNG  
And ROBERT WITHEROW,  
Defendants

\*

To: **MARCUS SWAN and THELMA LYNCH:**

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



Chris A. Pentz, Esquire  
Attorney for Defendant,  
Robert Witherow

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

MARCUS SWAN and \*  
THELMA LYNCH, \*  
Plaintiffs \*  
\*  
vs No. 00-1150-C.D.  
\*  
EATON CORPORATION, \*  
ELDON YOUNG and \*  
ROBERT WITHEROW, \*  
Defendants \*

ANSWER TO COMPLAINT

NEW MATTER

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment.
5. Paragraph 5 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment.
6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. Paragraph 8 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment as to who manufactured and sold the electrical panel in question. The remaining allegation is also denied in that Defendant Witherow installed the electrical panel and Defendant Young ran the electrical service from the source to the electrical meter and then to the electrical panel.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied. The service panel was installed by Witherow on or before 1991 and worked on by Young approximately two (2) weeks before the fire.

11. Paragraph 11 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment.

12. Paragraph 12 - No answer required.

**COUNT ONE**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs vs**  
**EATON CORPORATION, defendant**

**STRICT LIABILITY**

13. Paragraph 13 - No Answer required by Defendant Witherow.

14. Paragraph 14 - No Answer required by Defendant Witherow.

15. Paragraph 15 - No Answer required by Defendant Witherow.

16. Paragraph 16 - No Answer required by Defendant Witherow.

**COUNT TWO**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs vs**  
**EATON CORPORATION, defendant**

**STRICT LIABILITY**

17. Paragraph 17 - No Answer required by Defendant Witherow.

18. Paragraph 18 - No Answer required by Defendant Witherow.

19. Paragraph 19 - No Answer required by Defendant Witherow.

20. Paragraph 20 - No Answer required by Defendant Witherow.

**COUNT THREE**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs vs**  
**EATON CORPORATION, defendant**

**NEGLIGENCE**

21. Paragraph 21 - No Answer required by Defendant Witherow.

22. Paragraph 22 - No Answer required by Defendant Witherow.

23. Paragraph 23 - No Answer required by Defendant Witherow.

24. Paragraph 24 - No Answer required by Defendant Witherow.

**COUNT FOUR**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs  
ROBERT WITHEROW, defendant  
NEGLIGENCE**

25. Paragraph 25 - Defendant Witherow hereby incorporates by reference Paragraphs 1 through 12 of this Answer.

26. Paragraph 26 is admitted.

27. Paragraph 27 is denied. After reasonable investigation the Defendant Witherow is without sufficient knowledge or information to form a belief as to the averment.

28. Paragraph 28 is denied. After reasonable investigation the Defendant Witherow is without sufficient knowledge or information to form a belief as to the averment.

29. Paragraph 29 is a conclusion of law to which no Answer is required. To the extent an Answer is required, it is denied that any actions of Defendant Witherow were negligent as to the installation of the electrical panel.

30. Paragraph 30 is denied. After reasonable investigation the Defendant Witherow is without sufficient knowledge or information to form a belief as to the averment. Paragraph 30 is also denied in that Defendant Witherow did not install the service panel in a negligent manner and it was installed at the specific direction of the Plaintiffs and/or their agent, Erma Swan.

WHEREFORE, the Defendant, Robert Witherow, respectfully  
requests Your Honorable Court to enter a judgment in his favor.

**COUNT FIVE**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs, vs**  
**ELDON YOUNG, defendant**

**NEGLIGENCE**

31. Paragraph 31 - No Answer required by Defendant Witherow.
32. Paragraph 32 - No Answer requires by Defendant Witherow.
33. Paragraph 33 - No Answer required by Defendant Witherow.
34. Paragraph 34 - No Answer required by Defendant Witherow.
35. Paragraph 35 - No Answer required by Defendant Witherow.
36. Paragraph 36 - No Answer required by Defendant Witherow.

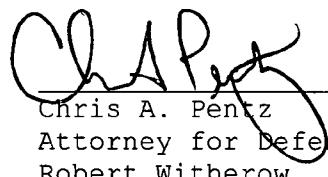
**COUNT SIX**

**NEW MATTER**

37. Paragraph 1 through 36 of this Answer and new matter are incorporated herein by reference as though set forth in full.
38. The services performed by the Defendant Witherow were on or before 1991.
39. Any action which the Plaintiffs may have against the Defendant Robert Witherow is barred to the Statute of Limitations.

WHEREFORE, the Defendant, Robert Witherow, respectfully  
requests Your Honorable Court to enter a judgment in his favor.

Respectfully submitted this 16 day of March, 2001.

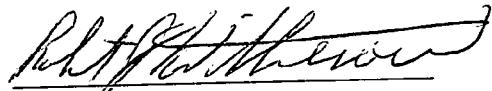


Chris A. Pentz  
Attorney for Defendant,  
Robert Witherow

VERIFICATION

I, ROBERT WITHEROW, verify that the statements made in this ANSWER AND 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.

03-16-01  
Date

  
Robert Witherow

202  
No 91  
Prothonotary  
William A. Shaw  
6/3/2001  
MAR 21 2001

**FILED**

— Fold Here —

CHRIS A. PENTZ  
ATTORNEY AT LAW  
211 1/2 EAST LOCUST ST. P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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

MARCUS SWAN and,  
THELMA LYNCH,  
Plaintiffs

vs

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
Defendants

\* No. 00 - 1150 - C.D.

\* Type of Case: Civil

\* Type of Pleading: Entry of  
\* of Appearance

\* Filed on Behalf of: Defendant  
\* Robert Witherow

\* Counsel of Record for this Party:  
\* CHRIS A. PENTZ, Esquire

\* Supreme Court I.D. # 39232  
\* 211 1/2 East Locust Street  
\* P. O. Box 552  
\* Clearfield PA 16830  
\* 814 765-4000

**FILED**

MAR 21 2001

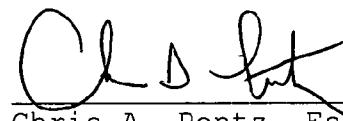
William A. Shaw  
Prothonotary

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

MARCUS SWAN and	*
THELMA LYNCH,	*
Plaintiffs	*
	*
vs	*
	No. 00 - 1150 - C.D.
	*
	*
EATON CORPORATION,	*
ELDON YOUNG and	*
ROBERT WITHEROW,	*
Defendants	*
	*

Please enter my appearance as attorney of record  
for the Defendant, ROBERT WITHEROW.

Respectfully submitted this 21 day of March, 2001.

  
Chris A. Pentz, Esquire

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

MARCUS SWAN and THELMA LYNCH,

No. 00-1150-CD

Plaintiffs

ISSUE:  
**AMENDED COMPLAINT**

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and  
correct copy of the within was mailed  
to all counsel of record this 22<sup>nd</sup> day of  
March, 2001.

Heather Harrington  
\_\_\_\_\_  
Attorney for Plaintiffs

**FILED**

MAR 23 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants :

**NOTICE**

You have been sued in the 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 Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. 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.

DAVID S. MEHOLIK, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET  
CLEARFIELD, PA 16830  
814-765-2641, EXT. 5982

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT

*Heather A. Harrington*  
\_\_\_\_\_  
Attorneys for PLAINTIFFS  
Heather A. Harrington, Esquire  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

Date: March 22, 2001

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

COMPLAINT

AND NOW, come plaintiffs MARCUS SWAN and THELMA LYNCH, by and through their counsel, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT, and file the within COMPLAINT, averring as follows:

1. Plaintiff Marcus Swan, is an adult individual residing at RD 1, Box 58, Irvona, Clearfield County, Pennsylvania.
2. Plaintiff Thelma Lynch is an adult individual residing at Box 505 Apple Square, Sanford, North Carolina.
3. At all times material hereto, plaintiffs were the owners of real, improved property located t RD 1, Box 58, Irvona, Clearfield County, Pennsylvania, which contained a two-story, frame structure which served as the home of plaintiff Marcus Swan.
4. Pursuant to a Durable Power of Attorney, Charles Kitchen, an adult individual residing at RD 1, Box 123, Hesston, Pennsylvania and William Swan, an adult

individual residing at Box 188, Mount Gilead, North Carolina are the attorneys-in-fact for plaintiff Marcus Swan.

5. Defendant Eaton Corporation (hereafter "Eaton") is an business entity with it principal place of business at Eaton Center, 1111 Superior Avenue, Cleveland, Ohio and which regularly does business in Clearfield County, Pennsylvania.

6. Defendant Eldon Young (hereafter "Young") is an adult individual residing at RD, LaJose, Clearfield County, Pennsylvania.

7. Defendant Robert Witherow (hereafter "Witherow") is an adult individual residing at RR 2, Box 350, Curwensville, Clearfield County, Pennsylvania.

8. Defendant Eaton manufactured and sold a 40 circuit Challenger Model electrical panel known which was installed in the property of the plaintiffs by defendant Young and to which defendant Witherow attached an electrical service meter.

9. On October 4, 1998, a fire broke out at the property of the plaintiffs and destroyed the frame building structure and its contents.

10. The fire was caused when the entrance cable and the breaker attached to it, in the service panel manufactured by Eaton, installed by Young and worked on by Witherow, overheated and failed.

11. As a result of the fire, the plaintiffs sustained damages in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00).

12. The legal and factual cause of the fire was the malfunction of the service panel, as described above, due to improper manufacturing, installation and electrical work done by the defendants.

**COUNT ONE**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant**

**STRICT LIABILITY**

13. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
14. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by defendant Eaton for residential installation and use.
15. Defendant Eaton improperly manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.
16. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.
17. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.
18. Defendant Eaton is strictly liable for the malfunction of it's product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

**COUNT TWO**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant**

**STRICT LIABILITY**

19. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
20. The legal and factual cause of the plaintiffs damages was the improper design by Eaton of the 40 circuit Challenger electric panel sold by defendant Eaton for residential installation and use.
21. Defendant Eaton improperly designed the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.
22. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.
23. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.
24. Defendant Eaton is strictly liable for the malfunction of it's product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

**COUNT THREE**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant**

**NEGLIGENCE**

25. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
26. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by defendant Eaton for residential installation and use.
27. Defendant Eaton negligently manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.
28. Defendant Eaton is liable to the plaintiffs for its negligent manufacture of its product and the damages sustained by plaintiffs as a result of that negligence.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

## **COUNT FOUR**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ROBERT WITHEROW, defendant**

### **NEGLIGENCE**

29. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.
30. The Challenger service panel which failed was installed by defendant Witherow.
31. As part of the installation process, the service panel was attached to a pine board and secured to the wall with wood blocking, thereby allowing a three (3) inch gap between the service panel and the foundation wall.
32. As a result of this gap behind the service panel, when the panel overheated and failed, the heat ignited the board and wood blocking and the fire spread to the exterior sheathing board and floor joists of the home.
33. Defendant Witherow negligently installed the Challenger service panel by not securing the panel directly to the foundation wall.
34. Due to the negligence of defendant Witherow in installing the Challenger service panel, the damages sustained by the plaintiffs were greater than they would have been had the panel been improperly installed.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Witherow, with prejudice.

## **COUNT FIVE**

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ELDON YOUNG, defendant

NEGLIGENCE

35. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Complaint.

36. The drop line from the main electrical service and electrical service meter were installed by defendant Young.

37. Investigation reveals that the greatest area of heat and damage to the service panel itself was at the drop line connection indicating a failure of the connection which allowed arcing and caused the wooden backing material to ignite.

38. Defendant Young negligently installed the connection between the service panel and the main line by not securing the connection with a service cable connector which allowed the wire to grind against the panel cabinet and/or the backpan adjustment screw wearing away the wire's protective sheath.

39. Due to the negligence of defendant Young in installing the Challenger service cable connector, the plaintiffs incurred the damages described above.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Young , with prejudice.

Respectfully Submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE &  
SCHMITT

Heather A. Harrington  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID.No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

TO THE WITHIN NAMED PARTY

You are hereby notified to plead to the  
enclosed Complaint within twenty (20)  
days of service hereof or a default judgment  
may be entered against you.

Heather A. Harrington  
Attorney for Plaintiffs

**VERIFICATION**

I, HEATHER A. HARRINGTON, ESQUIRE, being the attorney of record for Plaintiffs, MARCUS SWAN and THELMA LYNCH, verify that I am authorized to make this verification on behalf of said Plaintiffs in the within action, as the parties who may verify this matter are outside the jurisdiction of the Court and the Verification of none of them can be obtained within the time allowed for filing the **Amended Complaint**. I further verify that the statements made in the foregoing **Amended Complaint** are true and correct to the best of my knowledge, information, and belief.

*Heather A. Harrington*  
HEATHER A. HARRINGTON, ESQUIRE

Date: March 22, 2001

**FILED**

MAR 23 2001

116/16  
William A. Shaw  
Prothonotary

*get*

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

No. 00-1150-CD

**REPLY TO NEW MATTER OF  
DEFENDANT ROBERT WITHEROW**

Filed on Behalf of Plaintiffs,  
Marcus Swan and Thelma Lynch

Counsel of Record for Plaintiffs:

**Pfaff, McIntyre, Dugas, Hartye &  
Schmitt**  
STEPHEN L. DUGAS, ESQUIRE  
PA I.D. No. 21351  
HEATHER A. HARRINGTON, ESQ.  
PA I.D. No. 62977  
Post Office Box 533  
Hollidaysburg, PA 16648  
Ph: (814) 696-3581

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE  
WITHIN HAS BEEN FORWARDED  
TO ALL COUNSEL OF RECORD THIS  
**29<sup>TH</sup> DAY OF MARCH, 2001.**

Heather A. Hartye  
Attorneys for Plaintiffs

**FILED**

MAR 30 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**REPLY TO NEW MATTER OF  
DEFENDANT ROBERT WITHEROW**

AND NOW, come Plaintiffs, Marcus Swan and Thelma Lynch, by and through their counsel, Pfaff, McIntyre, Dugas, Hartye & Schmitt, and file the within Reply to Defendant Robert Witherow's New Matter, as follows:

37. Paragraph 37 is an incorporation paragraph which requires no response.
38. Admitted.
39. Paragraph 39 contains conclusions of law to which no responsive pleading is required. Insofar as a response is required, it is denied that the statute of limitations on any claim against Robert Witherow passed prior to the filing of this lawsuit. To the contrary, the statute of limitations only began to run upon the Plaintiffs' knowledge of any injury, which was the date of the fire loss.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor in accord with the requests of the Complaint.

Respectfully Submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE &  
SCHMITT

Heather A. Harrington  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID.No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

**FILED**

MAR 30 2001  
11:02 AM  
W.M.C.  
William A. Shaw  
Prothonotary  
*REC*

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

No. 00-1150-CD

SWAN/LYNCH, Plaintiffs

vs

EATON CORPORATION, Et al

PRELIMINARY OBJECTIONS TO  
AMENDED COMPLAINT

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiff :  
vs. : No. 00-1150-CD  
EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW, :  
Defendants : Type of Case: Civil  
: Type of Pleading: PRELIMINARY  
: OBJECTIONS TO AMENDED  
: COMPLAINT  
: Filed on behalf of:  
: Defendant, Eaton Corporation  
: Counsel of Record for this  
: Party:  
: Laurance B. Seaman, Esquire  
: Supreme Court No.: 19620  
: GATES & SEAMAN  
: Two North Front Street  
: P. O. Box 846  
: Clearfield, PA 16830  
: (814) 765-1766  
: and Co-Counsel of Record:  
: Harry T. Quick, Esquire  
: Bar No. 0031239  
: BRZYTWA, QUICK & McCRYSTAL, LLC  
: 1660 W. 2nd Street, Suite 900  
: Cleveland, OH 44113-1411  
: (216) 664-6900

**FILED**

APR 11 2001

0333 NOCC

William A. Shaw  
Prothonotary *KBD*

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

N O T I C E

To: Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

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

GATES & SEAMAN

By



---

Laurence B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: April 11, 2001

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

NOW COMES Defendant, EATON CORPORATION, by and through its counsel, Gates and Seaman and Brzytwa, Quick & McCrystal, and preliminarily objects to Plaintiffs' Amended Complaint as follows:

I. LEGAL INSUFFICIENCY OF COUNTS ONE AND TWO  
OF THE COMPLAINT (DEMURRER)

1. Plaintiffs commenced this action by their filing of a Praecept for the Issuance of a Writ of Summons on or about September 15, 2000, and thereafter filed a Complaint on or about February 27, 2001, pursuant to a Rule to do so.

2. Defendant, Eaton Corporation, filed Preliminary Objections to said Complaint.

3. Plaintiffs subsequently filed an Amended Complaint on March 23, 2001.

4. The Amended Complaint contains an introductory twelve (12) paragraphs followed by two counts in strict liability against Defendant, Eaton Corporation, one count in negligence against Defendant, Eaton Corporation, one count in negligence against Defendant, Robert Witherow, and one count in negligence against Defendant, Eldon Young.

5. Paragraph 10 of the Amended Complaint states: "The fire was caused by an electrical malfunction in the service panel manufactured by Eaton, installed by Young and worked on by Witherow.".

6. Paragraph 12 of the Amended Complaint states: "The legal and factual cause of the fire was the malfunction of the service panel due to improper manufacturing, installation and electrical work done by the Defendants.".

7. Count One against Defendant, Eaton Corporation, is a claim in strict liability alleging:

"14. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by Defendant Eaton for residential installation and use.

15. Defendant Eaton improperly manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

16. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.

17. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.

18. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by Plaintiffs as a result of that malfunction.".

8. Count Two against Defendant, Eaton Corporation, is a claim in strict liability alleging:

"20. The legal and factual cause of the plaintiffs damages was the improper design by Eaton of the 40 circuit Challenger electric panel sold by defendant Eaton for residential installation and use.

21. Defendant Eaton improperly designed the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

22. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.

23. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.

24. Defendant Eaton is strictly liable for the malfunction of it's product and the damages sustained by plaintiffs as a result of that malfunction.".

9. Plaintiffs have included claims of negligence against Defendant, Eaton Corporation, and against Defendants, Eldon

Young and Robert Witherow, which allegedly demonstrate abnormal use and secondary causes, which Plaintiff has the burden of eliminating in order to recover in a strict liability malfunction case.

10. Plaintiffs allege no personal injuries and only claim physical property damage.

11. The theory of strict liability does not apply in cases where the harm is merely physical property.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court grant its Preliminary Objections that Counts One and Two of the Amended Complaint are legally insufficient (demurrer) and dismiss Counts One and Two of Plaintiffs' Amended Complaint.

**II. LEGAL INSUFFICIENCY OF COUNT THREE OF THE AMENDED COMPLAINT (DEMURRER)**

12. Paragraphs 1 through 6 hereof are incorporated herein by reference.

13. Count Three against Defendant, Eaton Corporation, is a claim in negligence alleging:

"26. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by Defendant Eaton for residential installation and use.

27. Defendant Eaton negligently manufactured the service panel so as to allow one branch of the service

entrance cable and the breaker to which it was attached to overheat and fail.

28. Defendant Eaton is liable to the plaintiffs for its negligent manufacture of its product and the damages sustained by plaintiffs as a result of that negligence.”.

14. Plaintiff alleges in Paragraph 26 of the Amended Complaint that the cause of the damages was the malfunction of the electric panel, which sounds in strict liability, as there are no allegations of any specific negligent conduct on the part of Defendant, Eaton Corporation.

15. Paragraph 27 of the Amended Complaint alleges only that Defendant, Eaton Corporation, negligently manufactured the electric service panel, which allegations are overly broad, general, and vague and fail to state what conduct or lack thereof constituted negligence on the part of Defendant, Eaton Corporation, in the manufacture of the service panel, and do not set forth sufficient facts upon which Defendant, Eaton Corporation can prepare a defense.

16. These overly broad and general allegations violate the Pennsylvania Rules of Civil Procedure as Plaintiffs have failed to set forth sufficient facts and provide notice to Defendant, Eaton Corporation, as to what Plaintiffs allege constituted negligence on the part of Defendant, Eaton Corporation, nor what

was the malfunction of the electric service panel, nor how it malfunctioned, nor the cause of the malfunction.

17. Plaintiffs have failed to set forth a valid cause of action by the failure to set forth any acts or omissions to act on the part of Defendant, Eaton Corporation, which would constitute negligence in this case.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court grant its Preliminary Objections that Count Three of the Amended Complaint is legally insufficient (demurrer) and dismiss Count Three of Plaintiffs' Complaint.

### **III. MOTION TO STRIKE AND/OR FOR A MORE SPECIFIC PLEADING**

18. Paragraphs 1 through 17 hereof are incorporated herein by reference.

19. Pa.R.C.P. §1019(a) provides: "The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.".

20. Pa.R.C.P. §1028(a)(3) states: (a) Preliminary Objections may be filed by any party to any pleading and are limited to the following founds: ". . . (3) insufficient specificity in a pleading;".

21. The allegations of Plaintiffs' Complaint as to strict liability and negligence are overly broad and general and insufficient to provide adequate notice to Defendant, Eaton Corporation, as to exactly what the allegations are so that Defendant, Eaton Corporation, can prepare a defense against the

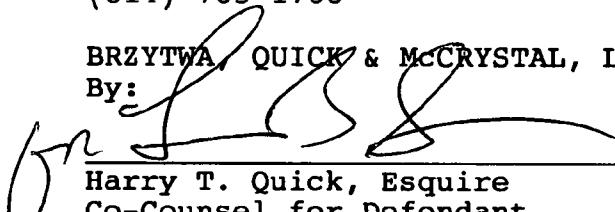
same.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court to strike Paragraphs 12, 14, 16, 18, 20-22 24-26 and/or require Plaintiffs to plead a more specific pleading.

GATES & SEAMAN  
By: 

---

Laurance B. Seaman, Esquire  
Attorneys for Defendant,  
Eaton Corporation  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

BRZYTWA, QUICK & McCRYSTAL, LC  
By: 

Date: 4-11-01

Date: 4-11-01

---

Harry T. Quick, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation  
1660 West 2nd Street, Suite 900  
Cleveland, OH 44113-1411  
(216) 664-6900

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

CERTIFICATE OF SERVICE

1/1 I hereby certify that I served by regular U. S. Mail on the  
day of April, 2001, a true and correct copy of the  
original of Defendant, Eaton Corporation's Preliminary  
Objections to Complaint to:

Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

Eldon Young  
R. D., Box 581  
LaJose, PA 15753

Chris A. Pentz, Esquire  
P. O. Box 552  
Clearfield, PA 16830

GATES & SEAMAN

By \_\_\_\_\_

  
Lawrence B. Seaman, Esquire,  
Attorney for Defendant,  
Eaton Corporation

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

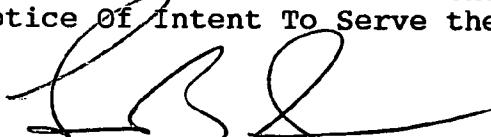
MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

CERTIFICATE  
PREREQUISITE TO SERVICE OF A SUBPOENA  
PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Laurance B. Seaman, Esquire, Attorney for Defendant, Eaton Corporation, certifies that:

- (1) A Notice of Intent to Serve the Subpoena with a copy of the Subpoena attached to said Notice was mailed to each party or their counsel of record at least twenty (20) days prior to the date on which the Subpoena is sought to be served;
- (2) a copy of the Notice of Intent, including the proposed Subpoena, is attached to this certificate and made a part hereof as Exhibit "A";
- (3) no objection to the Subpoena has been received; and
- (4) The Subpoena which will be served is identical to the Subpoena which is attached to the Notice Of Intent To Serve the Subpoena.

Date: 4/18/01

  
Laurance B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Law Offices of Gates & Seaman  
2 North Front Street  
P. O. Box 846  
Clearfield, PA 16830

**FILED**

APR 18 2001

William A. Shaw  
Prothonotary

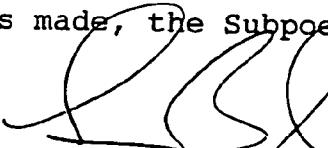
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. :  
: : No. 00-1150-CD  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE  
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendant, Eaton Corporation, through and by its Attorney, Laurance B. Seaman, Esquire, intends to serve a Subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an Objection to the Subpoena. If no objection is made, the Subpoena may be served.

Date: 3/27/01

  
\_\_\_\_\_  
Laurance B. Seaman, Esquire

LAW OFFICES OF GATES & SEAMAN  
Two North Front Street  
P. O. Box 846  
Clearfield, Pennsylvania 16830  
(814) 765-1766

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

MARCUS SWAN and THELMA LYNCH,  
Plaintiffs

-vs-

EATON CORPORATION, ELDON YOUNG and  
ROBERT WITHEROW, Defendants

File No. 00-1150-CD

:

:

:

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS  
FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: PAUL J. EVANKO, COMMISSIONER OF THE STATE POLICE  
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: All investigative reports, notes, records and photographs re: Fire at residence of Ralph Marcus Swan on October 3, 1998 - Incident No. C30571103

at Two North Front Street, Clearfield, PA 16830

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Laurance B. Seaman, Esquire

ADDRESS: GATES & SEAMAN

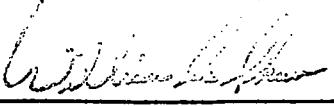
Two North Front Street  
Clearfield, PA 16830

TELEPHONE: (814) 765-1766

JUDGE COURT ID #: 19620

ATTORNEY FOR: Defendant, Eaton  
Corporation

BY THE COURT:

  
Prothonotary/Clerk, Civil Division

RE: 3-27-01

Seal of the Court

Deputy

On the \_\_\_\_\_ day of

\_\_\_\_\_, 19\_\_\_\_.

I, \_\_\_\_\_, served \_\_\_\_\_

(name of person served)

with the foregoing subpoena by:  
(Describe method of service)

I verify that the statements in this  
return of service are true and correct.  
I understand that false statements  
herein are made subject to the penalties  
of 18 P.A.C.S.A. § 1904 relating to  
unsworn falsification to authorities.

DATE: \_\_\_\_\_

(signature)

FILED

APR 18 2001  
03:45pm  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

REPLY OF PLAINTIFFS' PRELIMINARY  
OBJECTIONS TO AMENDED  
COMPLAINT OF DEFENDANT EATON  
CORPORATION

Defendants

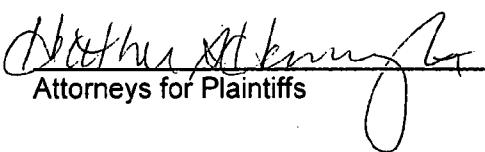
Filed on Behalf of Plaintiffs,  
Marcus Swan and Thelma Lynch

Counsel of Record for Plaintiffs:

**Pfaff, McIntyre, Dugas, Hartye &  
Schmitt**

STEPHEN L. DUGAS, ESQUIRE  
PA I.D. No. 21351  
HEATHER A. HARRINGTON, ESQ.  
PA I.D. No. 62977  
Post Office Box 533  
Hollidaysburg, PA 16648  
Ph: (814) 696-3581

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE  
WITHIN HAS BEEN FORWARDED  
TO ALL COUNSEL OF RECORD THIS  
**25<sup>TH</sup> DAY OF APRIL, 2001.**

  
\_\_\_\_\_  
Attnys for Plaintiffs

**FILED**

APR 26 2001  
M 10:40:10 AM  
William A. Shaw  
Prothonotary 

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW.

Defendants

**REPLY OF PLAINTIFFS' PRELIMINARY OBJECTIONS TO  
AMENDED COMPLAINT OF DEFENDANT EATON CORPORATION**

AND NOW, come Plaintiffs Marcus Swan and Thelma Lynch, by and through their counsel, Pfaff, McIntyre, Dugas, Hartye & Schmitt, and file the following Reply to Defendant Eaton Corporation's Preliminary Objections to the Amended Complaint.

**I. LEGAL INSUFFICIENCY OF COUNTS ONE AND TWO OF THE COMPLAINT  
(DEMURRER)**

1. Admitted.

2. Admitted.

3. Admitted.

4. - 10. The Amended Complaint speaks for itself and therefore these Paragraphs which reference its content require no response.

11. Paragraph 11 contains conclusions of law to which no responsive pleading is required.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny the Preliminary Objections of Defendant Eaton Corporation and direct that it respond to the Amended Complaint within twenty (20) days.

**II. LEGAL INSUFFICIENCY OF COUNT THREE OF THE AMENDED COMPLAINT  
(DEMURRER)**

12. The Plaintiffs hereby incorporate their responses to Paragraphs 1 through 11 of the Preliminary Objections as if more fully set forth at length.

13. - 14. The Amended Complaint speaks for itself and therefore no response is necessary to these Paragraphs.

15. Denied. To the contrary, the allegations of the Amended Complaint are clear and concise and provide Defendant Eaton Corporation with sufficient facts to respond to the allegations against it.

16. - 17. Paragraphs 16 and 17 contain conclusions of law to which no responsive pleading is required.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny the Preliminary Objections of Defendant Eaton Corporation and direct that it respond to the Amended Complaint within twenty (20) days.

**III. MOTION TO STRIKE AND/OR FOR A MORE SPECIFIC PLEADING**

18. The Plaintiffs hereby incorporate their responses to Paragraphs 1 through 17 as if more fully set forth at length.

19. Admitted.

20. Admitted.

21. Denied. To the contrary, the Amended Complaint sufficiently sets forth all facts upon which the Plaintiffs' claims are based so that Defendant Eaton Corporation knows exactly what allegations are being made against it and the facts upon which those allegations are based.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny the Preliminary Objections of Defendant Eaton Corporation and direct that it respond to the Amended Complaint within twenty (20) days. In the alternative, Plaintiffs request the opportunity to file a more specific pleading.

Respectfully Submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE &  
SCHMITT

Stephen L. Dugas, Esquire  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID. No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

CERTIFICATE OF SERVICE

I, Heather A. Harrington, Esquire, hereby certify that I have served a true and correct copy of the  
on behalf of Plaintiffs, Marcus Swan and Thelma Lynch, on the following persons by  
placing the same in the U.S. Mail, postage prepaid, on the 25<sup>th</sup> day of April, 2001:

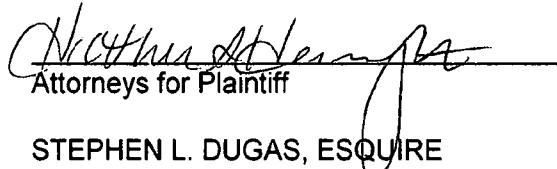
Laurence B. Seaman, Esquire  
GATES & SEAMAN  
Two North Front Street  
Post Office Box 846  
Clearfield, PA 16830

Harry T. Quick, Esquire  
BRZYTWA, QUICK & McCRYSTAL, LLC  
1660 W. 2<sup>nd</sup> Street, Suite 900  
Cleveland, OH 44113-1411

Chris A. Pentz, Esquire  
211 1/2 East Locust Street  
P.O. Box 552  
Clearfield, PA 16830

Eldon Young  
R.D., Box 581  
LaJose, PA 15753

PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT

  
Attnorneys for Plaintiff

STEPHEN L. DUGAS, ESQUIRE  
PA I.D. No. 21351  
HEATHER A. HARRINGTON, ESQUIRE  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

No. : 00-1150-CD

**ISSUE:**  
**Praeclipe to Substitute Verifications**

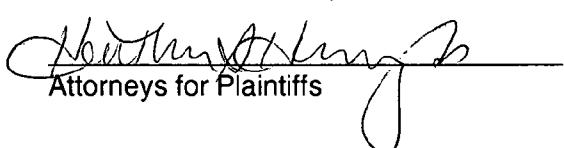
Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL/PARTIES OF  
RECORD ON MAY 10, 2001.

  
\_\_\_\_\_  
Attorneys for Plaintiffs

**FILED**  
MAY 11 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**PRAECIPE TO SUBSTITUTE VERIFICATIONS**

Please substitute the attached verifications of William Swans, Charles Kitchen  
and Thelma Lynch for the verification of counsel for plaintiff on the Amended Complaint.

Respectfully submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT

*Heather A. Harrington*  
Attorneys for Plaintiffs

**HEATHER A. HARRINGTON, ESQUIRE**  
Pa. I.D. #62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

VERIFICATION

I, CHARLES KITCHEN, do verify that I am one of the two joint Attorneys-In-Fact for MARCUS SWAN under a durable power of attorney dated June 5, 1995 and as such I have read the foregoing **COMPLAINT**. Except for the allegations of ownership by the plaintiffs and the fact that there was a fire that destroyed the premises I have no personal knowledge or information and belief as to the statements contained in the **COMPLAINT**.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Charles Kitchen  
Charles Kitchen

Date: 4-27-01

ECM 243 NH

VERIFICATION

I, THELMA LYNCH do hereby verify that I have read the foregoing **AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Thelma Lynch  
Thelma Lynch

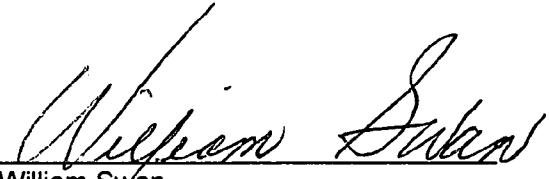
Date: 3/26/2001

ECM 243 NH

VERIFICATION

I, WILLIAM SWAN do hereby verify that I have read the foregoing **AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

  
William Swan

Date: Mar. 27-2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

MARCUS SWAN and THELMA LYNCH :

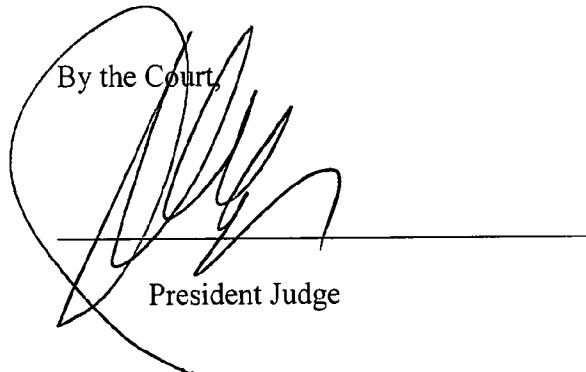
-VS- : No. 00-1150-CD

EATON CORPORATION, ELDON :

AND ROBERT WITHEROW :

**ORDER**

NOW, this 27<sup>th</sup> day of June, 2001, this being the day and date set for argument into Preliminary Objections filed on behalf of Defendant Eaton Corporation, upon agreement of the parties, it is the ORDER of this Court that said argument shall be and is hereby continued for a period of 120 days to afford Plaintiffs the opportunity to determine the specific legal theory for recovery as to whether it is strict liability or negligence as against Defendant Eaton Corporation.

By the Court,  
  
President Judge

FILED

JUN 27 2001

William A. Shaw  
Prothonotary

1cc Harrington  
1cc Seaman  
1cc Lentz  
1cc Young  
C.R. 1013-44-822  
JUN 27 2001  
William A. Shaw  
Prothonotary

**FILED**

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**NOTICE**

You have been sued in the 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 Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. 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.

DAVID S. MEHOLIK, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET  
CLEARFIELD, PA 16830  
814-765-2641, EXT. 5982

McINTYRE, DUGAS, HARTYE & SCHMITT

*Heather A. Harrington*  
\_\_\_\_\_  
Attorneys for PLAINTIFFS  
Heather A. Harrington, Esquire  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

Date: October 10, 2001

**FILED**

OCT 11 2001  
11/11/2001  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**SECOND AMENDED COMPLAINT**

AND NOW, come plaintiffs MARCUS SWAN and THELMA LYNCH, by and through their counsel, MCINTYRE, DUGAS, HARTYE & SCHMITT, and file the within SECOND AMENDED COMPLAINT, averring as follows:

1. Plaintiff Marcus Swan, is an adult individual residing at RD 1, Box 58, Irvona, Clearfield County, Pennsylvania.
2. Plaintiff Thelma Lynch is an adult individual residing at Box 505 Apple Square, Sanford, North Carolina.
3. At all times material hereto, plaintiffs were the owners of real, improved property located t RD 1, Box 58, Irvona, Clearfield County, Pennsylvania, which contained a two-story, frame structure which served as the home of plaintiff Marcus Swan.
4. Pursuant to a Durable Power of Attorney, Charles Kitchen, an adult individual residing at RD 1, Box 123, Hesston, Pennsylvania and William Swan, an adult

individual residing at Box 188, Mount Gilead, North Carolina are the attorneys-in-fact for plaintiff Marcus Swan.

5. Defendant Eaton Corporation (hereafter "Eaton") is an business entity with it principal place of business at Eaton Center, 1111 Superior Avenue, Cleveland, Ohio and which regularly does business in Clearfield County, Pennsylvania.

6. Defendant Eldon Young (hereafter "Young") is an adult individual residing at RD, LaJose, Clearfield County, Pennsylvania.

7. Defendant Robert Witherow (hereafter "Witherow") is an adult individual residing at RR 2, Box 350, Curwensville, Clearfield County, Pennsylvania.

8. Defendant Eaton manufactured and sold a 40 circuit Challenger Model electrical panel known which was installed in the property of the plaintiffs by defendant Young and to which defendant Witherow attached an electrical service meter.

9. On October 4, 1998, a fire broke out at the property of the plaintiffs and destroyed the frame building structure and its contents.

10. The fire was caused when the entrance cable and the breaker attached to it, in the service panel manufactured by Eaton, installed by Young and worked on by Witherow, overheated and failed.

11. As a result of the fire, the plaintiffs sustained damages in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00).

12. The legal and factual cause of the fire was the malfunction of the service panel, as described above, due to improper manufacturing.

**COUNT ONE**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant**

**STRICT LIABILITY**

13. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

14. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by defendant Eaton for residential installation and use.

15. Defendant Eaton improperly manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

16. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.

17. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.

18. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

**COUNT TWO**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION,  
defendant**

**STRICT LIABILITY**

19. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

20. The legal and factual cause of the plaintiffs' damages was the improper design by Eaton of the 40 circuit Challenger electric panel sold by defendant Eaton for residential installation and use.

21. Defendant Eaton improperly designed the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

22. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.

23. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.

24. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

**COUNT THREE**

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ROBERT WITHEROW, defendant  
NEGLIGENCE

29. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

30. The Challenger service panel which failed was installed by defendant Witherow.

31. As part of the installation process, the service panel was attached to a pine board and secured to the wall with wood blocking, thereby allowing a three (3) inch gap between the service panel and the foundation wall.

32. As a result of this gap behind the service panel, when the panel overheated and failed, the heat ignited the board and wood blocking and the fire spread to the exterior sheathing board and floor joists of the home.

33. Defendant Witherow negligently installed the Challenger service panel by not securing the panel directly to the foundation wall.

34. Due to the negligence of defendant Witherow in installing the Challenger service panel, the damages sustained by the plaintiffs were greater than they would have been had the panel been improperly installed.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Witherow, with prejudice.

## COUNT FOUR

MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ELDON YOUNG, defendant

### NEGLIGENCE

35. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

36. The drop line from the main electrical service and electrical service meter were installed by defendant Young.

37. Investigation reveals that the greatest area of heat and damage to the service panel itself was at the drop line connection indicating a failure of the connection which allowed arcing and caused the wooden backing material to ignite.

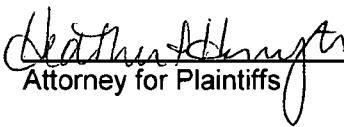
38. Defendant Young negligently installed the connection between the service panel and the main line by not securing the connection with a service cable connector which allowed the wire to grind against the panel cabinet and/or the backpan adjustment screw wearing away the wire's protective sheath.

39. Due to the negligence of defendant Young in installing the Challenger service cable connector, the plaintiffs incurred the damages described above.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Young, with prejudice.

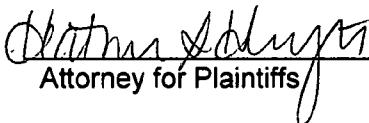
Respectfully Submitted,

MCINTYRE, DUGAS, HARTYE & SCHMITT

  
\_\_\_\_\_  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID. No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

TO THE WITHIN NAMED PARTY  
You are hereby notified to plead to the  
enclosed Second Amended Complaint  
within twenty (20) days of service  
hereof or a default judgment may be  
entered against you.

  
\_\_\_\_\_  
Attorney for Plaintiffs

**VERIFICATION**

I, CHARLES KITCHEN, do verify that I am one of the two joint Attorneys-In-Fact for MARCUS SWAN under a durable power of attorney dated June 5, 1995 and as such I have ~~SECOND AMENDED~~ read the foregoing ~~COMPLAINT~~ Except for the allegations of ownership by the plaintiffs and the fact that there was a fire that destroyed the premises I have no personal knowledge or ~~SECOND AMENDED~~ information and belief as to the statements contained in the ~~COMPLAINT~~.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Charles Kitchen  
Charles Kitchen

Date: 9-28-07

VERIFICATION

I, THELMA LYNCH, do hereby verify that I have read the foregoing **SECOND AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Thelma Lynch  
Thelma Lynch

Date: 10-3-61

**VERIFICATION**

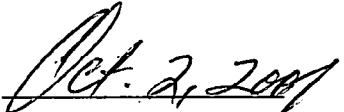
I, WILLIAM SWAN, do hereby verify that I have read the foregoing **SECOND AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



William Swan

Date:

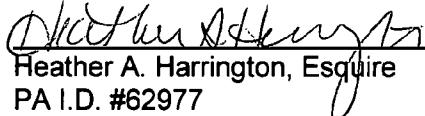


Oct. 2, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **SECOND  
AMENDED COMPLAINT** was served on all counsel of record this **10<sup>th</sup>** day of  
**OCTOBER, 2001.**

McINTYRE, DUGAS, HARTYE & SCHMITT

  
Heather A. Harrington, Esquire  
PA I.D. #62977  
Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA  
CIVIL ACTION - LAW  
No. 00-1150-CD

MARCUS SWAN and THELMA LYNCH  
Plaintiffs

vs.

EATON CORPORATION, ELDON  
YOUNG and ROBERT WITHEROW  
Defendants

PRELIMINARY OBJECTIONS TO  
SECOND AMENDED COMPLAINT

FILED

OCT 29 2001  
13281 NOCC  
John A. Shaw  
Prothonotary

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiff :  
: No. 00-1150-CD  
vs. :  
: Type of Case: Civil  
EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW, :  
Defendants :  
: Type of Pleading: PRELIMINARY  
: OBJECTIONS TO SECOND AMENDED  
: COMPLAINT  
: Filed on behalf of:  
: Defendant, Eaton Corporation  
: Counsel of Record for this  
: Party:  
: Laurance B. Seaman, Esquire  
: Supreme Court No.: 19620  
: GATES & SEAMAN  
: Two North Front Street  
: P. O. Box 846  
: Clearfield, PA 16830  
: (814) 765-1766  
: and Co-Counsel of Record:  
: Harry T. Quick, Esquire  
: Bar No. 0031239  
: BRZYTWA, QUICK & McCRYSTAL, LLC  
: 1660 W. 2nd Street, Suite 900  
: Cleveland, OH 44113-1411  
: (216) 664-6900

**FILED**

OCT 29 2001

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
vs. : No. 00-1150-CD  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

N O T I C E

To: Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

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

GATES & SEAMAN  
By  


---

Laurance B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: October 29, 2001

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
: :  
vs. : : No. 00-1150-CD  
: :  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, :  
Defendants :  
: :

PRELIMINARY OBJECTIONS TO SECOND AMENDED COMPLAINT

NOW COMES Defendant, EATON CORPORATION, by and through its counsel, Gates and Seaman and Brzytwa, Quick & McCrystal, and preliminarily objects to Plaintiffs' Amended Complaint as follows:

I. LEGAL INSUFFICIENCY OF COUNTS ONE AND TWO  
OF THE SECOND AMENDED COMPLAINT (DEMURRER)

1. Plaintiffs allege no personal injuries and only claim physical property damage.
2. The theory of strict liability does not apply in cases where the harm is merely physical property damage.

WHEREFORE, Defendant, Eaton Corporation, respectfully requests this Honorable Court grant its Preliminary Objections that Counts One and Two of the Second Amended Complaint are

legally insufficient (demurrer) and dismiss Counts One and Two of Plaintiffs' Second Amended Complaint.

GATES & SEAMAN  
By:

Laurance B. Seaman, Esquire  
Attorneys for Defendant,  
Eaton Corporation  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Date: 10/29/01

BRZYTWA, QUICK & McCRYSTAL, LC  
By:

Harry T. Quick, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation  
1660 West 2nd Street, Suite 900  
Cleveland, OH 44113-1411  
(216) 664-6900

Date: 10/29/01

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

CERTIFICATE OF SERVICE

29 I hereby certify that I served by regular U. S. Mail on the  
day of October, 2001, a true and correct copy of the  
original of Defendant, Eaton Corporation's Preliminary  
Objections to Second Amended Complaint to:

Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648

Eldon Young  
R. D., Box 581  
LaJose, PA 15753

Chris A. Pentz, Esquire  
P. O. Box 552  
Clearfield, PA 16830

GATES & SEAMAN

By

  
Laurance B. Seaman, Esquire,  
Attorney for Defendant,  
Eaton Corporation

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

**REPLY OF PLAINTIFFS' PRELIMINARY  
OBJECTIONS TO SECOND AMENDED  
COMPLAINT OF DEFENDANT EATON  
CORPORATION**

Defendants

Filed on Behalf of Plaintiffs,  
Marcus Swan and Thelma Lynch

Counsel of Record for Plaintiffs:

**McIntyre, Dugas, Hartye & Schmitt**  
STEPHEN L. DUGAS, ESQUIRE  
PA I.D. No. 21351  
HEATHER A. HARRINGTON, ESQ.  
PA I.D. No. 62977  
Post Office Box 533  
Hollidaysburg, PA 16648  
Ph: (814) 696-3581

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE  
WITHIN HAS BEEN FORWARDED  
TO ALL COUNSEL OF RECORD THIS  
5<sup>TH</sup> DAY OF NOVEMBER, 2001.

Heather A. Harrington  
Attorneys for Plaintiffs

**FILED**

NOV 06 2001  
m11047ncc

William A. Shaw  
Prothonotary

*[Signature]*

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**REPLY OF PLAINTIFFS' PRELIMINARY OBJECTIONS TO SECOND  
AMENDED COMPLAINT OF DEFENDANT EATON CORPORATION**

AND NOW, come Plaintiffs Marcus Swan and Thelma Lynch, by and through their counsel, McIntyre, Dugas, Hartye & Schmitt, and file the following Reply to Defendant Eaton Corporation's Preliminary Objections to the Second Amended Complaint.

1. Admitted.
2. Denied.

WHEREFORE, Plaintiffs request that this Honorable Court deny these Preliminary Objections and order Defendant Eaton Corporation to respond to the Second Amended Complaint, as pled.

Respectfully Submitted,

MCINTYRE, DUGAS, HARTYE & SCHMITT

Heather A. Harrington  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID.No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

CERTIFICATE OF SERVICE

I, Heather A. Harrington, Esquire, hereby certify that I have served a true and correct copy of the within on behalf of Plaintiffs, Marcus Swan and Thelma Lynch, on the following persons by placing the same in the U.S. Mail, postage prepaid, on the 5<sup>th</sup> day of November, 2001:

Laurance B. Seaman, Esquire  
GATES & SEAMAN  
Two North Front Street  
Post Office Box 846  
Clearfield, PA 16830

Harry T. Quick, Esquire  
BRZYTWA, QUICK & McCRYSTAL, LLC  
1660 W. 2<sup>nd</sup> Street, Suite 900  
Cleveland, OH 44113-1411

Chris A. Pentz, Esquire  
211 1/2 East Locust Street  
P.O. Box 552  
Clearfield, PA 16830

Eldon Young  
R.D., Box 581  
LaJose, PA 15753

MCINTYRE, DUGAS, HARTYE & SCHMITT

Heather A. Harrington  
Attorneys for Plaintiff

STEPHEN L. DUGAS, ESQUIRE  
PA I.D. No. 21351  
HEATHER A. HARRINGTON, ESQUIRE  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**NOTICE**

You have been sued in the 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 Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Petition or for any other claim or relief requested by the Petitioner. 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.

DAVID S. MEHOLIK, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET  
CLEARFIELD, PA 16830  
814-765-2641, EXT. 5982

McINTYRE, DUGAS, HARTYE & SCHMITT

*Heather A. Harrington*  
\_\_\_\_\_  
Attorneys for PLAINTIFFS  
Heather A. Harrington, Esquire  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

**FILED**

Date: October 10, 2001

OCT 11 2001  
10/11/2001  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

**SECOND AMENDED COMPLAINT**

AND NOW, come plaintiffs MARCUS SWAN and THELMA LYNCH, by and through their counsel, McINTYRE, DUGAS, HARTYE & SCHMITT, and file the within **SECOND AMENDED COMPLAINT**, averring as follows:

1. Plaintiff Marcus Swan, is an adult individual residing at RD 1, Box 58, Irvona, Clearfield County, Pennsylvania.
2. Plaintiff Thelma Lynch is an adult individual residing at Box 505 Apple Square, Sanford, North Carolina.
3. At all times material hereto, plaintiffs were the owners of real, improved property located t RD 1, Box 58, Irvona, Clearfield County, Pennsylvania, which contained a two-story, frame structure which served as the home of plaintiff Marcus Swan.
4. Pursuant to a Durable Power of Attorney, Charles Kitchen, an adult individual residing at RD 1, Box 123, Hesston, Pennsylvania and William Swan, an adult

individual residing at Box 188, Mount Gilead, North Carolina are the attorneys-in-fact for plaintiff Marcus Swan.

5. Defendant Eaton Corporation (hereafter "Eaton") is an business entity with it principal place of business at Eaton Center, 1111 Superior Avenue, Cleveland, Ohio and which regularly does business in Clearfield County, Pennsylvania.

6. Defendant Eldon Young (hereafter "Young") is an adult individual residing at RD, LaJose, Clearfield County, Pennsylvania.

7. Defendant Robert Witherow (hereafter "Witherow") is an adult individual residing at RR 2, Box 350, Curwensville, Clearfield County, Pennsylvania.

8. Defendant Eaton manufactured and sold a 40 circuit Challenger Model electrical panel known which was installed in the property of the plaintiffs by defendant Young and to which defendant Witherow attached an electrical service meter.

9. On October 4, 1998, a fire broke out at the property of the plaintiffs and destroyed the frame building structure and its contents.

10. The fire was caused when the entrance cable and the breaker attached to it, in the service panel manufactured by Eaton, installed by Young and worked on by Witherow, overheated and failed.

11. As a result of the fire, the plaintiffs sustained damages in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00).

12. The legal and factual cause of the fire was the malfunction of the service panel, as described above, due to improper manufacturing.

**COUNT ONE**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION, defendant**

**STRICT LIABILITY**

13. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

14. The legal and factual cause of the plaintiffs damages was the malfunction of the 40 circuit Challenger electric panel manufactured and sold by defendant Eaton for residential installation and use.

15. Defendant Eaton improperly manufactured the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

16. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.

17. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.

18. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

**COUNT TWO**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. EATON CORPORATION, defendant**

**STRICT LIABILITY**

19. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

20. The legal and factual cause of the plaintiffs' damages was the improper design by Eaton of the 40 circuit Challenger electric panel sold by defendant Eaton for residential installation and use.

21. Defendant Eaton improperly designed the service panel so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail.

22. The electric panel was in a defective condition when it left Eaton's possession which made it unreasonably dangerous to the user or consumer.

23. The electrical panel reached the plaintiffs without substantial change in the condition in which it was sold.

24. Defendant Eaton is strictly liable for the malfunction of its product and the damages sustained by plaintiffs as a result of that malfunction.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Eaton Corporation, with prejudice.

### **COUNT THREE**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ROBERT WITHEROW, defendant**  
**NEGLIGENCE**

29. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

30. The Challenger service panel which failed was installed by defendant Witherow.

31. As part of the installation process, the service panel was attached to a pine board and secured to the wall with wood blocking, thereby allowing a three (3) inch gap between the service panel and the foundation wall.

32. As a result of this gap behind the service panel, when the panel overheated and failed, the heat ignited the board and wood blocking and the fire spread to the exterior sheathing board and floor joists of the home.

33. Defendant Witherow negligently installed the Challenger service panel by not securing the panel directly to the foundation wall.

34. Due to the negligence of defendant Witherow in installing the Challenger service panel, the damages sustained by the plaintiffs were greater than they would have been had the panel been improperly installed.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Witherow, with prejudice.

## **COUNT FOUR**

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs. ELDON YOUNG, defendant**

### **NEGLIGENCE**

35. Plaintiffs hereby incorporate by reference paragraphs 1-12 of the Second Amended Complaint.

36. The drop line from the main electrical service and electrical service meter were installed by defendant Young.

37. Investigation reveals that the greatest area of heat and damage to the service panel itself was at the drop line connection indicating a failure of the connection which allowed arcing and caused the wooden backing material to ignite.

38. Defendant Young negligently installed the connection between the service panel and the main line by not securing the connection with a service cable connector which allowed the wire to grind against the panel cabinet and/or the backpan adjustment screw wearing away the wire's protective sheath.

39. Due to the negligence of defendant Young in installing the Challenger service cable connector, the plaintiffs incurred the damages described above.

WHEREFORE, plaintiffs Marcus Swan and Thelma Lynch respectfully request that judgment be entered in the amount of One Hundred Fifty Five Thousand Two Hundred and Fifty Dollars (\$155,250.00) and for such interest and costs as are allowed against defendant Young, with prejudice.

Respectfully Submitted,

MCINTYRE, DUGAS, HARTYE & SCHMITT

Heather A. Harrington  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID.No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

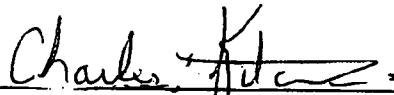
TO THE WITHIN NAMED PARTY  
You are hereby notified to plead to the  
enclosed Second Amended Complaint  
within twenty (20) days of service  
hereof or a default judgment may be  
entered against you.

Heather A. Harrington  
Attorney for Plaintiffs

**VERIFICATION**

I, CHARLES KITCHEN, do verify that I am one of the two joint Attorneys-In-Fact for MARCUS SWAN under a durable power of attorney dated June 5, 1995 and as such I have read the foregoing <sup>SECOND AMENDED</sup> /COMPLAINT. Except for the allegations of ownership by the plaintiffs and the fact that there was a fire that destroyed the premises I have no personal knowledge or <sup>SECOND AMENDED</sup> information and belief as to the statements contained in the /COMPLAINT.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

  
\_\_\_\_\_  
Charles Kitchen

Date: 9-28-01

**VERIFICATION**

I, **THELMA LYNCH**, do hereby verify that I have read the foregoing **SECOND AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Thelma Lynch  
Thelma Lynch

Date: 10-3-01

**VERIFICATION**

I, WILLIAM SWAN, do hereby verify that I have read the foregoing **SECOND AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

  
William Swan  
William Swan

Date: Oct. 3, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **SECOND  
AMENDED COMPLAINT** was served on all counsel of record this 10<sup>th</sup> day of  
**OCTOBER, 2001.**

McINTYRE, DUGAS, HARTYE & SCHMITT

Heather A. Harrington  
Heather A. Harrington, Esquire  
PA I.D. #62977  
Counsel for Plaintiffs

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

MARCUS SWAN and  
THELMA LYNCH,  
Plaintiffs,  
-vs-

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
Defendants.

No. 00-1150-C.D.

**FILED**

JAN 24 2002

OPINION and ORDER

William A. Shaw  
Prothonotary

Plaintiffs in this case have filed a Second Amended Complaint asserting two counts of strict liability against Defendant Eaton Corporation (“Defendant Eaton”) arising out of a fire that destroyed Plaintiffs’ house. In Count One of the Second Amended Complaint, Plaintiffs assert a claim for strict liability, alleging that the fire was caused by a malfunction of the electric panel manufactured by Eaton. Count Two also asserts a strict liability claim based upon Eaton’s allegedly improper design of the electric panel. Eaton’s Preliminary Objections assert that under Pennsylvania law, Plaintiffs’ have not stated legally viable claims based in strict liability where the only damage claimed is physical property damage.

In support of its Preliminary Objections, Defendant Eaton cites the case of Lobianco v. Property Protection Inc., 437 A.2d 417 (Pa. Super. 1981). In Lobianco, the plaintiff asserted a strict liability claim based upon an alleged malfunction of a burglar alarm system that resulted in a theft of plaintiff’s property. The Superior Court affirmed the trial court’s dismissal of this action based upon its finding that a theory of strict liability did not apply to this situation. In so holding, the Superior Court stated as follows:

If harm to a person were involved, as for example which might occur if a homeowner were injured by a burglar who had entered the home undetected because the burglar alarm system failed, a different case would be presented. As to what should be the disposition of such a case, we express no opinion. Id. at 425-26.

This Court finds that Lobianco is inapplicable to the case at hand. While Lobianco did not permit the plaintiff to proceed on a strict liability claim under Section 402A of the Restatement (Second) Torts, the absence of an allegation of physical injuries was not the basis for the Superior Court's decision. Rather, the Superior Court stated that the purpose of Section 402A "is the protection of otherwise defenseless victims of manufacturing defects and the spreading throughout society of the cost of compensating them." Id. at 424, quoting, Price v. Shell Oil Co. 466 P.2d 722, 725 (Cal. 1970). The Superior Court noted that applying Section 402A would not serve these purposes, due to the fact that the homeowners suffering a loss from a burglary are not "'otherwise defenseless victims' of burglar alarm manufacturers" because the homeowner themselves could insure their property to protect themselves from any such loss. Id. As such, the Superior Court held that strict liability in this case would have the effect of causing the manufacturer to be the insurer, a result which the Superior Court considered to be an equitable allocation of risk Id. The Superior Court never discussed the issue of whether an allegation of physical injury is necessary to a strict liability claim.

Moreover, this Court finds that under Pennsylvania law, the "economic loss doctrine" does not bar Plaintiffs' strict liability claims against Defendant Eaton. The "economic loss doctrine" provides that a strict liability claim will not stand in an action between commercial enterprises involving "a product that malfunctions where the only resulting damage is to the product itself." REM Coal Co. v. Clark Equip. Co., 563 A.2d 128 (Pa. Super. 1989). The Pennsylvania Superior Court has distinguished the foregoing from a situation in which the

malfuction of a product results in damage to property other than the product itself, in which a tort claim for such damage is recognizable. Id. at 129. *See also 2-J Corporation v. Tice*, 126 F.3d 539, 541 (3d Cir. 1997)(predicting that the Pennsylvania Supreme Court would adopt law finding that recovery is available for damages a defective product causes to “other property”). *See also Mt. Lebanon School Dist. V. W.R. Grace & Co.*, 607 A.2d 756 (Pa. Super. 1992)(school district sought recovery for product’s damage to building, its contents and occupants); Jones v. General Motors Corp., 631 A.2d 665 (Pa. Super. 1993)(plaintiffs failed to state cause of action in strict liability where they made no allegation of damage beyond loss of product itself).

While the Superior Court has not determined how this theory applies to disputes involving noncommercial parties, REM Coal Co., 563 A.2d 128, 134 n.4, this analysis has been applied to a case involving an individual plaintiff. In Snook v. Tri-County Confinement Systems Inc., 29 D. & C. 4<sup>th</sup> 350 (Snyder Co. 1995), a plaintiff alleged that defective roof trusses caused his barn to collapse resulting in substantial damage to plaintiff’s business and personal property. The defendant filed preliminary objections in the nature of a demurrer asserting that the “economic loss” rule precluded plaintiff’s claims under theories of strict liability or negligence. The Common Pleas Court of Snyder County disagreed, denying these preliminary objections, finding that

one may conclude that [plaintiff] seeks damages outside the loss of the roof trusses themselves . . Insofar as plaintiff has alleged loss to his business and personal property, the economic loss rule does not compel the grant of a demurrer.

Id. at 355.

Based upon the foregoing, this Court finds that the “economic loss doctrine” does not bar Plaintiffs’ strict liability claims against Defendant Eaton. In their Second Amended

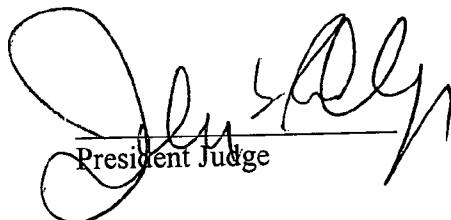
Complaint, Plaintiffs have alleged that the defect in the electric panel manufactured by Defendant Eaton resulted in the fire that destroyed their house. In reviewing Defendant Eaton's Preliminary Objections, this Court must accept as true all material facts as set forth in Plaintiffs' Second Amended Complaint, as well as all reasonable inferences therefrom. Powell v. Drumheller, 653 A.2d 619, 621 (Pa. 1995). Moreover, in reviewing a demurrer, under the facts averred, there must be legal certainty that no recovery is possible. Id. Under this standard, this Court finds that Plaintiffs have pled facts sufficient to maintain a cause of action in strict liability against Defendant Eaton, notwithstanding the fact that Plaintiffs' damages are purely economic. Accordingly, Defendant Eaton's preliminary objections to Plaintiffs' Second Amended Complaint must be denied.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 24<sup>th</sup> day of January, 2002, based on the foregoing arguments and authorities, it is the ORDER of this Court that Defendant Eaton Corporation's Preliminary Objections to Plaintiffs' Second Amended Complaint be and are hereby DENIED.

BY THE COURT,



A handwritten signature in black ink, appearing to read "President Judge", is written over a horizontal line. The signature is fluid and cursive, with "President" and "Judge" written in a smaller, more formal script.

**FILED**

01/30/02  
JAN 24 2002

1cc Atty Harrington  
- 1cc Atty Seaman  
- 1cc Atty Pantz  
William A. Shaw  
Prothonotary  
- 1cc Atty D. Mitchell

1cc Edmon Young - P.O. Box 581  
Latrobe, PA 15753

*Key*

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 00-1150-CD

MARCUS SWAN and THELMA  
LYNCH, Plaintiffs

-vs-

EATON CORPORATION, ELDON  
YOUNG AND ROBERT WITHEROW,  
Defendants

ANSWER, NEW MATTER AND NEW  
MATTER UNDER RULE 2252 (d)  
OF DEFENDANT, EATON  
CORPORATION

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiff :  
vs. : No. 00-1150-CD  
: Type of Case: Civil  
EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW, :  
Defendants : Type of Pleading: ANSWER, NEW  
: MATTER AND NEW MATTER UNDER  
: RULE 2252(d) OF DEFENDANT,  
: EATON CORPORATION  
: Filed on behalf of:  
: Defendant, Eaton Corporation  
: Counsel of Record for this  
: Party:  
: Laurance B. Seaman, Esquire  
: Supreme Court No.: 19620  
: GATES & SEAMAN  
: Two North Front Street  
: P. O. Box 846  
: Clearfield, PA 16830  
: (814) 765-1766  
: and Co-Counsel of Record:  
: Harry T. Quick, Esquire  
: Bar No. 0031239  
: BRZYTWA, QUICK & McCRYSTAL, LLC  
: 1660 W. 2nd Street, Suite 900  
: Cleveland, OH 44113-1411  
: (216) 664-6900

**FILED**

FEB 22 2002  
02/19/ndcc  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

N O T I C E

To: Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
Attorneys for Plaintiffs,  
Marcus Swan and Thelma Lynch

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.

GATES & SEAMAN  
By



Laurence B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: February 22, 2002.

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

N O T I C E

To: Chris A. Pentz, Esquire  
P. O. Box 552  
Clearfield, PA 16830  
Attorney for Defendant,  
Robert Witherow

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO  
THE ENCLOSED NEW MATTER UNDER RULE 2252(d) WITHIN  
TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY  
BE ENTERED AGAINST YOU.

GATES & SEAMAN

By



---

Laurance B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: February 22, 2002.

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

N O T I C E

To: Eldon Young  
R. D. Box 581  
LaJose, PA 15753

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO  
THE ENCLOSED NEW MATTER UNDER RULE 2252(d) WITHIN  
TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY  
BE ENTERED AGAINST YOU.

GATES & SEAMAN

By



---

Laurence B. Seaman, Esquire  
Attorney for Defendant,  
Eaton Corporation

Date: February 22, 2002.

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

ANSWER, NEW MATTER AND NEW MATTER  
UNDER RULE 2252(d) OF DEFENDANT, EATON CORPORATION

AND NOW, comes Defendant, Eaton Corporation, by and through its attorneys, BRZYTWA, QUICK & McCRYSTAL, LLC and GATES & SEAMAN, and answers the Complaint as follows:

1. The identity of Plaintiff, Marcus Swan, is admitted. The remaining allegations are denied in that after reasonable investigation, Defendant, Eaton Corporation (hereafter "Defendant Eaton") is without knowledge or information sufficient to form a belief as to the truth of the same. Strict proof of the same is demanded at the time of trial.

2. The identity of Plaintiff, Thelma Lynch, is admitted. The remaining allegations are denied in that after reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the same. Strict proof of the same is demanded at the time of trial.

3. Denied. After reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3 of the Complaint. Strict proof of the same is demanded at time

of trial.

4. Denied. After reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 4 of the Complaint. Strict proof of the same is demanded at time of trial.

5. Admitted.

6. The identity of Defendant, Eldon Young (hereafter "Defendant Young"), is admitted. The remaining allegations are denied in that after reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the same. Strict proof of the same is demanded at time of trial.

7. The identity of Defendant, Robert Witherow (hereafter "Defendant Witherow"), is admitted. The remaining allegations are denied in that after reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the same. Strict proof of the same is demanded at time of trial.

8. Admitted, except as to the ownership of the property by Plaintiffs since, after reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of said averments and strict proof thereof is demanded at time of trial.

9. Admitted that a fire broke out on October 4, 1998 at the house located at the address stated in Paragraph 3 of the

Complaint. The remaining allegations of Paragraph 9 are denied since after reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of said averments and strict proof thereof is demanded at time of trial.

10. It is admitted that the Challenger electric panel was manufactured by Defendant Eaton, installed by Defendant Young and worked on by Defendant Witherow. It is denied that the fire was caused in any way by any malfunction or otherwise of the Challenger electric panel including any overheating or failure. In answer thereto, it is averred that the Challenger electric panel operated properly. In further answer thereto, it is averred that the fire was caused by the faulty workmanship and negligence of Defendant Young and Defendant Witherow, as set forth in the Complaint, which Paragraphs 29 through 39 are incorporated herein by reference. In further answer thereto, the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

11. Denied. After reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 11 of the Complaint. Strict proof of the same is demanded at time of trial.

12. Denied. The averments of Paragraph 12 of the Complaint constitute conclusions of law to which no answer is required. In the event it is determined that an answer is

required, it is averred that the cause of the fire was the faulty workmanship and negligence of Defendant Young and Defendant Witherow, as set forth in the Complaint, which Paragraphs 29 through 39 are incorporated herein by reference. In further answer thereto, it is averred that the service panel functioned properly and was manufactured properly. In further answer thereto, the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

COUNT ONE

MARCUS SWAN and THELMA LYNCH, PLAINTIFFS VS.  
EATON CORPORATION, DEFENDANT

STRICT LIABILITY

13. Paragraphs 1 through 12 hereof are incorporated herein by reference.

14. Denied. The averments of Paragraph 14 constitute conclusions of law to which no answer is required. In the event it is determined that an answer is required, the averments of Paragraph 14 are denied. In answer thereto, it is averred that while the Challenger electric panel was manufactured and sold by Defendant Eaton for residential installation and use, the same did not malfunction and was not the legal or factual cause of Plaintiffs' alleged damages. In answer thereto, it is averred that said Challenger electric panel functioned properly. In further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

15. Denied. In answer thereto, it is averred that Defendant Eaton properly manufactured the Challenger electric panel and the same was not manufactured so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail and the same did not overheat and fail. In further answer thereto, it is averred that the damage to the Challenger electric panel was caused by the faulty workmanship and negligence of Defendant Witherow and Defendant Young as set forth in Paragraphs 29 through 39 of the Complaint, which are incorporated herein by reference. In further answer thereto, the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

16. Denied. In answer thereto, it is averred that the Challenger electric panel was in a proper and safe condition when it left Defendant Eaton's possession and it was therefore not unreasonably dangerous to the user or consumer. In further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

17. Denied. After reasonable investigation, Defendant Eaton is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of the Complaint. Strict proof of the same is demanded at time of trial. Alternatively, in further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are

incorporated herein by reference.

18. Denied. The averments of Paragraph 18 constitute conclusions of law to which no answer is required. In the event it is determined that an answer is required, the averments of Paragraph 18 are denied. In answer thereto, it is averred that the Challenger electric panel did not malfunction, but rather functioned properly. In further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

WHEREFORE, Defendant Eaton demands judgment against Plaintiffs with costs and requests that the Complaint be dismissed with prejudice.

COUNT TWO

MARCUS SWAN and THELMA LYNCH, PLAINTIFFS VS.  
EATON CORPORATION, DEFENDANT

STRICT LIABILITY

19. Paragraphs 1 through 12 hereof are incorporated herein by reference.

20. Denied. The averments of Paragraph 20 constitute conclusions of law to which no answer is required. In the event it is determined that an answer is required, the averments of Paragraph 20 are denied. In answer thereto, it is averred that while the Challenger electric panel was manufactured and sold by Defendant Eaton for residential installation and use, the same was the proper design and was not the legal or factual cause of

Plaintiffs' alleged damages. In answer thereto, it is averred that said Challenger electric panel was properly designed. In further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

21. Denied. In answer thereto, it is averred that Defendant Eaton properly designed the Challenger electric panel and the same was not designed so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail and the same did not then heat and fail. In further answer thereto, it is averred that the damage to the Challenger electric panel was caused by the faulty workmanship and negligence of Defendant Witherow and Defendant Young as set forth in Paragraphs 29 through 39 of the Complaint which are incorporated herein by reference. In further answer thereto, the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

22. Denied. In answer thereto, it is averred that the Challenger electric panel was in a proper and safe condition when it left Defendant Eaton's possession and it was therefore not unreasonably dangerous to the user or consumer. In further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

23. Denied. After reasonable investigation, Defendant Eaton is without knowledge or information sufficient

to form a belief as to the truth of the averments contained in Paragraph 23 of the Complaint. Strict proof of the same is demanded at time of trial. Alternatively, in further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

24. Denied. The averments of Paragraph 24 constitute conclusions of law to which no answer is required. In the event it is determined that an answer is required, the averments of Paragraph 24 are denied. In answer thereto, it is averred that the Challenger electric panel did not malfunction, but rather functioned properly. In further answer thereto, Paragraphs 29 through 39 of the Complaint and the averments of New Matter and New Matter Under Rule 2252(d) are incorporated herein by reference.

WHEREFORE, Defendant Eaton demands judgment against Plaintiffs with costs and requests that the Complaint be dismissed with prejudice.

COUNT THREE

MARCUS SWAN and THELMA LYNCH, PLAINTIFFS VS.  
ROBERT WITHEROW, DEFENDANT

NEGLIGENCE

29-34. Paragraphs 29 through 34 of the Complaint are directed to another Defendant and no answer thereto is required by Defendant Eaton.

WHEREFORE, Defendant Eaton demands judgment against

Plaintiffs with costs and requests that the Complaint be dismissed with prejudice.

COUNT FOUR

MARCUS SWAN and THELMA LYNCH, PLAINTIFFS VS.  
ELDON YOUNG, DEFENDANT

NEGLIGENCE

35-39. Paragraphs 35 through 39 of the Complaint are directed to another Defendant and no answer is thereto required by Defendant Eaton.

WHEREFORE, Defendant Eaton demands judgment against Plaintiffs with costs and requests that the Complaint be dismissed with prejudice.

NEW MATTER

By way of New Matter, Defendant Eaton alleges the following:

40. Plaintiffs' cause of action is barred under the applicable Statute of Limitations.

41. Plaintiffs' cause of action is barred in that any and all damages allegedly suffered by Plaintiffs are the sole, direct and proximate result of superseding, intervening acts of other persons or entities after the Challenger electric panel left the possession and/or control of Defendant Eaton.

42. Plaintiffs' cause of action is barred under the Doctrine of Spoilation.

43. Defendant Eaton hereby raises and asserts any and all limitations and restrictions on remedies and/or damages as

provided by the Uniform Commercial Code or similar principals.

44. At all times relevant and material to this action, said Challenger electric panel was fit and safe for its intended and reasonably foreseeable use.

45. The averments of Paragraphs 29 through 39 of the Complaint are incorporated herein by reference.

46. Plaintiffs, or their predecessors, joint owners or others acting on their behalf, engaged Defendants Young and Witherow to install and/or work on or around the Challenger electric panel knowing or having reason to know that Defendants Young and Witherow were not certified electricians nor competent and capable of performing said work, and as a result thereof, Plaintiffs themselves are responsible for the faulty workmanship and negligence of Defendants Young and Witherow, whose faulty workmanship and negligence, as set forth in the Complaint, and as set forth in the New Matter Under Rule 2252(d), both of which are incorporated herein, was the direct and proximate cause of the fire and Plaintiffs' alleged damages.

47. Defendants Young and Witherow were acting as agents of Plaintiffs as aforesaid and the conduct of Defendants Young and Witherow, and their faulty workmanship and negligence, is directly attributable to Plaintiffs for engaging or having engaged on their behalf individuals to do highly skilled work without the necessary training, capability and certifications to do the same.

WHEREFORE, Defendant Eaton requests the Complaint be

dismissed with prejudice.

NEW MATTER UNDER RULE 2252(d)  
DIRECTED TO DEFENDANT, ROBERT WITHEROW

48. Paragraphs 1 through 47 are incorporated herein by reference.

49. Paragraphs 29 through 35 of the Complaint are incorporated herein by reference.

50. Due to the faulty workmanship and negligence of Defendant Witherow in installing the Challenger electric panel, the damages sustained by Plaintiffs were greater than they would have been had the panel been properly installed.

51. Defendant Witherow negligently and improperly installed the Challenger electric panel by doing so in a manner which allowed water to enter the said panel, which in turn may have caused or contributed to the start of said fire and Plaintiffs' alleged damages.

52. Defendant Witherow, in the installation of said Challenger electric panel, used, except for the panel itself, substandard and discontinued materials and may have altered, changed and/or modified the Challenger electric panel before or at the time of said installation, thereby causing or contributing to the start of said fire and Plaintiffs' alleged damages.

53. Defendant Eaton has denied and will continue to deny that it is liable to Plaintiffs. However, if, at any time, it is determined that Plaintiffs are entitled to any damages

from Defendant Eaton, then, and in that event, Defendant Eaton maintains that, pursuant to Pennsylvania Rule of Civil Procedure 2252(d), Defendant Witherow is solely liable to Plaintiffs, or in the alternative, Defendant Witherow is jointly and severally liable to Plaintiffs with Defendant Eaton, and/or Defendant Young, or, Defendant Witherow is liable over to Defendant Eaton for contribution and/or indemnification, or directly liable to Defendant Eaton, in the event Defendant Eaton is found to be liable in any way to Plaintiffs, as the facts and circumstances may warrant.

WHEREFORE, Defendant Eaton requests that Defendant Witherow be joined as an Additional Defendant because he is solely responsible for the damages alleged in the Complaint, or in the alternative, so as to protect the right of contribution and/or indemnity of Defendant Eaton against Defendant Witherow, if on the trial of this action it should be found that Defendant Eaton and Defendant Witherow were jointly and/or severally responsible in causing the alleged damages, and/or Defendant Witherow is liable over or directly liable to Defendant Eaton for said alleged damages.

NEW MATTER UNDER RULE 2252(d) DIRECTED  
TO DEFENDANT, ELDON YOUNG

54. Paragraphs 1 through 47 are incorporated herein by reference.

55. Paragraphs 35 through 39 of the Complaint are incorporated herein by reference.

56. Due to the faulty workmanship and negligence when Defendant Young worked on and around the Challenger electric panel installing a drop line from the same and a new electrical service meter, the fire was caused and its alleged damages were caused.

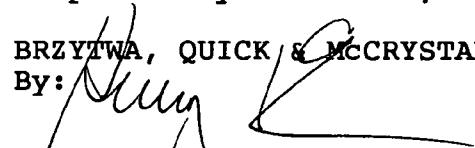
57. Defendant Young used substandard and discontinued materials in doing the above work, thereby causing or contributing to said fire and Plaintiffs' alleged damages.

58. Defendant Eaton has denied and will continue to deny that it is liable to Plaintiffs. However, if, at any time, it is determined that Plaintiffs are entitled to any damages from Defendant Eaton, then, and in that event, Defendant Eaton maintains that, pursuant to Pennsylvania Rule of Civil Procedure 2252(d), Defendant Young is solely liable to Plaintiffs, or in the alternative, Defendant Young is jointly and severally liable to Plaintiffs with Defendant Eaton, and/or Defendant Witherow, or, Defendant Young is liable over to Defendant Eaton for contribution and/or indemnification, or directly liable to Defendant Eaton, in the event Defendant Eaton is found to be liable in any way to Plaintiffs, as the facts and circumstances may warrant.

WHEREFORE, Defendant Eaton requests that Defendant Young be joined as an Additional Defendant because he is solely responsible for the damages alleged in the Complaint, or in the alternative, so as to protect the right of contribution and/or indemnity of Defendant Eaton against Defendant Young, if on the

trial of this action it should be found that Defendant Eaton and Defendant Young were jointly and/or severally responsible in causing the alleged damages, and/or Defendant Young is liable over or directly liable to Defendant Eaton for said alleged damages.

Respectfully submitted,

BRZYTWA, QUICK & MCCRYSTAL, LC  
By: 

---

Harry T. Quick, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation

Date: February 21, 2002

1660 West 2nd Street, Suite 900  
Cleveland, OH 44113-1411  
(216) 664-6900

GATES & SEAMAN

By:

---

Laurance B. Seaman, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation

Date: February       , 2002

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

trial of this action it should be found that Defendant Eaton and Defendant Young were jointly and/or severally responsible in causing the alleged damages, and/or Defendant Young is liable over or directly liable to Defendant Eaton for said alleged damages.

Respectfully submitted,

BRZYTWA, QUICK & MCCRYSTAL, LC  
By:

---

Harry T. Quick, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation

Date: February       , 2002

1660 West 2nd Street, Suite 900  
Cleveland, OH 44113-1411  
(216) 664-6900

GATES & SEAMAN  
By: 

---

Laurence B. Seaman, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation

Date: February 22, 2002

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

VERIFICATION

The undersigned verifies that he/she is the A  
SENIOR ENGINEER of Defendant, Eaton Corporation, in the within  
action, and that the statements made in the foregoing document  
are true and correct to the best of his/her knowledge,  
information and belief. The undersigned understands that false  
statements made herein are subject to the penalties of 18 Pa.  
C.S.A. § 4904 relating to unsworn falsification to authorities.

EATON CORPORATION  
By:



Date: February 21, 2002

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

CERTIFICATE OF SERVICE

I hereby certify that service was made upon the following individuals, by mailing a true and correct copy of Answer, New Matter and New Matter Under Rule 2252(d) of Defendant Eaton Corporation on February 22, 2002 by regular mail, postage prepaid to:

Heather A. Harrington, Esquire  
PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
Attorneys for Plaintiffs, Marcus Swan and Thelma Lynch

Chris A. Pentz, Esquire  
P. O. Box 552  
Clearfield, PA 16830  
Attorney for Defendant, Robert Witherow

Eldon Young  
R. D. Box 581  
LaJose, PA 15753

GATES & SEAMAN

By

  
Laurance B. Seaman, Esquire  
Co-Counsel for Defendant  
Eaton Corporation

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

MARCUS SWAN and THELMA LYNCH, : No. 00-1150-CD  
Plaintiffs : JURY TRIAL DEMANDED  
vs. :  
EATON CORPORATION, : REPLY TO NEW MATTER AND  
ELDON YOUNG and : NEW MATTER UNDER RULE 2252(d)  
ROBERT WITHEROW, : OF DEFENDANT EATON  
Defendants : CORPORATION  
: Filed on Behalf of Plaintiffs,  
: Marcus Swan and Thelma Lynch  
: Counsel of Record for Plaintiffs:  
: McIntyre, Dugas, Hartye & Schmitt  
: STEPHEN L. DUGAS, ESQUIRE  
: PA I.D. No. 21351  
: HEATHER A. HARRINGTON, ESQ.  
: PA I.D. No. 62977  
: Post Office Box 533  
: Hollidaysburg, PA 16648  
: Ph: (814) 696-3581

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE  
WITHIN HAS BEEN FORWARDED  
TO ALL COUNSEL OF RECORD THIS  
28<sup>th</sup> DAY OF February, 2002.

William A. Shaw  
Attorneys for Plaintiffs

FILED

MAR 01 2002  
m 11241nrc  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants : JURY TRIAL DEMANDED

**REPLY TO NEW MATTER AND  
NEW MATTER UNDER RULE 2252(d) OF  
DEFENDANT EATON CORPORATION**

AND NOW, come Plaintiffs, Marcus Swan and Thelma Lynch, by and through their counsel, McIntyre, Dugas, Hartye & Schmitt, and file the within Reply to Defendant Eaton Corporation's New Matter and New Matter Under Rule 2252(d), as follows:

**REPLY TO NEW MATTER**

40. - 44. These Paragraphs contain conclusions of law to which no responsive pleading is required. Insofar as a response is required, it is denied that Plaintiffs' cause of action is barred by the Statute of Limitations, the Superseding/Intervening Act, or the Doctrine of Spoliation.

45. As Paragraph 45 incorporates allegations of the Complaint of these parties, no response is necessary.

46. Denied.

47. Denied.

WHEREFORE, the Plaintiffs request that relief be granted to them as requested in the Second Amended Complaint.

**REPLY TO NEW MATTER UNDER RULE 2252(d)  
DIRECTED TO DEFENDANT ROBERT WITHEROW**

48. The Plaintiffs hereby incorporate by reference their responses to Paragraphs 40 through 47 of the New Matter.

49. - 53. The allegations are directed to another party and therefore require no response from the Plaintiffs.

WHEREFORE, the Plaintiffs request that relief be granted to them as requested in the Second Amended Complaint.

**REPLY TO NEW MATTER UNDER RULE 2252(d)  
DIRECTED TO DEFENDANT ELDON YOUNG**

54. The Plaintiffs hereby incorporate by reference their responses to Paragraphs 40 through 47 of the New Matter.

55. - 58. These allegations are directed to another party and therefore require no response by the Plaintiffs.

WHEREFORE, the Plaintiffs request that relief be granted to them as requested in the Second Amended Complaint.

Respectfully Submitted,

MCINTYRE, DUGAS, HARTYE & SCHMITT

  
\_\_\_\_\_  
Attorney for Plaintiffs

Stephen L. Dugas, Esquire  
PA ID.No. 21351  
Heather A. Harrington, Esquire  
PA. ID. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

— Fold Here —

**CHRIS A. PENTZ**  
ATTORNEY AT LAW  
211 1/2 EAST LOCUST ST. P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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

MARCUS SWAN and  
THELMA LYNCH,  
Plaintiffs

vs

\* No. 2000-1150-C.D.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
Defendant

\* Type of Case: Civil

\* Type of Pleading: Answer to  
\* Second Amended Complaint, New  
\* Matter and Certificate of  
\* Service

\* Filed on Behalf of: Defendant,  
\* Robert Witherow

\* Counsel of Record for this Party:  
\* CHRIS A. PENTZ, Esquire

\* Supreme Court I.D. # 39232  
\* 211 1/2 East Locust Street  
\* P. O. Box 552  
\* Clearfield PA 16830  
\* 814 765-4000

**FILED**

MAR 11 2002

013:501 NOCC  
William A. Shaw  
Prothonotary  
*WAD*

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

MARCUS SWAN and THELMA LYNCH,  
Plaintiffs

\*

vs

\*

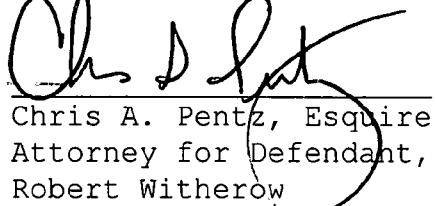
No. 00-1150-CD

EATON CORPORATION, ELDON YOUNG  
and ROBERT WITHEROW,  
Defendants

\*

To: **MARCUS SWAN and THELMA LYNCH:**

You are hereby notified to file a written response to the enclosed Answer to Second Amended Complaint and New Matter within twenty (20) days from the service hereof or a judgement may be entered against you.

  
Chris A. Pentz, Esquire  
Attorney for Defendant,  
Robert Witherow

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

\*

MARCUS SWAN and  
THELMA LYNCH,  
Plaintiffs

\*

VS

\* NO. 00-1150-CD

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
Defendants

\*

\*

\*

**ANSWER TO THE COMPLAINT AND NEW MATTER**

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment.
5. Paragraph 5 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment.
6. Paragraph 6 is admitted.
7. Paragraph 7 is admitted.
8. Paragraph 8 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment as to who manufactured and sold the electrical panel in question. The remaining allegation is also denied in that Defendant Witherow

installed the electrical panel and Defendant Young ran the electrical service from the source to the electrical meter and then to the electrical panel.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied. The service panel was installed by Witherow on or before 1991 and worked on by Young approximately two (2) weeks before the fire. As to the cause of the fire, the Defendant Robert Witherow after reasonable investigation is without sufficient knowledge or information to form a belief as to the averment.

11. Paragraph 11 is denied. After reasonable investigation, the Defendant Robert Witherow is without sufficient knowledge or information to form a belief as to the averment.

12. Paragraph 12 is denied. The answers set forth in Paragraphs 8 and 10 above are incorporated herein by reference.

**COUNT ONE**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs vs**  
**EATON CORPORATION, defendant**

**STRICT LIABILITY**

13. Paragraph 13 - No Answer required by Defendant Witherow.
14. Paragraph 14 - No Answer required by Defendant Witherow.
15. Paragraph 15 - No Answer required by Defendant Witherow.
16. Paragraph 16 - No Answer required by Defendant Witherow.
17. Paragraph 17 - No Answer required by Defendant Witherow.
18. Paragraph 18 - No Answer required by Defendant Witherow.

**COUNT TWO**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs vs**  
**EATON CORPORATION, defendant**

**STRICT LIABILITY**

19. Paragraph 19 - No Answer required by Defendant Witherow.
20. Paragraph 20 - No Answer required by Defendant Witherow.
21. Paragraph 21 - No Answer required by Defendant Witherow.
22. Paragraph 22 - No Answer required by Defendant Witherow.
23. Paragraph 23 - No Answer required by Defendant Witherow.
24. Paragraph 24 - No Answer required by Defendant Witherow.

**COUNT THREE**  
**MARCUS SWAN and THELMA LYNCH, plaintiffs vs**  
**ROBERT WITHEROW, defendant**

**NEGLIGENCE**

29. Paragraph 29 - Defendant Witherow hereby incorporates by reference Paragraphs 1 through 12 of this Answer.
30. Paragraph 30 is admitted.
31. Paragraph 31 is denied. After reasonable investigation the Defendant Witherow is without sufficient knowledge or information to form a belief as to the averment.
32. Paragraph 32 is denied. After reasonable investigation the Defendant Witherow is without sufficient knowledge or information to form a belief as to the averment.
33. Paragraph 33 is denied. It is denied that any actions of Defendant Witherow were negligent as to the installation of the electrical panel.

34. Paragraph 34 is denied. After reasonable investigation the Defendant is without knowledge or sufficient information to form a belief as to the averment. Paragraph 34 is also denied in that the Defendant Witherow did not install the service panel in a negligent manner and it was installed at the specific direction of the Plaintiffs and/or their Agent, Erma Swan.

WHEREFORE, the Defendant, Robert Witherow, respectfully requests Your Honorable Court to enter a judgement in his favor.

**MARCUS SWAN and THELMA LYNCH, plaintiffs vs  
ELDON YOUNG, defendant**

**NEGLIGENCE**

35. Paragraph 35 - No Answer required by Defendant Witherow.

36. Paragraph 36 - No Answer required by Defendant Witherow.

37. Paragraph 37 - No Answer required by Defendant Witherow.

38. Paragraph 38 - No Answer required by Defendant Witherow.

39. Paragraph 39 - No Answer required by Defendant Witherow.

**NEW MATTER**

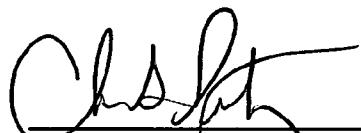
40. Paragraph 40 - Paragraphs 1 through 39 above are incorporated here and by reference to those set forth in full.

41. The services performed by the Defendant Witherow were on or before 1991.

42. Any action which the Plaintiffs may have against the Defendant Robert Witherow is barred by the Statute of Limitations.

WHEREFORE, the Defendant, Robert Witherow, respectfully requests Your Honorable Court to enter a judgement in his favor.

Respectfully submitted this 25 day of Feb., 2002.



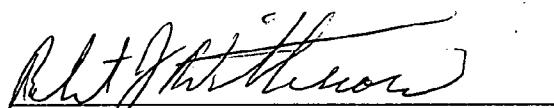
Chris A. Pentz  
Attorney for Defendant,  
Robert Witherow

**VERIFICATION**

I, ROBERT WITHEROW, verify that the statements made in this SECOND AMENDED COMPLAINT AND 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.

3-05-02

Date

  
Robert Witherow

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

MARCUS SWAN and THELMA LYNCH,  
Plaintiffs \*

vs \* No. 2000-1150-C.D.

EATON CORPORATION, ELDON YOUNG  
and ROBERT WITHEROW,  
Defendants \*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of  
Defendant, Robert Witherow, was served upon the following:

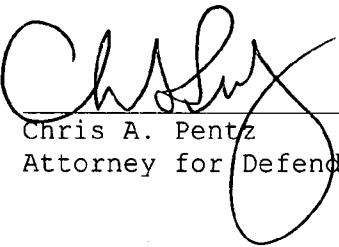
Heather A. Harrington, Esquire  
P. O. Box 533  
Hollidaysburg PA 16648-0533

Mr. Eldon Young  
R. D. Box 581  
LaJose PA 15753

Laurance B. Seaman, Esquire  
P. O. Box 846  
Clearfield PA 16830

Service was made by regular mail, postage prepaid, from the  
U.S. Post Office, Clearfield, Pennsylvania 16830.

Service was made the 11th day of March, 2002.

  
Chris A. Pentz

Attorney for Defendant

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

MARCUS SWAN and THELMA LYNCH,

No. 00 - 1150 - CD

Plaintiffs

ISSUE:  
REPLY TO NEW MATTER

vs.

JURY TRIAL DEMANDED

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 15<sup>th</sup> day of March, 2002.

Heather A. Harrington  
Attorney for Plaintiffs

**FILED**

MAR 18 2002  
10:34 AM  
William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
: JURY TRIAL DEMANDED

Defendants

**REPLY TO NEW MATTER**

AND NOW, come the plaintiffs, MARCUS SWAN and THELMA LYNCH, by and  
through their counsel, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the  
following Reply to New Matter:

41. Admitted.
42. Paragraph No. 42 contains conclusions of law to which no responsive  
pleading is required.

WHEREFORE, plaintiffs respectfully request that this Honorable Court enter  
judgment in their favor as set forth in the Complaint.

MCINTYRE, DUGAS, HARTYE & SCHMITT

Heather A. Harrington  
Attorney for Plaintiffs

HEATHER A. HARRINGTON, ESQUIRE  
PA. I.D. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

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

MARCUS SWAN and THELMA LYNCH,

1150  
No. 00-41150-CD

Plaintiffs

**ISSUE:**

NOTICE OF SERVICE OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT EATON  
CORPORATION DATED  
AUGUST 7, 2002

vs.

**JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 7<sup>th</sup> day of August, 2002.

Heather A. Harrington  
Attorney for Plaintiffs

**FILED**

AUG 8 2002

110/100cc

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

JURY TRIAL DEMANDED

Defendants

**NOTICE OF SERVICE OF INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT EATON CORPORATION DATED AUGUST 7, 2002**

TO: PROTHONOTARY

You are hereby notified that on the **7th** day of **AUGUST, 2002**, Plaintiffs,  
MARCUS SWAN and THELMA LYNCH, served Interrogatories and Request for  
Production of Documents Directed to Defendant Eaton Corporation Dated August 7,  
2002 by mailing the original of same via First Class U.S. Mail, postage prepaid,  
addressed to the following:

Laurence Seaman, Esquire  
Two North Front Street  
P.O. Box 846  
Clearfield, PA 16930

Harry Quick, Esquire  
1660 W. 2<sup>nd</sup> Street, Suite 900  
Cleveland, OH 44113-1411

McINTYRE, DUGAS, HARTYE & SCHMITT

Heather A. Harrington  
Attorneys for Plaintiffs

**Heather A. Harrington, Esquire**  
**PA I.D #: 62977**  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

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

MARCUS SWAN and THELMA LYNCH,

No. 00-1150-CD

Plaintiffs

**ISSUE:**

MOTION TO COMPEL RESPONSES  
TO INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF  
DOCUMENTS

vs.

**JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 9<sup>th</sup> day of October, 2002.

Heather A. Harrington  
Attorney for Plaintiffs

**FILED**

OCT 10 2002

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

**JURY TRIAL DEMANDED**

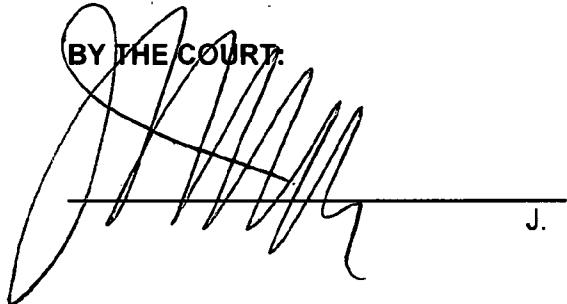
Defendants

**RULE RETURNABLE**

AND NOW, this 18<sup>th</sup> day of October, 2002, a Rule is  
hereby granted to show cause why Plaintiffs' Motion to Compel Discovery Responses  
should not be granted.

This Rule is returnable on the 9 day of December, 2002, at  
3:00 a.m./p.m. in Courtroom No. 1.

BY THE COURT:



J.

**FILED**

OCT 18 2002

William A. Shaw  
Prothonotary

FILED

cc

Atty Harrington

1913681  
OCT 18 2002

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

**JURY TRIAL DEMANDED**

Defendants

**PROPOSED ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, after consideration of plaintiffs' Motion to Compel Discovery Responses, it is hereby ORDERED, DIRECTED AND DECREED that said Motion is granted. Defendant, Eaton Corporation, shall provide full and complete responses to plaintiffs' Interrogatories and Request for Production of Documents within thirty (30) days of the date of this Order, or suffer sanctions as the Court may deem appropriate.

**BY THE COURT:**

---

J.

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,  
JURY TRIAL DEMANDED

Defendants

**MOTION TO COMPEL RESPONSES TO INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

AND NOW, come Plaintiffs, by and through their counsel, McINTYRE, DUGAS, HARTYE & SCHMITT and file the within Motion to Compel Discovery Responses, as follows:

1. This litigation pertains to a fire which occurred at a home occupied by Marcus Swan and owned by Marcus Swan and Thelma Lynch on or about October 4, 1998. Plaintiffs have filed suit against Defendant, Eaton Corporation alleging that an electrical service panel manufactured by Eaton malfunctioned causing the fire.
2. On or about August 7, 2002, plaintiffs served Defendant, Eaton Corporation, with Interrogatories and Request for Production of Documents. (A copy of the Notice of Service of that discovery is attached hereto, marked as Exhibit "A" and incorporated by reference.)

3. This discovery inquired into the history of this particular panel, prior complaints, prior problems and other information regarding the manufacturer of this service panel.

4. To date, Defendant, Eaton Corporation, has neither responded to the discovery, objected to it nor requested an extension for response.

5. Defendant, Eaton Corporation's failure to respond to this discovery seriously prejudices the plaintiffs' ability to pursue their claim.

WHEREFORE, plaintiffs respectfully request that this Honorable Court enter an Order directing that Defendant, Eaton Corporation, file full and complete responses to the Interrogatories and Request for Production of Documents of plaintiffs dated August 7, 2002, within thirty (30) days of the date of the Court's Order, or suffer sanctions as the Court may deem appropriate.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

By Heather A. Harrington  
Attorneys for Plaintiffs

Heather A. Harrington, Esquire  
PA I.D. #62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

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

MARCUS SWAN and THELMA LYNCH,

No. 00-11150-CD

Plaintiffs

**ISSUE:**

NOTICE OF SERVICE OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT EATON  
CORPORATION DATED  
AUGUST 7, 2002

vs.

**JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

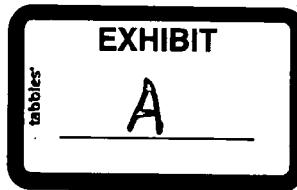
Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 7<sup>th</sup> day of August, 2002.

*Heather Harrington*

\_\_\_\_\_  
Attorney for Plaintiffs



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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

JURY TRIAL DEMANDED

Defendants

**NOTICE OF SERVICE OF INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT EATON CORPORATION DATED AUGUST 7, 2002**

TO: PROTHONOTARY

You are hereby notified that on the **7th** day of **AUGUST, 2002**, Plaintiffs,  
MARCUS SWAN and THELMA LYNCH, served Interrogatories and Request for  
Production of Documents Directed to Defendant Eaton Corporation Dated August 7,  
2002 by mailing the original of same via First Class U.S. Mail, postage prepaid,  
addressed to the following:

Laurence Seaman, Esquire  
Two North Front Street  
P.O. Box 846  
Clearfield, PA 16930

Harry Quick, Esquire  
1660 W. 2<sup>nd</sup> Street, Suite 900  
Cleveland, OH 44113-1411

McINTYRE, DUGAS, HARTYE & SCHMITT

*Heather Harrington*

---

Attorneys for Plaintiffs

**Heather A. Harrington, Esquire**  
**PA I.D #: 62977**  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

FILED

NO  
CC

10/10/02  
OCT 10 2002

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
: No. 00-1150-CD  
Plaintiffs : **PRAEICE TO WITHDRAW**  
: **MOTION TO COMPEL**  
:  
:  
:  
:  
:  
:  
:  
vs. : JURY TRIAL DEMANDED  
:  
:  
EATON CORPORATION, : Filed on behalf of Plaintiffs  
ELDON YOUNG and : Counsel of Record for These Parties:  
ROBERT WITHEROW, :  
: Heather A. Harrington, Esquire  
: PA I.D. #62977  
:  
Defendants : McINTYRE, DUGAS, HARTYE  
: & SCHMITT  
: P.O. Box 533  
: Hollidaysburg, PA. 16648  
: (814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 5<sup>th</sup> day of November, 2002.

  
\_\_\_\_\_  
Attorney for Plaintiffs

**FILED**

NOV 06 2002

William A. Shaw  
Prothonotary

MARCUS SWAN and THELMA LYNCH, : IN THE COURT OF COMMON PLEAS  
Plaintiffs : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : No. 00-1150-CD  
EATON CORPORATION, : JURY TRIAL DEMANDED  
ELDON YOUNG and :  
ROBERT WITHEROW,  
Defendants

**PRAECIPE TO WITHDRAW MOTION TO COMPEL**

TO: PROTHONOTARY

Please withdraw the recently filed Motion to Compel on behalf of Plaintiffs and against Defendant Eaton Corporation. Please forward this document to the Court Administrator so that the argument scheduled for Friday, December 13, 2002 at 3:00 p.m. may be canceled.

Respectfully submitted:

**McIntyre, Dugas, Hartye & Schmitt**

  
\_\_\_\_\_  
Atorneys for Plaintiff

Heather A. Harrington, Esquire  
PA I.D. No. 62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
Ph: (814) 696-3581

FILED

NO  
PC

11/10/02  
NOV 08 2002

OFFICE OF THE  
PROTHONOTARY

William A. Shaw  
Prothonotary

11/10/02  
NOV 08 2002

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

MARCUS SWAN and THELMA LYNCH,

No. 00-1150-CD

Plaintiffs

MOTION TO COMPEL RESPONSES  
TO INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF  
DOCUMENTS

vs.

JURY TRIAL DEMANDED

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

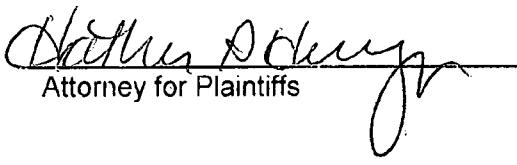
Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 18<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
Attorney for Plaintiffs

**FILED**

DEC 19 2002

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

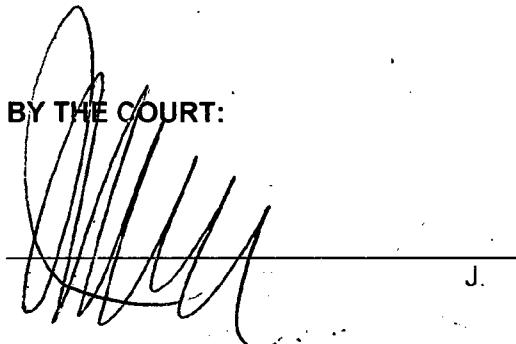
JURY TRIAL DEMANDED

Defendants

**PROPOSED ORDER**

AND NOW, this 27<sup>th</sup> day of December, 2002, after consideration of plaintiffs' Motion to Compel Discovery Responses, it is hereby ORDERED, DIRECTED AND DECREED that said Motion is granted. Defendant, Eaton Corporation, shall provide full and complete responses to plaintiffs' Interrogatories and Request for Production of Documents within thirty (30) days of the date of this Order, or suffer sanctions as the Court may deem appropriate.

BY THE COURT:

A handwritten signature in black ink, appearing to be a stylized 'J' or a similar letter, is written over a horizontal line. To the right of the signature, the letter 'J.' is handwritten.

**FILED**

DEC 27 2002

William A. Shaw  
Prothonotary

1301-1 Plaintiff ONE HAVING BUSHMAN

DEFENDANT C. S. A.

et al.

RECEIVED

RECEIVED

1301-1 Plaintiff ONE HAVING BUSHMAN  
et al. vs. C. S. A. et al. (Plaintiff's Motion for Summary Judgment)

12/24/2002, A reduced and true copy of Plaintiff's Motion for Summary Judgment was  
served upon Defendants C. S. A. et al. and Plaintiff's Motion for Summary Judgment was

**FILED**

12/31/02  
cc  
DEC 27 2002

Attn: H. Harrington

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

VS.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

: JURY TRIAL DEMANDED

Defendants

**RULE RETURNABLE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, a Rule is hereby granted to show cause why Plaintiffs' Motion to Compel Discovery Responses should not be granted.

This Rule is returnable on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in Courtroom No. \_\_\_\_\_.

**BY THE COURT:**

---

J.

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

: JURY TRIAL DEMANDED

Defendants :

**MOTION TO COMPEL RESPONSES TO INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

AND NOW, come Plaintiffs, by and through their counsel, MCINTYRE, DUGAS, HARTYE & SCHMITT and file the within Motion to Compel Discovery Responses, as follows:

1. This litigation pertains to a fire which occurred at a home occupied by Marcus Swan and owned by Marcus Swan and Thelma Lynch on or about October 4, 1998. Plaintiffs have filed suit against Defendant, Eaton Corporation alleging that an electrical service panel manufactured by Eaton malfunctioned causing the fire.
2. On or about August 7, 2002, plaintiffs served Defendant, Eaton Corporation, with Interrogatories and Request for Production of Documents. (A copy of the Notice of Service of that discovery is attached hereto, marked as Exhibit "A" and incorporated by reference.)
3. This discovery inquired into the history of this particular panel, prior complaints, prior problems and other information regarding the manufacturer of this service panel.
4. To date, Defendant, Eaton Corporation, has neither responded to the discovery, objected to it nor requested an extension for response.
5. Defendant, Eaton Corporation's failure to respond to this discovery seriously prejudices the plaintiffs' ability to pursue their claim.

6. Pursuant to representations by counsel for Eaton Corporation, new counsel was to be assuming the defense and substantive responses to the discovery was to be provided to undersigned counsel within thirty (30) days. That has not occurred.

7. Based solely on the representations of counsel for Eaton Corporation, the Plaintiffs agree to forego the originally filed Motion to Compel. Since no responses have been received, it is necessary for the Court now to impose deadlines upon Eaton Corporation for responses.

WHEREFORE, plaintiffs respectfully request that this Honorable Court enter an Order directing that Defendant, Eaton Corporation, file full and complete responses to the Interrogatories and Request for Production of Documents of plaintiffs dated August 7, 2002, within thirty (30) days of the date of the Court's Order, or suffer sanctions as the Court may deem appropriate.

Respectfully submitted,

McINTYRE, DUGAS, HARTYE & SCHMITT

By Heather Harrington  
Attorneys for Plaintiffs

Heather A. Harrington, Esquire  
PA I.D. #62977  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

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

MARCUS SWAN and THELMA LYNCH,

No. 00-11150-CD

Plaintiffs

**ISSUE:**

NOTICE OF SERVICE OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT EATON  
CORPORATION DATED  
AUGUST 7, 2002

vs.

**JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

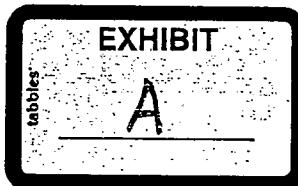
Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 7<sup>th</sup> day of August, 2002.

*Heather Harrington*  
\_\_\_\_\_  
Attorney for Plaintiffs



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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

JURY TRIAL DEMANDED

Defendants

NOTICE OF SERVICE OF INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS

DIRECTED TO DEFENDANT EATON CORPORATION DATED AUGUST 7, 2002

TO: PROTHONOTARY

You are hereby notified that on the 7th day of AUGUST, 2002, Plaintiffs,  
MARCUS SWAN and THELMA LYNCH, served Interrogatories and Request for  
Production of Documents Directed to Defendant Eaton Corporation Dated August 7,  
2002 by mailing the original of same via First Class U.S. Mail, postage prepaid,  
addressed to the following:

Laurence Seaman, Esquire  
Two North Front Street  
P.O. Box 846  
Clearfield, PA 16930

Harry Quick, Esquire  
1660 W. 2<sup>nd</sup> Street, Suite 900  
Cleveland, OH 44113-1411

MCINTYRE, DUGAS, HARTYE & SCHMITT

*Heather Harrington*

---

Attorneys for Plaintiffs

**Heather A. Harrington, Esquire**  
**PA I.D #: 62977**  
**P.O. Box 533**  
**Hollidaysburg, PA 16648**  
**(814) 696-3581**

FILED

11:12 AM  
DEC 19 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,

CIVIL DIVISION

Plaintiffs,

No. 00-1150-CD

vs.

**PRAECIPE FOR APPEARANCE**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants.

Filed on Behalf of:  
Eaton Corporation

Counsel of Record for This Party:  
**DIANE BARR QUINLIN, ESQUIRE**  
Pa. I.D. No. 30337

OLSZEWSKI & QUINLIN  
Henry W. Oliver Building, Suite 614  
535 Smithfield Street  
Pittsburgh, PA 15222

Telephone No. (412) 644-0200  
Fax No. (412) 644-0219

**FILED**

JUN 13 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH, : CIVIL DIVISION  
: :  
Plaintiffs, : No. 00-1150-CD  
: :  
vs. : :  
: :  
EATON CORPORATION, : :  
ELDON YOUNG and : :  
ROBERT WITHEROW, : :  
: :  
Defendants. : :

**PRAECIPE FOR APPEARANCE**

TO: PROTHONOTARY

KINDLY ENTER the Appearance of Diane Barr Quinlin, Esquire, and Olszewski & Quinlin, P.C. on behalf of Defendant, Eaton Corporation.

Respectfully submitted,

OLSZEWSKI & QUINLIN, P.C.

By:

Diane Barr Quinlin, Esquire  
Attorneys for Defendant  
Eaton Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE was served by first class mail, postage prepaid, this 11<sup>th</sup> day of June, 2002, upon the following:

Heather A. Harrington, Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648

Chris A. Pentz, Esquire  
P.O. Box 552  
Clearfield, PA 16830

Eldon Young  
R.D. Box 581  
LaJose, PA 15753

Respectfully submitted,

OLSZEWSKI & QUINLIN, P.C.

By:

Diane Barr Quinlin, Esquire  
Attorney for Defendant  
Eaton Corporation

FILED

311245-81  
cc  
JUN 13 2003

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiff :  
: No. 00-1150-CD  
vs. :  
: Type of Case: Civil  
EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW, :  
Defendants :  
: Type of Pleading: Praecipe  
: to Withdraw Appearance  
: :  
: Filed on behalf of:  
: Defendant, Eaton Corporation  
: :  
: Counsel of Record for this  
: Party:  
: :  
: Harry T. Quick, Esquire  
: Bar No. 0031239  
: BRZYTWA, QUICK & McCRYSTAL, LLC  
: 1660 W. 2nd Street, Suite 900  
: Cleveland, OH 44113-1411  
: (216) 664-6900

**FILED**

JUL 11 2003

William A. Shaw  
Prothonotary

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

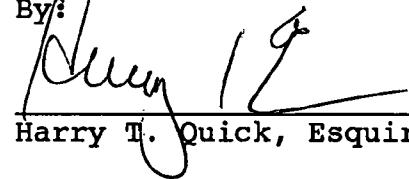
MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

PRAECIPE TO WITHDRAW APPEARANCE

TO WILLIAM A. SHAW, PROTHONOTARY:

Please withdraw my appearance, and that of the law firm of  
BRZYTWA, QUICK & McCRYSTAL, LLC, on behalf of Defendant, EATON  
CORPORATION, in reference to the above-captioned action.

BRZYTWA, QUICK & McCRYSTAL, LLC  
By:

  
Harry T. Quick, Esquire

Date: 7/3/03

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

MARCUS SWAN and THELMA LYNCH, :  
Plaintiffs :  
: :  
vs. : No. 00-1150-CD  
: :  
EATON CORPORATION, ELDON YOUNG and :  
ROBERT WITHEROW, Defendants :  
:

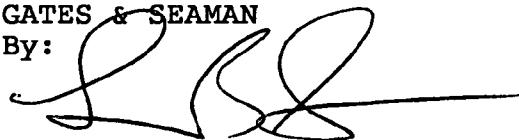
CERTIFICATE OF SERVICE

I hereby certify that I mailed by regular U. S. mail,  
postage prepaid, on the 11 day of July, 2003, a true  
and correct copy of Praeclipe to Withdraw Appearance of Harry T.  
Quick, Esquire to:

Heather A. Harrington, Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P. O. Box 533  
Hollidaysburg, PA 16648-0533

Diane Barr Quinlin, Esquire  
Olszewski & Quinlin, P.C.  
Henry W. Oliver Building, Suite 614  
535 Smithfield Street  
Pittsburgh, Pennsylvania 15222

GATES & SEAMAN  
By:



Laurence B. Seaman, Esquire  
Co-Counsel for Defendant,  
Eaton Corporation

FILED

JUL 11 2003

010-55-

William A. Shaw  
Prothonotary

cc

*[Signature]*

6  
received  
06-30-03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,

CIVIL DIVISION

Plaintiffs,

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants.

**NOTICE OF SERVICE OF  
DEFENDANT THOMAS & BETTS,  
indemnitor to EATON  
CORPORATION'S  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFFS**

Filed on Behalf of:

Thomas & Betts, indemnitor to  
Eaton Corporation

Counsel of Record for This Party:  
**DIANE BARR QUINLIN, ESQUIRE**  
Pa. I.D. No. 30337

**OLSZEWSKI & QUINLIN, P.C.**  
Henry W. Oliver Building, Suite 614  
535 Smithfield Street  
Pittsburgh, PA 15222

Telephone No. (412) 644-0200  
Fax No. (412) 644-0219

**FILED**

AUG 25 2003  
m / 2:30p  
William A. Shaw  
Prothonotary/Clerk of Courts

2 cent to Attn: G  
GPD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,      )      CIVIL DIVISION  
  )  
Plaintiffs,                              )      No. 00-1150-CD  
  '  
vs.                                      )  
  '  
EATON CORPORATION,                      )  
ELDON YOUNG and                      )  
ROBERT WITHEROW,                      )  
  '  
Defendants.                              )

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS FILED ON BEHALF  
OF THOMAS & BETTS, INDEMNITOR TO EATON CORPORATION**

TO: The Prothonotary of Clearfield County

I hereby certify that an original set of Interrogatories and Request for Production of Documents Directed to Plaintiffs Filed on Behalf of Thomas & Betts, Indemnitor to Eaton Corporation was served on Plaintiffs, Marcus Swan and Thelma Lynch by mailing the same to counsel of record, Heather A. Harrington, Esquire, McIntyre, Dugas, Hartye & Schmitt, P.O. Box 533, Hollidaysburg, PA 16648, on the 22nd day of August, 2003.

OLSZEWSKI & QUINLIN, P.C.

By:

Diane Barr Quinlin, Esquire  
Attorney for Thomas & Betts,  
indemnitor to Eaton Corporation

Date: 8-22-03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,

Plaintiffs,

vs.  
EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendant.

CIVIL DIVISION

No. 00-1150-CD

**NOTICE OF SERVICE OF  
SUPPLEMENTAL ANSWERS TO  
FIRST SET OF INTERROGATORIES  
DIRECTED TO DEFENDANT EATON  
CORPORATION AND RESPONSES TO  
EATON CORPORATION'S REQUEST  
FOR PRODUCTION DATED AUGUST  
7, 2002**

Filed on Behalf of:  
Thomas & Betts, indemnitor to  
Eaton Corporation

Counsel of Record for This Party:  
**DIANE BARR QUINLIN, ESQUIRE**  
Pa. I.D. No. 30337

**OLSZEWSKI & QUINLIN, P.C.**  
Henry W. Oliver Building, Suite 614  
535 Smithfield Street  
Pittsburgh, PA 15222

Telephone No. (412) 644-0200  
Fax. No. (412) 644-0219

**FILED**

AUG 25 2003  
m/rw/ln  
William A. Shaw  
Prothonotary/Clerk of Courts  
2 Cents To Pay  
E  
Kep

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH, ) CIVIL DIVISION  
)  
Plaintiffs, ) No. 00-1150-CD  
)  
vs. )  
)  
EATON CORPORATION, )  
ELDON YOUNG and )  
ROBERT WITHEROW, )  
)  
Defendants. )

**NOTICE OF SERVICE OF SUPPLEMENTAL ANSWERS TO FIRST SET OF  
INTERROGATORIES DIRECTED TO DEFENDANT EATON CORPORATION  
AND RESPONSES TO EATON CORPORATION'S REQUEST FOR PRODUCTION**  
**DATED AUGUST 7, 2002**

TO: The Prothonotary of Clearfield County

I hereby certify that an original set of Supplemental Answers to First Set of Interrogatories Directed to Defendant Eaton Corporation and Responses to Eaton Corporation's Request for Production Dated August 7, 2002, was served on Plaintiffs, Marcus Swan and Thelma Lynch by mailing same to counsel of record, Heather A. Harrington, Esquire, McIntyre, Dugas, Hartye & Schmitt, P.O. Box 533, Hollidaysburg, PA 16648, on the 20th day of August, 2003.

OLSZEWSKI & QUINLIN, P.C.

By: Diane Barr Quinlin, Esquire  
Attorney for Thomas & Betts,  
indemnitor to Eaton Corporation

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

MARCUS SWAN and THELMA LYNCH,

: No. 00-1150-CD

Plaintiffs

: **ISSUE: NOTICE OF SERVICE OF  
ANSWERS TO DISCOVERY**

vs.

: **JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

: Filed on behalf of Plaintiffs

: Counsel of Record for These Parties:

: Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

: McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
: Hollidaysburg, PA 16648  
: (814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 6<sup>th</sup> day of November,  
2003.

Heather A. Harrington  
\_\_\_\_\_  
Attorney for Plaintiffs

**FILED**

NOV 10 2003

William A. Shaw  
Prothonotary/Clerk of Courts

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

**JURY TRIAL DEMANDED**

Defendants

**NOTICE OF SERVICE OF ANSWERS TO DEFENDANT EATON CORPORATION'S  
INTERROGATORIES AND REPLY TO DEFENDANT EATON CORPORATION'S  
REQUEST FOR PRODUCTION OF DOCUMENTS**

**TO: PROTHONOTARY**

You are hereby notified that on the 6<sup>th</sup> day of **November, 2003**, plaintiffs Marcus Swan and Thelma Lynch, served Answers to Defendant Eaton Corporation's Interrogatories and Reply to Defendant Eaton Corporation's Request for Production of Documents on the Plaintiffs by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

McINTYRE, DUGAS, HARTYE & SCHMITT

By Heather A. Dugas  
Attorneys for Plaintiffs,  
**Heather A. Harrington, Esquire**  
**PA I.D. No. 62977**  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581  
(814) 696-9399 - Fax

FILED NO  
M 8:30 AM  
NOV 10 2003  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

MARCUS SWAN and THELMA LYNCH,

No. 00-1150-CD

Plaintiffs

**ISSUE: MOTION TO SUBSTITUTE  
PARTIES PLAINTIFF AND TO AMEND  
THE CAPTION**

vs.

**JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

Defendants

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 17<sup>th</sup> day of October,  
2003.

Heather A. Harrington  
Attorney for Plaintiffs

**FILED**

OCT 21 2003

William A. Shaw  
Prothonotary/Clerk of Courts

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

MARCUS SWAN and THELMA LYNCH,

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

**JURY TRIAL DEMANDED**

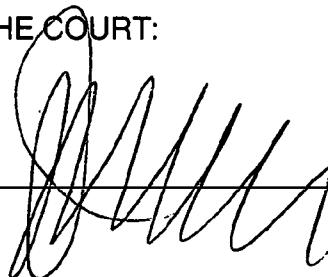
Defendants :

**RULE TO SHOW CAUSE**

AND NOW, this 24<sup>th</sup> day of October, 2003, a Rule is hereby granted to show cause why the **Motion to Substitute Parties Plaintiff and to Amend the Caption** filed by Plaintiffs, MARCUS SWAN AND THELMA LYNCH, should not be granted.

This Rule is returnable on the 18 day of November, 2003, at 9:00 A.M., in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



J.

**FILED**

OCT 24 2003

William A. Shaw  
Prothonotary

**FILED**

0 10:40 13A 1CC & BTP

OCT 24 2003

William A. Shaw  
Prothonotary

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

MARCUS SWAN and THELMA LYNCH, :

Plaintiffs : No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW, :

**JURY TRIAL DEMANDED**

Defendants :

**MOTION TO SUBSTITUTE PARTIES PLAINTIFF AND TO AMEND THE CAPTION**

AND NOW, come plaintiffs MARCUS SWAN AND THELMA LYNCH, by and through their attorneys, McIntyre, Dugas, Hartye, & Schmitt, and file within Motion to Substitute Parties Plaintiff and to Amend the Caption.

1. This property damage action was filed on or about September 15, 2000, with a filing of a Praecept for Writ of Summons.
2. At the time of the filing, named plaintiffs were the owners of real property which suffered fire damage on October 4, 1998.
3. Since the filing of this Complaint, both plaintiffs have passed away.
4. Attached hereto as Exhibit "A" are the Letters Testamentary from Lee County in the State of North Carolina appointing MARTHA STEPHENS as the Personal Representative of the Estate of Thelma S. Lynch effective May 24, 2002.

5. Attached hereto as Exhibit "B" is a Notice of Estate Administration appointing WILLIAM H. SWAN as Executor of the Estate of Ralph Marcus Swan who died on April 15, 2003.

6. Pursuant to Pennsylvania Rules of Civil Procedure 2352 (Substitution of Successor) and 2355 (Substitution of Personal Representative) plaintiffs, by and through the their Personal Representatives of their Estates, respectfully requests that this Honorable Court grant and order formally substituting the Personal Representatives as the Estates as the parties plaintiff and direct that the Prothonotary amend the caption appropriately.

WHEREFORE, plaintiffs respectfully submit a request that this Honorable Court grant the Motion for Substitution of Parties Plaintiff and to Amend the Caption.

Respectfully submitted,

**McIntyre, Dugas, Hartye, & Schmitt**

  
\_\_\_\_\_  
Attorney for Plaintiffs

**Heather A. Harrington, Esquire**  
PA. ID. No. 62977

P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581  
814/696-9399 - fax

## STATE OF NORTH CAROLINA

File No.

250172

LEE \_\_\_\_\_ County

In The General Court Of Justice  
Superior Court Division  
Before the Clerk

## IN THE MATTER OF THE ESTATE OF:

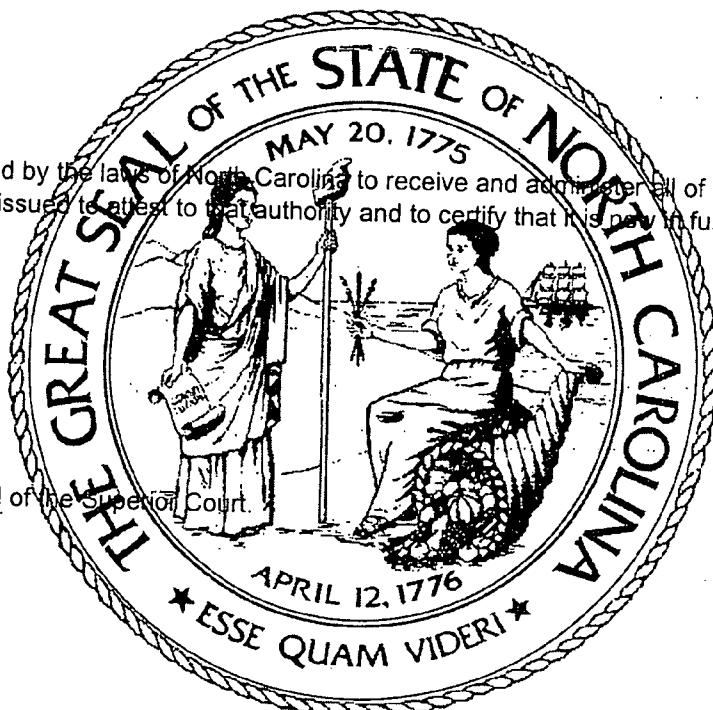
Name

THELMA S. LYNCH

LETTERS  
TESTAMENTARY

G.S. 28A-6-1

The Court in the exercise of its jurisdiction of the probate of wills and the administration of estates, and upon application of the fiduciary, has adjudged legally sufficient the qualification of the fiduciary named below and orders that Letters be issued in the above estate.



Witness my hand and the Seal of the Superior Court.

Name And Title Of Fiduciary 1 <b>MARTHA L. STEPHENS, Personal Representative</b>	Date Of Qualification <b>5-24-02</b>
Address <b>503 Apple Lane</b>	Clerk Of Superior Court <b>ANN H. BLAKELY</b>
City, State, Zip <b>Sanford, NC 27330</b>	EX OFFICIO JUDGE OF PROBATE
Name And Title Of Fiduciary 2	
Address	Date Of Issuance <b>5-24-02</b>
City, State, Zip	Signature <b>Ann H. Blakely</b>

EXHIBIT

SEAL

 Deputy CSC Assistant CSC

IMPORTANT NOTICE  
NOTICE OF ESTATE ADMINISTRATION

THIS NOTICE DOES NOT MEAN THAT YOU WILL RECEIVE  
ANY MONEY OR PROPERTY FROM THIS ESTATE OR OTHERWISE

Whether you will receive any money or property will be determined wholly or partly by the decedent's will. If the decedent died without a will, whether you will receive any money or property will be determined by the intestacy laws of Pennsylvania.

BEFORE THE REGISTER OF WILLS,  
COUNTY OF CLEARFIELD, PENNSYLVANIA

In re Estate of Ralph Marcus Swan, deceased  
No. 2003-282 of Clearfield County

TO: William H. Swan  
PO Box 188  
Mt. Gilead, NC 27306

Please take notice of the death of decedent and the grant of letters to the personal representative(s) named below.

The Decedent, Ralph Marcus Swan, died on the 15<sup>th</sup> day of April, 2003, at Clearfield County, Pennsylvania.

The Decedent died testate (with a Will).

The personal representative of the Decedent is William H. Swan of PO Box 188, Mt. Gilead, NC 27306.

The Decedent died testate, and the will has been filed with the Office of the Register of Wills of Clearfield County, North Second Street, Clearfield, PA. Phone Number 814-765-2641.

A copy of the Petition may be obtained by contacting the Register of Wills and paying the charges for duplication.

Date: 06/23/03

Signature: Timothy E. Durant  
Name: Timothy E. Durant, Esq.  
Address: 201 N. Second Street  
Clearfield, PA 16830  
Telephone (814) 765-1711  
Capacity: Counsel for personal representative

EXHIBIT

B

**FILED**

1cc

111-01-00000  
OCT 21 2003  
Amy Harrington

William A. Shaw  
Prothonotary/Clerk of Courts

WAS

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

MARCUS SWAN and THELMA LYNCH :

: -vs- : No. 00 - 1150 - CD

EATON CORPORATION, ELDON :  
YOUNG and ROBERT WITHEROW :

**ORDER**

NOW, this 18<sup>th</sup> day of November, 2003, after consideration of Plaintiffs' Motion for Substitution of Parties Plaintiff and to Amend the Caption, it is hereby ORDERED, DIRECTED AND DECREED that said Motion is granted.

It is further ORDERED that Martha L. Stephens, Personal Representative of the Estate of Thelma S. Lynch, shall be substituted as a party plaintiff for Thelma S. Lynch. Further, William H. Swan, Executor of the Estate of Ralph Marcus Swan, shall be substituted as a party plaintiff for Marcus Swan.

Finally, the Prothonotary is hereby ORDERED to change the captioned of this matter to read as follows: William H. Swan, Executor of the Estate of Ralph Marcus Swan and Martha L. Stephens, Personal Representative of the Estate of Thelma S. Lynch, plaintiffs versus Eaton Corporation, Eldon Young and Robert Witherow, defendants.

By the Court,

President Judge

**FILED**

NOV 18 2003

William A. Shaw  
Prothonotary

**FILED**

1cc attorney Sperry, Jr.  
019-22 54  
1cc attorney Gremm  
1cc attorney Pente  
NOV 18 2003

William A. Shaw  
Prothonotary

*GRPS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,      )      CIVIL DIVISION  
  )  
Plaintiffs,                              )      No. 00-1150-CD  
  )  
vs.                                      )  
  )  
EATON CORPORATION,                      )  
ELDON YOUNG and                        )  
ROBERT WITHEROW,                        )  
  )  
Defendants.                              )

**SCHEDULING ORDER**

Kindly take notice that the within Motion for Summary Judgment will be presented before the Honorable Judge Kelly on the 25 day of February, 2004, at 1:30 o'clock or as soon thereafter as suits the convenience of the Court.

Judie J. Zimmerman

01/13/04

**FILED**

**JAN 14 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
1cc Atty Quinn  
JAN 14 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,

CIVIL DIVISION

Plaintiffs,

No. 00-1150-CD

vs.

**MOTION FOR SUMMARY  
JUDGMENT**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants.

Filed on Behalf of:

**THOMAS & BETTS, INDEMNITOR  
TO EATON CORPORATION**

Counsel of Record for This Party:

**DIANE BARR QUINLIN, ESQUIRE**  
Pa. I.D. No. 30337

**OLSZEWSKI & QUINLIN, P.C.**  
Firm No. 512  
Henry W. Oliver Building, Suite 614  
535 Smithfield Street  
Pittsburgh, PA 15222

Telephone No: (412) 644-0200  
Fax No: (412) 644-0219

**JURY TRIAL DEMANDED**

**FILED**

**JAN 12 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH, ) CIVIL DIVISION  
 )  
 Plaintiffs, ) No. 00-1150-CD  
 )  
 vs. )  
 )  
 EATON CORPORATION, )  
 ELDON YOUNG and )  
 ROBERT WITHEROW, )  
 )  
 Defendants. )

**MOTION FOR SUMMARY JUDGMENT**

Thomas & Betts Corporation, Indemnitor to Eaton Corporation (hereinafter "Eaton"), by its attorneys OLSZEWSKI & QUINLIN, P.C. and DIANE BARR QUINLIN, ESQUIRE, files this Motion for Summary Judgment of which the following is a statement:

1. On or about February 2001, Plaintiffs, William H. Swan, Executor of the Estate of Ralph Marcus Swan, and Martha L. Stephens, Personal Representative of the Estate of Thelma S. Lynch, filed a lawsuit against defendants, Eaton Corporation, Eldon Young and Robert Witherow contending that they were responsible for an October 4, 1998 fire which destroyed the structure and contents of their home.
2. Defendant Young was accused of the negligent installation of a drop line in the electrical service meter which allowed arcing and caused the wooden backing material to ignite. (See Complaint at paragraphs 32 - 33).
3. Defendant Witherow was accused of negligently installing the Challenger service panel by attaching it to a pine board and wooden blocking, creating a three-inch gap between the service panel and foundation wall which, when the panel overheated, ignited the board and wood blocking causing the fire to spread. (See Complaint at paragraphs 27 - 28).

4. Defendant Eaton was accused of causing the fire because of an electrical malfunction in an allegedly defective 40 circuit Challenger electric panel allegedly manufactured by it. (See Complaint at paragraphs 14 - 15).

5. Four days after the fire on October 8, 1998, a claims representative for Everett Cash Mutual, the insurer of the home, contacted Richard Hughes, engineer, and asked him to inspect the home to determine the cause of the fire.

6. On October 9, 1998, Hughes inspected the home in order to determine if Everett Cash Mutual could file a subrogation claim against the entity Hughes claimed caused the fire. At the time of his inspection, Hughes had access to and the ability to inspect the electrical service meter, the service panel and the accompanying service door as well as other electrical equipment.

7. Despite Hughes' ability to examine and retain the electrical service meter and accompanying service panel door, he did not preserve that evidence and it was destroyed shortly thereafter.

8. Hughes issued a report on November 10, 1998 which concluded that the fire was caused by a failure of the Challenger service panel "...based on the physical evidence at the site... plus a review of the electrical panel and service entrance and the load on the system" (See Hughes' report dated November 10, 1998 attached hereto as Exhibit "1" and incorporated by reference herein). Based on this report, Everett Cash Mutual authorized a subrogation lawsuit against the aforementioned defendants.

9. On February 4, 2000 Eaton, at that time known as Cutler-Hammer, was permitted to have an engineer view the evidence which had been retained and which was in Hughes' possession.

10. Edward Lias, P.E., Cutler-Hammer's engineer, was not permitted to touch or examine the evidence except to place it in position to be photographed. Lias took no notes and believed that either he or another engineer would be at some future date permitted to perform an extensive analysis. (See photographs of Edward Lias attached hereto and incorporated by reference herein as Exhibit 2 and Affidavit of Edward Lias, Cutler-Hammer, Inc. now known as Eaton Electrical, Inc. attached hereto as Exhibit "3" and incorporated herein by reference).

11. Although at the time of inspection, Lias requested that he be allowed to handle and test the retained evidence, Plaintiff's counsel refused and permitted him only to take photographs. (See Affidavit of Edward Lias, Cutler-Hammer, Inc. now known as Eaton Electrical, Inc. attached hereto as Exhibit "3" and incorporated herein by reference).

12. Lias' preliminary conclusion after his inspection was that there was evidence of arcing, a cause not attributable to a defective circuit breaker, which evidence needed to be analyzed in more detail. (See Affidavit of Edward Lias, Cutler-Hammer, Inc., now known as Eaton Electrical, Inc. attached hereto as Exhibit "3" and incorporated by reference herein).

13. Hughes authored a second report on May 31, 2000 which indicated that he would make the panel available for further inspection by Cutler-Hammer. (See March 31, 2000 expert report attached hereto as Exhibit "4" and incorporated by reference herein).

14. On or about April 7, 2003 Cutler-Hammer tendered the defense of this case to Thomas & Betts Corporation, purchaser of the Cutler-Hammer product line from Eaton Corporation and Indemnitor to Eaton Corporation. As early as July 2003, current counsel requested another inspection and an opportunity for more rigorous examination of the evidence. (See correspondence dated July 14, 2003 attached hereto as Exhibit "5" and incorporated by reference herein).

15. After multiple requests to examine the evidence and permit Eaton's expert, Mr. Walter Dragus, engineer, to test the evidence in order to determine the cause of the fire, counsel was informed that Hughes had destroyed all the evidence.

16. In Answers to Interrogatories Plaintiffs have averred that Hughes discarded the panel on instructions from the subrogation insurer, Everett Cash Mutual, despite its knowledge of the ongoing subrogation claim. The evidence was destroyed to avoid future storage costs. (See Answers to Interrogatories filed by Plaintiffs, Numbers 16 and 17, attached hereto as Exhibit "6" and incorporated by reference herein).

17. The intentional destruction of the only evidence which could enable Eaton to determine the cause of the fire has effectively foreclosed it from investigating the case, presenting a defense and from challenging Hughes' conclusory statements of fault.

18. The destruction of the loadcenter cover, the electrical meter, the Challenger circuit breaker, the neutral ground buss, service entrance cable and the earlier discarded electrical service panel meter and service panel door along with other components have foreclosed any investigation that Dragus could have undertaken. (See Affidavit of Mr. Walter Dragus attached hereto as Exhibit "7" and incorporated by reference herein).

19. The prejudice to Eaton in this single product defect action is substantial and virtually insurmountable since there is no way to verify product identification; adequately test for the alleged defect or investigate the merits of any defense, including misuse, alteration, improper maintenance, improper installation and improper modification of the circuit breaker panel by Plaintiffs or others.

20. The nature of the alleged defect requires that Eaton examine the product in order to refute the claim. See Tenaglia v. Proctor & Gamble, Inc., 737 A.2d 306 (Pa. Super. 1999).

21. Because this is a subrogation action, Everett Cash Mutual is the real plaintiff in interest in this case and has had full control of the litigation.

22. Its actions in instructing its expert witness to destroy the product before Eaton had an opportunity to physically examine, manipulate and analyze it has precluded Eaton's ability to undertake the most fundamental step of product inspection. As Eaton is unable to examine the product and because of the substantial prejudice to it, there is no sanction other than dismissal which can protect Eaton's rights. See Fox Run Apartments v. The General Motors Corporation, 31 D&C 14 (1996).

WHEREFORE, it is respectfully requested that the Motion for Summary Judgment be granted and that the action filed against Eaton Corporation be dismissed with prejudice.

Respectfully submitted,

OLSZEWWSKI & QUINLIN, P.C.

By:

Diane Barr Quinlin, Esquire  
Attorneys for Defendant  
Thomas & Betts, indemnitor to  
Eaton Corporation

ARROW  
10/1998  
Hughes

Cause and Origin Study of a Fire Loss

at the

Mr. Mark Swan Residence  
RD#1, TR 425  
Ansonville, PA  
Clearfield County

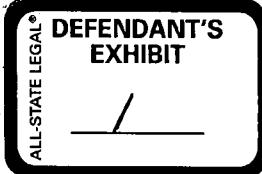
for

Everett Cash Mutual Insurance Company  
Claim # 9802376  
November 10, 1998



*Richard T. Hughes, P.E.*  
*Consulting Engineer*

506 Krebs Avenue  
Clearfield, Pa. 16830  
(814) 765-8691



## INDEX

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3.0 REFERENCES .....	4

## **SUMMARY**

The Mark Swan residence sustained a complete fire loss on October 4, 1998. The results of the investigation revealed that the cause of the fire was due to an electrical panel failure and the origin was in the basement.

## 1.0 INVESTIGATION

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On October 4, 1998, a fire broke out at the Mark Swan residence located on TR425, just outside of Ansonville, PA, Clearfield County. The Irvona Fire Department answered the call at 9:20 a.m. and within three hours had the fire extinguished. The Punxsutawney State Police Fire Marshall determined that the cause of the fire was electrical and that the origin was in the front corner of the house near the electric meter.

On October 8, 1998, a Mr. Matt Thomas, Claims Representative for Everett Cash Mutual, contacted Mr. Richard T. Hughes, P.E. and requested a cause and origin study of this fire.

The structure sustained a total loss and was a residential, 100-year-old, two-story frame dwelling owned by Mr. Mark Swan, a retired gentleman approximately 80 years old who had two guests living at his house, a Ms. Helen Shaffer, approximately 40 years old, and a Ms. Reba Tubbs. It is Ms. Tubbs, approximately 60 years old, who essentially ran the dwelling, did the household chores and errands for Mr. Swan and Ms. Shaffer, who is a disabled woman.

Ms. Reba Tubbs indicated that on the morning of October 4, 1998, she left the dwelling at approximately 8:15 a.m. to visit her father nearby, at which time Ms. Shaffer and Mr. Swan were up watching television. She tried to call the residence at approximately 9:00 a.m. with no luck and upon returning to the house discovered that the front corner of the dwelling was engulfed in flames and the fire department was on the scene. Both Mr. Swan and Ms. Shaffer were able to get out of the house safely, at which time the fire department extinguished the flames and at that time determined that the origin of the fire was the front corner of the dwelling. Unfortunately the heat and soot damage spread throughout the house and eventually engulfed the roof system on the front (see attached photos) causing a complete loss.

On October 9, 1998, Mr. Richard T. Hughes, P.E. inspected the dwelling to determine the cause and origin of the fire. The electrical entrance meter and service panels were first inspected. According to Ms. Reba Tubbs, approximately 7 years ago Mr. Robert Witherow of RD#2 Curwensville, PA, installed a new 200amp service panel in the basement. The service panel was a 40 circuit Challenger Model. The address for the Challenger representative in this region is Mr. Dan Oleary, 787 Pine Valley Drive, Pittsburgh, PA 15239. His phone number is (412) 327-1414. This past year a Mr. Eldon Young from Irvona (8140 672-5715 completed the installation of a new service meter including a new drop from the main line. It is at this location that the parolysis of the fire was most severe and that the extent of damage was confined. The lowest point demarcation of the fire was limited to the corner of the basement where the service panel was.

An inspection of the panel revealed, upon removing the cover, that behind the panel the top portion of the panel sustained high heat and the main service breaker was melted. The panel was removed and stored at Mr. Hughes' office.

The panel was never installed tight up against the foundation wall. The new panel had approximately a 3 inch gap behind it where it was attached to a pine board and with the help of wood blocking the panel it was secured to the wall. This blocking and board behind the panel was ignited with severe parolysis and consequently ignited the exterior sheathing boards and floor joists in the front left corner of the house.

While the fire never broke through the floor system, it did break through the outer sheeting and exterior siding of the dwelling and the front corner of the house allowed the fire to spread. A pile of firewood in the front corner of the dwelling just adjacent to the meters provided additional fuel for the fire.

As part of the inspection, an inventory of all electrical appliances in the house that were on or being used at the time was completed by Mr. Hughes. Mr. Eldon young who installed the new meter was present for this study. A general inspection of the house was also completed including an inspection of all the different utilities in the basement.

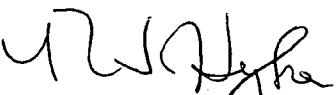
## 2.0 CONCLUSIONS

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Based on the physical evidence at the site, an interview with the power supplier Unilec plus a review of the electrical panel and service entrance and the load on the system, it is my professional opinion that :

1. The cause of the fire was a failure of the Challenger Service panel;
2. The limit of damage of the service panel was confined to the 200 amp main breaker circuit;
3. The installation of the new meter into the home and service panel was not the cause of the problem;
4. The wiring of the service was not a cause nor was there a specific line overloaded;

The above conclusions are made with a high degree of Engineering certainty.



Richard T. Hughes, P.E.  
October 28, 1998

#### 4.0 REFERENCES

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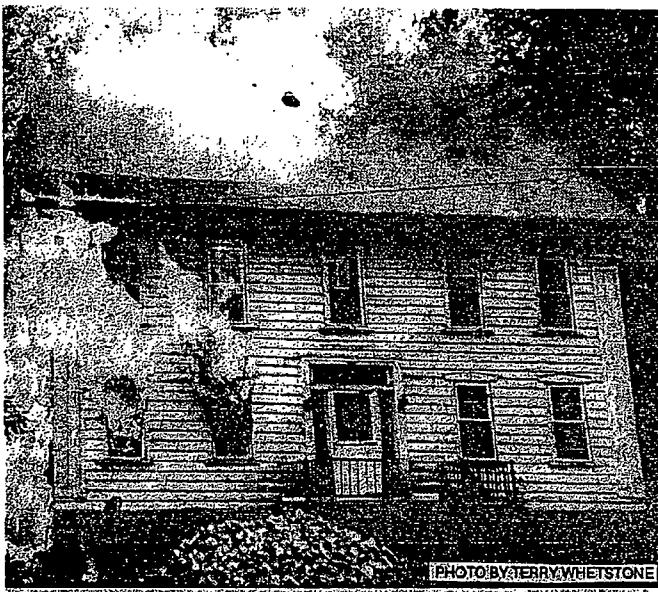


PHOTO BY TERRY WHETSTONE  
people lost their home in this three-alarm blaze  
broke out Saturday morning at the Mark Swan resi-  
in Ansonville

## Ansonville fire leaves see people homeless

By Terry Whetstone  
Correspondent

ANSONVILLE — A three-alarm structure fire that summoned fire companies from across Clearfield County broke out late Saturday morning at the Mark Swan residence located on TR 425 in Ansonville.

See people lost their home, and the Clearfield Chapter of the American Red Cross has issued an appeal for clothing and financial aid.

State police fire marshal at Punxsutawney has ruled the fire as accidental and started near the electrical service panel in the basement. Estimated loss is \$230,000.

The fire was reported to Clearfield County 911 at about 9:20 a.m. A Glen Hope and Glendale fire companies were dispatched within a minute.

Glen Hope Deputy Fire Chief Dave Camburg was the first to arrive at the scene and reported a working structure fire. Thick

## Ansonville

(From Page 1)

black smoke could be seen from as far away as Berwindale. Homeowner Mark Swan, who is nearly blind, said he's lain in the living room on fire and informed his foster many years, Helen Shaffer, to get out of the house. The the home. The other resident, caretaker Reba Tubbs, was home when the fire broke out.

The house, over 100 years old, had a metal roof on it over of what was believed to be the original roof, which has firefighters' efforts. Ms. Tubbs said the home was full of memorabilia, most of which were lost in the fire.

Mr. Swan's guide dog escaped the fire, as did Ms. Tubbs.

After fighting the fire for nearly three hours, Glen Hope firefighter Nathan Dotts emerged from the structure with

With her face peeling, Ms. Tubbs said, "That's my Pa thought he was gone, he's blind, you know," explaining she he would not be able to escape the fire. Mr. Dotts found in portion of the house that received only heavy smoke and damage.

Irvona Deputy Fire Chief Mike Rusnak was in command fire, and called in reinforcements to relieve those at the Crews were on scene for a total of five hours and 10 minutes.

Assisting Irvona were: Glen Hope, Glendale, Madera, Ramey, Mahaffey, Curwensville and Osceola Mill companies.

The Irvona Volunteer Ambulance and Irvona Volunteer Police responded and the Clearfield Chapter of the American Red Cross held a canteen.

On stand-by were: Glen Campbell, Westover, Grampian, Ridge and Ashville fire companies.

Crews were in quarters and still cleaning equipment for one hour when they were dispatched again to the site for a fire. Irvona, Glen Hope and Glendale companies were dispatched along with Irvona ambulance.

Crews were at the scene a second time for two hours and 15 minutes.

No serious injuries were reported.

The American Red Cross has issued the following appeal to residents:

Clothing sizes: man's top, 16 or XL; man's pants, 36 or 38 man's coat, XL; women's top: 18 or 20 and XL; women's pants, 16 and 20; woman's shoes, 9, 9 and 1/2 and 10.

Financial donations for this and other disasters may be made to: Clearfield Chapter, American Red Cross, 309 W. Locust

Turn to Page 6, Col. 2

APR 16 1978

THE DAILY

114 00014



**ALL FIRES**  
FIELD NOTES 906-1

AGENCY	FILE NUMBER
--------	-------------

INCIDENT		ADDRESS/LOCATION	TIR 425 ANSONVILLE, PA	DAY 10	DATE 4	TIME 9:20 AM	FIRE DEPT. INCIDENT NO.	
WEATHER AT TIME OF FIRE	GENERAL CONDITIONS WARM CLEAR				TEMP. 55	WIND DIR. —	WIND SPEED —	
PROPERTY DESCRIPTION	STRUCTURE (906-2) <input checked="" type="checkbox"/>	VEHICLE (906-3) <input type="checkbox"/>	WILDLAND (906-4) <input type="checkbox"/>	OTHER <input type="checkbox"/>				

OWNER/OCCUPANT		
OWNER'S NAME	MR. MARK SWAN	PHONE NO. 814 277-6416
OWNER'S ADDRESS	TR 425 ANSONVILLE, PA	
OCCUPANT'S NAME	SAME	PHONE NO.
OCCUPANT'S ADDRESS		
DOING BUSINESS AS		PHONE NO.

NOTIFICATION FOR INVESTIGATION				
DAY 10/16/98	DATE	TIME	FROM WHOM	MAT Thomas
RECEIVED BY Richard HUGHES				ASSIGNED TO Richard HUGHES
ARRIVED AT SCENE 10/18/98	DAY 10/18/98	DATE 11:00 AM	TIME	SCENE SECURED <input type="checkbox"/> NO (COMMENT ON CONDITION) <input checked="" type="checkbox"/> YES (BY WHOM):
AUTHORITY TO ENTER	EMERGENCY <input checked="" type="checkbox"/>	CONSENT <input checked="" type="checkbox"/> VERBAL <input type="checkbox"/> WRITTEN	WARRANT <input type="checkbox"/> ADMIN. <input type="checkbox"/> CRIM.	OTHER (Describe)
DEPARTED SCENE 10/18/98	DAY 10/18/98	DATE 11:50	TIME	COMMENTS Did not take any evidence on 1st visit

OTHER AGENCIES INVOLVED			
FIRE DEPT. <i>IRVONA</i>	INCIDENT NO.	CONTACT PERSON <i>FIRE CHIEF MIKE RUSNAK</i>	PHONE NO.
POLICE DEPT.	FILE NO.	CONTACT PERSON	PHONE NO.
OTHER	CASE NO.	CONTACT PERSON	PHONE NO.

ESTIMATED TOTAL LOSS	
\$ 230,000	ESTIMATED BY Insurance carrier

**EVIDENCE**  
FIELD NOTES 906-7

AGENCY

FILE NUMBER

## DESCRIPTION

## WHERE FOUND/WHEN

## REMOVED TO/BY

1. 200 AMP SERVICE PANEL BASEMENT WALL 11/10/98 OFFICES OF RICH HUGHES  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_  
5. \_\_\_\_\_  
6. \_\_\_\_\_  
7. \_\_\_\_\_  
8. \_\_\_\_\_  
9. \_\_\_\_\_  
10. \_\_\_\_\_  
11. \_\_\_\_\_  
12. \_\_\_\_\_

## REMARKS

THE MAIN BREAKER TO THE PANEL IS  
COMPLETELY MELTED DOWN. THE REST OF  
THE PANEL IS FINE. THE ENTIRE PANEL  
WAS REMOVED AND ALL WIRES COMMING  
INTO PANEL WERE NOT DISTURBED.

## STRUCTURE FIRES

FIELD NOTES 906-2a

AGENCY

FILE NUMBER

## TYPE &amp; STATUS

PROPERTY USE

Residential Dwelling

STATUS (OCCUPIED, UNOCCUPIED, VACANT)

OCCUPIED

COMMENTS

3 PEOPLE LIVED THERE  
NO TWO RELATED

2 DISABLED

## AREA DESCRIPTION

 RURAL  FARM  URBAN  SUBURBAN  OTHER ZONED  UNZONED  IMPROVING  DECLINING  STABLE  OTHER

## CONSTRUCTION

FOUNDATION

 SLAB  CRAWL SPACE  BASEMENT(S)  OTHER

DIMENSIONS

40 FT. LENGTH 30 FT. WIDTH 25 FT. HEIGHT 2 STORIES 1 NO. UNITS

TYPE OF CONSTRUCTION EXTERIOR WALLS INTERIOR WALLS FLOORS ROOF  
Timber PLASTER LATH Wood Wood / Asphalt Shingles

## SECURITY (Time of Fire)

DOORS  SECURE  NOT SECURE PER:WINDOWS  SECURE  NOT SECURE PER:OTHER  SECURE  NOT SECURE PER:

COMMENTS ON SECURITY

## ALARM/PROTECTION SYST.

ALARMS  YES  NO TYPE ALARM

ALARM COMPANY CONTACT PERSON PHONE NO.

COMMENTS

PROTECTION SYSTEMS  YES  NO  OPERATED  DID NOT OPERATE COMMENTS

DESCRIPTION OF SYSTEM(S)

## UTILITIES (Time of Fire)

ELECTRIC	<input checked="" type="checkbox"/> ON <input type="checkbox"/> OFF	UTILITY COMPANY NAME Uni LEC	CONTACT	PHONE NO. 814 371-8570
GAS	<input type="checkbox"/> ON <input type="checkbox"/> OFF	UTILITY COMPANY NAME	CONTACT	PHONE NO.
WATER	<input checked="" type="checkbox"/> ON <input type="checkbox"/> OFF	UTILITY COMPANY NAME	CONTACT	PHONE NO.
PHONE	<input checked="" type="checkbox"/> ON <input type="checkbox"/> OFF	UTILITY COMPANY NAME	CONTACT	PHONE NO.
OTHER	<input type="checkbox"/> ON <input type="checkbox"/> OFF	UTILITY COMPANY NAME	CONTACT	PHONE NO.

**STRUCTURE FIRES**  
 FIELD NOTES 906-2b

AGENCY

FILE NUMBER

**EXTERIOR OBSERVATIONS**

Front corner NEAR ELECTRICAL Entrance  
 meter severely DAMAGED.

**INTERIOR OBSERVATIONS**

SMOKE SOOT THROUGH out HIGH heat on  
 1ST FLOOR NO DAMAGE TO BASEMENT other than  
 panel lowest DEMARCACTION IS JUST ABOVE PANEL IN BASEMENT.

**HEATING SYSTEM**

TYPE	Wood / Coal hot water	LOCATION
COMMENTS	Not DAMAGED Not ON IN OPERATION.	

**ELECTRICAL SERVICE**

<input type="checkbox"/> FUSES	<input checked="" type="checkbox"/> BREAKERS	ENTRY LOCATION	SERVICE PANEL LOCATION
COMMENTS		SIDE front of house	Front corner of Basement
		200 Amps Challenger Panel installed in April 1994	

**OTHER HEATING EQUIP.**

TYPE(S)	LOCATION
COMMENTS	

**STRUCTURE CONTENTS**

COMMENTS
FURNISHINGS

**AREA OF ORIGIN**

COMMENTS
THE AREA OF ORIGIN WAS behind the <del>base</del> SERVICE PANEL IN BASEMENT. THE PANEL HEATED UP AND IGNITED THE PINE BOARD BEHIND THE PANEL CAUGHT FIRE AND DUE TO A SPACE BEHIND THE BOARD ON STONE WALL IT CAUGHT THE joist

## STRUCTURE FIRES

FIELD NOTES 906-2c

AGENCY

FILE NUMBER

## IGNITION SEQUENCE

HEAT SOURCE

Electrical Main Ave to failed 200 amp Breaker

MATERIAL IGNITED

Wood Attachment Boards

IGNITION FACTOR

Failed Breaker

IF EQUIPMENT INVOLVED

MAKE Challenger

MODEL

SERIAL NO.

COMMENTS

the main breaker in box failed causing panel to overheat. carrying less than 60 amp of draw was on panel at time of failure.

## FIRE SPREAD

MATERIALS

soft pine boards behind panel ignited and caught

AVENUES

Floor joist and exterior sheathing.

COMMENTS

IF PANEL WAS TIGHT TO STONE WALL SPREAD MIGHT  
NOT HAVE BEEN AS SEVERE.

## SMOKE SPREAD

MATERIALS

Through out residence goes into upstairs

AVENUES

OPEN STAIR CASE

COMMENTS

THE 1ST FLOOR SUSTAINED HIGH HEAT IN FRONT  
ROOM AND SMALL KITCHEN AND SOOT IN DALLAS.

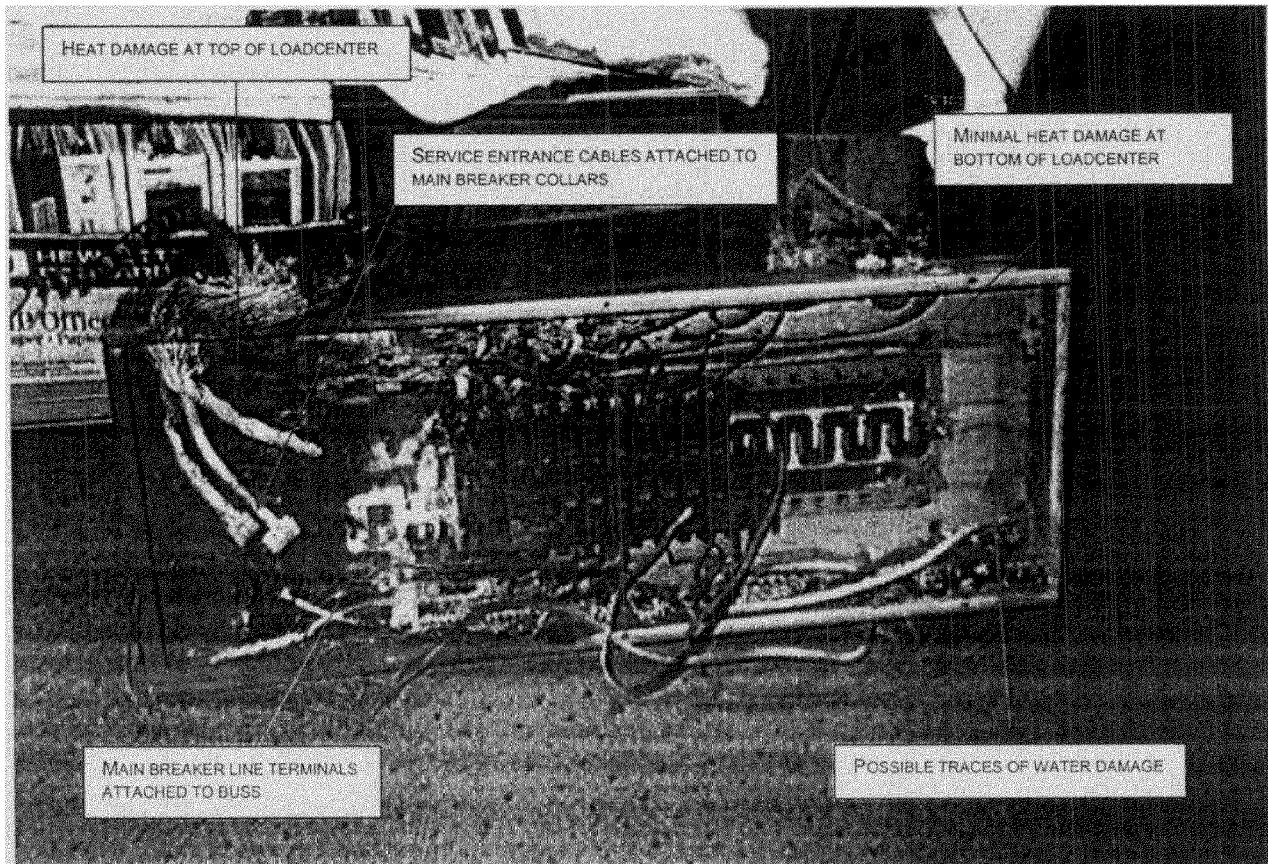
## REMARKS

THE DAMAGE TO THE SERVICE PANEL IS  
RESTRICTED TO THE MAIN BREAKER ONLY. THE  
BACK OF THE PANEL SUSTAINED HIGH HEAT AND IGNITED  
THE WOOD PANEL. THE AMOUNT OF CURRENT  
FROM THE SERVICE FEED COULD HAVE REACHED 300 AMPS.  
THE PANEL WAS REMOVED AND SECURED FOR  
EVIDENCE.

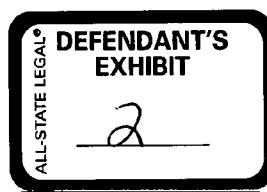
Comments as related to retained loadcenter in Everett-Cash Mutual vs Cutler-Hammer litigation:

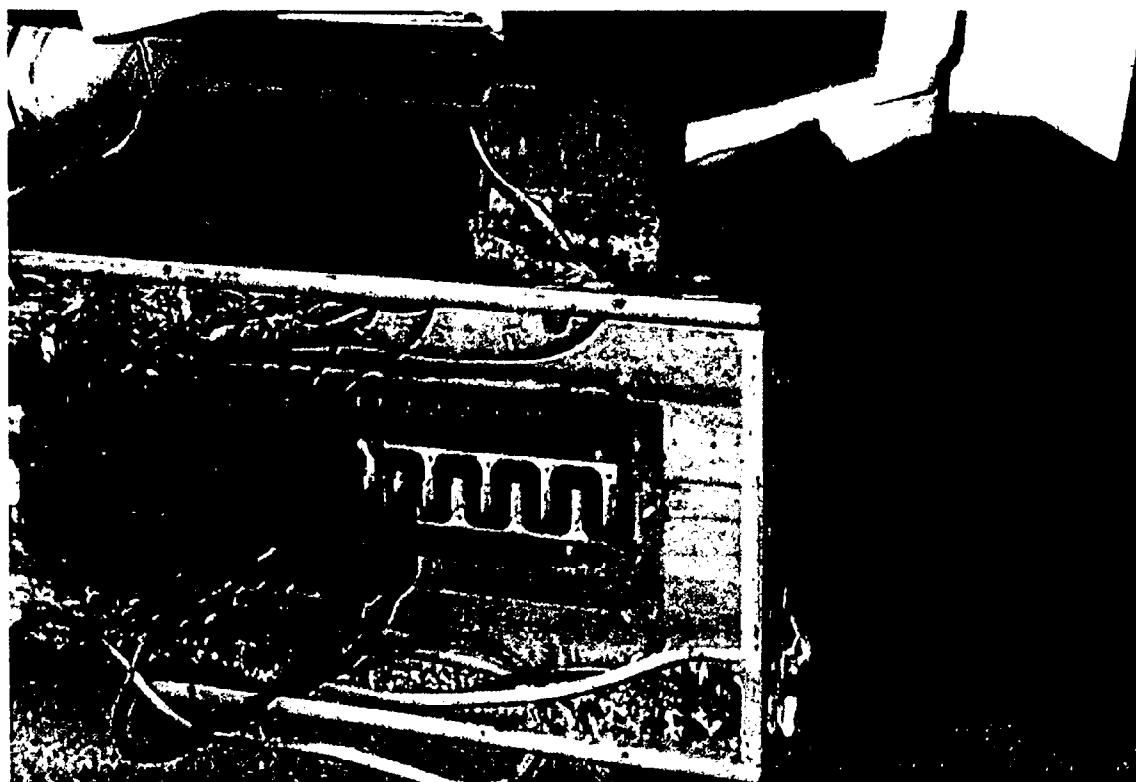
Panel Description: 200A - 40 space panel

Main Breaker: QFP2200 (can not be confirmed)

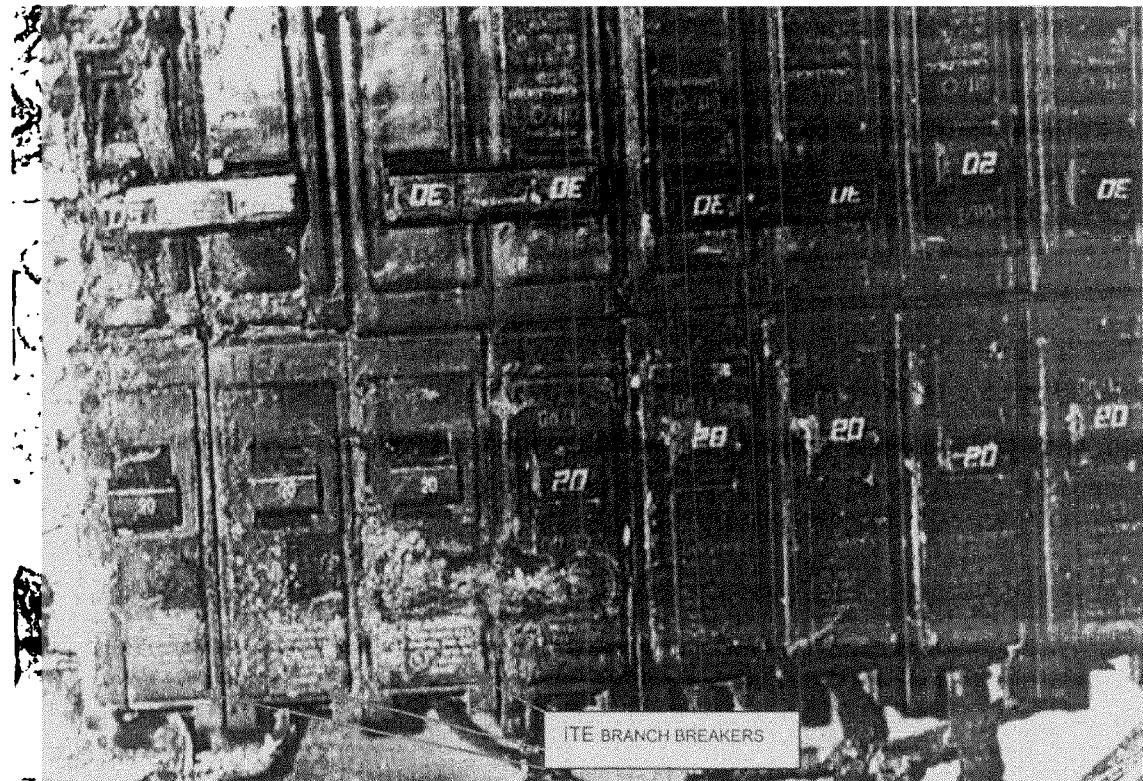


- ⇒ Most heat damage at top end of panel ... with the exception of loadcenter buss connections and service wire connections, main breaker has been completely destroyed by fire

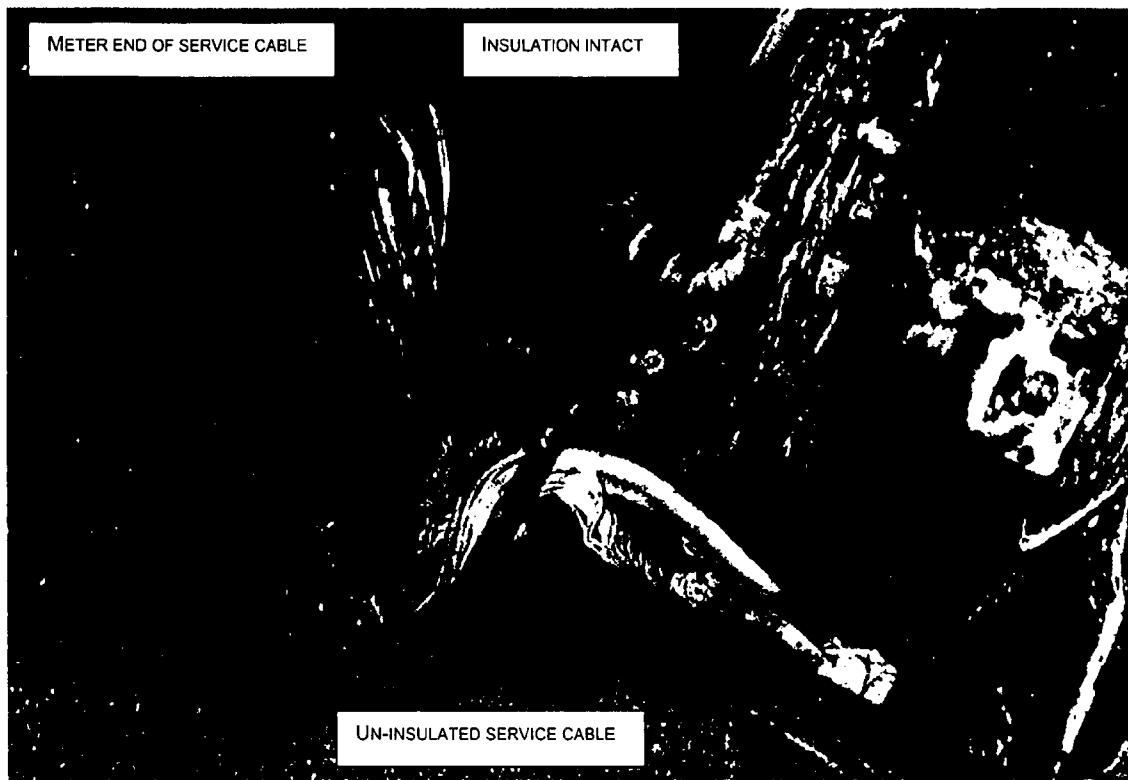




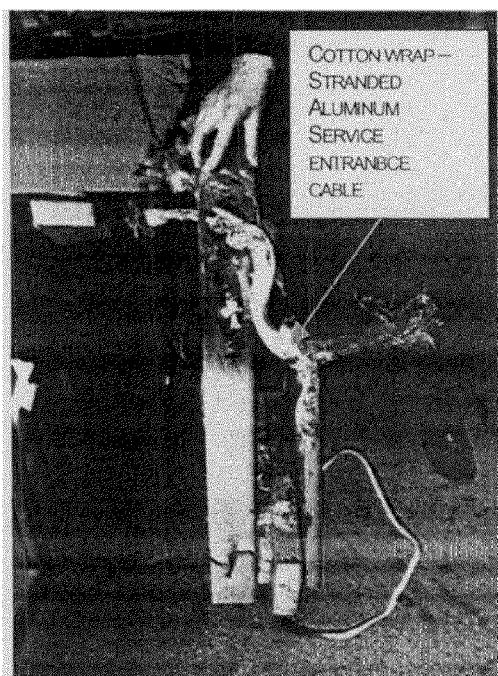
- ⇒ Degree of interior damage to loadcenter decreases as you progress towards bottom of panel



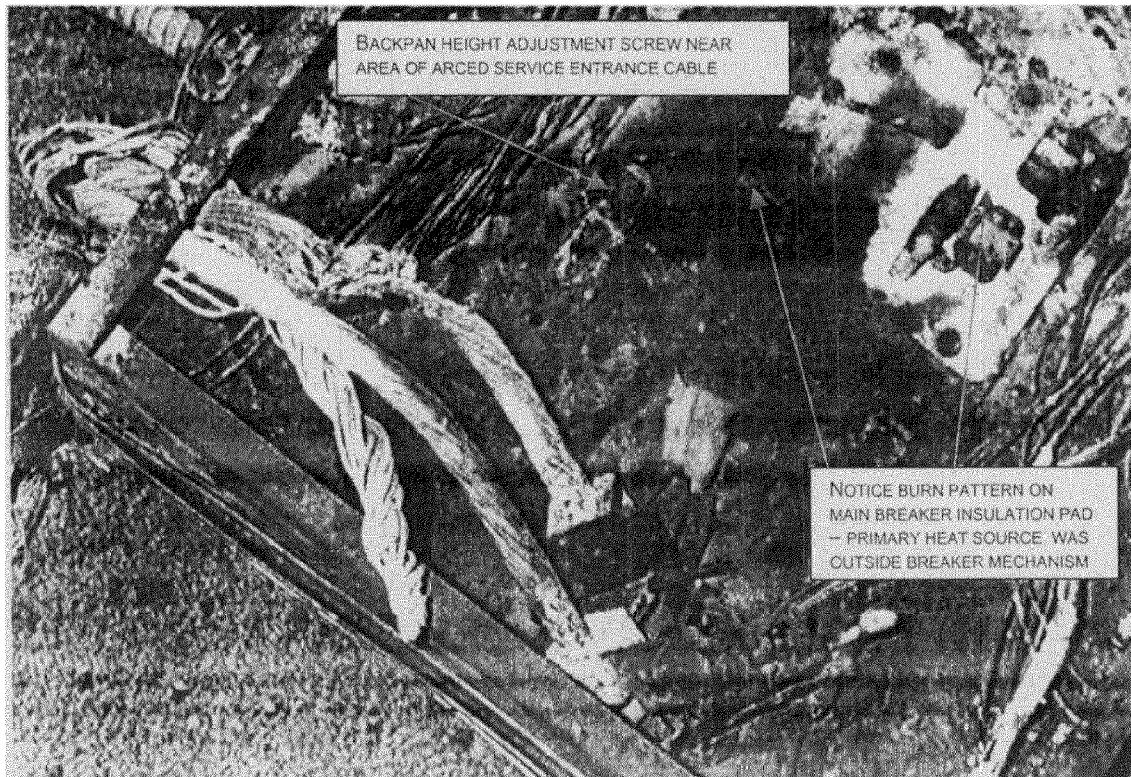
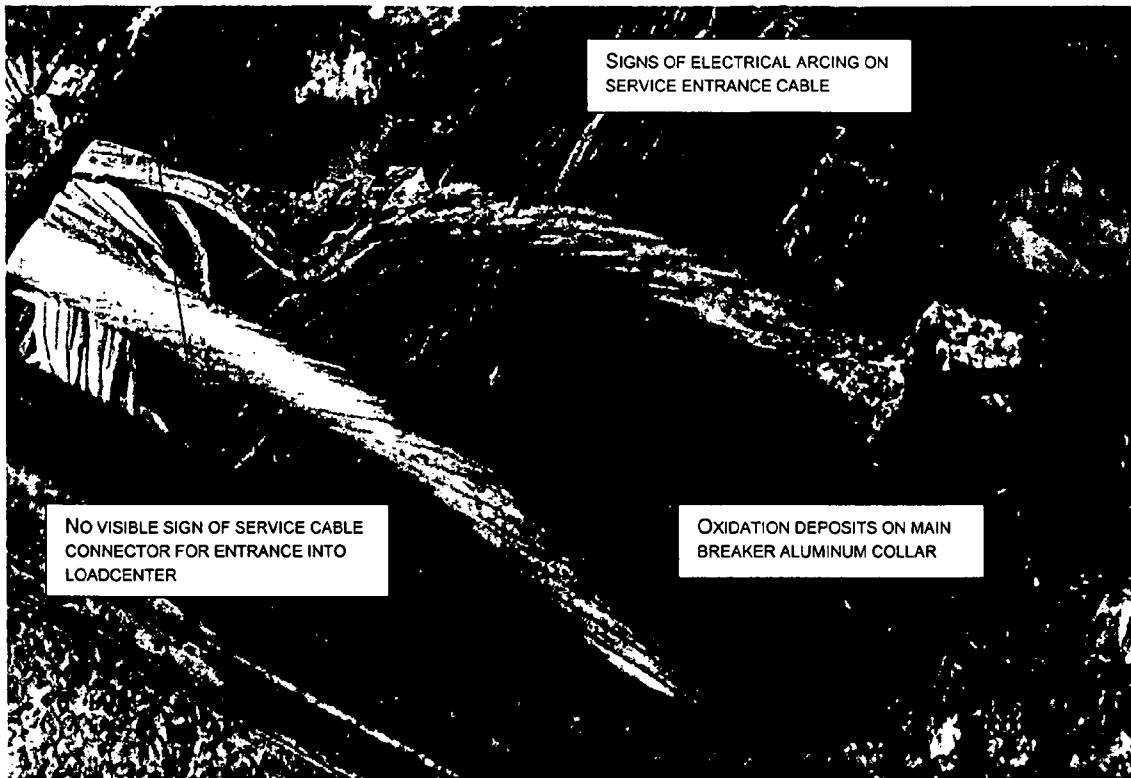
- ⇒ (3) Three ITE Type QP breakers were mounted next to main along left buss ... these breakers are not Classified for use in this panel
- ⇒ Challenger branch breaker date codes range from February 1992 to June 1993

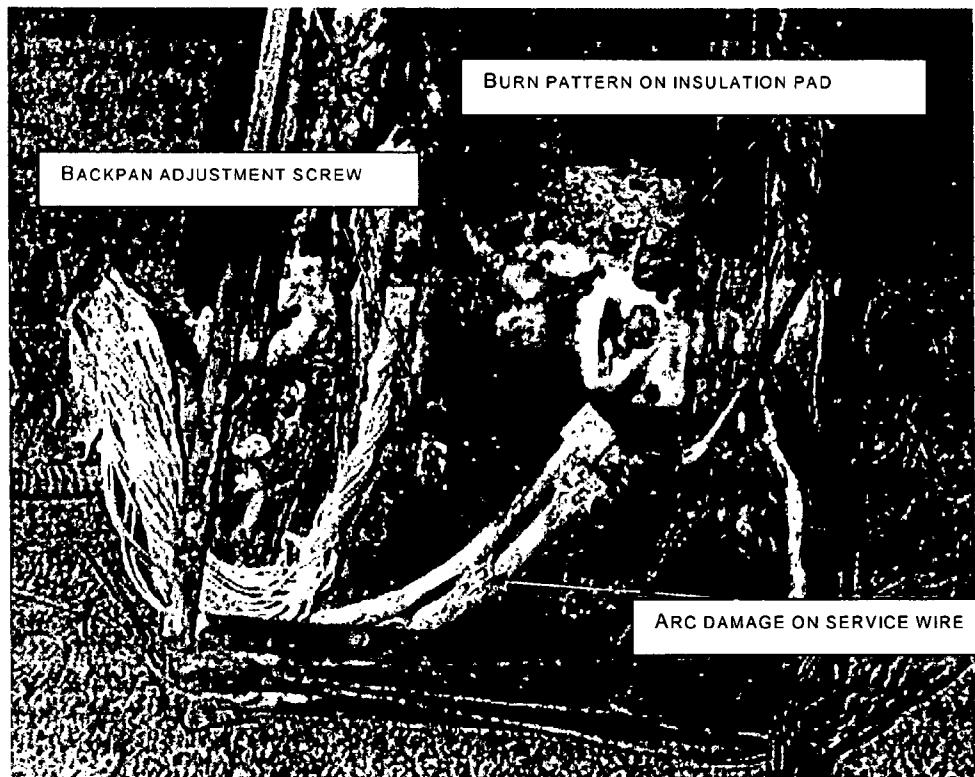


- ⇒ Aluminum service wire was still attached to line collars of main breaker, wires had been cut between main breaker & meter ... insulation of service wire was still intact at meter end, whereas insulation of service wire has been completely destroyed (melted away) at main breaker collar connection ... insulation damage extended approximately 12" to 18" from collar connection (both inside & outside panel)

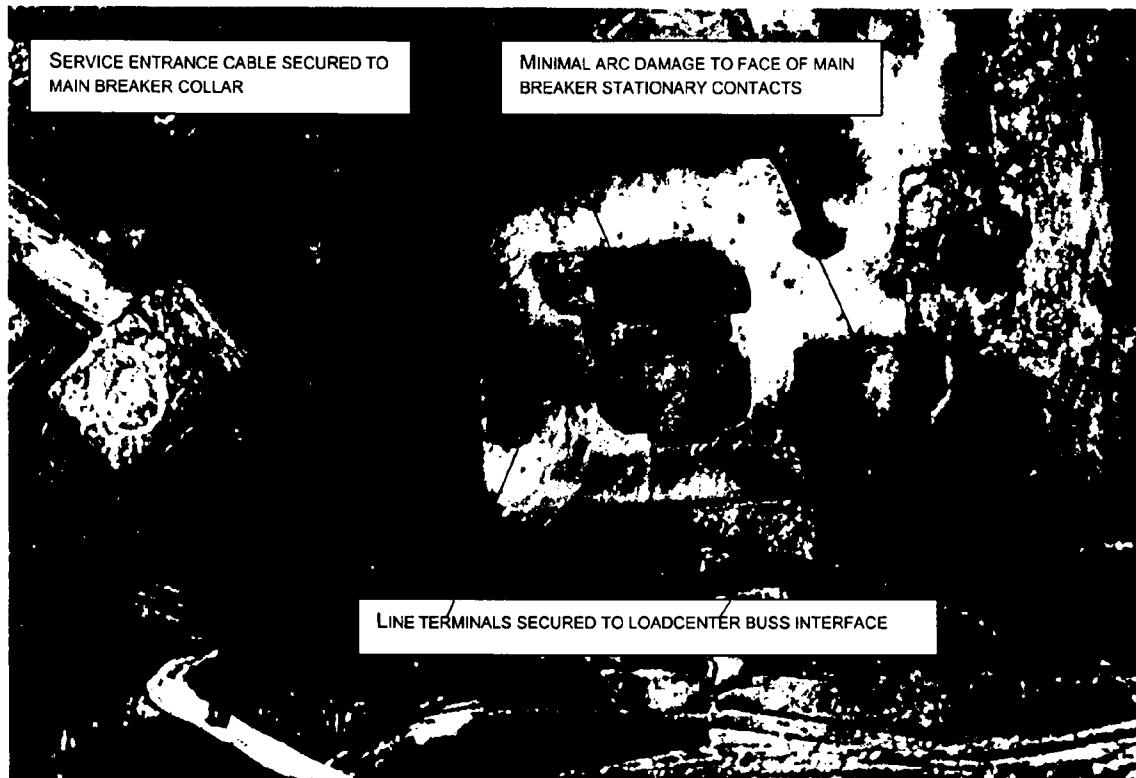


- ⇒ Must question the vintage of the cotton wrapped, stranded aluminum service entrance cable ... cotton wrap service entrance cable was dis-continued in the 1970's





- ⇒ Service phase wire exhibits signs of significant electrical arcing at entrance to panel ... stranded aluminum wire has melted through approximately 1/2 the wire diameter ... appears to have shorted to ground (may have arced to backpan adjustment screw)
- ⇒ Oxidation deposits on main breaker aluminum collars



- ⇒ Minimal arcing on stationary & moving contacts that remain intact in panel ... breaker did not appear to overheat due to load interruption
- ⇒ Main breaker buss connections appear to remain firmly attached to panel buss ... this would indicate breaker did not over-heat due to loose buss connection (opposing lawyer would not allow me to verify how well connections were attached to buss)



BACK VIEW



BACK VIEW



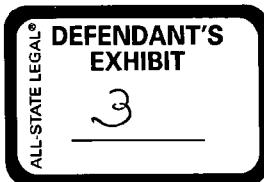
SIDE VIEW

Other Comments:

- ⇒ Could not clearly identify panel ground wire ... there was a spliced piece of stranded wire attached to neutral bar that could not be associated with another circuit
- ⇒ Loadcenter cover was not available for review
- ⇒ Meter was not available for review
- ⇒ Richard Hughes could not confirm if loadcenter main breaker was changed-out at time of new meter installation

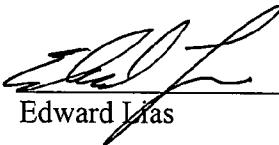
**AFFIDAVIT OF EDWARD LIAS, CUTLER HAMMER INC. NOW KNOWN AS**  
**EATON ELECTRICAL INC.**

1. I am Edward Lias, Senior Designer Engineer for miniature circuit breakers for Eaton Electrical Inc., a wholly-owned subsidiary of Eaton Corporation.
2. Pursuant to my employment I was requested by a member of Eaton Corporation's Law Department to examine a loadcenter, which was in the possession of Richard Hughes, engineer retained by Everett-Cash Mutual, the insurer of the home owned by Marcus Swan and Thelma Lynch.
3. My inspection occurred at Hughes' office on February 4, 2000 in the presence of Richard Hughes, Plaintiffs' consulting engineer, and counsel for Plaintiffs.
4. I took no notes during this inspection but only photographs, attached hereto as Exhibit "A" and incorporated by reference herein.
5. I was not permitted to touch or examine the evidence except to place it in an appropriate position in order to take its photograph.
6. It was understood by all involved that a more rigorous inspection would occur at a later time.
7. My task was to conduct a preliminary evaluation to (1) identify the product and (2) render a preliminary opinion as to whether the subrogation claim would be contested.
8. Although I am familiar with QFP breakers, this is not the product line which I use or work with.
9. Although I requested an opportunity to check the breaker-buss connection, opposing counsel refused to permit me this inspection. (See Exhibit "A", page 6 description) This inspection is essential in determining whether the breaker overheated due to a loose connection.
10. I would have wanted to investigate this potential cause further since the breakers used in the panel were not classified for use in this panel.
11. I also found preliminary evidence of arcing, a cause that would not be attributable to a circuit breaker defect.
12. Further, other components necessary for determination of the cause of the fire were not available for inspection including the loadcenter cover as well as the meter.



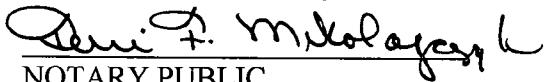
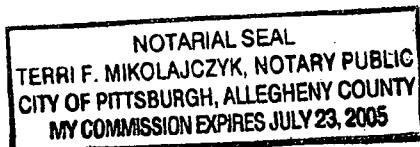
13. Because I was not permitted to handle the components or to perform a microscopic analysis, I expected that either another engineer or I would be provided an opportunity to return and test the components at some time in the future.
14. Mr. Hughes agreed that further inspection opportunities would be provided.

I aver that the aforementioned statements are true and correct to the best of my knowledge and belief.

  
Edward Lias

Sworn to and subscribed before me

this 17 day of December, 2003.

  
NOTARY PUBLIC

*Richard T. Hughes, P.E.*  
*Consulting Engineer*  
506 Krebs Avenue  
Clearfield, PA 16830  
(814) 765-8691  
Fax(814) 765-8692

Pfaff, McIntyre, Dugas, Hartye & Schmit  
ATTN: Heather A. Harrington, Esq.  
PO Box 533  
Hollidaysburg, PA 16648

March 31, 2000

RE: Everett Cash Mutual Ins. Co. vs. Eaton

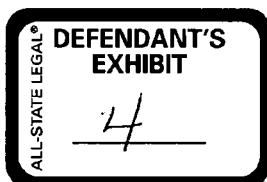
Dear Ms. Harrington:

Acknowledged receipt is made of the Bowman & Brooke, LLP letter dated March 15, 2000. In this letter Attorney Michael J. Mehall rejects my ascertation that the cause of the fire was due to a failure within the electrical panel. Mr. Mehall states that "Evidence of a breaker malfunction is typically evidenced by: 1) arcing at the contacts; 2) loose buss connections; or 3) signs of overheating at the service collars."

My initial report did not specify the exact element of failure in the panel. I am writing today to state that the cause of the fire was due to overheating and failure of the one leg of the service entrance cable and the breaker to which it is attached. My opinion is based on the fact that the damage in the service panel was limited to the main breaker and a branch breaker and the main breaker was completely destroyed and disintegrated.

Mr. Mehall's indication in paragraph two of his letter that there is no damage to the branch breakers is false. One 50 amp, two-pole branch breaker is deteriorated. Therefore, the defect is not upstream of the breakers.

I strongly reject that the failure was upstream of the service collars and that the arcing in the one service cable leg was a possible cause and the arcing was due to movement. While admittedly the service cable did not have a cable connector as it passed into the panel, which is a NEC violation, the arcing in the one cable occurred after the main breaker completely disintegrated and the cable sprung back into contact with the panel cover plate. No arcing occurred near the edges of the panel where the cables initially enter the panel.



Page Two  
March 31, 2000  
Ms. Harrington

Finally, Mr. Mehall questions my experience and background with regards to electrical issues. My entire career in building design has included the design of power systems for buildings such as industrial 480/277 volts, three phase four wire services, as well as residential 120/240 single phase three wire and three phase four wire 120/208 volts services. I am a registered professional engineer in six states.

I will make the panel available for more inspection by Mr. Mehall's people if they desire to inspect it further.

Sincerely,



Richard T. Hughes, P.E.

LAW OFFICES  
**MCINTYRE, DUGAS, HARTYE & SCHMITT**

P. O. BOX 533

HOLLIDAYSBURG, PA 16648-0533

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July 14, 2003

**Our Reference: ECM 243 SH**

Diane Barr Quinlan, Esquire  
Olszewski & Quinlan, P.C.  
Henry W. Oliver Bldg., Ste. 614  
535 Smithfield Street  
Pittsburgh, PA 15222

Re: Marcus Swan and Thelma Lynch vs. Eaton Corporation,  
Eldon Young and Robert Witherow  
No. 00-1150-C.D.

Dear Ms. Quinlan:

Enclosed are copies of the Cause and Origin Report of Richard Hughes and two supplemental letters from him analyzing additional information.

As to a defense examination of the panel, one did occur on February 4, 2000. It was conducted by a Mr. Ed Lias. It was arranged by Mr. Mike Mehall of Bowman and Brooke. We never received a formal report, just a letter from Mr. Mehall dated March 15, 2000 setting forth some criticisms. I trust that you have that document. I have called Mr. Hughes and as soon as he gets back to me with details on how to arrange another inspection, I will advise.

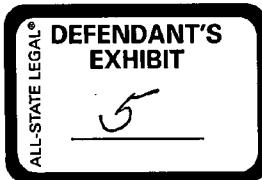
Sincerely,

*Heather A. Harrington*

Heather A. Harrington

HAH/hah

44-10  
DBQ  
Re: 100-  
Inspech



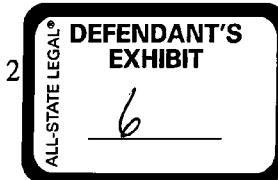
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH, ) CIVIL DIVISION  
  )  
Plaintiffs,                         ) No. 00-1150-CD  
  )  
vs.                                    )  
  )  
EATON CORPORATION,                 )  
ELDON YOUNG and                    )  
ROBERT WITHEROW,                    )  
  )  
Defendants.                         )

ANSWERS TO  
INTERROGATORIES DIRECTED TO PLAINTIFFS

Thomas & Betts Corporation, indemnitor of Eaton Corporation pursuant to the January 31, 1994 Purchase Agreement between Thomas & Betts Corporation and Eaton Corporation, by its attorneys OLSZEWSKI & QUINLIN, P.C. and DIANE BARR QUINLIN, ESQUIRE demand that Plaintiffs file full, complete and verified written answers to the following Interrogatories within thirty (30) days after the date of service hereof. These Interrogatories shall be deemed to be continuing so as to require Supplemental Answers under oath if the above-named individual(s), the Plaintiffs' attorneys or representatives, obtain further information not contained in the answers to the following Interrogatories between the time answers are served and the time of trial.

*Ans to  
Fony  
10/21/17*



14. Provide all facts in your possession forming the basis of the contention that Eaton improperly designed the service panel (circuit breaker/circuit board) so as to allow one branch of the service entrance cable and the breaker to which it was attached to overheat and fail as contended in Paragraph 19 of the Complaint.

ANSWER:

**Please see the attached expert reports of Mr. Hughes.**

15. Describe all facts in your possession leading you to conclude that Eaton negligently manufactured the service panel (circuit breaker/circuit board).

ANSWER:

**Please see the attached expert reports of Mr. Hughes.**

16. Provide the chain of custody of the service panel (circuit breaker/circuit board) from the time the fire occurred on October 4, 1998 to present.

ANSWER:

**The panel was examined by Mr. Hughes at the scene and removed by him to his place of business. Based on information from Mr. Hughes, the panel has been discarded. Therefore, its current whereabouts are unknown. However, it was examined by Mr. Lias, an engineering expert, on behalf of the defendant Eaton Corporation.**

17. Upon whose direction was the service panel (circuit breaker/circuit board) destroyed? Please delineate upon whose authority Richard Hughes destroyed the service panel and the date upon which it was destroyed. Produce any writing, if one exists, that directs the destruction of the service panel (circuit breaker/circuit board).

ANSWER:

**Mr. Hughes was not directed by anyone to destroy the service panel. It is understood that Mr. Hughes contends that a representative of Everett Cash Mutual directed him to discard the panels so as to avoid future storage costs. No writings exist, to the knowledge of the plaintiffs.**

18. Identify each person/entity who had possession of the service panel beginning on October 4, 1998 including and up to the time the service panel was destroyed.

ANSWER:

**Please see the answer to the prior Interrogatories.**

19. Identify each person/entity who had possession of the service panel door beginning on October 4, 1998 including and up to the time the service panel door was lost or destroyed.

ANSWER:

**Please see the answers to the prior Interrogatories.**

VERIFICATION

I, WILLIAM SWAN, do hereby verify that I have read the foregoing ANSWERS TO INTERROGATORIES DIRECTED TO PLAINTIFFS. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

William Swan  
William Swan

Date: Oct 28, 2003

VERIFICATION

I, MARTHA STEPHENS, do hereby verify that I have read the foregoing **ANSWERS TO INTERROGATORIES DIRECTED TO PLAINTIFFS**. The statements therein are correct to the best of my personal knowledge or information and belief.

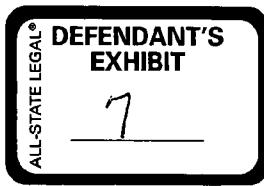
This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Martha Stephens  
Martha Stephens

Date: 10-28-03

**AFFIDAVIT OF WALTER A. DRAGUS, TECHNICAL SPECIALIST**

1. I am Walter A. Dragus, a Technical Specialist employed by Thomas & Betts Corporation with a specialization in electrical connections & wiring devices. I have worked in this field for 39 years.
2. As Technical Specialist for Thomas & Betts, I am called upon to examine products which have been implicated in failures in order to evaluate the probability of the alleged failure. I have conducted these examinations subsequent to a claim being made or litigation being commenced.
3. I have been asked to investigate a product that was involved in a residential fire in Irvona, Pennsylvania on October 4, 1998 in order to determine if the circuit breaker was defective as alleged by plaintiffs. The product has been identified by the plaintiffs as a 40 circuit electrical service breaker panel, ITE Type QP breaker, (hereinafter "circuit breaker") and has been implicated by plaintiffs as the cause of the fire.
4. It is my understanding that the product which had been in the custody of plaintiffs' expert has been disposed of and is not longer available for inspection.
5. In order to make an evaluation of the potential causes of the residential fire in Irvona, Pennsylvania on October 4, 1998, I would complete the following activities:
  - a. Examine and analyze the entrance cable stranding and associated arcing patterns in order to determine if the electrical damage was upstream and above the circuit breaker and therefore not attributable to a defective circuit breaker. I cannot conduct this examination and analysis because the evidence has been destroyed.



- b. Examine the circuit breaker, buss, service entrance cable and panel to determine if there was evidence of insect or rodent activity. Such evidence would indicate if the service connector was properly installed to prevent the intrusion of insects or rodents. The presence of insects or rodents and/or evidence of their activity could be indicative of an alternative cause of the fire. I cannot conduct this examination because the evidence was not originally preserved.
- c. Check for visible or apparent water entrance patterns inside the panel. This can be evidence of poor installation which can cause arcing. Such arcing could have caused the fire of October 3, 1998, instead of the circuit breaker as alleged by plaintiffs. I cannot conduct this examination and analysis because the evidence has been destroyed.
- d. Investigate the structural integrity of the service entrance conductors entering the main circuit breaker and neutral ground buss. Even though Mr. Lias was permitted to make an initial visual observation of the buss connections, such observation cannot be verified or disproved without an actual physical examination and manipulation of the evidence. I cannot conduct this examination and analysis because the evidence has been destroyed.
- e. Investigate the integrity of the main circuit breaker's connection to the branch circuit buss. This examination would rule out a possible cause of the fire from excessive heat due to a faulty connection, a potential service issue, which could have caused the fire instead of the circuit breaker as

alleged by the plaintiffs. I cannot conduct this examination and analysis because the evidence has been destroyed.

- f. Investigate the degree of degradation (arcing) of the main circuit breaker's stationary and movable contacts to ascertain the structural and electrical integrity of the circuit breaker. If excessive arcing and/or pitting were present in the circuit breaker, this would be evidence of a lack of structural integrity. I cannot conduct this examination and analysis because the evidence has been destroyed.
- g. Analyze the mechanical and electrical integrity of the service entrance cable located on the outside of the residence and connected to the electrical panel inside the home. The integrity and quality of the service entrance cable is important because its outerjacket or covering could be easily compromised if it was old or its construction was degraded. This analysis could potentially reveal the source of arcing which caused the fire instead of the circuit breaker as alleged by the plaintiff. I cannot conduct this examination because the evidence was not originally preserved.
- h. Investigate arcing patterns located on the interior sides and rear of the panel enclosure which could identify the location with the greatest damage and, therefore, indicate whether arcing was the cause of the fire. I cannot conduct this examination because the evidence was not originally preserved.
- i. Investigate arcing patterns on the panel cover and door which would identify the location with the greatest damage and provide evidence that

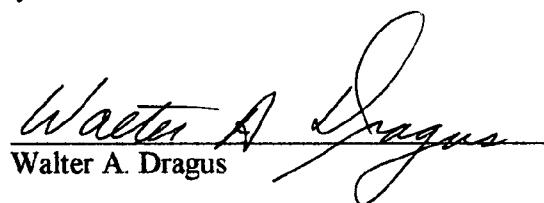
arcing was the cause of the fire instead of the circuit breaker as alleged by the plaintiffs. I cannot conduct this examination because the evidence was not originally preserved.

- j. Investigate the connection and integrity of the branch circuit breakers located at the uppermost portion of the panel and closest to the main circuit breaker location. Evidence of a burn pattern would have shown how much of the circuit breaker panel was involved in the fire. This analysis could have revealed precisely where the fire began and where it traveled. I cannot conduct this examination because the evidence was not originally preserved.
- k. Analyze microscopically the level of oxidation present on all connections within the panel in order to ascertain whether there was a defect within the breaker or whether there was evidence of faulty servicing. I cannot conduct this examination and analysis because the evidence has been destroyed.

6. Each of the aforescribed examinations and analyses require various degrees of magnification and possible metallurgic analysis.

7. The photographs which Mr. Ed Lias was permitted to take at the only opportunity he had to view the evidence along with his comments for each photograph are not sufficient to assist me in the investigation I need to perform to establish the cause of this fire. It is imperative that such an investigation include the manual testing, manipulation and microscopic review of the evidence. The conducting of specific testing would also be expected.

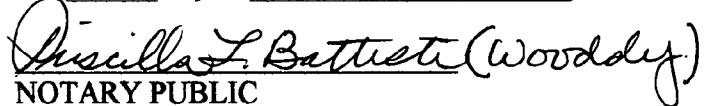
8. This testing was anticipated by Mr. Hughes, plaintiffs' expert engineer, when he noted on March 31, 2000 that he would make the panel available for further inspection. There is no doubt that the panel/circuit breaker was involved in a fire. The above-described investigation would have determined whether the circuit breaker caused the fire or was destroyed by a fire caused by some other mechanism. I cannot conduct this examination because the evidence was not originally preserved or has otherwise been destroyed.



Walter A. Dragus  
Walter A. Dragus

Sworn to and subscribed before me

this 9th day of December, 2003.



Dicella L. Battisti (Woodley)  
NOTARY PUBLIC

Notary Public State of Mississippi At Large  
My Commission Expires: November 11, 2004  
Bonded Thru Helden, Brooks & Garland, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT was served by first class mail, postage prepaid, this 9<sup>th</sup> day of January, 2004, upon the following:

Heather A. Harrington, Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648

Chris A. Pentz, Esquire  
P.O. Box 552  
Clearfield, PA 16830

Eldon Young  
R.D. Box 581  
LaJose, PA 15753

Respectfully submitted,

OLSZEWNSKI & QUINLIN, P.C.

By:

Diane Barr Quinlin, Esquire  
Attorney for Defendant  
Thomas & Betts, indemnitor to  
Eaton Corporation

FILED NO  
11864 cc  
JAN 12 2004  
WES

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,      )      CIVIL DIVISION  
  )  
Plaintiffs,                              )      No. 00-1150-CD  
  )  
vs.                                      )  
  )  
EATON CORPORATION,                      )  
ELDON YOUNG and                        )  
ROBERT WITHEROW,                        )  
  )  
Defendants.                              )

**ORDER OF COURT**

THIS \_\_\_\_\_ day of \_\_\_\_\_, 2004 the Motion for Summary Judgment filed  
on behalf of Eaton Corporation is hereby granted. Eaton Corporation is dismissed from the  
lawsuit with prejudice.

BY THE COURT:

\_\_\_\_\_  
J.

ORDER

~~FILED~~

~~JAN 12 2004~~

William A. Shaw  
Prothonotary/Clerk of Courts

OLSZEWSKI & QUINLIN, P.C.

— ATTORNEYS AT LAW —

OF COUNSEL TO

Harvey, Pennington, Cabot, Griffith & Renneisen, Ltd.

Philadelphia Bryn Mawr New York City San Francisco Wilmington Cherry Hill

January 9, 2004

**Diane Barr Quinlin, Esquire**  
E-mail Address: [quinlin@oq-law.com](mailto:quinlin@oq-law.com)

Dave Meholick  
Court Administrator  
Clearfield County  
230 East Market Street  
Clearfield, PA 16830

Re: Marcus Swan and Thelma Lynch v. Eaton Corporation, Eldon Young and Robert  
Witherow  
No. 00-1150-CD  
Our File No: 112-DQ053603

Dear Mr. Meholick:

Enclosed for filing is the original Brief in Support of Summary Judgment relative to the above-captioned case. I have also enclosed an extra cover sheet to be clocked and returned in the enclosed self-addressed stamped envelope. If you have any questions, please feel free to call me.

Yours truly,

Diane Barr Quinlin

DBQ/mlk

Enclosures

**RECEIVED**

**JAN 12 2004**

**COURT ADMINISTRATOR'S  
OFFICE**

HENRY W. OLIVER BUILDING, SUITE 614  
535 SMITHFIELD STREET  
PITTSBURGH, PENNSYLVANIA 15222  
TELEPHONE: 412-644-0200 FAX: 412-644-0219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH,

CIVIL DIVISION

Plaintiffs,

No. 00-1150-CD

vs.

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

**BRIEF IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

Defendants.

Filed on Behalf of:

**THOMAS & BETTS, INDEMNITOR  
TO EATON CORPORATION**

Counsel of Record for This Party:

**DIANE BARR QUINLIN, ESQUIRE**  
Pa. I.D. No. 30337

**OLSZEWSKI & QUINLIN, P.C.**  
Firm No. 512  
Henry W. Oliver Building, Suite 614  
535 Smithfield Street  
Pittsburgh, PA 15222

Telephone No: (412) 644-0200  
Fax No: (412) 644-0219

**JURY TRIAL DEMANDED**

RECEIVED  
JAN 12 2004  
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OFFICE

OBVIOUSLY

ABOVE 8.5 MM

DETAILED IN THE FIGURE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARCUS SWAN and THELMA LYNCH, ) CIVIL DIVISION  
Plaintiffs, )  
vs. ) No. 00-1150-CD  
EATON CORPORATION, )  
ELDON YOUNG and )  
ROBERT WITHEROW, )  
Defendants. )

**BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Thomas & Betts, Indemnitor to Eaton Corporation (hereinafter "Eaton"), by its attorneys OLSZEWSKI & QUINLIN, P.C. and DIANE BARR QUINLIN, ESQUIRE, files this Brief in Support of the Motion for Summary Judgment of which the following is a statement:

**I. FACTS**

On or about February, 2001 plaintiffs, William H. Swan, Executor of the Estate of Ralph Marcus Swan, and Martha L. Stephens, Personal Representative of the Estate of Thelma S. Lynch, filed a lawsuit against defendants, Eaton Corporation, Eldon Young and Robert Witherow. Plaintiffs contended that on October 4, 1998 a fire occurred at their home which destroyed the structure and its contents. (See Complaint at paragraph 9).

As to Defendant Eaton, Plaintiffs contended that the cause of the fire was an electrical malfunction due to a defective 40 circuit Challenger electric panel manufactured by Eaton. (See Complaint at paragraphs 14 - 15). Defendant Young was accused of the negligent installation of

a drop line in the electrical service meter, "...indicating a failure of the connection which allowed arcing and caused the wooden backing material to ignite." (Complaint at paragraphs 3233). Defendant Witherow was accused of negligently installing the Challenger service panel by attaching it to a pine board and wooden blocking creating a three inch gap between the service panel and foundation wall which, "...when the panel overheated and failed, the heat ignited the board and wood blocking and the fire spread." (Complaint at paragraphs 27-28).

Four days after the fire, on October 8, 1998, a claims representative for Everett Cash Mutual, the insurer of the home, contacted Richard Hughes, P.E. (hereinafter "Hughes"), and asked him to examine the home to determine the cause of the fire. One day later, on October 9, 1998, Hughes inspected the home to determine if Everett Cash Mutual would be able to file a subrogation claim against the entity responsible for causing the fire. Hughes had access to and the ability to examine and inspect the electrical service meter, the service panel and the accompanying service panel door. In his November 10, 1998 report, Hughes stated that his conclusion that the fire was caused by a failure of the Challenger service panel was "...based on the physical evidence at the site...plus a review of the electrical panel and service entrance and the load on the system." (See Hughes' report dated November 10, 1998 attached to the Motion for Summary Judgment as Exhibit "1" and incorporated by reference herein). Based on Hughes' report, Everett Cash Mutual authorized a lawsuit against the aforementioned defendants.

On February 4, 2000 Eaton, at that time known as Cutler-Hammer, was permitted to have an engineer examine the retained loadcenter that was in Hughes' possession. Unfortunately neither the loadcenter cover nor the electrical meter previously examined by Hughes was preserved by Hughes, Everett Cash Mutual or any of their representatives. At the time of inspection, Cutler-Hammer's selected engineer, Edward Lias, was not permitted to touch or

examine the evidence except to place it in position to be photographed. (See photographs of Edward Lias attached to the Motion for Summary Judgment as Exhibit "2" and Affidavit of Edward Lias, Cutler-Hammer, Inc. now known as Eaton Electrical, Inc. attached to the Motion for Summary Judgment as Exhibit "3" and incorporated by reference herein). Lias took no notes but believed that either he or another engineer would at some future date be permitted to perform an extensive analysis of the evidence. For this reason Lias did not dispute Plaintiff's refusal of his request to manipulate a breaker-buss connection. Lias' preliminary conclusion was that there was evidence of arcing, a cause not attributable to a defective circuit. (See Affidavit of Edward Lias, Cutler-Hammer, Inc., now known as Eaton Electrical, Inc. attached to the Motion for Summary Judgment as Exhibit "3" and incorporated by reference herein).

Hughes authored a second report on May 31, 2000. In that report he indicated he would make the panel available for further inspection by Cutler-Hammer. (See March 31, 2000 expert report attached to the Motion for Summary Judgment as Exhibit "4" and incorporated by reference herein). Hughes authored a third expert report on June 12, 2001 reiterating his conclusion that the fire was caused by a faulty panel. (See June 12, 2001 report attached to this Brief in Support of Summary Judgment as Exhibit "A" and incorporated by reference herein).

On or about April 7, 2003, Cutler-Hammer tendered the defense of this case to Thomas & Betts Corporation as purchaser of the Cutler-Hammer product line and indemnitor to Eaton. As early as July, 2003, current counsel requested another inspection and more rigorous examination of the evidence retained by Hughes. (See correspondence dated July 14, 2003 attached to the Motion for Summary Judgment as Exhibit "5" and incorporated by reference herein).

After multiple requests to examine the evidence and permit defense expert, Mr. Walter Dragus, to test it to determine the cause of the fire, counsel was informed that Hughes had destroyed all of the evidence. In their Answers to Interrogatories, Plaintiffs have averred that Hughes discarded the panel on instructions from the insurer, Everett Cash Mutual, so as to avoid future storage costs. (See Answers to Interrogatories filed by Plaintiffs, numbers 16 and 17 attached to the Motion for Summary Judgment as Exhibit "6" and incorporated by reference herein).

The intentional destruction of the only evidence which could enable Eaton to determine the cause of the fire has effectively foreclosed it from both presenting a defense and from challenging Hughes' conclusory statements of fault. Based on the now-destroyed evidence, Hughes and Everett Cash Mutual made a determination to file a lawsuit against Eaton. Hughes was aware of and acknowledged that Eaton would need future opportunities to handle, inspect and test the evidence in his possession. Everett Cash Mutual, a sophisticated insurance company, knew or should have known that in a products liability case, a defendant must have access to the evidence. Despite this knowledge, Everett Cash Mutual instructed Hughes to "save storage costs" by destroying Eaton's sole avenue of defense. Hughes, who knew or should have known, both as plaintiffs' expert engineer and Everett Cash Mutual's agent, that the evidence needed to be preserved, intentionally discarded it and thereby deprived Eaton of any ability to defend itself.

Mr. Walter Dragus, a specialist in electrical connections and wiring devices, had been requested by defense to examine the evidence in order to determine if the circuit breaker was defective. Although Lias' initial impression was that arcing caused the fire and not a defective circuit breaker, the destruction of the loadcenter cover, the meter, the circuit breaker, the neutral

ground buss, service entrance cable and other components has effectively foreclosed any investigation Mr. Dragus could have undertaken. (See Affidavit of Mr. Walter Dragus attached to the Motion for Summary Judgment as Exhibit "7" and incorporated by reference herein).

## **II. LAW - STANDARD OF REVIEW**

Summary judgment may be granted where the pleadings, depositions, interrogatory answers, admissions, affidavits and expert reports show there is no genuine issue as to any material fact and the record entitles the moving party to judgment as a matter of law. Pa. R.C.P. 1035.2; Schroeder v. Commonwealth of Pennsylvania, Department of Transportation, 551 Pa. 243, 710 A.2d 23, 25 (1998).

## **III. PLAINTIFFS' DESTRUCTION OF THE PRODUCT UPON WHICH ITS CLAIM IS BASED REQUIRES THAT SUMMARY JUDGMENT BE GRANTED TO EATON CORPORATION**

The destruction of a product by a litigant who bases their claim on an alleged defect of the product places the defendant, the product manufacturer, in an inherently unfair position. Pennsylvania courts have addressed this spoliation of evidence issue. In Schroeder v. Commonwealth of Pennsylvania, Department of Transportation, 710 A.2d 23 (Pa. 1998) the Pennsylvania Supreme Court adopted a three-part test to determine the sanction to be applied for destruction of evidence. The court found relevant: (1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) the availability of a lesser sanction that would protect the opposing party's rights and deter future similar conduct. Schroeder, *supra*, at 27.

In Tenaglia v. Proctor & Gamble, Inc., 737 A.2d 306 (Pa.Super. 1999), plaintiff, employed as a pharmacist, was injured when attempting to open a cardboard box. It was plaintiff's opinion that excess glue on the box made it distinctive from other boxes of its type.

Plaintiff failed to request that her employer save the box and she took no steps to preserve it. The Superior Court concluded that because plaintiff alleged **that the particular** box was defective, the defendant had to be provided an opportunity to examine the box to determine the cause, nature and extent of the alleged defect. Absent an ability by defendant to inspect the box, the court found that defendant suffered substantial prejudice. Its remedy was to grant summary judgment in favor of the defendant.

The Tenaglia court noted that trial courts must not focus solely on one prong of spoliation test but must balance the facts of the case as to each prong. In Tenaglia the court found that because the alleged defect was unique, destruction of the evidence resulted in severe prejudice to the defendant. The court observed, "When pursuing a cause of action for a manufacturing defect, the preservation of the product is even more crucial than when pursuing an action on the basis of a design defect." Tenaglia at 309. In Tenaglia the court agreed that the manufacturer could not proceed since the product had not been preserved because the nature of the defect required an examination of the product in order to allow the manufacturer an opportunity to rebut plaintiffs allegations. It would be impossible for the defendant to rebut an allegation of too much glue absent the physical evidence of the box itself.

A similar situation occurred in Fox Run Apartments v. General Motors Corporation, 31 D& C 4th 14 (1996) in which a fire in an apartment caused damages. Plaintiff theorized that the fire started when a thermostat in a dryer malfunctioned. Although plaintiff retained the thermostat, it misplaced the dryer prior to defendant's examination of the unit. In this circumstance the court granted summary judgment to the manufacturer-defendant noting that, "Destruction of the dryer removed the most direct means for plaintiff to determine if modification, poor maintenance, improper use or other factors contributed or caused the

thermostat to malfunction." The court found it fundamentally unfair to compel the manufacturer to develop a defense with a handicap imposed on it by the loss of the product.

In Baliotis v. McNeil, 870 F.Supp. 1285, 1290 (M.D. Pa. 1994) the court described the relationship of the insurer to the party-plaintiff in a subrogation setting. It noted that although the subrogation claim was filed by the McNeils, named plaintiffs, in reality it was being prosecuted by Liberty Mutual, their insurance carrier. The court held that knowledge of even a potential subrogation claim is deemed sufficient to impose a duty to preserve evidence. Baliotis at 1290. The court concluded that since Liberty Mutual had authorized the destruction of indisputably relevant evidence, it and its insured, the plaintiffs, were subject to sanctions. The court found that clear prejudice exists if a party cannot have its own cause and origin expert inspect a fire scene for other potential causes. The Baliotis court did not dismiss the lawsuit because the relevant evidence, i.e., the microwave oven, coffeemaker and refrigerator wiring along with wiring inside the kitchen, photographs and a two hour videotape of the fire scene were available. The court distinguished the situation by noting that it was not a case in which the defective product as well as the fire scene were destroyed.

Further, in Walters v. General Motors Corporation, 209 F.Supp.2d 481, 492 (W.D. Pa. 2002) the court noted that in a manufacturing defect case when the opportunity to examine and test the alleged defective components is eliminated, the effect is to preclude any ability of the defendant to offer an explanation that secondary causes were responsible for the accident or that its abnormal use resulted in the injuries. The court noted in Walters, supra, "Here, the destruction of the Blazer effectively precludes defendant from refuting plaintiff's allegations. It precludes defendant from examining and testing the component parts of the vehicle to determine whether the air bag was defective or had been subject to misuse or whether there

were reasonable secondary causes that would account for its non-deployment." Walter at 492.

In Pia v. Perrotti, 718 A.2d 321 (Pa. Super. 1998), plaintiff surmised that a warehouse fire started due to an electrical malfunction. Plaintiff preserved only that evidence it believed caused the fire and discarded other evidence it considered unimportant. Perrotti filed a motion for summary judgment based upon spoliation of evidence. The court rejected its claim because, unlike the case at bar, the defendant was able to examine and test the object posited by plaintiff as the alleged source of the fire and to present a defense to the accusations of negligence.

In the case at bar, the situation is remarkably similar to the facts in Tenaglia, Fox Run and Walters. Engaging in the analysis required by the Supreme Court leads to the inevitable conclusion that Eaton is entitled to a dismissal of the case against it. Initially the electrical meter and the loadcover door were not preserved, depriving Eaton of an opportunity to both identify the product and examine the burn patterns. The importance of that examination is noted in the Affidavit of Walter Dragus. (See Affidavit of Walter Dragus attached hereto as Exhibit "7" and incorporated herein by reference). More egregiously and late in the case, in an effort to "save storage charges", the real plaintiff in interest, Everett Cash Mutual, instructed its expert witness to destroy all the evidence. Despite this expert's acknowledgement that the evidence would be saved for future inspections by the defendant, he deliberately destroyed all the evidence and thus prevented Eaton from investigating any potential defense. For this reason the first prong of the Schroeder test invariably points to a severe degree of fault of the party who destroyed the evidence. Further, the degree of prejudice suffered by Eaton is significant and debilitating. As noted in Walters, supra, prejudice to a defendant in a single defect case is much more severe than in a design case because the spoiled product is forever lost and there is no way to test the particular product for the alleged defects. Courts have noted;

To permit claims of defective products where a purchaser of the product has simply thrown it away after the accident, would both encourage false claims and make legitimate defense of valid claims more difficult. It would put a plaintiff in the position of deciding whether the availability of the item would help or hurt his or her case. Roselli v. General Electric Company, 410 Pa.Super. 223, 559 A.2d 685, 687 - 688 (1991)

It is anticipated that Plaintiffs will argue that the inspection by Lias was sufficient to provide Eaton a defense. Unfortunately, this claim is not substantiated by the evidence. Although Lias' preliminary visual inspection found evidence of a cause of the fire other than the product, he was prevented from handling, manipulating or subjecting to microscopic analyses the evidence he observed. Although promised that an opportunity for testing would be provided at a later date, the evidence was destroyed. Mr. Dragus, Eaton's current engineer expert, has indicated that without an opportunity to examine and manipulate the component parts and to examine burn patterns and evidence of arcing, he has been deprived of the ability to analyze and properly defend the claim. Further he is precluded from pointing to evidence of improper use or other secondary factors that could have caused the fire. Interestingly, it is of note that Plaintiff concedes that there could have been other secondary factors which caused the fire and specifically points to the conduct of co-defendants Swan and Lynch.

The final prong of spoliation analysis requires a determination of whether a sanction other than dismissal will protect Eaton's rights. Just as in Tenaglia, supra, where the prejudice was substantial, no lesser sanction can be imposed which will enable Eaton to defend itself against Plaintiffs' claims. There can be no method to challenge the claims that the Challenger circuit contained a manufacturing defect absent product inspection and testing. Quite simply, due to no fault of its own, Eaton has no ability to present a viable defense.

Despite Plaintiffs' anticipated claim that it is without fault in destroying the most fundamental evidence, it cannot avoid dismissal of its case. Eaton is completely unable to defend itself, since the only evidence of any significance was inspected by plaintiffs' expert, recognized by plaintiff as a suspected source of the fire and then destroyed. Eaton has only plaintiffs' self-serving report upon which to rely, a report formulated in order to levy a subrogation claim against Eaton. In sum, the analysis necessary to prepare this report as well as the report itself establishes that Plaintiffs knew to take appropriate measures to preserve necessary evidence and they failed or refused to do so. This Court should not further reward plaintiffs with a strategic litigation advantage due to a failure which they caused. Fundamental fairness augurs the Plaintiffs' claim should not proceed.

### III. CONCLUSION

WHEREFORE, for the above-reasons of fact and law Eaton Corporation respectfully requests that this Court grant summary judgment in its favor and dismiss the case against Eaton Corporation with prejudice.

Respectfully submitted:

OLSZEWNSKI & QUINLIN, P.C.

By:

Diane Barr Quillin, Esquire  
Attorney for Defendant  
Thomas & Betts, indemnitor to  
Eaton Corporation

*Richard T. Hughes, P.E.*

*Consulting Engineer*

*506 Krebs Avenue  
Clearfield, PA 16830  
V (814) 765-8691  
F (814) 765-8692*

June 12, 2001

Pfaff, McIntyre, Dugas, Hartye & Schmitt  
ATTN: Ms. Heather A. Harrington  
PO Box 533  
Hollidaysburg, PA 16648

RE: Everett Cash Mutual Insurance Co.  
Insured: Mark Swan

Dear Ms. Harrington:

I have reviewed the Pennsylvania State Police report developed by Captain David Young that was sent to my office June 6, 2001, and I also reviewed my previously submitted cause and origin reports.

Mr. Young's report totally concurs with my findings. He pinpoints the origin to the electrical service panel in the basement and he determines the cause to be electrical.

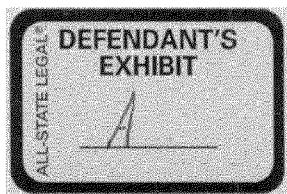
My reports and follow-up letters specifically determine that the failure was due to a faulty panel.

Please do not hesitate to call if you have any questions or if you need additional information.

Sincerely,



Richard T. Hughes, P.E.



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT was served by first class mail, postage prepaid, this 9<sup>th</sup> day of January, 2004, upon the following:

Heather A. Harrington, Esquire  
McIntyre, Dugas, Hartye & Schmitt  
P.O. Box 533  
Hollidaysburg, PA 16648

Chris A. Pentz, Esquire  
P.O. Box 552  
Clearfield, PA 16830

Eldon Young  
R.D. Box 581  
LaJose, PA 15753

Respectfully submitted,

OLSZEWSKI & QUINLIN, P.C.

By:

Diane Barr Quinlin, Esquire  
Attorney for Defendant  
Thomas & Betts, indemnitor to  
Eaton Corporation

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

WILLIAM H. SWAN, Executor of the  
Estate of Ralph Marcus Swan and  
MARTHA L. STEPHENS, Personal  
Representative of the Estate of  
Thelma S. Lynch,

Plaintiffs

No. 00-1150-CD

**ISSUE: Praecipe to Settle and  
Discontinue**

vs.

**JURY TRIAL DEMANDED**

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

Defendants

Filed on behalf of Plaintiffs

Counsel of Record for These Parties:

Heather A. Harrington, Esquire  
PA I.D. #62977

McINTYRE, DUGAS, HARTYE  
& SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

I hereby certify that a true and correct  
copy of the within was mailed to all counsel  
of record this 10<sup>th</sup> day of February,  
2004.

Heather A. Harrington  
Attorney for Plaintiffs

**FILED**

FEB 12 2004

William A. Shaw  
Prothonotary

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

WILLIAM H. SWAN, Executor of the  
Estate of Ralph Marcus Swan and  
MARTHA L. STEPHENS, Personal  
Representative of the Estate of  
Thelma S. Lynch,

Plaintiffs : No. 00-1150-CD

vs. :

EATON CORPORATION,  
ELDON YOUNG and  
ROBERT WITHEROW,

JURY TRIAL DEMANDED

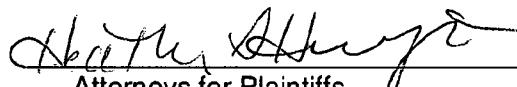
Defendants :

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO: PROTHONOTARY

Kindly mark the above captioned matter as settled, discontinued and  
ended, with prejudice.

McINTYRE, DUGAS, HARTYE & SCHMITT

  
\_\_\_\_\_  
Attnorneys for Plaintiffs

Heather A. Harrington, Esquire

PA I.D. #62977

P.O. Box 533

Hollidaysburg, PA 16648

(814) 696-3581

Date: February 10, 2004

**FILED**

O 10.49 cc. sent to atty

Copy To CA

FEB 12 2004

*Shaw*

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**William H. Swan, Executor of the Estate of Ralph Marcus Swan  
Martha L. Stephens, Pers Rep. of the Est. of Thelma S. Lynch**

Vs. No. 2000-01150-CD  
**Eaton Corporation**  
**Eldon Young**  
**Robert Witherow**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 12, 2004, marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$144.61 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 12th day of February A.D. 2004.

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William A. Shaw, Prothonotary