

00-1392-CD
COMMONWEALTH OF PA -VS- C-WAYNE FIXTURES

J-137-2004
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, : No. 12 WAP 2004
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, O/B/O LYNNDON : Appeal from the Order of the
HUBLER, : Commonwealth Court entered May 2,
Appellees : 2003 at No. 1099CD2002, affirming the
: Order of the Court of Common Pleas of
: Clearfield County entered April 2, 2002 at
: No. 2000-1392-CD.
v. :
: :
WAYNE STUBER, INDIVIDUALLY AND :
D/B/A C-WAYNE FIXTURES, :
Appellant : Argued: September 20, 2004

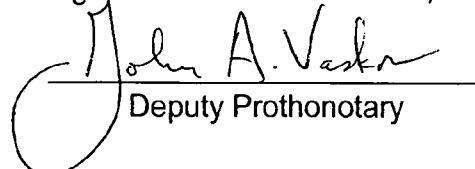
ORDER

PER CURIAM

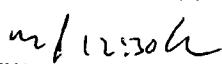
DECIDED: OCTOBER 20, 2004

AND NOW, this 20th day of October, 2004, the order of the Commonwealth Court is hereby AFFIRMED, on the basis of the Commonwealth Court opinion, Commonwealth of Pennsylvania, Bureau of Labor Law Compliance v. Wayne Stuber, 822 A.2d 870 (Pa. Cmwlth. 2003).

Judgment Entered October 20, 2004


John A. Vasko
Deputy Prothonotary

FILED¹²

NOV 16 2004

William A. Shaw
Prothonotary



Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District

November 9, 2004

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Certificate of Remittal/Remand of Record

TO: Mr. William A. Shaw
Prothonotary

RE: Labor and Ind., Hubler v. Stuber, W., Aplt
No.12 WAP 2004

Trial Court/Agency Dkt. Number: 2000-1392-CD

Trial Court/Agency Name: Clearfield County Court of Common Pleas

Intermediate Appellate Court Number: 1099 CD 2002

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Contents of Original Record:

Original Record Item	Filed Date	Description
Original Record	March 5, 2004	2
Envelope	March 5, 2004	1
Transcript	March 5, 2004	1

Date of Remand of Record: 11/9/2004

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.



Signature

11-16-04

Date

William A. Shaw
Printed Name

FILED

/dad

cc: Mr. Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

NOV 16 2004

mi/12:30c

William A. Shaw
Prothonotary

copy to Supreme Court,

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF LABOR
AND INDUSTRY, BUREAU OF LABOR LAW COMPLIANCE, o/b/o
LYNNNDON HUBLER,
Appellee

v.

WAYNE STUBER, individually and d/b/a C-WAYNE FIXTURES,
Appellant

NO. 1099 CD 2002

MOTION FOR EXTENSION OF TIME FOR
FILING OF BRIEF AND REPRODUCED RECORD

F. Cortez Bell, III, Esquire
Pa. I.D. #30183
Attorney for Appellant
Wayne Stuber, individually and d/b/a C-Wayne
Fixtures,

BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
Telephone: 814-765-5537

(5)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF	:
PENNSYLVANIA, DEPARTMENT OF	:
LABOR AND INDUSTRY, BUREAU	:
OF LABOR LAW COMPLIANCE, o/b/o	:
LYNNNDON HUBLER,	:
Appellee	:
V.	NO. 1099 CD 2002
WAYNE STUBER, individually and	:
d/b/a C-WAYNE FIXTURES,	:
Appellant	:

MOTION FOR EXTENSION OF TIME FOR
FILING OF BRIEF AND REPRODUCED RECORD

NOW, comes the Appellant, WAYNE STUBER, individually and d/b/a C-WAYNE FIXTURES, by and through his attorney, F. Cortez Bell, III, Esquire, who, for this Motion for Extension of Time, respectfully sets forth and avers as follows:

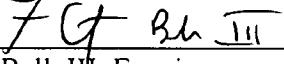
1. That the above captioned matter is currently before your Honorable Court as a result of the filing of an appeal from Judgment of the Court of Common Pleas of Clearfield County dated April 2, 2002 as entered to Civil Division No. 00-1392-CD.
2. That pursuant to Pa. R.A.P. 2185(a), the Brief for the Appellant and the Reproduced Record is currently due to your Honorable Court on or before Monday, October 28, 2002.
3. That the father of counsel for the Appellant has recently passed away after a lengthy hospitalization and illness.
4. That counsel for the Appellant has been away from his office extensively due to

his father's hospitalization and illness.

5. That there have been no previous requests for extension of time in this matter.
6. That in light of the preceding, counsel for the Appellant has not been able to dedicate the time and research necessary to diligently pursue the defense in this matter as Appellant is so rightly entitled to.

WHEREFORE, the Appellant, by and through his attorney, respectfully requests that your Honorable Court grant this Motion for Extension of Time for purpose of filing Briefs for a period of ten (10) days.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,


F. Cortez Bell, III, Esquire
Attorney for Appellant
Pa. I.D. #30183

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF	:
PENNSYLVANIA, DEPARTMENT OF	:
LABOR AND INDUSTRY, BUREAU	:
OF LABOR LAW COMPLIANCE, o/b/o	:
LYNNDON HUBLER,	:
Appellee	:
V.	NO. 1099 CD 2002
WAYNE STUBER, individually and	:
d/b/a C-WAYNE FIXTURES,	:
Appellant	:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving two (2) copies of the foregoing Motion for Extension of Time for Filing Appellant's Brief and Reproduced Record upon the following person by delivering such copy first class mail via United States Postal Service to:

Ms. Kathryn J. McDermott, Esquire
Assistant Counsel
Commonwealth of Pennsylvania
Department of Labor & Industry
Office of Chief Counsel
Labor Law Compliance Division
10th Floor, Labor & Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120

F. Cortez Bell III

F. Cortez Bell, III, Esquire
Attorney for Appellant

Date: **October 24, 2002**

In the Commonwealth Court of Pennsylvania

Commonwealth of Pennsylvania,
Department of Labor and
Industry, Bureau of Labor Law
Compliance, o/b/o Lynndon Hubler
v.
Wayne Stuber, individually and
d/b/a C-Wayne Fixtures,
Appellant

No.: 1099 CD 2002

ORDER

Per Curiam:

Now, December 16, 2002, the above Notice of Appeal shall be submitted on briefs,
without oral argument, unless otherwise ordered.

Certified from the Record

JAN 24 2003

and Order Exit

6

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
Department of Labor and :
Industry, Bureau of Labor Law :
Compliance, o/b/o Lynndon Hubler :
: v. : No. 1099 C.D. 2002
Wayne Stuber, individually and : Submitted: December 20, 2002
d/b/a/ C-Wayne Fixtures, :
: Appellant :
:

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE RENÉE L. COHN, Judge

OPINION BY JUDGE COHN

FILED: May 2, 2003

This is an appeal by Wayne Stuber d/b/a C-Wayne Fixtures (Stuber) from an order of the Court of Common Pleas of Clearfield County that, after a non-jury trial, assessed damages in the amount of \$1276.40 against Stuber for violation of The Minimum Wage Act of 1968, Act of January 17, 1968, P.L. 11, as amended, 43 P.S. §§333.101-333.115 (Act).

The case began when the Department of Labor and Industry, Bureau of Labor Law Compliance (Bureau) received an assignment of wage claim from Lynndon Hubler. Stuber's company installs counters and fixtures in stores,

primarily CVS pharmacies. Hubler did work for Stuber, including unloading trucks, installing cabinetry, hanging pictures, setting up stockroom shelving, setting up the pharmacy area, painting, installing carpeting and cleaning up, in connection with the installation business. (N.T. 32.) He submitted statements to Stuber indicating the number of hours worked and received pay in exchange. No taxes were withheld. With only one exception, he was not paid any overtime. After its own investigation, the Bureau determined that Hubler was owed \$1276.40 for overtime wages. The Bureau lost before a district magistrate; however, on appeal to common pleas, mandatory *de novo* arbitration resulted in a ruling in favor of the Bureau and Hubler. Stuber then filed an appeal *de novo* and, after a bench trial, the court ruled that Hubler was an employee of Stuber for purposes of the minimum wage requirement of the Act and ordered judgment in favor of Hubler and the Bureau. Stuber appeals to this Court.

On appeal, the single issue presented is whether Huber was an employee (and therefore entitled to overtime wages) or an independent contractor (and not entitled to such wages) for purposes of the Act.¹ The Honorable Frederic J.

¹ Section 4(c) of the Act, 43 P.S. §333.104(c), pertinently states:

Employees shall be paid for overtime not less than one and one-half times the employee's regular rate as prescribed in regulations promulgated by the secretary: ... And provided further, That the secretary shall promulgate regulations with respect to overtime subject to the limitations that no pay for overtime in addition to the regular rate shall be required except for hours in excess of forty hours in a workweek.

Ammerman, in an insightful opinion, held that Huber was an employee and, thus, awarded the overtime. We affirm.²

We note, initially, that there is no Pennsylvania authority that establishes the standard that should be used to determine whether one is an employee or an independent contractor under the Act. While both sides agree that the federal “economic reality” standard should be employed in this case of first impression, and also agree that there is a presumption that the individual is an employee, (a presumption the employer must rebut), Stuber additionally argues that the Court should look to other Pennsylvania laws, such as those dealing with unemployment compensation, or the Bureau of Employer Tax Operations cases, to examine the independent contractor/employee question. While such other laws should not be entirely discounted, we must remain cognizant that they were not enacted for precisely the same purpose as the Minimum Wage Act.

The unemployment compensation system provides financial benefits for persons who lose their jobs through no fault of their own. Section 3 of the Unemployment Compensation Law, Act of December 5, 1936, P.L. 2897, as amended, 43 P.S. § 752 (U.C. Law). The Bureau of Employer Tax Operations considers employer-filed petitions for reassessment of unemployment compensation taxes. Section 304 of the U.C. Law, 43 P.S. § 784. However, the Act under review here was specifically enacted, *inter alia*, to address the unequal bargaining power between employees and employers in certain occupations,

² Our scope of review over questions of law is plenary. Serapiglia v. City of Clairton, 809 A.2d 1079, 1084 n.13 (Pa. Cmwlth. 2002).

particularly with regard to negotiating minimum wage standards, Section 1 of the Act, 43 P.S. § 333.101, a goal similar to, but not identical with that of the unemployment system.

We note that our state Act mirrors the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (FLSA), which is also designed to protect employees who do not have real bargaining power. In fact, the definitions of "employ," "employer" and "employee" in the two acts are virtually identical for purposes of the case *sub judice*.³ Similarly, neither act contains language discussing any distinction between an employee and an independent contractor. However, there is federal

³ Under Section 3 of the Act, 43 P.S. §333.103, the definitions are:

"Employ" includes to suffer or to permit to work.

"Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.

"Employee" includes any individual employed by an employer.

Under Section 3 of FLSA, 29 U.S.C. § 203, the definitions are:

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee....

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

....
(g) "Employ" includes to suffer or permit to work.

The omitted language in (d) above refers to certain jurisdictional limitations unique to the federal courts and has no relevance here.

case law which does address this issue.⁴ In the past, this Court has indicated that it is proper to give deference to federal interpretation of a federal statute when the state statute substantially parallels it. See, e.g., Commonwealth v. Pennsylvania Labor Relations Board, 527 A.2d 1097 (Pa. Cmwlth. 1987) (referring to the National Labor Relations Act when interpreting the Public Employe Relations Act.) Therefore, because the state and federal acts have identity of purpose, we hold that federal case law, and the "economic reality" test employed by the federal courts, is the appropriate standard to use.⁵

Under the "economic reality" test, the relevant considerations are as follows:

- 1) the degree of control exercised by the employer over the workers;
- 2) the worker's opportunity for profit or loss depending upon managerial skill;
- 3) the alleged worker's investment in equipment or material required for the tasks or the employment of helpers;
- 4) whether the service rendered requires special skill;

⁴ For an excellent digest of case law in this area, see Landis, Debra T., Determination of "Independent Contractor" and "Employee" Status for Purposes of § 3(e)(1) of the Fair Labor Standards Act, 51 A.L.R. Fed. 702 (1981).

⁵ Even applying other law, the outcome would likely not change. For example, under Pennsylvania unemployment law, the inquiries are whether the claimant was free of the employer's control, *i.e.*, does the employer direct the job and manner of performance, and whether the claimant was engaged in an independently established trade, *i.e.*, did the claimant have a proprietary interest in the business or was he free from control by the employer. Sharp Equipment Co. v. Unemployment Compensation Board of Review, 808 A.2d 1019 (Pa. Cmwlth. 2002). The inquiry, additionally, involves determining whether the claimant could perform the work for anyone, or whether the nature of the services is such that they could only be performed for the employer. Moreover, under both the Act and our state unemployment law, there is a statutory presumption of an employment relationship that the employer must overcome. Id. When these principles are applied to the facts in the case *sub judice*, a different outcome from the one we reach here is far from assured.

- 5) the degree of permanence of the working relationship; and
- 6) the extent to which the work is an integral part of the employer's business.

Real v. Driscoll Strawberry Associates, Inc., 603 F.2d 748, 754 (9th Cir. 1979);
Martin v. Selker Brothers, Inc., 949 F.2d 1286 (3rd Cir. 1991).

When applying the economic reality test, the federal courts have looked at the totality of the circumstances and a single factor, by itself, is not necessarily determinative. Moreover, merely because a worker initially calls the particular arrangement something different, does not mean that there was no employer/employee relationship. For example, in Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290 (1985), "volunteers," working for religious and evangelical reasons, denied their employee status. Despite their protestations, however, the High Court, in applying the economic reality test, determined the existence of an employer/employee relationship. Similarly, in Real, the workers signed sublicense agreements identifying themselves as independent contractors. Nonetheless, this factor, by itself, was not persuasive. Id.

Additionally, a worker cannot waive his or her status as an employee. Robicheaux v. Radcliffe Material, Inc., 697 F.2d 662, 667 (5th Cir. 1983). In that case, the employees, who were welders, had signed independent contractor agreements, had filed tax returns indicating they were self-employed and furnished their own equipment. However, they received an hourly wage and invoiced employer for hours worked. They worked virtually only for the employer and, thus, were judicially determined to be employees and not independent contractors.

Conceding that the economic reality test is the proper one, Stuber, nonetheless, argues that the trial court erred in reaching the conclusion that Hubler was an employee. In so doing, he relies on the testimony of Stephen Oberholtzer, a superintendent for a general contractor on many of the jobs where Stuber's company had won the bid. This witness stated that he thought Hubler was an independent contractor, that Hubler had access to the premises he was working on, had a key as well as his own tools, and thought Hubler had signed an independent contractor agreement.

Stuber also testified, stating that Hubler had signed Waivers of Mechanics' Liens, which an employee would not need to sign, that he had signed Labor and Industry and tax forms indicating he was an independent contractor, that he thought Hubler had signed an Independent Contractor Agreement with Stuber's company, that Hubler provided his own tools, that he did not directly supervise Hubler, and that he had only trained Hubler for the initial job. Finally, Stuber notes that the trial judge stated that, at times in his testimony, Hubler attempted to appear "uncertain" about his status, *i.e.*, that he appeared to be more knowledgeable about what was going on than he let on.

We now turn to the facts as actually found in the case *sub judice*. The trial court determined that Hubler signed some documentation indicating that he was an independent contractor. In addition, he filed tax returns indicating he was self-employed. However, Hubler was never in business for himself prior to working for Stuber; it was Stuber who taught him how to do the work and controlled where he worked. Stuber fixed an hourly wage and supervised Hubler

on a semi-regular basis. Hubler had no opportunity to make a profit or suffer a loss and did not enter into separate contracts for each store in which he worked. He received occasional raises from Stuber the longer he worked for him, and his lodgings and meals were paid for by Stuber. Hubler ended his employment before the project he was working on was completed, but Stuber had no legal recourse for breach of contract. Hubler did not perform work for anyone else during the relevant time period, and relied solely upon the income he received from Stuber. The services Hubler provided were integral to Stuber's business and Hubler did not possess any special skills.

While it is clear that both the facts asserted by Stuber and the ones found by the court have support in the record, it is the court's findings that are controlling where, as here, they are supported by the evidence. Pittsburgh Des Moines Steel Co. v. Board of Property Assessment, 519 A.2d 1080, 1082 (Pa. Cmwlth. 1987) ("Since the proceeding in the trial court was *de novo*, the credibility and weight of all the evidence is for the fact finder, the trial judge."). That being the case, we next focus on whether the findings, as evaluated by the economic reality test, lead to the conclusion that Hubler was an employee, rather than an independent contractor.

Regarding the degree of control exercised by Stuber over Hubler, the court found that Hubler worked for an hourly wage, was provided with meals and some training. Regarding the possibility of making a profit, the court's findings show that Hubler had no opportunity to do so and relied entirely on Stuber for his income. Concededly, under prong three of the test, the facts favor Stuber, since

Hubler *did* provide his own tools and a method for transporting them to the job site. The question of whether special skill was required is a close one, but the court did find that Hubler required initial training, which he received from Stuber. As to the permanency of the relationship, the court found that Hubler had never been in business for himself prior to working for Stuber, that he had worked for a year and a half and that he had no other source of income. These facts can certainly be viewed as indicia of permanency. Finally, the record demonstrates that the work performed by Hubler was an integral part of Stuber's business. Moreover, as Real and Robicheaux demonstrate, any documentation that Hubler may have signed indicating that he was an independent contractor is simply not controlling.

Based on the above discussion, we conclude that the economic reality test is the appropriate test to use under the Act and, under that test, the trial court could properly find that Hubler was an employee of Stuber. For this reason, we affirm its order.

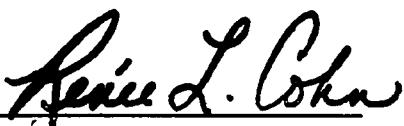

RENÉE L. COHN, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
Department of Labor and :
Industry, Bureau of Labor Law :
Compliance, o/b/o Lynndon Hubler :
v. : No. 1099 C.D. 2002
Wayne Stuber, individually and :
d/b/a/ C-Wayne Fixtures, :
Appellant :
:

O R D E R

NOW, May 2, 2003, the order of the Court of Common Pleas of Clearfield County in the above-captioned matter is hereby affirmed.


Renée L. Cohn
RENÉE L. COHN, Judge

Supreme Court of Pennsylvania
Western District

John A. Vaskov Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City County Building
Pittsburgh, PA 15219
412-565-2816
www.apc.org

ORIGINAL RECORD REQUEST

TO: Charles R. Hostutler
Deputy Prothonotary/Chief Clerk

RECORD REQUESTED: March 1, 2004

FROM: Office of the Prothonotary

RE: Commonwealth of Pennsylvania, Department of Labor and Industry,
Bureau of Labor Law
Compliance, o/b/o Lynndon Hubler, Appellees
v.
Wayne Stuber, individually and d/b/a/ C-Wayne Fixtures, Appellants
No.: 12 WAP 2004
No.: 1099 CD 2002
Trial Court Docket Number: 2000-1392-CD

Please forward the Original Record to the Supreme Court at the address shown above as soon as possible.

NT

RECORD FILED

MAR - 5 2004

**SUPREME COURT
WESTERN DISTRICT**

2004 MAR - 3 A 10:14

RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

(8)

Docket Number: 1099 CD 2002

Page 1 of 4

March 3, 2004



Commonwealth of Pennsylvania,
 Department of Labor and
 Industry, Bureau of Labor Law
 Compliance, o/b/o Lynndon Hubler
 v.
 Wayne Stuber, individually and
 d/b/a/ C-Wayne Fixtures,
 Appellant

Initiating Document: Notice of Appeal

Case Status: Decided/Active
 May 2, 2003 Awaiting Remittal

Case Processing Status:

Journal Number: SP-1176-2002

Case Category: Civil CaseType: Civil Action Law

Consolidated Docket Nos.:

Related Docket Nos.:

COUNSEL INFORMATION

Appellant Stuber, Wayne

Pro Se: Appoint Counsel Status:

IFP Status:

Attorney: Bell, F. Cortez

Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood

Address: 318 E. Locust St., Box 670

Clearfield, PA 16830

Phone No.: (814)765-5537

Fax No.: (814)765-9730

Certified from the Record

Receive Mail: Yes

MAR 3 - 2004

Appellee Bureau of Labor Law Compliance.

Pro Se: Appoint Counsel Status:

IFP Status:

Attorney: McDermott, Kathryn J.

Bar No.: 77238 Law Firm: Office of Chief Counsel

Address: PA Dept of Labor Law Comply

7th & Forster Sts 10th Fl

Harrisburg, PA 17120

Phone No.: (717)787-4186

Fax No.: (717)783-5027

and Order Exit



Docket Number: 1099 CD 2002
Page 2 of 4
March 3, 2004

Receive Mail: Yes

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas
 County: Clearfield Division: Civil
 Date of OrderAppealed From: April 2, 2002 Judicial District: 46
 Date Documents Received: May 3, 2002 Date Notice of Appeal Filed:
 Order Type: Order
 Judge: Ammerman, Fredric J. Lower Court Docket No.: 2000-1392-CD
 President Judge

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
agency record	September 17, 2002	1

Date of Remand of Record:

BRIEFING SCHEDULE

Appellant	Appellee
Brief	Brief
Stuber, Wayne	Bureau of Labor Law Compliance.
Due: November 7, 2002 Filed: November 7, 2002	Due: December 9, 2002 Filed: December 9, 2002
C-Wayne Fixtures	Hubler, Lynndon
Due: December 9, 2002 Filed: November 7, 2002	Due: December 9, 2002 Filed: December 9, 2002
Reproduced Record	
Stuber, Wayne	
Due: November 7, 2002 Filed: November 6, 2002	

Docket Number: 1099 CD 2002
 Page 3 of 4
 March 3, 2004



DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Exit Date	Party Type	Filed By
May 1, 2002 ①	Notice of Appeal Filed		Appellant	Stuber, Wayne
May 3, 2002	Notice Exited			Commonwealth Court Filing Office
August 16, 2002 ②	Order Filed Appellant shall pay for the transcript and submit a certificate of payment by 9/3/02.	8/19/2002		Narick, Emil E.
August 28, 2002	Affidavit Filed Of payment of transcript costs.		Appellant	Stuber, Wayne
September 17, 2002 ③	Trial Court Record Received			Lower Court or Agency
October 28, 2002 ④	Order Granting Application for Extension of Time to File Brief Appellant shall file a brief and rep. record by 11/7/02.	10/29/2002		Darlington, G. Ronald
October 29, 2002 ⑤	Application for Extension of Time to File Brief		Appellant	Stuber, Wayne
November 6, 2002	Reproduced Record Filed		Appellant Appellant	Stuber, Wayne C-Wayne Fixtures
November 7, 2002	Appellant's Brief Filed		Appellant Appellant	Stuber, Wayne C-Wayne Fixtures

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania



Docket Number: 1099 CD 2002
Page 4 of 4
March 3, 2004

December 9, 2002 Appellee's Brief Filed

Appellee Bureau of Labor Law Compliance.
 Appellee Hubler, Lynndon

December 16, 2002 Order Directing Submission on Brief 1/24/2003

Per Curiam

May 2, 2003 Affirmed 5/2/2003
 (7) Opinion (10 pgs)

Cohn, Renee L.

June 2, 2003 Petition for Allowance of Appeal to PA Supreme Court Filed
 (8) 261 WAL 2003

Appellant Stuber, Wayne
 Appellant C-Wayne Fixtures

Record forwarded to Western District on 3/3/04

SESSION INFORMATION

Journal Number: SP-1176-2002
 Consideration Type: Submitted on Briefs
 Date Listed/Submitted: 12/20/02

DISPOSITION INFORMATION

Related Journal Number:	SP-1176-2002	Judgment Date:	5/2/2003
Disposition Category:	Decided	Disposition Author:	Cohn, Renee L.
Disposition:	Affirmed	Disposition Date:	5/2/2003

Dispositional Comments:

Dispositional Filing:	Opinion	Author:	Cohn, Renee L.
Filed Date:	5/2/2003		
Judge:		Vote:	

REARGUMENT/RECONSIDERATION/REMITTAL

Reargument/Reconsideration Filed Date:

Reargument Disposition: Date:

Record Remitted:

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

COMMONWEALTH OF PENNSYLVANIA, : DEPARTMENT OF LABOR AND : INDUSTRY, BUREAU OF LABOR LAW : COMPLIANCE, o/b/o LYNNNDON : HUBLER,	:	
		Appellee
		:
Vs.	:	No. 2000-1392-CD
		:
WAYNE STUBER, individually : and d/b/a C-WAYNE FIXTURES, : Appellant	:	

NOTICE OF APPEAL

Notice is hereby given that Wayne Stuber, individually and d/b/a C-Wayne Fixtures, Appellant in the above captioned matter, hereby appeals to the Commonwealth Court of Pennsylvania from the Order of the Court of Common Pleas of Clearfield County, entered in this matter on April 2, 2002. This Order has been entered in the docket as evidence by the attached copy of the docket entries, as well as evidenced by the attached copy of the Court's Order dated April 2, 2002.

Respectfully submitted,

BELL, SILBERBLATT & WOOD

By:

74 Br III

F. Cortez Bell, III, Esquire
Counsel for Appellant
Supreme Court No. 30183

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA. 16830
Telephone: 814-765-5537

Dated: May 1, 2002

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

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE,
o/b/o LYNNDON HUBLER,
Plaintiff

*
*
*
*
*
*
*
*

vs.

No. 2000-1392-C.D.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

*
*
*
*
*

OPINION

The Pennsylvania Department of Labor and Industry (hereafter "DLI") filed a Complaint on November 29, 2000 on behalf of Lynndon Hubler. The Complaint sought judgment in the amount of \$1276.40, averred that Mr. Hubler was an employee of Defendant C-Wayne Fixtures (hereafter "Defendant") and that the Defendant violated provisions of Pennsylvania's Minimum Wage Act in failing to pay Mr. Hubler time and a half for overtime hours. An Answer and New Matter was filed on behalf of the Defendant and the matter proceeded to Arbitration on October 5, 2001 on the DLI's claim. Plaintiff received judgment in that amount from the Board of Arbitrators. Thereafter, an appeal to the Board of Arbitrators' decision was filed on behalf of the Defendant on November 1, 2001. Non-Jury Trial was held before the Court on March 7, 2002. The parties' briefs were timely received and the matter is now set for decision. In summary, DLI claims that Mr. Hubler was an

~~employee of the Defendant and as such entitled to the protection of the Minimum Wage Act.~~
Defendant claims that Mr. Hubler was an independent contractor and not subject to the provisions of the Minimum Wage Act.

The Pennsylvania Minimum Wage Act of 1968 ("MW Act"), 43 P.S. §§ 333.101-333.115, was enacted, in part, because persons employed in some occupations "are not as a class on a level of equality in bargaining with their employers in regard to minimum fair wage standards, and "freedom of contract" as applied to their relations with their employers is illusory." 43 P.S. § 333.101. To effectuate a balance in this uneven bargaining power, the MW Act was mirrored after the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* ("FLSA"), and provides protection for those employees who normally would not fall under the protection of the federal law. The definitions of employ, employer and employee in the state and federal statutes are practically indistinguishable, barring certain jurisdictional provisions that differentiate the two laws. See 43 P.S. §§ 333.103(f), (g) & (h); 29 U.S.C. Sections 203(g), (d) & (e). Similarly, neither Act contains language or guidance on the difference between an employee and independent contractor for purposes of the application of those Acts.

There is no Pennsylvania case law that sets out the standard to apply to employee versus independent contractor cases under the MW Act. However, there is a clearly established standard based upon a similar federal law with identical principles and purpose. Both the Pennsylvania Commonwealth Court and the U.S. Third Circuit Court of Appeals give deference to federal case law when state law substantially parallels federal law.

In *Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board*, 527 A.2d 1097 (Pa. Cmwlth. 1987), the Court was guided by the federal standard of the National Labor Relations act in interpreting the Public Employee Relations act, given their similar language and purpose, and that no meaningful difference exists between the policies of the Acts. *Id.* at 1099. Also, in *Fogleman v. Mercy Hospital, Inc.*, No. 00-2263, U.S. Court of Appeals for the Third Circuit, 2002 U.S. App. LEXIS 4306 (filed March 18, 2002), the Court reiterated its assertion that the Pennsylvania Human

Relations Act "is to be interpreted as identical to federal anti-discrimination where there is something specifically different in its language requiring that it be treated differently." *Id.* at 13. Given the unity of purpose between the MW Act and the FLSA, and the similarity between the two laws, this Court will give deference to the federal courts' interpretation of the FLSA since the state courts have not yet spoken on the issue in the context of the MW Act.

The Pennsylvania Federal Courts have applied the "economic reality" test to determine whether an individual is an employee or independent contractor in analyzing the application of the FLSA. *See, e.g., Martin v. Selker Brothers, Inc.*, 949 F.2d 1286 (3d Cir. 1991) (the Court applied the six-part "economic reality" test to establish the employment status of gas station attendants). The considerations of the test are as follows:

1. the degree of control exercised by the employer over the workers;
2. the workers opportunity for profit or loss depending upon his managerial skill;
3. the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;
4. whether the service rendered requires a special skill;
5. the degree of permanence of the working relationship;
6. the extent to which the work is an integral part of the employer's business.

Real v. Driscoll, 603 F.2d 748, 754 (9th Cir. 1979).

The fact that a worker initially consents to the arrangement, in and of itself, is not enough to determine that there was no employee/employer relationship. The U.S. Supreme Court, in *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985), applied the FLSA to workers of a religious enterprise, despite the workers' assertions that they were volunteers working for religious and

evangelical reasons, and their vehement denial of employee status. These protestations were not controlling of the employment issue, and the court applied the "economic reality" test in determining the existence of an employer/employee relationship. 471 U.S. at 301, 105 S. Ct. at 1961-1962, 85 L. Ed. 2d at 288-289. The workers in *Real*, supra, signed sub-licensee agreements that called the workers independent contractors. In applying the "economic reality" test, the court in *Real* noted that "[t]he presence of any individual factor is not dispositive of whether an employee/employer relationship exists. Such a determination depends "upon the circumstances of the whole activity." *Id.* at 755, quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730, 67 S. Ct. 1473, 1477, 91 L. Ed. 1772 (1947). thus, the "economic reality" test looks to the *totality of the circumstances* regarding the working arrangement, not just the consent of the employee in signing documentation that would indicate an independent contractor arrangement.

"An employee is not permitted to waive employee status." *Robicheaux v. Radcliff Material, Inc.*, 697 F.2d 662, 667 (5th Cir. 1983). *Robicheaux* dealt with welders who had worked with their employer for ten months to three years. They had signed independent contractor agreements with the employer and provided their own insurance. They filed income tax returns as self-employed individuals and furnished their own equipment. Workers received an hourly wage and invoiced the employer for hours worked. They worked solely for the employer except for insignificant jobs elsewhere, and some had owned businesses before working for the employer. After all of these considerations, the federal court still found that the welders were not independent contractors by looking to the economic realities of the working relationship. "A person's subjective opinion that he is a businessman rather than an employee does not change his status." *Id.* at 666-667.

In the case at hand, Mr. Hubler did in fact, sign some documentation that would indicate an independent contractor status, and filed his taxes as being self-employed. However, all the other factors of the business relationship make the "economic reality" of the situation an employer/employee relationship. Mr. Hubler was never in business for himself prior to working for the Defendant. The Defendant taught him how to do the

work for the company, and controlled where Mr. Hubler worked based on one Defendant's contracts with CVS Pharmacy. He fixed Mr. Hubler's hourly wage, and supervised him on a semi-regular basis. Mr. Hubler had no opportunity for profit or loss in the business, and did not enter into separate contracts for each of the stores that he worked on for the Defendant. Mr. Stuber was the only one who made out on the deals. Mr. Hubler got occasional raises the longer he worked for Mr. Stuber, like any other employee, and had his lodging and meals paid, as opposed to them being negotiated into the price of his work. Mr. Hubler ended his employment before the end of a particular project, and the Defendant had no legal recourse against him for breach of contract. He did not perform work for anyone else other than Mr. Stuber and C-Wayne Fixtures, and relied solely upon his income from the Defendant for the time period in question, one and one half years. The services provided were an integral part of the Defendant's business. In fact, the whole purpose of C-Wayne Fixtures, installing fixtures, was exactly what Mr. Hubler and other workers were doing. Mr. Hubler did not possess any special skill needed by the Defendant that the Defendant, or any of his other workers, could not do, as further evidenced by the fact that the Defendant now has temporary workers on the job to do the same work. Mr. Hubler was clearly an employee of the Defendant.

The Court notes that Mr. Stuber was a credible witness and impressed the Court as a hard working business owner. He appeared to be following the advise of counsel in attempting in good faith to maintain his employees as independent contractors, a status which was clearly more economically advantageous to him and his business. With no employees he need not pay an employer's share of social security tax, purchase worker's compensation insurance, contribute to unemployment compensation or pay overtime. Mr. Hubler, who was more aware of what was going on than he portrayed at trial, gave the Defendant the impression that he consented to the independent contractor arrangement, which as the Court notes is not relevant to a legal analysis. In conclusion, a duck by any other name is still a duck. Here, the duck is an employee.

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

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE,
o/b/o LYNNDON HUBLER,
Plaintiff

vs.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

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No. 2000-1392-C.D.

ORDER

NOW, this 2nd day of April, 2002, the Court finds in favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1276.40 plus costs of suit.

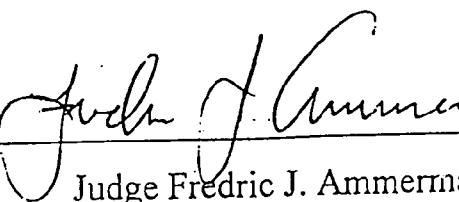
By the Court,

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

APR 03 2002

Attest:

64-10
BUREAU OF LABOR LAW
CLEARFIELD COUNTY



Judge Fredric J. Ammerman

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNNDON :
HUBLER, :
Appellee :
: Vs. : No. 2000-1392-CD
: :
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Appellant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal upon the following persons by mailing such copy first class mail, postage prepaid to:

Kathryn J. McDermott, Esquire Assistant Counsel Commonwealth of Pennsylvania Department of Labor & Industry Office of Chief Counsel Labor Law Compliance Division 10 th Floor, Labor & Industry Bldg. Seventh and Forster Streets Harrisburg, PA 17120	David Meholick Court Administrator Clearfield County Courthouse Clearfield, PA 16830
	Cathy Warrick Official Court Reporter Clearfield County Courthouse Clearfield, PA 16830

Honorable Fredric J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
Clearfield, PA 16830

[Signature]
F. Corfez Bell III, Esquire
Attorney for Appellee

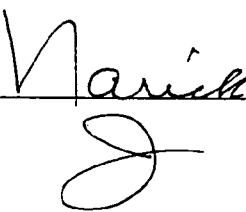
Date: May 17, 2002

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, :
Department of Labor and Industry, :
Bureau of Labor Law Compliance, :
o/b/o Lynndon Hubler :
: :
v. :
: :
Wayne Stuber, individually and d/b/a :
C-Wayne Fixtures, :
Appellant : No. 1099 C.D. 2002

ORDER

Now, August 16, 2002, having been advised by the trial court that appellant has failed to pay for the transcript in the above matter, appellant is hereby ordered to pay for the transcript and submit a certificate to this court indicating that such payment has been made within fourteen (14) days of the date of this order or the above captioned appeal will be dismissed as of course.



S. J.

Certified from the Record

AUG 19 2002
and Order Exit

(2)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:
Department of Labor and Industry,	:
Bureau of Labor Law Compliance,	:
o/b/o Lynndon Hubler	:
v.	:
Wayne Stuber, individually and d/b/a	:
C-Wayne Fixtures,	:
Appellant	:
	No. 1099 C.D. 2002

ORDER

NOW, October 28, 2002, upon consideration of appellant's motion for an extension of time, the motion is granted and appellant's brief (15 copies) and reproduced record (8 copies) shall be filed on or before November 7, 2002.

No further extensions will be granted absent extraordinary circumstances.

FOR THE COURT:


G. RONALD DARLINGTON
Executive Administrator

Certified from the Record

OCT 29 2002
and Order Exit

(4)

Commonwealth Court of Pennsylvania

May 3, 2002

RE: L & I, et al v. Stuber
 No.: 1099 CD 2002
 Agency Docket Number: 2000-1392-CD
 Filed Date: May 1, 2002

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
F. Cortez Bell, Esq.	Wayne Stuber	Appellant
Kathryn J. McDermott, Esq.	Bureau of Labor Law Compliance.	Appellee

RECORD FILED
 MAR - 5 2004
 MAY 06 2002 2:33 PM
 WILLIAM A. SHAW
 PROTHONOTARY
 COMMONWEALTH COURT
 RECEIVED & FILED
 SUPREME COURT
 WESTERN DISTRICT
 #17

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

1099 C 2002

COMMONWEALTH OF PENNSYLVANIA, : NO. 2000-1392-CD
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW : Type of Case: Civil
COMPLIANCE, o/b/o LYNNDON :
HUBLER, : Type of Pleading:
Appellee : Notice of Appeal
: Filed on Behalf of:
: Wayne Stuber, individually
: and d/b/a C-WAYNE FIXTURES,
: Appellant
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P. O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537

Law

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

MAY 01 2002

Attest:

John Bell
Prothonotary/
Clerk of Courts

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

**CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)**

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

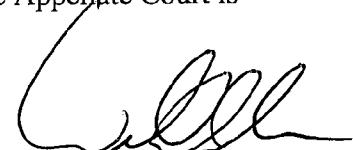
00-1392-CD

**Commonwealth of Pennsylvania, Dept. of Labor and Industry, Bureau of Labor
Law Compliance o/b/o Lynndon Hubler**
VS.
Wayne Stuber d/b/a C-Wayne Fixtures

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No.**
20, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is
September 13, 2002.



Prothonotary/Clerk of Courts

(seal)

Current Judge: Fredric J. Ammerman

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber

District Justice Appeal

Date		Judge
11/09/2000	New Case Filed. Filing: District Justice Appeals Paid by: Commonwealth of PA Receipt number: 0051204 Dated: 11/09/2000 Amount: \$80.00 (Check)	No Judge No Judge
11/17/2000	Proof of Service of Notice of Appeal and Rule to File Complaint, /s/Kathy McDermott, filed.	No Judge
11/22/2000	Transcript from District Justice Rudella, filed.	No Judge
11/29/2000	Notice to Defend. Complaint, filed by s/Kathryn J. McDermott, Esq. Verication, s/Gerald A. Barnett 1 cert to Atty	No Judge
12/26/2000	Acceptance of Service, Complaint upon Defendant, filed by s/F. Cortez Bell, III, Esq. One CC Atty for Plaintiff	No Judge
01/15/2001	Answer and New Matter to Plaintiff's Complaint, filed by s/F. Cortez Bell, III, No Judge Esq. Two CC Atty Bell	No Judge
02/07/2001	Answer to New Matter, filed by s/Kathryn J. McDermott, Esq. Verification, No Judge s/Gerald A. Barnett Cert of Service. no cc	No Judge
07/20/2001	Filing: Praecipe/List For Arbitration Paid by: Commonwealth of Pennsylvania Receipt number: 1828731 Dated: 07/20/2001 Amount: \$20.00 (Check) 2 cc atty McDermott Copy to CA	No Judge
08/14/2001	Letters Mailed from CA Office scheduling Arbitration hearing set for Friday, No Judge October 5, 2001, at 10:30 a.m., filed.	No Judge
10/05/2001	OATH OR AFFIRMATION OF ARBITRATORS, filed. s/Jeffrey S. DuBois, No Judge Esq., Chairman; Mark A. Falvo, Esq. & David R. Thompson Award of Arbitrators, filed. Judgment in favor of the Plaintiff in the amount of \$1,276.40. No interest or costs are awarded to Plaintiff. s/Jeffrey DuBois, Chairman, Mark Falvo & David R. Thompson Notice of Award to Atty. Bell (2) copies & Notice mailed to Atty. McDermott Entry of Award, Witness My Hand and the Seal of the Court, William A. Shaw, Prothonotary	No Judge
11/01/2001	Filing: Arbitration Appeal Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1833584 Dated: 11/01/2001 Amount: \$300.00 (Check) Notice of Appeal. Filed by s/F. Cortez Bell, III, Esq. Cert of Svc 3 cc Atty Bell Affidavit Pursuant to Local Rule 1308 (a)(1) Filed by s/F. Cortez Bell, III, No Judge Esq. Cert of Svc 4 cc Atty Bell	No Judge
01/11/2002	ORDER, AND NOW, this 11th day of January, 2002, re: Civil Non-Jury Trial Fredric J. Ammerman scheduled for Mar. 7, 2002, at 9:00 a.m. by the Court, s/FJA,J. 1 cc McDermott, Bell	Fredric J. Ammerman
03/05/2002	Filing: Subpoena Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1839118 Dated: 03/05/2002 Amount: \$3.00 (Check)	Fredric J. Ammerman
03/11/2002	ORDER, NOW, this 7th day of March, 2002, re: Counsel for both parties have no more than 15 days from this date to supply the Court w/appropriate legal authority or letter brief. by the Court, s/FJA,J. 1 cc Atty F. C. Bell, III and Atty McDermott	Fredric J. Ammerman
04/03/2002	OPINION and ORDER, NOW, this 2nd day of April, 2002, the Court finds in Fredric J. Ammerman favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1,276.40 plus costs of suit. by the Court, s/FJA,J. 2 cc to Atty McDermott, Bell,III, 2 copies to Judge Ammerman, 1 copy to Atty D. Mikesell, 1 to CA, and 1 to Law Library	

Date: 09/10/2002

Time: 11:06 AM

Page 2 of 2

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01392-CD

Current Judge: Fredric J. Ammerman

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber

District Justice Appeal

Date		Judge
05/01/2002	Filing: Notice of Appeal/Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1841897 Dated: 05/01/2002 Amount: \$45.00 (Check) One CC Commonwealth Court	Fredric J. Ammerman
05/06/2002	Case Number From Commonwealth Court of Pennsylvania: 1099 CD 2002	Fredric J. Ammerman
05/28/2002	Certified Mail Receipt, appeal mailed 5-24-02. Receipt No. 7099 3400 0016 7880 5683	Fredric J. Ammerman
05/30/2002	Domestic Return Receipt 7099 34000016 7880 5683. Filed. no cc	Fredric J. Ammerman
09/04/2002	Transcript of Proceedings, Civil NonJury Trial, March 7, 2002, before The Honorable Fredric J. Ammerman, Judge	Fredric J. Ammerman

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

SEP 10 2002

Attest.

William L. Houser
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1392-CD

Commonwealth of Pennsylvania,
Dept. of Labor and Industry, Bureau of
Labor Law Compliance o/b/o Lynndon Hubler
Vs.
Wayne Stuber d/b/a C-Wayne Fixtures

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/09/00	District Justice Appeals	03
02	11/17/00	Proof of Service of Notice of Appeal and Rule to File Complaint	01
03	11/22/00	Transcript from D.J. Rudella	02
04	11/29/00	Notice to Defend/Complaint	15
05	12/26/00	Acceptance of Service	01
06	01/15/01	Answer and New Matter to Plaintiff's Complaint	10
07	02/07/01	Answer to New Matter	09
08	07/20/01	Praecipe/List for Arbitration	02
09	08/14/01	Letters Mailed from CA office scheduling arbitration	02
10	10/05/01	Oath or Affirmation of Arbitrators, Award of Arbitrators, and Entry of Award	06
11	11/01/01	Arbitration Appeal/Notice of Appeal	04
12	11/01/01	Affidavit Pursuant to Local Rule 1308(a)(1)	03
13	01/11/02	Order, Re: Civil Non-Jury Trial	01
14	03/11/02	Order, Re: briefs	01
15	04/03/02	Opinion and Order, Re: Judgment for Plaintiff	06
16	05/01/02	Notice of Appeal	10
17	05/06/02	Case Number from Commonwealth Court of PA #1099 CD 2002	03
18	05/25/02	Certified Mail Receipt, appeal mailed	01
19	05/30/02	Domestic Return Receipt	01
		Appeal returned to lower court for completion of transcript.	
20	09/04/02	Transcript of Proceedings, Civil Non Jury Trial, March 7, 2002	Separate Cover

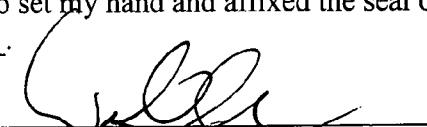
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

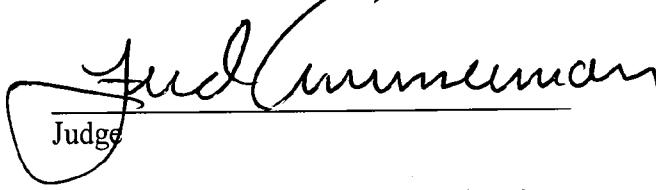
Commonwealth of Pennsylvania, Dept. of Labor and Industry, Bureau of Labor Law Compliance, o/b/o Lynndon Hubler
Vs.
Wayne Stuber d/b/a C-Wayne Fixtures
00-1392-CD

So full and entire as the same remains of record before the said Court, at No. **00-1392-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 10th Day of Sept., 2002.

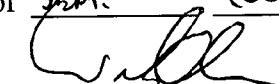

Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman**, Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.


Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, Judge, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 13 day of Sept. 2002.


Prothonotary/Clerk of Courts

**CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)**

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

00-1392-CD

**Commonwealth of Pennsylvania, Dept. of Labor and Industry, Bureau of Labor
Law Compliance o/b/o Lynndon Hubler
VS.
Wayne Stuber d/b/a C-Wayne Fixtures**

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No. 17**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is
May 24, 2002.



Prothonotary/Clerk of Courts

(seal)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**Commonwealth of Pennsylvania, Dept. of Labor and Industry, Bureau of Labor
Law Compliance o/b/o Lynndon Hubler**

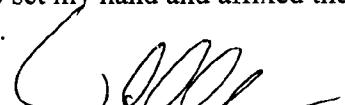
Vs.

Wayne Stuber d/b/a C-Wayne Fixtures

00-1392-CD

So full and entire as the same remains of record before the said Court, at No. **00-1392-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 22nd Day of MAY, 2002.



Prothonotary/Clerk of Courts

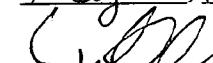
I, **Fredric J. Ammerman**, Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.



Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, Judge, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 24th day of May, 2002.



Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS
of **Clearfield County**
JUDICIAL DISTRICT

46

NOTICE OF APPEAL

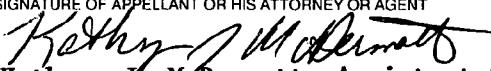
FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 2000-1392-C0

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Labor Law Compliance		MAG. DIST. NO. OR NAME OF D.J. 46-3-03		
ADDRESS OF APPELLANT 10th Floor, L&I Building, 7th & Forster Sts., Harrisburg,		CITY	STATE PA	ZIP CODE 17120
DATE OF JUDGMENT 10/13/00	IN THE CASE OF (PLAINTIFF) Commonwealth of PA, et al.	(DEFENDANT) C-Wayne Fixtures vs.		
CLAIM NO. CV YEAR 0000198-00	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT  Kathryn J. McDermott, Assistant Counsel			

This block will be signed ONLY when this notation is required under PA. R.C.P.J.P. No. 1008B.

This notice of Appeal, when received by the District Justice, will operate as A SUPERSEDEAS to the Judgment for possession in this case.

If appellant was Claimant (see PA R.C.P.J.P. No. 1001(6)) in action before district Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see PA R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon _____, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. _____) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Signature of appellant or his attorney or agent

RULE: To _____, appellee(s)
Name of appellee(s)

- (1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty(20) days after the date of service of this rule upon you by personal service or by certified or registered mail.
- (2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU UPON PRAECIPE.
- (3) The date of service of this rule if service was by mail is the date of the mailing.

Date: _____, Year _____

FILED

Signature of Prothonotary or Deputy

White - Prothonotary Copy
Green - Court File Copy
Yellow - Appellant's Copy
Pink - Appellee Copy
Gold - D. J. Copy

NOV 09 2000
JUN 3:59 AM
William A. Shaw
Prothonotary
P.O. Box 1600
#1

Proth. - 76

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; ss

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on (date of service) _____, year _____, by personal service by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) _____, on _____, year _____, by personal service by (certified) (registered) mail, sender's receipt attached hereto.

and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on _____, year _____, by personal service by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, YEAR _____.

Signature of Affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____, year _____.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: CLEARFIELD

Mag. Dkt. No.:

46-3-03

DJ Name: Hon.

MICHAEL A. RUDELLA
Address: MOUNTAIN VIEW PLAZA
P.O. BOX 210
KYLERTOWN, PA
Telephone: (814) 345-6789

16847-0000

Att:

Kathryn McDermott

1-717-783-5027 7-0000

THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR DEFENDANT

Judgment was entered for: (Name) C-WAYNE FIXTURES

Judgment was entered against: (Name) COMMONWEALTH OF PA/DEPT. OF L

in the amount of \$ 00 on: (Date of Judgment) 10/13/00

Defendants are jointly and severally liable. (Date & Time) _____

Damages will be assessed on: _____

This case dismissed without prejudice. _____

Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ _____

Levy is stayed for _____ days or generally stayed. _____

Objection to levy has been filed and hearing will be held: _____

Amount of Judgment	\$ <u>00</u>
Judgment Costs	\$ <u>00</u>
Interest on Judgment	\$ <u>00</u>
Attorney Fees	\$ <u>00</u>
Total	\$ <u>00</u>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

Date:	Place:
Time:	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

10/13/00 Date M. McDermott, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date _____, District Justice

My commission expires first Monday of January.

2006

SEAL

AOPC 315-99



POST OFFICE TO ADDRESSEE

ЕУРӨЛ89369US

UNITED STATES POSTAL SERVICE™

ORIGIN (POSTAL USE ONLY)

PO ZIP Code 16730	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In 11/9/00	Postage \$ 11.75	
Mo. Day Year 11 9 00	12 Noon <input type="checkbox"/> 3 PM <input type="checkbox"/>	
Time In 11:00 AM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight 0.25	Int'l Alpha Country Code CA	COD Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials CH	Insurance Fee
		Total Postage & Fees \$ 11.75

CUSTOMER USE ONLY

METHOD OF PAYMENT:

Ex-
Corporate Acct. No.
Federal Agency/Acct. No. or
Postal Service Acct. No.

WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested.
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY Weekend Holiday

Customer Signature

FROM: (PLEASE PRINT) **PHONE 717 787-4186**

Kathryn J. McDermott, Assistant Counsel
Office of Chief Counsel
Department of Labor and Industry
Commonwealth of Pennsylvania
10th Floor L&I Building
7th and Forster Streets
Harrisburg, PA 17120

TO: (PLEASE PRINT) **PHONE 717 787-4186**

Kathryn J. McDermott, Assistant Counsel
Office of Chief Counsel
Department of Labor and Industry
Commonwealth of Pennsylvania
10th Floor L&I Building
7th and Forster Streets
Harrisburg, PA 17120



FOR PICKUP OR TRACKING CALL 1-800-222-1811 www.usps.gov

Label 11-B July 1997

Customer Copy

Service Guarantee: *Excludes all International shipments. Military shipments delayed due to Customs inspections are also excluded.*

If this shipment is mailed at a designated USPS Express Mail facility on or before the specified deposit time for overnight delivery to the addressee, it will be delivered to the addressee or agent before the guaranteed time the next delivery day. Signature of the addressee, addressee's agent, or delivery employee is required upon delivery. If it is not delivered by the guaranteed time and the mailer files a claim for a refund, the USPS will refund the postage, unless: 1.) delivery was attempted but could not be made, 2.) this shipment was delayed by strike or work stoppage, or 3.) detention was made for a law enforcement purpose.

Consult your local Express Mail directory for noon and 3:00 PM delivery areas and for information on international and military Express Mail services. See the *Domestic Mail Manual* for details. Express Mail International mailings are not covered by this service agreement.

Insurance Coverage: Insurance is provided only in accordance with postal regulations in the *Domestic Mail Manual* (DMM) and for international shipments, the *International Mail Manual* (IMM). The DMM and IMM set forth the specific types of losses that are covered, the limitations on coverage, terms of insurance, conditions of payment, and adjudication procedures. Copies of the DMM and IMM are available for inspection at any post office. If copies are not available and information on Express Mail insurance is requested, contact postmaster prior to mailing. The DMM and the IMM consist of federal regulations, and USPS personnel are NOT authorized to change or waive these regulations or grant exceptions. Limitations prescribed in the DMM and IMM provide, in part, that:

- The contents of Express Mail shipments defined by postal indemnity regulations as merchandise are insured against loss, damage, or rifling. Coverage up to \$500 per shipment is included at no additional charge. Additional merchandise insurance up to \$5,000 per shipment may be purchased for an additional fee; however, additional merchandise insurance is void if waiver of the addressee's signature is requested.
- Items defined by postal regulations as "negotiable items" (instruments that can be converted to cash without resort to forgery), currency, or bullion are insured up to a maximum of \$15 per shipment.

■ For international Express Mail shipments, insurance coverage may vary by country and may not be available to some countries. Indemnity is not paid for items containing coins, banknotes, currency notes (paper money); securities of any kind payable to the bearer; traveler's checks, platinum, gold, and silver (manufactured or not); precious stones, jewelry; and other valuable or prohibited articles.

■ Items defined by postal indemnity regulations as nonnegotiable documents are insured against loss, damage, or rifling up to \$500 per shipment for document reconstruction, subject to additional limitations for multiple pieces lost or damaged in a single catastrophic occurrence. Document reconstruction insurance provides reimbursement for the reasonable costs incurred in reconstructing duplicates of nonnegotiable documents mailed. Document reconstruction insurance coverage above \$500 per shipment is NOT available, and attempts to purchase additional document reconstruction insurance coverage are void.

- No coverage is provided for consequential losses due to loss, damage, or delay of Express Mail.

COVERAGE, TERMS, AND LIMITATIONS ARE SUBJECT TO CHANGE. Consult *Domestic Mail Manual* and *International Mail Manual* for additional limitations and terms of coverage.

Claims: Original customer receipt of the Express Mail label must be presented when filing an indemnity claim and/or for a postage refund.

1. All claims for delay, loss, damage, or rifling must be made within 90 days of the date of mailing; for international, call 1-800-222-1811.
2. Claim forms may be obtained and filed at any post office.
3. To file a claim for damage, the article, container, and packaging must be presented to the USPS for inspection. To file a claim for loss of contents, the container and packaging must be presented to the USPS for inspection. **DO NOT REMAIL.**

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS
JUDICIAL DISTRICT

NOTICE OF APPEAL

FROM
DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. _____

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT	MAG. DIST. NO. OR NAME OF D.J.		
ADDRESS OF APPELLANT	CITY	STATE	ZIP CODE
DATE OF JUDGMENT	IN THE CASE OF (PLAINTIFF) (DEFENDANT)		
CLAIM NO. CV YEAR LT YEAR	VS. SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT		
This block will be signed ONLY when this notation is required under PA. R.C.P.J.P. No. 1008B. This notice of Appeal, when received by the District Justice, will operate as A SUPERSEDEAS to the Judgment for possession in this case.		If appellant was Claimant (see PA R.C.P.J.P. No. 1001(6)) in action before district Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.	
Signature of Prothonotary or Deputy			

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see PA R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon _____, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. _____) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Signature of appellant or his attorney or agent

RULE: To _____, appellee(s)
Name of appellee(s)

- (1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty(20) days after the date of service of this rule upon you by personal service or by certified or registered mail.
- (2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU UPON PRAECIPE.
- (3) The date of service of this rule if service was by mail is the date of the mailing.

Date: _____, Year _____

Signature of Prothonotary or Deputy

White - Prothonotary Copy
Green - Court File Copy
Yellow - Appellant's Copy
Pink - Appellee Copy
Gold - D. J. Copy

RECEIVED
MAY 11 1980
2:00 PM
JW

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Dauphin; ss

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. 2000-1392-CD, upon the District Justice designated therein on (date of service) November 16, year 2000, by personal service by (certified) ~~registered~~ mail, sender's receipt attached hereto, and upon the appellee, (name) C-Wayne Fixtures, on November 16, year 2000, by personal service by (certified) ~~registered~~ mail, sender's receipt attached hereto.

and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on _____, year _____, by personal service by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS 16th DAY OF November, YEAR 2000

Denise M. Stough
Signature of official before whom affidavit was made

Notary Public

Title of official

My commission expires on May 17, year 2003

Kathy J. McDermott

Signature of Affiant

Notarial Seal
Denise M. Stough, Notary Public
Harrisburg, Dauphin County
My Commission Expires May 17, 2003

Member, Pennsylvania Association of Notaries

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (no extra charge).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return ~~receipt~~ card, Form 3811, and attach it to the front of the article by means of gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make an inquiry.

10/1
Z 084-893 174
US Postal Service
Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail (See reverse)

Sent to C-Wayne Fixtures	
Street & Number R.D. #1, Box 18	
Post Office, State, & ZIP Code Morrisdale, PA 16858	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Requested When & Date Delivered	
Return Receipt Showing to Who, Date, & Addressee's Address	
TOTAL Postage & Fees \$ 2.98	
Postmark or Date	

PS Form 3800, April 1995

10/1
USPS

10F1

Z 084 893 175

US Postal Service

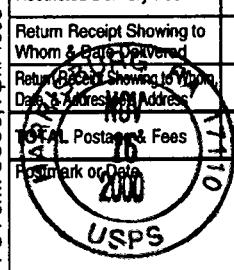
Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Michael A. Rudella, D.J.	
Street & Number	Mt. View Plaza
P.O. Box 210	
Kylertown, PA 16847	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date & Address of Address	
TOTAL Postage & Fees	
Postmark or Date	

PS Form 3800, April 1995



\$ 2.98

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

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (*no extra charge*).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends, if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make an inquiry.

102595-97-B-0145

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-03

DJ Name: Hon.

MICHAEL A. RUDELLA

Address: **MOUNTAIN VIEW PLAZA**
P.O. BOX 210
KYLERTOWN, PA

Telephone: **(814) 345-6789**

16847-0000

MICHAEL A. RUDELLA
MOUNTAIN VIEW PLAZA
P.O. BOX 210
KYLERTOWN, PA 16847-0000

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

NAME and ADDRESS

COMMONWEALTH OF PA/DEPT. OF L & I
7TH & FORESTER STS.
HARRISBURG, PA 17120

00-1392-CJ

VS.

DEFENDANT:

NAME and ADDRESS

C-WAYNE FIXTURES
R.D.1 BOX 18
MORRISDALE, PA 16858

Docket No.: **CV-0000198-00**
Date Filed: **9/14/00**



THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR DEFENDANT

Judgment was entered for: (Name) C-WAYNE FIXTURES

Judgment was entered against: (Name) COMMONWEALTH OF PA/DEPT. OF L

in the amount of \$ 00 on: (Date of Judgment) 10/13/00

Defendants are jointly and severally liable. (Date & Time) _____

Damages will be assessed on: _____

This case dismissed without prejudice. _____

Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ _____

Levy is stayed for _____ days or generally stayed. _____

Objection to levy has been filed and hearing will be held: _____

Amount of Judgment	\$ <u>00</u>
Judgment Costs	\$ <u>00</u>
Interest on Judgment	\$ <u>00</u>
Attorney Fees	\$ <u>00</u>
Total	\$ <u>00</u>
Post Judgment Credits	\$ <u>00</u>
Post Judgment Costs	\$ <u>00</u>
=====	
Certified Judgment Total	\$ <u>00</u>

Date:	Place:
Time:	

NOV 22 2000
01 12:20 AM 2000
MICHIGAN A. RUDELLA #20

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

10/13/00 Date M. Rudella, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

11/20/00 Date M. Rudella, District Justice

My commission expires first Monday of January,

2006

SEAL

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-03

DJ Name: Hon.

MICHAEL A. RUDELLA
Address: **MOUNTAIN VIEW PLAZA**
P.O. BOX 210
KYLERTOWN, PA

Telephone: **(814) 345-6789** **16847-0000**

**COMMON PLEAS NOTIFICATION
REQUEST FORM**

PLAINTIFF:

NAME and ADDRESS
COMMONWEALTH OF PA/DEPT. OF L & I
7TH & FORESTER STS.
HARRISBURG, PA 17120

DEFENDANT:

NAME and ADDRESS
C-WAYNE FIXTURES
R.D.1 BOX 18
MORRISDALE, PA 16858

VS.

Docket No.: **CV-0000198-00**
Date Filed: **9/14/00**



Disposition Date: 10/13/00

Please be advised that an appeal has been filed in the above captioned case. Kindly use this form to indicate the results in this case, and return to the issuing authority (listed above).

RESULT OF APPEAL

Common Pleas Judge

CIVIL-LANDLORD/TENANT APPEAL

- APPEAL STRICKEN - appeal has been disallowed.
- APPEAL DISCONTINUED - appeal has been discontinued by appellant.
- DISTRICT JUSTICE DECISION UPHELD - court has reached the same decision as the district justice judgment.
- DISTRICT JUSTICE DECISION DISMISSED - court has reached a decision that does not concur with the district justice decision.

WRIT OF CERTIORARI

- WRIT STRICKEN - appeal has been disallowed.
- WRIT DISCONTINUED - writ has been discontinued by appellant.
- DISTRICT JUSTICE DECISION SET ASIDE - the case will be reheard due to irregularity, lack of jurisdiction, or improper venue.
- WRIT DISMISSED - district justice decision was not found to be flawed, lacking jurisdiction, or having improper venue.

STATEMENT OF OBJECTION (Please give a general summary of the results)

- OBJECTION DISCONTINUED - objection has been discontinued by the appellant.
- OBJECTION DENIED - objection has been denied by the Court of Common Pleas.
- OBJECTION UPHELD - appellant's objection has been upheld by the Court of Common Pleas.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :	CIVIL ACTION - LAW
DEPARTMENT OF LABOR AND :	
INDUSTRY, BUREAU OF LABOR LAW :	
COMPLIANCE, o/b/o LYNNNDON HUBLER, :	
Plaintiff, :	
v. :	NO. 2000-1392-CD
WAYNE STUBER, individually and d/b/a :	
C-WAYNE FIXTURES, :	
Defendant. :	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must take action within TWENTY (20) after this Complaint and notice are served, by entering a written appearance, personally or by attorney, and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint, or for any other claim or relief requested by the Plaintiff. You may lose money or property 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, EITHER OF THE OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

FILED

NOV 29 2000
m 11:55/was
William A. Shaw
Prothonotary

1 CERT TO ATTY
EAS

(#4)

If you do not have an attorney, contact:

MidPenn Legal Services
Linda Lovett, Manager
211 ½ East Locust Street
Clearfield, PA 16830
Telephone: (814) 765-9646

If you cannot afford an attorney, contact:

David S. Meholick
Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
Telephone: (814) 765-2641


KATHRYN J. McDERMOTT
ASSISTANT COUNSEL
Atty. ID No. 77238

Commonwealth of Pennsylvania
Department of Labor and Industry
Office of Chief Counsel
Labor Law Compliance Division

10th Floor, Labor & Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
Telephone: (717) 787-4186
-- *Counsel for Plaintiff*

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

COMMONWEALTH OF PENNSYLVANIA, : CIVIL ACTION – LAW
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON HUBLER, :
Plaintiff, :
v. : NO. 2000-1392-CD
WAYNE STUBER, individually and d/b/a :
C-WAYNE FIXTURES CO. :
Defendant. :

COMPLAINT

1. Plaintiff is the Bureau of Labor Law Compliance, an administrative division of the Commonwealth of Pennsylvania's Department of Labor and Industry, which has been delegated the duties assigned to the Secretary of Labor and Industry ("Secretary") under the Minimum Wage Act of 1968, ("MWA"), act of January 17, 1968, P.L. 11, No. 5, as amended, 43 P.S. §§333.101-333.115. Plaintiff maintains an office, or regular place of business, at 1301 Labor and Industry Building, Seventh and Forster Streets, Harrisburg, Pennsylvania 17120.

2. Defendant Wayne Stuber is an adult individual, having an office or regular place of business at R.D. #1, Box 18, Morrisdale, Pennsylvania 16858. At all times relevant hereto, Defendant was doing business under the registered fictitious name of C-Wayne Fixtures Co., and was owner and agent of said company.

3. Plaintiff brings this action on behalf of Lynndon Hubler ("Claimant"), an adult individual residing in Kylertown, Pennsylvania 16847.

4. Pursuant to Section 13 of the MWA, 43 P.S. § 333.113, Claimant executed and delivered to Plaintiff an assignment of his claim under the MWA against Defendant. A true and correct copy of said wage claim and assignment, along with accompanying supporting documentation, is attached hereto, made a part hereof, and collectively marked as Exhibit "A".

5. Claimant was employed by Defendant as a carpenter from approximately March 30, 1998, to September 2, 1999, which employment was principally located in Pennsylvania.

6. Defendant was an "employer" as that term is defined in the MWA, 43 P.S. § 333.102, in that he employed Claimant and/or acted, directly or indirectly, in the interest of an employer in establishing or enforcing the terms and conditions of their employment including but not limited to the payment or non-payment of wages.

7. Claimant was paid between \$8.00-\$13.00 per hour during his employ with the Defendant. The specific amounts per week are more fully set forth in the attached Appendix "B", which is hereby incorporated by reference.

8. Defendant was required under Section 4(c) of the MWA, 43 P.S. §333.104(c), to pay Claimant not less than one-and-a-half (1½) times his wage for all hours worked in Defendant's employ in excess of 40 hours in a workweek ("overtime").

9. Defendant never paid overtime to the Claimant for the work Claimant performed for the Defendant during employment. As a result, Defendant is liable for unpaid overtime wages to Claimant for hours worked as set forth in Appendix "B", less amounts already paid as set forth in Claimant's original compliant with the Bureau as indicated in Appendix "A". The Claimant is therefore owed overtime wages in the amount of **\$1,276.40**.

WHEREFORE, Plaintiff requests judgment on behalf of Claimant and against Defendants, jointly and severally, in the amount of **\$1,276.40**, or such other amount as this Honorable Court may determine to be due Claimant, together with costs of suit and reasonable attorney's fees. THE AMOUNT CLAIMED DOES NOT EXCEED THE JURISDICTIONAL AMOUNT REQUIRING ARBITRATION REFERRAL BY LOCAL RULE.

Respectfully submitted,



KATHRYN J. McDERMOTT
Assistant Counsel
Atty. Reg. No. 77238

Labor Law Compliance Division
Office of Chief Counsel
Department of Labor and Industry
Commonwealth of Pennsylvania

10th Floor, Labor and Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
717-787-4186

Dated: November 28, 2000

-- *Counsel for Plaintiff*

VERIFICATION

I, GERALD A. BARNETT, hereby state that I am the Supervisor of the Commonwealth of Pennsylvania's Bureau of Labor Law Compliance, Harrisburg District Office, that I am authorized to make this statement on behalf of Plaintiff, that I have read the foregoing Complaint, and that the facts alleged therein are true and correct to the best of my knowledge, information and belief.

This statement is made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Gerald A. Barnett 11-28-00
GERALD A. BARNETT/DATE

APPENDIX A

WAGE COMPLAINT FORM

D 1-4

990 1154

Office use only: WP&C MW ✓ OT CLL

This form is used for complaints under the Pennsylvania Minimum Wage Act of 1968 and the Wage Payment and Collection Law. Persons returning this form should complete all parts, including the reverse side, that are applicable to the specific law or laws under which a complaint is made.

please attach a written description of your claim to the form.

RETURN TO:

Bureau of Labor Law Compliance
1301 Labor and Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120-0019
Telephone: 717-787-4671 or
1-800-932-0665

Bureau of Labor Law Compliance
1103 State Office Building
1400 Spring Garden Street
Philadelphia, PA 19130-4064
Telephone: 215-560-1858

Bureau of Labor Law Compliance
1201 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222-1210
Telephone: 412-565-5300 or
1-877-504-8354

Bureau of Labor Law Compliance
201-B State Office Building
100 Lackawanna Avenue
Scranton, PA 18503-1923
Telephone: 570-963-4577

PLEASE PRINT:

Name of Person Filing Complaint Lynndon D. Hubler

Address PO Box 46 STREET Kylerstown CITY PA 16847 STATE ZIP CODE

Social Security Number 209-54-2084 Birthdate 7-12-71

Telephone Number where you can be reached between 8:30 a.m. and 5:00 p.m. (814) 345-4225
(INCLUDE AREA CODE)

after 5:00 p.m. (" ") " " - " " " "

Type of Work Performed Carpentry

Location of Employment throughout P.A. STREET CITY COUNTY STATE ZIP CODE

Name of Employer (Against whom the Wage Claim is filed) C-WAYNE Fixtures - Wayne Stuber (owner)

Company Name, If any C-WAYNE fixtures Telephone Number (814) 342-5536

Address RD1 Box 18 STREET Morrisdale CITY Clearfield COUNTY PA 16858 STATE ZIP CODE

Date Hired 3-30-98 Are you still employed by the named employer? YES NO

If NO, give the last date worked 9-2-99 Was your termination: Voluntary Involuntary

1. Was there a written contract of employment between you and the named employer? YES NO

If YES, please attach copy.

2. Were you notified by the named employer as to when and where you would be paid? YES NO

3. What was your regular payday to be? (check one) Weekly Bi-Weekly Monthly Other _____

4. Were wages paid to you in a form other than a check? YES NO Other (cash) _____

5. What was the latest rate of pay agreed upon between you and the named employer?

Hourly \$ 13.00 hr. Weekly \$ _____ Other, please explain _____

What are the TOTAL wages claimed by you? \$ 1,276.40 overtime pay _____

COMPLETE REVERSE SIDE

WAGES CLAIMED ON OTHER SIDE ARE COMPUTED AS FOLLOWS:

NOTE: Failure to provide detailed information in the space provided above may make it impossible to pursue this claim on your behalf.

6. Did the named employer refuse to pay these wages? YES NO
If YES, the named employer's reason for refusal said that he doesn't pay overtime.

7. Do you and the named employer agree as to the amount of wages due you? YES NO
If NO, what amount does the named employer acknowledge as being due? \$ -0-

8. Has the named employer given you written confirmation of the amount due to you? YES NO

9. Has the named employer offered to pay you the amount to be due? YES NO
If YES, have you accepted the amount offered? YES NO

10. Have you agreed in writing to any deductions? YES NO
If YES, please list deductions _____

11. Have any deductions been made without your written agreement? YES NO
If YES, please explain _____

12. Do you owe any money to the named employer for any reason? YES NO If YES, how much? \$ _____

13. Are you covered under a Collective Bargaining Agreement? YES NO
If YES, list the name and address of the union _____

You may use additional paper to summarize related information and wage computations.

NOTE: I hereby certify that to the best of my knowledge and belief, this is a true statement of facts relating to the above claim of unpaid wages.

I hereby assign the said wages and all penalty wages accruing because of nonpayment thereof, also all liens securing said wages to the Secretary of Labor and Industry of the Commonwealth of Pennsylvania, and any Deputy or Representative authorized to act on the Secretary's behalf, to collect under the provisions of Section 9.1(e) of the Wage Payment and Collection Law or Section 13 of the Pennsylvania Minimum Wage Act, Sec. 333.113.

Signature of Claimant Lyndora D. Hulka Date of Complaint 9-29-99

Signature of Parent or Guardian if Claimant is under 18 years of age _____

The Bureau will contact you for any further information. Please notify the office checked on the other side of this form in the event that you are paid before the Bureau contacts you.

• ~~•~~ Attached Sheet #1
wage complaint form (question 5)

Week ending Date	number of hours worked this week	number of days worked this week	Rate of Pay per hour; Day week or other	Total Gross Wages earned this week	Gross wages & specify if Paid to you vacation pay For this sick leave or commission
4-3-98	41.5	4	10.00/h	415.00	415.00
5-14-98	41.5	4	10.00/h	415.00	415.00
6-12-98	42.0	4	8.00/h	336.00	336.00
6-29-98	40.5	4	8.00/h	324.00	324.00
7-10-98	44.0	4	8.00/h	352.00	352.00
7-17-98	49.0	4	10.00/h	490.00	490.00
7-24-98	46.25	4	10.00/h	465.00	465.00
7-30-98	43.5	4	10.00/h	435.00	435.00
8-8-98	66.0	40.5	10.00/h	660.00	660.00
8-15-98	60.5	40.5	10.00/h	605.00	605.00
8-22-98	42.0	4	10.00/h	420.00	420.00
8-28-98	41.5	4	10.00/h	415.00	415.00
9-18-98	49.5	4	10.00/h	495.00	495.00
9-25-98	41.5	4	10.50/h	435.75	435.75
10-22-98	47.5	4	10.50/h	498.75	498.75
9-10-98	49.5	4	8 and 10.00/h	499.00	499.00
10-30-98	41.0	4	10.50/h	436.50	436.50
11-6-98	42.5	4	10.50/h	446.25	446.25
11-12-98	42.5	4	10.50/h	446.25	446.25
1-16-99	41.0	4	8.00/h	328.00	328.00
* 1-27-99	52.0	4	12.50 and 18.50/h	643.75	643.75
* 2-12-99	55.5	4	12.50/h	693.75	693.75
* 2-19-99	51.0	4	12.50/h	637.50	637.50
* 2-26-99	43.5	4	12.50/h	537.80	537.80
* 4-22-99	45.0	4	13.00/h	585.00	585.00
* 4-29-99	43.5	4	13.00/h	586.00	586.00
* 5-5-99	40.5	4	13.00/h	526.50	526.50
* 5-13-99	48.5	4	13.00/h	630.00	620.00
* 6-4-99	43.0	4	13.00/h	552.00	552.00
* 6-24-99	41.0	4	13.00/h	538.00	538.00
* 7-2-99	42.0	4	13.00/h	544.00	544.00
* 7-9-99	51.5	4	13.00/h	669.50	669.50
* 7-16-99	66.5	4	13.00/h	864.50	864.50
7-24-99	46.5	4	13.00/h	604.00	604.00
8-6-99	44.0	4	13.00/h	572.00	572.00

* reduction in pay due to repayment of an advance

S.S.# 204-54-084
 PO Box 116
 Kutztown PA 16847
 (814)345-4225

DATE	Hours Over 40	Time Rate	Total Time/Half	amt. paid to me	Amt. owed to me
1. 4-3-98	1.5 hrs.	X \$15.00	= \$22.50	-\$15.00	=\$7.50
2. 5-14-98	1.5 hrs.	X \$15.00	= \$22.50	-\$15.00	=\$7.50
3. 6-17-98	2.0 hrs.	X \$12.00	= \$24.00	-\$16.00	=\$8.00
4. 6-29-98	0.5 hrs.	X \$12.00	= \$6.00	-\$4.00	=\$2.00
5. 7-10-98	4.0 hrs.	X \$12.00	= \$48.00	-\$32.00	=\$16.00
6. 7-17-98	9.0 hrs.	X \$15.00	= \$135.00	-\$90.00	=\$45.00
7. 7-24-98	6.25 hrs.	X \$15.00	= \$93.75	-\$62.50	=\$31.25
8. 7-30-98	3.5 hrs.	X \$15.00	= \$52.50	-\$35.00	=\$17.50
9. 8-8-98	26.0 hrs.	X \$15.00	= \$390.00	-\$260.00	=\$130.00
10. 8-15-98	80.5 hrs.	X \$15.00	= \$307.50	-\$205.00	=\$102.50
11. 8-22-98	2.0 hrs.	X \$15.00	= \$30.00	-\$20.00	=\$10.00
12. 8-28-98	1.5 hrs.	X \$15.00	= \$22.50	-\$15.00	=\$7.50
13. 9-18-98	2.5 hrs.	X \$15.00	= \$37.50	-\$25.00	=\$12.50
14. 9-25-98	1.5 hrs.	X \$15.25	= \$22.63	-\$15.25	=\$7.38
15. 10-22-98	7.5 hrs.	X \$15.25	= \$114.38	-\$78.75	=\$35.63
16. 9-10-98	9.5 hrs.	X \$15.00	= \$142.50	-\$95.00	=\$47.50
17. 10-30-98	1.0 hrs.	X \$15.25	= \$15.25	-\$10.50	=\$4.75
18. 11-6-98	2.5 hrs.	X \$15.25	= \$38.13	-\$26.00	=\$12.13
19. 11-12-98	2.5 hrs.	X \$7.50	= \$18.75	-\$12.50	=\$6.25
20. 1-16-99	1.0 hrs.	X \$12.00	= \$12.00	-\$8.00	=\$4.00
21. 1-27-99	12.0 hrs.	X \$18.75	= \$225.00	-\$156.25	=\$68.75
22. 2-12-99	15.5 hrs.	X \$18.75	= \$290.63	-\$193.75	=\$96.88
23. 2-19-99	11.0 hrs.	X \$18.75	= \$206.25	-\$137.50	=\$68.75
24. 2-26-99	3.0 hrs.	X \$18.75	= \$56.25	-\$37.50	=\$18.75
25. 4-22-99	5.0 hrs.	X \$19.50	= \$97.50	-\$65.00	=\$32.50
26. 4-29-99	5.5 hrs.	X \$19.50	= \$107.25	-\$71.50	=\$35.75
27. 5-5-99	0.5 hrs.	X \$19.50	= \$9.75	-\$6.50	=\$3.25
28. 5-13-99	8.5 hrs.	X \$19.50	= \$165.75	-\$110.50	=\$55.25
29. 6-4-99	3.0 hrs.	X \$19.50	= \$58.50	-\$39.00	=\$19.50
30. 6-24-99	1.0 hrs.	X \$19.50	= \$19.50	-\$13.00	=\$6.50
31. 7-2-99	7.0 hrs.	X \$19.50	= \$136.50	-\$91.00	=\$45.50
32. 7-9-99	11.5 hrs.	X \$19.50	= \$224.75	-\$149.50	=\$75.25

OVER →

$$34. 7-16-99. \quad 26.5 \text{ hrs.} \times \$19.50 = \$516.75 - \$344.50 = \$172.25$$

$$35. 7-24-99. \quad 6.5 \text{ hrs.} \times \$19.50 = \$126.75 - \$84.50 = \$42.25$$

$$36. 8-6-99. \quad 4.0 \text{ hrs.} \times \$19.50 = \$78.00 - \$52.00 = \$26.00$$

$$\text{total} = \$1,276.40$$

APPENDIX B

<u>WEEK ENDING</u>	<u># HOURS</u>	<u>PAY RATE</u>	<u>O.T. RATE</u>	<u>AMOUNT OWED</u>
04/03/98	41.5	\$10.00	\$15.00	\$7.50
05/14/98	41.5	\$10.00	\$15.00	\$7.50
06/12/98	42.0	\$8.00	\$12.00	\$8.00
06/29/98	40.5	\$8.00	\$12.00	\$2.00
07/10/98	44.0	\$8.00	\$12.00	\$16.00
07/17/98	49.0	\$10.00	\$15.00	\$45.00
07/24/98	46.3	\$10.00	\$15.00	\$31.25
07/30/98	43.5	\$10.00	\$15.00	\$17.50
08/08/98	66.0	\$10.00	\$15.00	\$130.00
08/15/98	60.5	\$10.00	\$15.00	\$102.50
08/22/98	42.0	\$10.00	\$15.00	\$10.00
08/28/98	41.5	\$10.00	\$15.00	\$7.50
09/10/98	49.5	\$10.00	\$15.00	\$47.50
09/18/98	42.5	\$10.00	\$15.00	\$12.50
09/25/98	41.5	\$10.50	\$15.75	\$7.38
10/22/98	47.5	\$10.50	\$15.75	\$35.63
10/30/98	41.0	\$10.50	\$15.75	\$4.75
11/06/98	42.5	\$10.50	\$15.75	\$12.13
11/12/98	42.5	\$0.50	\$0.75	\$0.63
01/16/99	41.0	\$8.00	\$12.00	\$4.00
01/27/99	52.0	\$12.50	\$18.75	\$68.75
02/12/99	55.5	\$12.50	\$18.75	\$96.88
02/19/99	51.0	\$12.50	\$18.75	\$68.75
02/26/99	43.0	\$12.50	\$18.75	\$18.75
04/22/99	45.0	\$13.00	\$19.50	\$32.50
04/29/99	45.5	\$13.00	\$19.50	\$35.75
05/05/99	40.5	\$13.00	\$19.50	\$3.25
05/13/99	48.5	\$13.00	\$19.50	\$55.25
06/04/99	43.0	\$13.00	\$19.50	\$19.50
06/24/99	41.0	\$13.00	\$19.50	\$6.50
07/02/99	47.0	\$13.00	\$19.50	\$45.50
07/09/99	51.5	\$13.00	\$19.50	\$75.25
07/16/99	66.5	\$13.00	\$19.50	\$172.25
07/24/99	46.5	\$13.00	\$19.50	\$42.25
08/06/99	44.0	\$13.00	\$19.50	\$26.00

\$1,276.40

CERTIFICATE OF SERVICE

I KATHRYN J. McDERMOTT hereby certify that I have, this 28th day of November, 2000, served the foregoing Complaint upon the person and in the manner set forth below, which service satisfies the pertinent Pa. Rules of Civil Procedure relating to service of documents:

**By First-Class Mail, Postage-Prepaid,
Addressed to:**

F. Cortez Bell, III, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
-- *Counsel for Defendants*



KATHRYN J. McDERMOTT
ASSISTANT COUNSEL
Atty. ID No. 77238

Commonwealth of Pennsylvania
Department of Labor and Industry
Office of Chief Counsel
Labor Law Compliance Division

10th Floor, Labor & Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
Telephone: (717) 787-4186
-- *Counsel for Plaintiff*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CIVIL ACTION - LAW
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNNDON HUBLER, :
Plaintiff, :
v. : NO. 2000-1392-CD
WAYNE STUBER, individually and d/b/a :
C-WAYNE FIXTURES, :
Defendant. :

ACCEPTANCE OF SERVICE

TO THE PROTHONOTARY:

I F. CORTEZ BELL, III, hereby accept service of the Complaint filed in the above-captioned matter on behalf of Defendant Wayne Stuber, individually and d/b/a C-Wayne Fixtures, and certify that I am authorized to do so by the Defendant.

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
-- Counsel for Defendant

FILED

DEC 26 2000
2000-1392-CD
William A. Shaw
Prothonotary

DATED: November 30, 2000

I CERTIFY TO THE COURT
PLFF

*Att'd d/c
10/4/01*

EZB

5

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

COMMONWEALTH OF PENNSYLVANIA, : NO. 2000-1392-CD
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW : Type of Case: Civil
COMPLIANCE, o/b/o LYNNDON :
HUBLER, : Type of Pleading:
Plaintiff : Answer and New Matter to
v. : Plaintiff's Complaint
: Filed on Behalf of:
WAYNE STUBER, individually : Wayne Stuber, individually
and d/b/a C-WAYNE FIXTURES, : and d/b/a C-Wayne Fixtures,
Defendant : Defendant
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P. O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:

FILED

JAN 15 2001

William A. Shaw
Prothonotary

#14

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER,
Plaintiff :
:
Vs. : No. 2000-1392-CD
:
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Defendant :

NOTICE TO PLEAD

TO THE WITHIN PLAINTIFFS, COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF LABOR AND INDUSTRY, BUREAU OF LABOR LAW COMPLIANCE, o/b/o LYNNDON HUBLER:

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.

BELL, SILBERBLATT & WOOD

By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER, :
Plaintiff :
:
Vs. : No. 2000-1392-CD
:
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Defendant :

ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

NOW comes the Defendant, Wayne Stuber, individually and d/b/a C-Wayne Fixtures, by and through his attorney, F. Cortez Bell, III, Esquire, who for the Defendant's Answer to Plaintiff's Complaint respectfully sets forth and avers as follows:

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint can neither be admitted nor denied as the Defendant after reasonable investigation is without sufficient information to prepare a response. Strict proof of the averment of Paragraph 3 would be demanded at time of trial or hearing in this matter.

4. Paragraph 4 of the Complaint can neither be admitted nor denied in part and would be denied in part. The Defendant is without sufficient information following investigation to either admit or deny that portion of Paragraph 4 which deals with the

assignment of the alleged claim of Lynndon Hubler to the Plaintiff. It would be specifically denied that said Lynndon Hubler or the Plaintiff if an assignment has occurred is owed any sums of money by the Defendant as Lynndon Hubler was employed solely as an independent contractor. Strict proof thereof of the averment of Paragraph 4 would be demanded at time of trial or hearing in this matter.

5. Paragraph 5 of the Complaint would be admitted in part and denied in part. It would be admitted that the Defendant retained the services of Lynndon Hubler as an independent contractor and that work was performed within the Commonwealth of Pennsylvania for certain periods of time within the dates specified. It would be denied that Lynndon Hubler at any point in time was employed or an employee of the Defendant and that wages in any fashion were due Lynndon Hubler as an employee. Strict proof of the denied averments of Paragraph 5 would be demanded at time of trial or hearing in this matter.

6. Paragraph 6 of the Complaint would be denied. It would be specifically denied that the Defendant in any fashion meets the definition of an employer under the Act as well as it would be specifically denied that the Defendant exercised any of the functions of an employer as defined within the Act. The Defendant retained the services of Lynndon Hubler as an independent contractor and paid said individual the agreed upon price for the completion of the projects pursuant to the terms of their Independent Contractor Agreement. Strict proof thereof of the

denied averments of Paragraph 6 would be demanded at time of trial or hearing in this matter.

7. Paragraph 7 of the Complaint would be denied. It would be specifically denied that Lynndon Hubler was in any fashion an employee of the Defendant as well as it would be specifically denied that Lynndon Hubler was paid any form of wage based upon an hourly rate as an employee. Strict proof of the denied averments of Paragraph 7 would be demanded at time of trial or hearing in this matter.

8. Paragraph 8 of the Complaint would be denied. It would be specifically denied that the services of Lynndon Hubler in any fashion placed the Defendant in the position that he was subject to the overtime provisions of the Act. Lynndon Hubler was at all times an independent contractor and was paid for his services pursuant to the Independent Contractor Agreement. Strict proof of the denied averments of paragraph 8 would be demanded at time of trial or hearing in this matter.

9. Paragraph 9 of the Complaint would be denied. It would be specifically denied that the Defendant in any fashion is subject to the provisions of the Act which require the payment of overtime wages. It would further be specifically denied that Lynndon Hubler was in any fashion an employee of the Defendant such that the provisions of the Act specified within the Complaint would apply. Strict proof thereof of the denied averments of Paragraph 9 of the Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, it is respectfully requested on behalf of the

Defendant that the Complaint filed by the Plaintiff be dismissed and that the Plaintiff be required to reimburse the Defendant for all counsel fees, costs and expenses associated with regard to the defense of this matter.

NEW MATTER

NOW comes the Defendant, Wayne Stuber, d/b/a C-Wayne Fixtures, by and through his attorney, F. Cortez Bell, III, Esquire, who respectfully set forth his New Matter to the Plaintiff's Complaint and would aver as follows:

10. Paragraphs 1 through 9 of the Answer set forth above would be incorporated herein by reference as if the same were set forth at length at this point.

11. That Lynndon Hubler was never employed by Wayne Stuber, d/b/a C-Wayne Fixtures as an employee.

12. That Lynndon Hubler was hired by Wayne Stuber, d/b/a C-Wayne Fixtures as an independent contractor.

13. That Lynndon Hubler executed an Independent Contractor Agreement evidencing that he was hired as an independent contractor.

14. That Lynndon Hubler was paid a just compensation for the labor and the services provided pursuant to the Independent Contractor Agreement with no deductions being made as said Lynndon Hubler was an independent contractor.

15. That Lynndon Hubler applied with the Pennsylvania Department of Public Welfare as an independent contractor for the

obtaining of funds for the purchase of tools and equipment in order to carry out his trade as a carpenter/independent contractor.

16. That Lynndon Hubler received funds/tools/equipment from the Pennsylvania Department of Public Welfare based upon his certification and verification that he was providing to Wayne Stuber, d/b/a C-Wayne Fixtures services as an independent contractor not as an employee.

17. That Lynndon Hubler filed his Federal and/or Pennsylvania income tax returns for those years that he filed them on the basis that he was self employed and filed a Schedule C showing his income from his self-employment.

18. That Lynndon Hubler received Schedule 1099's from Wayne Stuber, d/b/a C-Wayne Fixtures evidencing the payment of money for those years that Lynndon Hubler was retained as an Independent contractor.

19. That Lynndon Hubler billed Wayne Stuber, d/b/a C-Wayne Fixtures for his hours worked as an independent contractor on billing statements supplied by Lynndon Hubler all of which was done in accord with the Independent Contractor Agreement under which the parties were proceeding.

WHEREFORE, it is respectfully requested that your Honorable Court dismiss the Complaint filed by the Plaintiff and enter judgment in favor of the Defendant along with all counsel

fees, costs and expenses associated with regard to the defense of Plaintiff's Complaint.

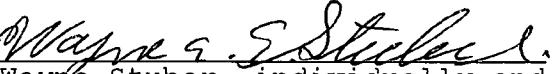
Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F.C. Bell III
F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, Wayne Stuber, individually and d/b/a C-Wayne Fixtures, verify that the statements made within the foregoing Answer and New Matter to Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 1-15-2001


Wayne Stuber, individually and
d/b/a C-Wayne Fixtures

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER,

Plaintiff :

Vs. : No. 2000-1392-CD

WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer and New Matter to Plaintiff's Complaint upon the following persons by mailing such copy first class mail, postage prepaid to:

Kathryn J. McDermott, Esquire
Assistant Counsel
Commonwealth of Pennsylvania
Department of Labor and Industry
Office of Chief Counsel
Labor Law Compliance Division
10th Floor, Labor & Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

Date: 1-15-2001

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

No. 2000-1392-CD

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
BUREAU OF LABOR LAW COMPLIANCE,
o/b/o LYNNDON HUBLER, Plaintiff

vs.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

ANSWER AND NEW MATTER TO
PLAINTIFF'S COMPLAINT

FILED

JAN 15 2001

✓ 3/4/01 cc Bell
William A. Shaw
Prothonotary

✓
JAN 15 2001
cc Bell
William A. Shaw
Prothonotary

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

COMMONWEALTH OF PENNSYLVANIA, : CIVIL ACTION – LAW
DEPARTMENT OF LABOR AND : INDUSTRY, BUREAU OF LABOR LAW : COMPLIANCE, o/b/o LYNNDON HUBLER, : Plaintiff, : : : v. : NO. 2000-1392-CD
WAYNE STUBER, individually and d/b/a : C-WAYNE FIXTURES CO., : Defendant. : : : FILE : FEB 2 2000

FILED

FEB 07 2001

ANSWER TO NEW MATTER

William A. Shaw
Prothonotary

10. DENIED, insofar as incorporation of Defendant avers that Lynndon Hubler was not an employee of Defendant, and not subject to the overtime provisions of the Pennsylvania Minimum Wage Act of 1968, (“MWA”), act of January 17, 1968, P.L. 11, No. 5, as amended, 43 P.S. §§333.101-333.115.

11. DENIED. Lynndon Hubler was an employee of Defendant as a carpenter from approximately March 30, 1998, to September 2, 1999, which employment was principally located in Pennsylvania. By way of further answer, Lynndon Hubler was granted unemployment compensation benefits as an employee of Defendant by determination of the Pennsylvania Job Center dated November 15, 1999, hereby incorporated by reference in Appendix "A".

12. DENIED. At all times relevant hereto, Lynndon Hubler performed work as an employee of Defendant. By way of further answer, Defendant hired Mr. Hubler as an hourly employee; showed Mr. Hubler how to do the work; allowed Mr. Hubler to use tools of Defendant; and otherwise controlled the method and manner in which the work was to be completed by Mr. Hubler.

13. DENIED. To the best of Plaintiff's knowledge and belief, Lynndon Hubler did not sign an Independent Contractor Agreement, nor was he an independent contractor for Defendant. By way of further answer, Mr. Hubler was hired as an hourly employee of Defendant by virtue an oral agreement.

14. DENIED in part; ADMITTED in part. DENIED insofar as Defendant did not pay overtime wages properly owed to Lynndon Hubler. It is ADMITTED, to the best of Plaintiff's knowledge and belief, that deductions were not taken out of Lynndon Hubler's pay, except for those repayments of advancement of wages owed to Defendant. It is DENIED that Lynndon Hubler was an independent contractor for Defendant.

15. ADMITTED in part; DENIED in part. It is ADMITTED that Mr. Hubler applied to the Pennsylvania Department of Public Welfare ("DPW") to obtain aid in the purchase of tools and equipment for his work with Defendant. It is DENIED that he was working as an independent contractor. By way of further answer, Mr. Hubler was told

by Defendant to seek aid from DPW so that Mr. Hubler would not have to make use of Defendant's equipment.

16. ADMITTED in part; DENIED in part. It is ADMITTED that Mr. Hubler received aid from the DPW to obtain aid in the purchase of tools and equipment for his work with Defendant. It is DENIED that he was working as an independent contractor. By way of further answer, Mr. Hubler was told by Defendant to seek aid from DPW so that Mr. Hubler would not have to make use of Defendant's equipment.

17. ADMITTED. By way of further answer, Lynndon Hubler was told by Defendant that he needed to file his taxes in the manner set forth in the averments of paragraph 17 of Defendant's New Matter, because Defendant was providing him with a 1099 form.

18. ADMITTED in part; DENIED in part. It is ADMITTED that Mr. Hubler was paid on the basis of 1099's issued by Defendant. It is DENIED that Lynndon Hubler was retained as an independent contractor by Defendant.

19. ADMITTED in part; DENIED in part. It is ADMITTED that Mr. Hubler submitted a statement of hours and expenses to Defendant upon which his wages were based. It is DENIED that this accounting constitutes a billing under any executed

Independent Contractor Agreement, or is evidence that Mr. Hubler was an independent contractor.

WHEREFORE, Plaintiff requests this Honorable Court to dismiss Defendant's New Matter, and find judgment for Plaintiff and against Defendant as outlined in the Complaint, in the amount of **\$1,276.40**, or such other amount as this Court may determine to be due Claimant, together with costs of suit and reasonable attorney's fees.

Respectfully submitted,



KATHRYN J. McDERMOTT
Assistant Counsel
Atty. Reg. No. 77238

Labor Law Compliance Division
Office of Chief Counsel
Department of Labor and Industry
Commonwealth of Pennsylvania

10th Floor, Labor and Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
Telephone: (717) 787-4186
-- *Counsel for Plaintiff*

Dated: February 6, 2001

APPENDIX "A"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
PENNSYLVANIA JOB CENTER

NOTICE OF
DETERMINATION

PAGE 01 OF 02

The Last Day to File an Appeal from this
Determination is: NOV 30, 1999

RIGHT OF APPEAL

If you disagree with this determination, you may
appeal. If you want to file an appeal, you must
do so on or before the date shown above. See
below for appeal instructions

LYNNDON D. HUBLER (CLAIMANT)
PO BOX 46
KYLERTOWN, PA.

16847

C WAYNE FIXTURES (EMPLOYER)
RD #1 BOX 18
MORRISDALE, PA.

16858

L

FINDINGS OF FACT:

1. THE CLAIMANT WAS LAST EMPLOYED BY C. WAYNE FIXTURES AT \$10. PER HOUR FULL TIME.
2. THE CLAIMANT WAS NOT PAID OVERTIME FOR HOURS WORKED PAST 40.
3. THE EMPLOYER CONTENDS THE CLAIMANT WAS A SUB-CONTRACTOR, HOWEVER, THE CLAIMANT'S HOURLY RATE OF PAY WAS DETERMINED BY THE EMPLOYER AS WELL AS THE JOB SITE, MATERIALS, ETC., THEREFORE, THE CLAIMANT WAS NOT FREE FROM CONTROL.
4. SINCE THE CLAIMANT MEETS THE REQUIREMENTS OF THE LAW AS AN EMPLOYEE HE CANNOT BE CONSIDERED SELF-EMPLOYED UNDER SECTION 402(H) AND IS ELIGIBLE FOR BENEFITS.
5. THE CLAIMANT VOLUNTARILY QUIT HIS EMPLOYMENT WITH C. WAYNE FIXTURES WITH A LAST DAY OF WORK OF 9-2-99.
6. THE EMPLOYER WAS REQUIRING THE CLAIMANT TO OBTAIN HIS OWN LIABILITY INSURANCE AND REFUSED THE CLAIMANT'S REQUEST FOR A PAY INCREASE TO COVER THE ADDED COST.
7. THE EMPLOYER ALSO REFUSED TO PAY OVERTIME FOR ANY HOURS OVER 40 THAT THE CLAIMANT WORKED.
8. THE CLAIMANT ATTEMPTED TO RESOLVE THE CONFLICT BUT WAS UNABLE TO DO SO.

ISSUE:

SECTION 402(B) OF THE LAW PROVIDES, IN PART, THAT AN EMPLOYEE SHALL BE INELIGIBLE FOR BENEFITS FOR ANY WEEK IN WHICH HIS UNEMPLOYMENT IS DUE TO VOLUNTARILY LEAVING WORK WITHOUT CAUSE OF A NECESSITOUS AND COMPELLING NATURE.

REASONING:

THE BURDEN IS UPON THE CLAIMANT TO SHOW THAT HE HAD NECESSITOUS AND/OR COMPELLING CAUSE TO QUIT HIS JOB.

ORDER:

THE CLAIMANT HAS MET THIS BURDEN, THEREFORE, HE IS NOT DISALLOWED UNDER SECTION 402(B) OF THE LAW AND IS ELIGIBLE FOR BENEFITS.

OFFICE REPRESENTATIVE: J. L. KERFOOT

(JKE)

CLAIMANT/EMPLOYER APPEAL INSTRUCTIONS - Under Section 501(e) of the Law, this Determination becomes final unless you file an appeal within 15 days from the date this Determination was mailed or delivered to you. If you think that this Determination is incorrect, you have the right to file an appeal on or before the deadline, which is the last day to appeal shown above on this Determination. You may file your appeal in person at any Pennsylvania Job Center or by mail.
- If your appeal is filed in person, it must be hand-delivered during business hours on or before the last day to appeal shown above on this Determination.
- If your appeal is filed by mail, it must include your name, social security number, a specific statement that you want to file an appeal from this Determination, and the reasons for your appeal. The appeal must be addressed to your Pennsylvania Job Center and postmarked on or before the last day to appeal shown above on this Determination.

CLAIMANT'S SSN	APPLICATION DATE	TYPE CLAIM	DATE MAILED	OFFICE NUMBER
209-54-2084	99-09-12	UC	99-11-15	0412

PHILIPSBURG JOB CENTER
103 WEST MAPLE STREET
PHILIPSBURG PA 16866-2299

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
PENNSYLVANIA JOB CENTER

NOTICE OF
DETERMINATION

PAGE 02 OF 02

The Last Day to File an Appeal from this
Determination is: NOV 30, 1999

RIGHT OF APPEAL

If you disagree with this determination, you may
appeal. If you want to file an appeal, you must
do so on or before the date shown above. See
below for appeal instructions

LYNNOND D. HUBLER (CLAIMANT)
PO BOX 46
KYLERTOWN, PA.

16847

C WAYNE FIXTURES (EMPLOYER)
RD #1 BOX 18
MORRISDALE, PA.

16858

FINDINGS OF FACT:

DETERMINATION:

The following determination was made in accordance with the following sections of the
Pennsylvania Unemployment Compensation Law.

APPROVED 402(h), 402(b)

CWE	PAY AMT	STATUS	CWE	PAY AMT	STATUS	CWE	PAY AMT	STATUS
99/09/18	WWK	APPROVED	99/09/25	238*	APPROVED	99/10/02	238*	APPROVED
99/10/09	238*	APPROVED	99/10/16	238*	APPROVED	99/10/23	238*	APPROVED
99/10/30	238*	APPROVED	99/11/06	238*	APPROVED			

*The above amount paid does not include dependents allowance.

OFFICE REPRESENTATIVE: J. L. KERFOOT

(JKE)

CLAIMANT/EMPLOYER APPEAL INSTRUCTIONS - Under Section 501(e) of the Law, this Determination becomes final unless you file an appeal within 15 days from the date this Determination was mailed or delivered to you. If you think that this Determination is incorrect, you have the right to file an appeal on or before the deadline, which is the last day to appeal shown above on this Determination. You may file your appeal in person at any Pennsylvania Job Center or by mail.

- If your appeal is filed in person, it must be hand-delivered during business hours on or before the last day to appeal shown above on this Determination.

- If your appeal is filed by mail, it must include your name, social security number, a specific statement that you want to file an appeal from this Determination, and the reasons for your appeal. The appeal must be addressed to your Pennsylvania Job Center and postmarked on or before the last day to appeal shown above on this Determination.

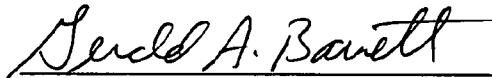
CLAIMANT'S SSN	APPLICATION DATE	TYPE CLAIM	DATE MAILED	OFFICE NUMBER
209-54-2084	99-09-12	UC	99-11-15	0412

PHILIPSBURG JOB CENTER
103 WEST MAPLE STREET
PHILIPSBURG PA 16866-2299

VERIFICATION

I, GERALD A. BARNETT, hereby state that I am the Supervisor of the Commonwealth of Pennsylvania's Bureau of Labor Law Compliance, Harrisburg District Office, that I am authorized to make this statement on behalf of Plaintiff, that I have read the foregoing Complaint, and that the facts alleged therein are true and correct to the best of my knowledge, information and belief.

This statement is made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

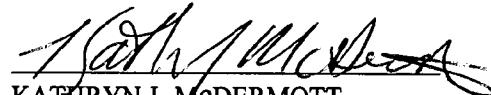
2-601
GERALD A. BARNETT/DATE

CERTIFICATE OF SERVICE

I, KATHRYN J. McDERMOTT hereby certify that I have, this 6th day of February, 2001, served the foregoing Answer to New Matter upon the person and in the manner set forth below, which service satisfies the pertinent rules of court relating to service of documents:

**By First-Class Mail, Postage-Prepaid,
Addressed to:**

F. Cortez Bell, III, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
-- *Counsel for Defendant*


KATHRYN J. McDERMOTT
ASSISTANT COUNSEL
Atty. ID No. 77238

Commonwealth of Pennsylvania
Department of Labor and Industry
Office of Chief Counsel
Labor Law Compliance Division

10th Floor, Labor & Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
Telephone: (717) 787-4186
-- *Counsel for Plaintiff*

ED

7/2001
M 13.07/ NOCC
Shaw
Secondary
FBI

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

00-1392-CJ

DATE PRESENTED: July 19, 2001

CASE NUMBER

TYPE TRIAL REQUESTED

ESTIMATED TRIAL TIME

Date Complaint () Jury () Non-Jury
Filed: 11/28/00 (X) Arbitration

2 days/hours

PLAINTIFF(S)

Commonwealth of Pennsylvania, Department of
Labor and Industry, Bureau of Labor Law Compliance,

o/b/o Lynndon Hubler, Plaintiff () Check block if a Minor
is a Party to the Case

DEFENDANT(S)
Wayne Stuber, individually and d/b/a
C-Wayne Fixtures, Defendant ()

ADDITIONAL DEFENDANT(S)

Not applicable ()

FILED

JUL 20 2001

William A. Shaw
Prothonotary

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

\$1,276.40

More than

& () yes (X) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties
and witnesses are available; serious settlement negotiations have been conducted; the
case is ready in all respects for trial, and a copy of this Certificate has been served upon
all counsel of record and upon all parties of record who are not represented by counsel:

Kathryn J. McDermott, Assistant Counsel

(717) 787-4186

FOR THE PLAINTIFF

TELEPHONE NUMBER

F. Cortez Bell, III, Esquire

(814) 765-5537

FOR THE DEFENDANT

TELEPHONE NUMBER

Not Applicable

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

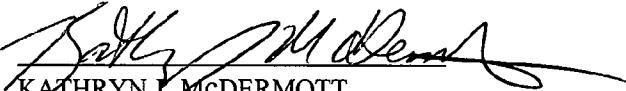
#8

CERTIFICATE OF SERVICE

I, KATHRYN J. McDERMOTT hereby certify that I have, this 19th day of July, 2001, served the foregoing Certificate of Readiness upon the person and in the manner set forth below, which service satisfies the pertinent rules of court relating to service of documents:

**By First-Class Mail, Postage-Prepaid,
Addressed to:**

F. Cortez Bell, III, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
-- *Counsel for Defendant*


KATHRYN J. MCDERMOTT
ASSISTANT COUNSEL
Atty. ID No. 77238

Commonwealth of Pennsylvania
Department of Labor and Industry
Office of Chief Counsel
Labor Law Compliance Division

10th Floor, Labor & Industry Building
Seventh and Forster Streets
Harrisburg, PA 17120
Telephone: (717) 787-4186
-- *Counsel for Plaintiff*

FILED
JUL 23 2007
AMY McDERMOTT
William A. Shaw
Prothonotary
FCC
AMY McDERMOTT
pd. 20.00



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET, SUITE 228
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6059 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

August 1, 2001

Kathryn J. McDermott, Esquire
Commonwealth of Pennsylvania,
Department of Labor and Industry
10th Floor, Labor & Industry Building
Seventh & Forster Streets
Harrisburg, PA 17120

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
Post Office Box 670
Clearfield, PA 16830

RE: COMMONWEALTH OF PENNSYLVANIA, al
vs.
WAYNE STUBER, al
No. 00-1392-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Friday, October 5, 2001. The following have been appointed to the Board of Arbitrators:

Dwight L. Koerber, Jr., Esquire
Elizabeth Cunningham, Esquire
Jeffrey S. DuBois, Esquire
Michael S. Marshall, Esquire
David R. Thompson, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration hearing.

FILED

AUG 14 2001

William A. Shaw
Prothonotary

Very truly yours,

Marcy Kelley
Marcy Kelley
Deputy Court Administrator

#9



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET, SUITE 228
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6009 7449

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

August 14, 2001

Kathryn J. McDermott, Esquire
Commonwealth of Pennsylvania,
Department of Labor and Industry
10th Floor, Labor & Industry Building
Seventh & Forster Streets
Harrisburg, PA 17120

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
Post Office Box 670
Clearfield, PA 16830

RE: COMMONWEALTH OF PENNSYLVANIA, al
vs.
WAYNE STUBER, al
No. 00-1392-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Friday, October 5, 2001 at 10:30 A.M. The following have been appointed as Arbitrators:

Jeffrey S. DuBois, Esquire, Chairman
Michael S. Marshall, Esquire
David R. Thompson, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

Very truly yours,

Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: Jeffrey S. DuBois, Esquire
Michael S. Marshall, Esquire
David R. Thompson, Esquire

FILED

110-2001
AUG 14 2001

John
John William A. Shan
Proprietor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Commonwealth of Pennsylvania,
Department of Labor and Industry,
Bureau of Labor Law Compliance,
o/b/o Lynndon Hubler

vs.

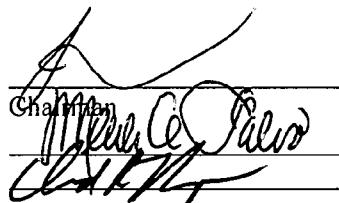
Wayne Stuber, individually and
d/b/a C-Wayne Fixtures

No. 2000-01392-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 5th day of October, 2001, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Jeffrey S. DuBois, Esq.

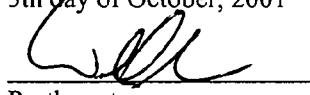


Chairman

Mark A. Falvo, Esq.

David R. Thompson, Esq.

Sworn to and subscribed before me this
5th day of October, 2001

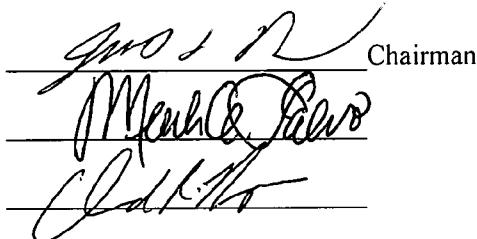


Prothonotary

AWARD OF ARBITRATORS

Now, this 5th day of October, 2001, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

*JUDGEMENT IN FAVOR OF THE PLAINTIFF IN THE AMOUNT \$1276.40.
NO INTEREST OR COSTS ARE AWARDED TO PLAINTIFF.*



Chairman

FILED

OCT 05 2001

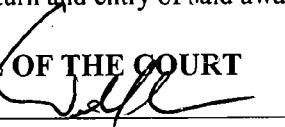
(Continue if needed on reverse.)

William A. Shaw
Prothonotary

ENTRY OF AWARD

Now, this 5th day of October, 2001, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT



EWS

#10

Commonwealth of Pennsylvania

Vs.

C-Wayne Fixtures Wayne Stuber

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
No. 2000-01392-CD

NOTICE OF AWARD

TO: Copies to: C-Wayne Fixtures (Defendant), R.D. #1, Box 18, , Morrisdale, PA, 16858,Wayne Stuber (Defendant), , , PA, ,Commonwealth of Pennsylvania (Plaintiff), Department of Labor & Industry, 10th Floor, Labor & Industry , Harrisburg, PA, 17121,F. Cortez Bell III (Defense Attorney),F. Cortez Bell III (Defense Attorney),Kathryn J. McDermott (Plaintiff Attorney)

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on October 5, 2001 and have awarded:

Judgment in favor of the Plaintiff in the amount of \$1,276.40.

William A. Shaw

Prothonotary

By

October 5, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

FILED

OCT 05 2001

William A. Shaw
Prothonotary

NOTICE OF
AWARD TO
2 - ATT'Y BELL
1 - ATT'Y McDERMOTT

Commonwealth of Pennsylvania

Vs.

C-Wayne Fixtures Wayne Stuber

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
No. 2000-01392-CD

NOTICE OF AWARD

TO: F. CORTEZ BELL III

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on October 5, 2001 and have awarded:

Judgment in favor of the Plaintiff in the amount of \$1,276.40.

William A. Shaw

Prothonotary

By _____

October 5, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Commonwealth of Pennsylvania

Vs.

C-Wayne Fixtures Wayne Stuber

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
No. 2000-01392-CD

NOTICE OF AWARD

TO: WAYNE STUBER

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on October 5, 2001 and have awarded:

Judgment in favor of the Plaintiff in the amount of \$1,276.40.

William A. Shaw
Prothonotary
By _____

October 5, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Commonwealth of Pennsylvania : IN THE COURT OF COMMON PLEAS
Vs. : OF CLEARFIELD COUNTY
: No. 2000-01392-CD
C-Wayne Fixtures Wayne Stuber :

NOTICE OF AWARD

TO: Kathryn J. McDermott, Esq.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on October 5, 2001 and have awarded:

Judgment in favor of the Plaintiff in the amount of \$1,276.40. No interest or costs are awarded to Plaintiff.

William A. Shaw _____
Prothonotary
By _____

October 5, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

COPY

ARBITRATION BOARD

I, William A. Shaw, Prothonotary of the Courts of Clearfield County, hereby certify that:
Case # 2000-01392-CD

Jeffrey S. DuBois, Esq.
Chairman
Mark A. Falvo, Esq.
David R. Thompson, Esq.

are members of the Clearfield County Bar and have served as arbitrators on the 5th day of October, 2001, starting at 10:15 A.M./P.M. and ending at 3:15 A.M./P.M.

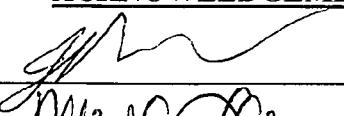
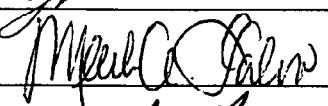
COMPENSATION OF ARBITRATORS

Each attorney shall receive an appearance fee of \$100.00 for appearing as a member of the Board of Arbitration on the day designated and shall receive additional fees as follows:

- a) an additional fee of \$50.00 in the event the attorney is required to hear cases until 10:00 A.M.
- b) an additional fee of \$50.00 if the attorney is required to be present between the hours of 10:00 A.M. and 12:00 noon
- c) an additional fee of \$100.00 if an attorney, after a normal lunch break, is required to return for arbitration after 1:00 P.M.

Said rule to be effective as of July 26, 1984

ACKNOWLEDGEMENT OF ARBITRATORS DATE

Chairman  Jeffrey S. DuBois 10/05/01
 Mark A. Falvo
 David R. Thompson

APPROVED



Prothonotary
Clearfield County Commissioner's Office
By: _____

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

COMMONWEALTH OF PENNSYLVANIA, : NO. 2000-1392-CD
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW : Type of Case: Civil
COMPLIANCE, c/b/o LYNNDON :
HUBLER, : Type of Pleading:
Plaintiff : Notice of Appeal
:
V.
:
WAYNE STUBER, individually : Filed on Behalf of:
and d/b/a C-WAYNE FIXTURES, : Wayne Stuber, individually
Defendant : and d/b/a C-Wayne Fixtures,
 : Defendant
:
:
Counsel of Record for This :
Party: :
F. Cortez Bell, III, Esq. :
I.D. #30183
:
BELL, SILBERBLATT & WOOD :
318 East Locust Street :
P. O. Box 670 :
Clearfield, PA 16830 :
Telephone: (814) 765-5537
:
:

FILED
NOV 01 2001

J. Lynn A. Shaw
Prothonotary

#11

Commonwealth of Pennsylvania

Vs.

C-Wayne Fixtures Wayne Stuber

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
No. 2000-01392-CD

NOTICE OF AWARD

TO: WAYNE STUBER

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on October 5, 2001 and have awarded:

Judgment in favor of the Plaintiff in the amount of \$1,276.40.

William A. Shaw

Prothonotary

By 

October 5, 2001

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER, :
Plaintiff :
: Vs. : No. 2000-1392-CD
: :
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal upon the following persons by mailing such copy first class mail, postage prepaid to:

Kathryn J. McDermott, Esquire
Assistant Counsel
Commonwealth of Pennsylvania
Department of Labor & Industry
Office of Chief Counsel
Labor Law Compliance Division
10th Floor, Labor & Industry Bldg.
Seventh and Forster Streets
Harrisburg, PA 17120

F.C. Bell III
F. Cortez Bell, III, Esquire

Attorney for Defendant

Date: November 1, 2001

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 2000-1392-CD

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
BUREAU OF LABOR LAW COMPLIANCE,
o/b/o LYNDON HUBLER,
Plaintiff
vs.
WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

NOTICE OF APPEAL

FILED

NOV 01 2001

0/2/01 3cc atty Bell
William A. Shaw
Prothonotary

Atty Bell *PA \$300.00*

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

COMMONWEALTH OF PENNSYLVANIA, : NO. 2000-1392-CD
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW : Type of Case: Civil
COMPLIANCE, o/b/o LYNNDON :
HUBLER, : Type of Pleading:
Plaintiff : Affidavit pursuant to Local
V. : Rule 1308(a)(1)
: Filed on Behalf of:
WAYNE STUBER, individually : Wayne Stuber, individually
and d/b/a C-WAYNE FIXTURES, : and d/b/a C-Wayne Fixtures,
Defendant : Defendant
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P. O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537

FILED

NOV 01 2001

V. Anna A. Shaw
Notary

#12

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER, :
Plaintiff :
Vs. : No. 2000-1392-CD
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Defendant :

Affidavit pursuant to Local Rule 1308(a)(1)

I, F. Cortez Bell, III, Esquire, attorney for the Defendant, Wayne Stuber, individually and d/b/a C-Wayne Fixtures, do hereby certify, swear and affirm that the Appeal from the Award of the Board of Arbitration to the Court of Common Pleas of Clearfield County is not taken for the purpose of delay but rather is taken as it is believed and therefore averred that the Board of Arbitration erred by granting an award in favor of the Plaintiff in the amount of \$1,276.40.

F. Cortez Bell III
F. Cortez Bell, III, Esquire

Sworn to and subscribed before
me this 1st day of November,
2001.

Nancy M. Smeal

NOTARIAL SEAL
NANCY M. SMEAL, Notary Public
Graham Township, Clearfield Co., PA
My Commission Expires May 4, 2002

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER, :
Plaintiff :
: Vs. : No. 2000-1392-CD
: :
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Affidavit pursuant to Local Rule 1308(a)(1) upon the following persons by mailing such copy first class mail, postage prepaid to:

Kathryn J. McDermott, Esquire
Assistant Counsel
Commonwealth of Pennsylvania
Department of Labor & Industry
Office of Chief Counsel
Labor Law Compliance Division
10th Floor, Labor & Industry Bldg.
Seventh and Forster Streets
Harrisburg, PA 17120

F. Cortez Bell, III

F. Cortez Bell, III, Esquire
Attorney for Defendant

Date: November 1, 2001

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 2000-1392-CD

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
BUREAU OF LABOR LAW COMPLIANCE,
o/b/o LYNNON HUBLER,
Plaintiff

vs.
WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

AFFIDAVIT PURSUANT TO LOCAL RULE
1308(a)(1)

FILED

NOV 01 2001

01/01/01 4cc atty b/w
A. Shaw

Monetary *for*

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE o/b/o LYNNDON HUBLER :
vs. : No. 00-1392-CD
: :
WAYNE STUBER, d/b/a C-WAYNE :
FIXTURES :
:

O R D E R

AND NOW, this 11 day of January, 2002, it is the ORDER of
the Court that Civil Non-Jury Trial in the above matter has been scheduled for
Thursday, March 7, 2002 at 9:00 A.M. in Courtroom No. 2, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
Judge

JAN 11 2002

William A. Shaw
Prothonotary

(#13)

FILED

013:50
JAN 11 2002

cc mcdermott
cc Bell

William A. Shaw
Prothonotary

ER
JPS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :
DEPT. OF LABOR AND INDUSTRY, :
BUREAU OF LABOR LAW COMPLIANCE :
o/b/o LYNNDON HUBLER :
VS. : NO. 00-1392-CD
WAYNE STUBER, d/b/a :
C-WAYNE FIXTURES :

O R D E R

NOW, this 7th day of March, 2002, following the conclusion of nonjury trial, it is the ORDER of this Court that counsel for both parties have no more than fifteen (15) days from this date to supply the Court with appropriate legal authority or letter brief.

BY THE COURT,

Judie J. Zimmerman

Judge

FILED

MAR 11 2002

William A. Shaw
Prothonotary

#14

FILED

MAR 11 2002

State Atty. T.C. Bell, III
William A. Shaw
Prothonotary

cc Atty McDermott,
LSD

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

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE,
o/b/o LYNNDON HUBLER,
Plaintiff

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*
*

vs.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

*
*
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*
*

No. 2000-1392-C.D.

FILED

APR 03 2002

OPINION

William A. Shaw
Prothonotary

The Pennsylvania Department of Labor and Industry (hereafter "DLI") filed a Complaint on November 29, 2000 on behalf of Lynndon Hubler. The Complaint sought judgment in the amount of \$1276.40, averred that Mr. Hubler was an employee of Defendant C-Wayne Fixtures (hereafter "Defendant") and that the Defendant violated provisions of Pennsylvania's Minimum Wage Act in failing to pay Mr. Hubler time and a half for overtime hours. An Answer and New Matter was filed on behalf of the Defendant and the matter proceeded to Arbitration on October 5, 2001 on the DLI's claim. Plaintiff received judgment in that amount from the Board of Arbitrators. Thereafter, an appeal to the Board of Arbitrators' decision was filed on behalf of the Defendant on November 1, 2001. Non-Jury Trial was held before the Court on March 7, 2002. The parties' briefs were timely received and the matter is now set for decision. In summary, DLI claims that Mr. Hubler was an

#15

employee of the Defendant and as such entitled to be paid time and a half for over-time. The Defendant claims that Mr. Hubler was an independent contractor and not subject to the provisions of the Minimum Wage Act.

The Pennsylvania Minimum Wage Act of 1968 (“MW Act”), 43 P.S. §§ 333.101-333.115, was enacted, in part, because persons employed in some occupations “are not as a class on a level of equality in bargaining with their employers in regard to minimum fair wage standards, and “freedom of contract” as applied to their relations with their employers is illusory.” 43 P.S. § 333.101. To effectuate a balance in this uneven bargaining power, the MW Act was mirrored after the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”), and provides protection for those employees who normally would not fall under the protection of the federal law. The definitions of employ, employer and employee in the state and federal statutes are practically indistinguishable, barring certain jurisdictional provisions that differentiate the two laws. See 43 P.S. §§ 333.103(f), (g) & (h); 29 U.S.C. Sections 203(g), (d) & (e). Similarly, neither Act contains language or guidance on the difference between an employee and independent contractor for purposes of the application of those Acts.

There is no Pennsylvania case law that sets out the standard to apply to employee versus independent contractor cases under the MW Act. However, there is a clearly established standard based upon a similar federal law with identical principles and purpose. Both the Pennsylvania Commonwealth Court and the U.S. Third Circuit Court of Appeals give deference to federal case law when state law substantially parallels federal law.

In *Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board*, 527 A.2d 1097 (Pa. Cmwlth. 1987), the Court was guided by the federal standard of the National Labor Relations act in interpreting the Public Employee Relations act, given their similar language and purpose, and that no meaningful difference exists between the policies of the Acts. *Id.* at 1099. Also, in *Fogleman v. Mercy Hospital, Inc.*, No. 00-2263, U.S. Court of Appeals for the Third Circuit, 2002 U.S. App. LEXIS 4306 (filed March 18, 2002), the Court reiterated its assertion that the Pennsylvania Human

Relations Act “is to be interpreted as identical to federal anti-discrimination laws except where there is something specifically different in its language requiring that it be treated differently.” *Id.* at 13. Given the unity of purpose between the MW Act and the FLSA, and the similarity between the two laws, this Court will give deference to the federal courts’ interpretation of the FLSA since the state courts have not yet spoken on the issue in the context of the MW Act.

The Pennsylvania Federal Courts have applied the “economic reality” test to determine whether an individual is an employee or independent contractor in analyzing the application of the FLSA. *See, e.g., Martin v. Selker Brothers, Inc., 949 F.2d 1286 (3d Cir. 1991)* (the Court applied the six-part “economic reality” test to establish the employment status of gas station attendants). The considerations of the test are as follows:

1. the degree of control exercised by the employer over the workers;
2. the workers opportunity for profit or loss depending upon his managerial skill;
3. the alleged employee’s investment in equipment or materials required for his task, or his employment of helpers;
4. whether the service rendered requires a special skill;
5. the degree of permanence of the working relationship;
6. the extent to which the work is an integral part of the employer’s business.

Real v. Driscoll, 603 F.2d 748, 754 (9th Cir. 1979).

The fact that a worker initially consents to the arrangement, in and of itself, is not enough to determine that there was no employee/employer relationship. The U.S. Supreme Court, in *Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985)*, applied the FLSA to workers of a religious enterprise, despite the workers’ assertions that they were volunteers working for religious and

evangelical reasons, and their vehement denial of employee status. These protestations were not controlling of the employment issue, and the court applied the “economic reality” test in determining the existence of an employer/employee relationship. 471 U.S. at 301, 105 S. Ct. at 1961-1962, 85 L. Ed. 2d at 288-289. The workers in *Real*, supra, signed sub-licensee agreements that called the workers independent contractors. In applying the “economic reality” test, the court in *Real* noted that “[t]he presence of any individual factor is not dispositive of whether an employee/employer relationship exists. Such a determination depends “upon the circumstances of the whole activity.” *Id.* at 755, quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730, 67 S. Ct. 1473, 1477, 91 L. Ed. 1772 (1947). thus, the “economic reality” test looks to the *totality of the circumstances* regarding the working arrangement, not just the consent of the employee in signing documentation that would indicate an independent contractor arrangement.

“An employee is not permitted to waive employee status.” *Robicheaux v. Radcliff Material, Inc.*, 697 F.2d 662, 667 (5th Cir. 1983). *Robicheaux* dealt with welders who had worked with their employer for ten months to three years. They had signed independent contractor agreements with the employer and provided their own insurance. They filed income tax returns as self-employed individuals and furnished their own equipment. Workers received an hourly wage and invoiced the employer for hours worked. They worked solely for the employer except for insignificant jobs elsewhere, and some had owned businesses before working for the employer. After all of these considerations, the federal court still found that the welders were not independent contractors by looking to the economic realities of the working relationship. “A person’s subjective opinion that he is a businessman rather than an employee does not change his status.” *Id.* at 666-667.

In the case at hand, Mr. Hubler did in fact, sign some documentation that would indicate an independent contractor status, and filed his taxes as being self-employed. However, all the other factors of the business relationship make the “economic reality” of the situation an employer/employee relationship. Mr. Hubler was never in business for himself prior to working for the Defendant. The Defendant taught him how to do the

work for the company, and controlled where Mr. Hubler worked based on the Defendant's contracts with CVS Pharmacy. He fixed Mr. Hubler's hourly wage, and supervised him on a semi-regular basis. Mr. Hubler had no opportunity for profit or loss in the business, and did not enter into separate contracts for each of the stores that he worked on for the Defendant. Mr. Stuber was the only one who made out on the deals. Mr. Hubler got occasional raises the longer he worked for Mr. Stuber, like any other employee, and had his lodging and meals paid, as opposed to them being negotiated into the price of his work. Mr. Hubler ended his employment before the end of a particular project, and the Defendant had no legal recourse against him for breach of contract. He did not perform work for anyone else other than Mr. Stuber and C-Wayne Fixtures, and relied solely upon his income from the Defendant for the time period in question, one and one half years. The services provided were an integral part of the Defendant's business. In fact, the whole purpose of C-Wayne Fixtures, installing fixtures, was exactly what Mr. Hubler and other workers were doing. Mr. Hubler did not possess any special skill needed by the Defendant that the Defendant, or any of his other workers, could not do, as further evidenced by the fact that the Defendant now has temporary workers on the job to do the same work. Mr. Hubler was clearly an employee of the Defendant.

The Court notes that Mr. Stuber was a credible witness and impressed the Court as a hard working business owner. He appeared to be following the advise of counsel in attempting in good faith to maintain his employees as independent contractors, a status which was clearly more economically advantageous to him and his business. With no employees he need not pay an employer's share of social security tax, purchase worker's compensation insurance, contribute to unemployment compensation or pay overtime. Mr. Hubler, who was more aware of what was going on than he portrayed at trial, gave the Defendant the impression that he consented to the independent contractor arrangement, which as the Court notes is not relevant to a legal analysis. In conclusion, a duck by any other name is still a duck. Here, the duck is an employee.

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

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE,
o/b/o LYNNDON HUBLER,
Plaintiff

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*
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vs.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

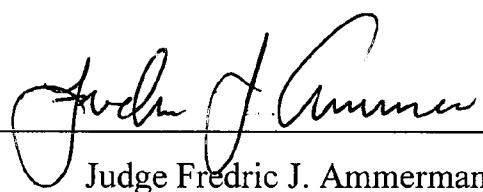
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No. 2000-1392-C.D.

ORDER

NOW, this 2nd day of April, 2002, the Court finds in favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1276.40 plus costs of suit.

By the Court,



Judge Fredric J. Ammerman

FILED

APR 03 2002

19501cm
William A. Shaw
Prothonotary

WAS

2 certified copies to Kathryn J. McDermott, Esquire
2 certified copies to F. Cortez Bell, III, Esquire
2 copies to Judge Ammerman
1 copy to Don Mikesell, Esquire
1 copy to Court Administrator
1 copy to Law Library

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

COMMONWEALTH OF PENNSYLVANIA, : , NO. 2000-1392-CD
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW : Type of Case: Civil
COMPLIANCE, o/b/o LYNNDON :
HUBLER, : Type of Pleading:
Appellee : Notice of Appeal
:
V. :
:
WAYNE STUBER, individually : Filed on Behalf of:
and d/b/a C-WAYNE FIXTURES, : Wayne Stuber, individually
Appellant : and d/b/a C-Wayne Fixtures,
 : Appellant
:
:
Counsel of Record for This :
Party: :
: F. Cortez Bell, III, Esq.
: I.D. #30183
:
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P. O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:
:

FILED

MAY 01 2002

5/23/02 Atty Bell pd
SAC William A. Shaw
PA Prothonotary \$45.00

1cc. Com Court
by \$55.00 ck.

FILED

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNNDON :
HUBLER, :
Appellee :
:
Vs. : No. 2000-1392-CD
:
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Appellant :

NOTICE OF APPEAL

Notice is hereby given that Wayne Stuber, individually and d/b/a C-Wayne Fixtures, Appellant in the above captioned matter, hereby appeals to the Commonwealth Court of Pennsylvania from the Order of the Court of Common Pleas of Clearfield County, entered in this matter on April 2, 2002. This Order has been entered in the docket as evidence by the attached copy of the docket entries, as well as evidenced by the attached copy of the Court's Order dated April 2, 2002.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

F. Cortez Bell III
F. Cortez Bell, III, Esquire
Counsel for Appellant
Supreme Court No. 30183

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA. 16830
Telephone: 814-765-5537

Dated: May 1, 2002

Date: 05/01/2002

Time: 10:18 AM

Page 1 of 1

Garfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01392-CD

Current Judge: Fredric J. Ammerman

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

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber
District Justice Appeal

MAY 01 2002

Attest:

William K. L. Johnson
Prothonotary

Date		Judge
11/09/2000	New Case Filed. Filing: District Justice Appeals Paid by: Commonwealth of PA Receipt number: 0051204 Dated: 11/09/2000 Amount: \$80.00 (Check)	No Judge
11/17/2000	Proof of Service of Notice of Appeal and Rule to File Complaint, /s/Kathy McDermott, filed.	No Judge
11/22/2000	Transcript from District Justice Rudella, filed.	No Judge
11/29/2000	Notice to Defend. Complaint, filed by s/Kathryn J. McDermott, Esq. Verification, s/Gerald A. Barnett 1 cert to Atty	No Judge
12/26/2000	Acceptance of Service, Complaint upon Defendant, filed by s/F. Cortez Bell, III, Esq. One CC Atty for Plaintiff	No Judge
01/15/2001	Answer and New Matter to Plaintiff's Complaint, filed by s/F. Cortez Bell, III, Esq. Two CC Atty Bell	No Judge
02/07/2001	Answer to New Matter, filed by s/Kathryn J. McDermott, Esq. Verification, No Judge s/Gerald A. Barnett Cert of Service. no cc	No Judge
07/20/2001	Filing: Praeclipe/List For Arbitration Paid by: Commonwealth of Pennsylvania Receipt number: 1828731 Dated: 07/20/2001 Amount: \$20.00 (Check) 2 cc atty McDermott Copy to CA	No Judge
08/14/2001	Letters Mailed from CA Office scheduling Arbitration hearing set for Friday, October 5, 2001, at 10:30 a.m., filed.	No Judge
10/05/2001	OATH OR AFFIRMATION OF ARBITRATORS, filed. s/Jeffrey S. DuBois, Esq., Chairman; Mark A. Falvo, Esq. & David R. Thompson Award of Arbitrators, filed. Judgment in favor of the Plaintiff in the amount of \$1,276.40. No interest or costs are awarded to Plaintiff. s/Jeffrey DuBois, Chairman, Mark Falvo & David R. Thompson Notice of Award to Atty. Bell (2) copies & Notice mailed to Atty. McDermott Entry of Award, Witness My Hand and the Seal of the Court, William A. Shaw, Prothonotary	No Judge
11/01/2001	Filing: Arbitration Appeal Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1833584 Dated: 11/01/2001 Amount: \$300.00 (Check) Notice of Appeal. Filed by s/F. Cortez Bell, III, Esq. Cert of Svc 3 cc Atty Bell Affidavit Pursuant to Local Rule 1308 (a)(1) Filed by s/F. Cortez Bell, III, Esq. Cert of Svc 4 cc Atty Bell	No Judge
01/11/2002	ORDER, AND NOW, this 11th day of January, 2002, re: Civil Non-Jury Trial Fredric J. Ammerman scheduled for Mar. 7, 2002, at 9:00 a.m. by the Court, s/FJA,J. 1 cc McDermott, Bell	Fredric J. Ammerman
03/05/2002	Filing: Subpoena Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1839118 Dated: 03/05/2002 Amount: \$3.00 (Check)	Fredric J. Ammerman
03/11/2002	ORDER, NOW, this 7th day of March, 2002, re: Counsel for both parties have no more than 15 days from this date to supply the Court w/appropriate legal authority or letter brief. by the Court, s/FJA,J. 1 cc Atty F. C. Bell, III and Atty McDermott	Fredric J. Ammerman
.04/03/2002	OPINION and ORDER, NOW, this 2nd day of April, 2002, the Court finds in Fredric J. Ammerman favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1,276.40 plus costs of suit. by the Court, s/FJA,J. 2 cc to Atty McDermott, Bell,III, 2 copies to Judge Ammerman, 1 copy to Atty D. Mikesell, 1 to CA, and 1 to Law Library	

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

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE,
o/b/o LYNNDON HUBLER,
Plaintiff

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vs.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

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No. 2000-1392-C.D.

OPINION

The Pennsylvania Department of Labor and Industry (hereafter "DLI") filed a Complaint on November 29, 2000 on behalf of Lynndon Hubler. The Complaint sought judgment in the amount of \$1276.40, averred that Mr. Hubler was an employee of Defendant C-Wayne Fixtures (hereafter "Defendant") and that the Defendant violated provisions of Pennsylvania's Minimum Wage Act in failing to pay Mr. Hubler time and a half for overtime hours. An Answer and New Matter was filed on behalf of the Defendant and the matter proceeded to Arbitration on October 5, 2001 on the DLI's claim. Plaintiff received judgment in that amount from the Board of Arbitrators. Thereafter, an appeal to the Board of Arbitrators' decision was filed on behalf of the Defendant on November 1, 2001. Non-Jury Trial was held before the Court on March 7, 2002. The parties' briefs were timely received and the matter is now set for decision. In summary, DLI claims that Mr. Hubler was an

employee of the Defendant and as such entitled to be paid time and a half for over-time. The Defendant claims that Mr. Hubler was an independent contractor and not subject to the provisions of the Minimum Wage Act.

The Pennsylvania Minimum Wage Act of 1968 ("MW Act"), 43 P.S. §§ 333.101-333.115, was enacted, in part, because persons employed in some occupations "are not as a class on a level of equality in bargaining with their employers in regard to minimum fair wage standards, and "freedom of contract" as applied to their relations with their employers is illusory." 43 P.S. § 333.101. To effectuate a balance in this uneven bargaining power, the MW Act was mirrored after the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* ("FLSA"), and provides protection for those employees who normally would not fall under the protection of the federal law. The definitions of employ, employer and employee in the state and federal statutes are practically indistinguishable, barring certain jurisdictional provisions that differentiate the two laws. See 43 P.S. §§ 333.103(f), (g) & (h); 29 U.S.C. Sections 203(g), (d) & (e). Similarly, neither Act contains language or guidance on the difference between an employee and independent contractor for purposes of the application of those Acts.

There is no Pennsylvania case law that sets out the standard to apply to employee versus independent contractor cases under the MW Act. However, there is a clearly established standard based upon a similar federal law with identical principles and purpose. Both the Pennsylvania Commonwealth Court and the U.S. Third Circuit Court of Appeals give deference to federal case law when state law substantially parallels federal law.

In *Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board*, 527 A.2d 1097 (Pa. Cmwlth. 1987), the Court was guided by the federal standard of the National Labor Relations act in interpreting the Public Employee Relations act, given their similar language and purpose, and that no meaningful difference exists between the policies of the Acts. *Id.* at 1099. Also, in *Fogleman v. Mercy Hospital, Inc.*, No. 00-2263, U.S. Court of Appeals for the Third Circuit, 2002 U.S. App. LEXIS 4306 (filed March 18, 2002), the Court reiterated its assertion that the Pennsylvania Human

Relations Act “is to be interpreted as identical to federal anti-discrimination laws except where there is something specifically different in its language requiring that it be treated differently.” *Id.* at 13. Given the unity of purpose between the MW Act and the FLSA, and the similarity between the two laws, this Court will give deference to the federal courts’ interpretation of the FLSA since the state courts have not yet spoken on the issue in the context of the MW Act.

The Pennsylvania Federal Courts have applied the “economic reality” test to determine whether an individual is an employee or independent contractor in analyzing the application of the FLSA. *See, e.g., Martin v. Selker Brothers, Inc., 949 F.2d 1286 (3d Cir. 1991)* (the Court applied the six-part “economic reality” test to establish the employment status of gas station attendants). The considerations of the test are as follows:

1. the degree of control exercised by the employer over the workers;
2. the workers opportunity for profit or loss depending upon his managerial skill;
3. the alleged employee’s investment in equipment or materials required for his task, or his employment of helpers;
4. whether the service rendered requires a special skill;
5. the degree of permanence of the working relationship;
6. the extent to which the work is an integral part of the employer’s business.

Real v. Driscoll, 603 F.2d 748, 754 (9th Cir. 1979).

The fact that a worker initially consents to the arrangement, in and of itself, is not enough to determine that there was no employee/employer relationship. The U.S. Supreme Court, in *Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985)*, applied the FLSA to workers of a religious enterprise, despite the workers’ assertions that they were volunteers working for religious and

evangelical reasons, and their vehement denial of employee status. These protestations were not controlling of the employment issue, and the court applied the “economic reality” test in determining the existence of an employer/employee relationship. 471 U.S. at 301, 105 S. Ct. at 1961-1962, 85 L. Ed. 2d at 288-289. The workers in *Real*, supra, signed sub-licensee agreements that called the workers independent contractors. In applying the “economic reality” test, the court in *Real* noted that “[t]he presence of any individual factor is not dispositive of whether an employee/employer relationship exists. Such a determination depends “upon the circumstances of the whole activity.” *Id.* at 755, quoting *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730, 67 S. Ct. 1473, 1477, 91 L. Ed. 1772 (1947). thus, the “economic reality” test looks to the *totality of the circumstances* regarding the working arrangement, not just the consent of the employee in signing documentation that would indicate an independent contractor arrangement.

“An employee is not permitted to waive employee status.” *Robicheaux v. Radcliff Material, Inc.*, 697 F.2d 662, 667 (5th Cir. 1983). *Robicheaux* dealt with welders who had worked with their employer for ten months to three years. They had signed independent contractor agreements with the employer and provided their own insurance. They filed income tax returns as self-employed individuals and furnished their own equipment. Workers received an hourly wage and invoiced the employer for hours worked. They worked solely for the employer except for insignificant jobs elsewhere, and some had owned businesses before working for the employer. After all of these considerations, the federal court still found that the welders were not independent contractors by looking to the economic realities of the working relationship. “A person’s subjective opinion that he is a businessman rather than an employee does not change his status.” *Id.* at 666-667.

In the case at hand, Mr. Hubler did in fact, sign some documentation that would indicate an independent contractor status, and filed his taxes as being self-employed. However, all the other factors of the business relationship make the “economic reality” of the situation an employer/employee relationship. Mr. Hubler was never in business for himself prior to working for the Defendant. The Defendant taught him how to do the

work for the company, and controlled where Mr. Hubler worked based on the Defendant's contracts with CVS Pharmacy. He fixed Mr. Hubler's hourly wage, and supervised him on a semi-regular basis. Mr. Hubler had no opportunity for profit or loss in the business, and did not enter into separate contracts for each of the stores that he worked on for the Defendant. Mr. Stuber was the only one who made out on the deals. Mr. Hubler got occasional raises the longer he worked for Mr. Stuber, like any other employee, and had his lodging and meals paid, as opposed to them being negotiated into the price of his work. Mr. Hubler ended his employment before the end of a particular project, and the Defendant had no legal recourse against him for breach of contract. He did not perform work for anyone else other than Mr. Stuber and C-Wayne Fixtures, and relied solely upon his income from the Defendant for the time period in question, one and one half years. The services provided were an integral part of the Defendant's business. In fact, the whole purpose of C-Wayne Fixtures, installing fixtures, was exactly what Mr. Hubler and other workers were doing. Mr. Hubler did not possess any special skill needed by the Defendant that the Defendant, or any of his other workers, could not do, as further evidenced by the fact that the Defendant now has temporary workers on the job to do the same work. Mr. Hubler was clearly an employee of the Defendant.

The Court notes that Mr. Stuber was a credible witness and impressed the Court as a hard working business owner. He appeared to be following the advise of counsel in attempting in good faith to maintain his employees as independent contractors, a status which was clearly more economically advantageous to him and his business. With no employees he need not pay an employer's share of social security tax, purchase worker's compensation insurance, contribute to unemployment compensation or pay overtime. Mr. Hubler, who was more aware of what was going on than he portrayed at trial, gave the Defendant the impression that he consented to the independent contractor arrangement, which as the Court notes is not relevant to a legal analysis. In conclusion, a duck by any other name is still a duck. Here, the duck is an employee.

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

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE,
o/b/o LYNNDON HUBLER,
Plaintiff

vs.

WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Defendant

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No. 2000-1392-C.D.

ORDER

NOW, this 2nd day of April, 2002, the Court finds in favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1276.40 plus costs of suit.

By the Court,

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

APR 03 2002

Attest:

Frederick J. Ammerman
Prothonotary
Clerk of Courts

Judie J. Ammerman

Judge Fredric J. Ammerman

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

COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, o/b/o LYNNDON :
HUBLER, :
Appellee :
:
Vs. : No. 2000-1392-CD
:
WAYNE STUBER, individually :
and d/b/a C-WAYNE FIXTURES, :
Appellant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal upon the following persons by mailing such copy first class mail, postage prepaid to:

Kathryn J. McDermott, Esquire Assistant Counsel Commonwealth of Pennsylvania Department of Labor & Industry Office of Chief Counsel Labor Law Compliance Division 10 th Floor, Labor & Industry Bldg. Seventh and Forster Streets Harrisburg, PA 17120	David Meholick Court Administrator Clearfield County Courthouse Clearfield, PA 16830
Cathy Warrick Official Court Reporter Clearfield County Courthouse Clearfield, PA 16830	

Honorable Fredric J. Ammerman
Court of Common Pleas of Clearfield County
Clearfield County Courthouse
Clearfield, PA 16830

F.C. Bell III
F. Cortez Bell, III, Esquire
Attorney for Appellee

Date: May 1, 2002

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 2000-1392-CD

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
BUREAU OF LABOR LAW COMPLIANCE,
o/b/o LYNNNDON HUBLER,
vs.
WAYNE STUBER, individually and
d/b/a C-WAYNE FIXTURES,
Appellant

Appellee

NOTICE OF APPEAL

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

Commonwealth Court of Pennsylvania

May 3, 2002

COPY

RE: L & I, et al v. Stuber
 No.: 1099 CD 2002
 Agency Docket Number: 2000-1392-CD
 Filed Date: May 1, 2002

Notice of Docketing Appeal

A Notice of Appeal, a copy of which is enclosed, from an order of your court has been docketed in the Commonwealth Court of Pennsylvania. The docket number in the Commonwealth Court is endorsed on this notice. The Commonwealth Court docket number must be on all correspondence and documents filed with the court.

Under Chapter 19 of the Pennsylvania Rules of Appellate Procedure, the Notice of Appeal has the effect of directing the Court to transmit the certified record in the matter to the Prothonotary of the Commonwealth Court.

The complete record, including the opinion of the trial judge, should be forwarded to the Commonwealth Court within forty (40) days of the date of filing of the Notice of Appeal. Do not transmit a partial record.

Pa.R.A.P. 1921 to 1933 provides the standards for preparation, certification and transmission of the record.

The address to which the Court is to transmit the record is set forth on Page 2 of this notice.

Notice to Counsel

A copy of this notice is being sent to all parties or their counsel indicated on the proof of service accompanying the Notice of Appeal. The appearance of all counsel has been entered on the record in the Commonwealth Court. Counsel has thirty (30) days from the date of filing of the Notice of Appeal to file a praecipe to withdraw their appearance pursuant to Pa. R.A.P. 907 (b).

Appellant or Appellant's attorney should review the record of the trial court, in order to insure that it is complete, prior to certification to this Court. (Note: A copy of the Zoning Ordinance must accompany records in Zoning Appeal cases).

The addresses to which you are to transmit documents to this Court are set forth on Page 2 of this Notice.

If you have special needs, please contact this court in writing as soon as possible.

Attorney Name	Party Name	Party Type
F. Cortez Bell, Esq.	Wayne Stuber	Appellant
Kathryn J. McDermott, Esq.	Bureau of Labor Law Compliance.	Appellee

FILED

MAY 06 2002
 11:36pm
 KPS

William A. Shaw
 Prothonotary

411

ATTORNEYS FOR Appellant

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

1099 Oct 2002

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND
INDUSTRY, BUREAU OF LABOR LAW
COMPLIANCE, o/b/o LYNNDON
HUBLER,
Appellee

V.

WAYNE STUBER, individually
and d/b/a C-WAYNE FIXTURES,
Appellant

[Handwritten signature]

NO. 2000-1392-CD

Type of Case: Civil

Type of Pleading:
Notice of Appeal

Filed on Behalf of:
Wayne Stuber, individually
and d/b/a C-Wayne Fixtures,
Appellant

Counsel of Record for This
Party:
F. Cortez Bell, III, Esq.
I.D. #30183

BELL, SILBERBLATT & WOOD
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830
Telephone: (814) 765-5537

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

MAY 01 2002

Attest,

Willie A. Brown
Prothonotary/
Clerk of Courts

Address all written communications to:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
P.O. Box 11730
Harrisburg, PA 17108
(717) 255-1650

Filings may be made in person at the following address (except on Saturdays, Sundays and holidays observed by Pennsylvania Courts) between 9:00 a.m. and 4:00 p.m.

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Room 624
Sixth Floor
South Office Building
Harrisburg, PA 17120
(717) 255-1650

Pleadings and similar papers (but not paperbooks or certified records) may also be filed in person only at:

Office of the Chief Clerk
Commonwealth Court of Pennsylvania
Filing Office
Suite 990
The Widener Building
One South Penn Square
Philadelphia, PA 19107
(215) 560-5742

The hours of the Philadelphia Filing Office are 9:00 a.m. to 4:00 p.m.

Under Pa.R.A.P. 3702, writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office.

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50-1392-00

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																							
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<table border="0"><tr><td>A. Received by (Please Print Clearly)</td><td>B. Date of Delivery</td></tr><tr><td colspan="2" style="text-align: center;">MAY 28 2002</td></tr><tr><td colspan="2">C. Signature</td></tr><tr><td colspan="2"><i>Edward S. Deary</i></td></tr><tr><td colspan="2">D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: <i>Deary</i></td></tr><tr><td colspan="2">E. Service Type</td></tr><tr><td colspan="2"><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</td></tr><tr><td colspan="2">F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</td></tr><tr><td colspan="2">2. Article Number (Copy from service label) 7099 3400 0016 7880 5683</td></tr><tr><td colspan="2">PS Form 3811, July 1999</td><td colspan="2">Domestic Return Receipt 102595-00-M-0952</td></tr></table>		A. Received by (Please Print Clearly)	B. Date of Delivery	MAY 28 2002		C. Signature		<i>Edward S. Deary</i>		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: <i>Deary</i>		E. Service Type		<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		2. Article Number (Copy from service label) 7099 3400 0016 7880 5683		PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952	
A. Received by (Please Print Clearly)	B. Date of Delivery																								
MAY 28 2002																									
C. Signature																									
<i>Edward S. Deary</i>																									
D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: <i>Deary</i>																									
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PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952																							

FILED

MAY 30 2002

111:46/1000 E
William A. Shaw *WAS*
Prothonotary

#19

Comm. of PA

vs

C. Wayne Fixtures

00-1392-cp

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"><input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.<input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you.<input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly)	B. Date of Delivery
		<i>SEP 16 2002</i>	
		C. Signature	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
		<input checked="" type="checkbox"/> D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
1. Article Addressed to: Commonwealth Court of Pennsylvania Office of the Prothonotary PO Box 11730 Harrisburg, PA 17108		FILED 00-1392-cp	
		SEP 19 2002	
2. Article Number (Copy from service label)		William A. Shaw 700-00-3400-0016 7880 5546 Prothonotary	
PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952	

FILED

✓ SEP 19 2002

William A. Shaw
Prothonotary

FILED

SEP 13 2002

0/11:50 (u)

William A. Shaw
Prothonotary

2000-1392-CD

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

00-1392-CD

Commonwealth Court of Pennsylvania

Postage	\$ 5.30
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 9.35

Postmark
CLEARFIELD PA 15830
13
2002
USPS

Recipient's Name (Please Print Clearly) (to be completed by mailer)
Office of the Prothonotary
Street, Apt. No. or PO Box No.
PO Box 11730
City, State, ZIP+4
Harrisburg, PA 17108

PS Form J800, February 2000

See Reverse for Instructions

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

CCP

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659

September 13, 2002

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

Re: Commonwealth of Pennsylvania, Dept. of Labor & Industry, Bureau of Labor
Law Compliance o/b/o Lynndon Hubler
Vs.
Wayne Stuber individually and d/b/a C-Wayne Fixtures
No. 00-1392-CD
Commonwealth Court No. 1099 CD 2002

Dear Prothonotary:

Enclosed you will find the above referenced complete record re-submitted to your office. Also, please find enclosed one transcript, as per your instructions.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Shaw".

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext 1330
FAX(814)-765-7659

Fredric J. Ammerman, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Kathryn J. McDermott, Asst. Counsel
10th Floor, Labor & Industry Bldg.
Seventh and Forster Streets
Harrisburg, PA 17120

F. Cortez Bell, III, Esq.
318 E. Locust Street
PO Box 670
Clearfield, PA 16830

Commonwealth of Pennsylvania, Dept. of Labor & Industry, Bureau of Labor Law
Compliance o/b/o Lynndon Hubler
Vs.
Wayne Stuber individually and d/b/a C-Wayne Fixtures

Court No. 00-1392-CD; Commonwealth Court No. 1099 CD 2002

Dear Counsel:

Please be advised that the above referenced record was re-submitted to the Commonwealth Court of Pennsylvania on September 13, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



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Compliance o/b/o Lynndon Hubler
Vs.
Wayne Stuber individually and d/b/a C-Wayne Fixtures

Court No. 00-1392-CD; Commonwealth Court No. 1099 CD 2002

Dear Counsel:

Please be advised that the above referenced record was re-submitted to the Commonwealth Court of Pennsylvania on September 13, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



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P.O. Box 549
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Compliance o/b/o Lynndon Hubler
Vs.
Wayne Stuber individually and d/b/a C-Wayne Fixtures

Court No. 00-1392-CD; Commonwealth Court No. 1099 CD 2002

Dear Counsel:

Please be advised that the above referenced record was re-submitted to the Commonwealth Court of Pennsylvania on September 13, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 05/22/2002

Time: 11:01 AM

Page 1 of 2

Clayfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01392-CD

Current Judge: Fredric J. Ammerman

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber

District Justice Appeal

Date	Judge	
11/09/2000	New Case Filed. Filing: District Justice Appeals Paid by: Commonwealth of PA Receipt number: 0051204 Dated: 11/09/2000 Amount: \$80.00 (Check)	No Judge
11/17/2000	Proof of Service of Notice of Appeal and Rule to File Complaint, /s/Kathy McDermott, filed.	No Judge
11/22/2000	Transcript from District Justice Rudella, filed.	No Judge
11/29/2000	Notice to Defend. Complaint, filed by s/Kathryn J. McDermott, Esq. Verication, s/Gerald A. Barnett 1 cert to Atty	No Judge
12/26/2000	Acceptance of Service, Complaint upon Defendant, filed by s/F. Cortez Bell, III, Esq. One CC Atty for Plaintiff	No Judge
01/15/2001	Answer and New Matter to Plaintiff's Complaint, filed by s/F. Cortez Bell, III, No Judge Esq. Two CC Atty Bell	No Judge
02/07/2001	Answer to New Matter, filed by s/Kathryn J. McDermott, Esq. Verification, No Judge s/Gerald A. Barnett Cert of Service. no cc	No Judge
07/20/2001	Filing: Praecipe/List For Arbitration Paid by: Commonwealth of Pennsylvania Receipt number: 1828731 Dated: 07/20/2001 Amount: \$20.00 (Check) 2 cc atty McDermott Copy to CA	No Judge
08/14/2001	Letters Mailed from CA Office scheduling Arbitration hearing set for Friday, No Judge October 5, 2001, at 10:30 a.m., filed.	No Judge
10/05/2001	OATH OR AFFIRMATION OF ARBITRATORS, filed. s/Jeffrey S. DuBois, No Judge Esq., Chairman; Mark A. Falvo, Esq. & David R. Thompson Award of Arbitrators, filed. Judgment in favor of the Plaintiff in the amount of \$1,276.40. No interest or costs are awarded to Plaintiff. s/Jeffrey DuBois, Chairman, Mark Falvo & David R. Thompson Notice of Award to Atty. Bell (2) copies & Notice mailed to Atty. McDermott Entry of Award, Witness My Hand and the Seal of the Court, William A. Shaw, Prothonotary	No Judge
11/01/2001	Filing: Arbitration Appeal Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1833584 Dated: 11/01/2001 Amount: \$300.00 (Check) Notice of Appeal. Filed by s/F. Cortez Bell, III, Esq. Cert of Svc 3 cc Atty Bell Affidavit Pursuant to Local Rule 1308 (a)(1) Filed by s/F. Cortez Bell, III, No Judge Esq. Cert of Svc 4 cc Atty Bell	No Judge
01/11/2002	ORDER, AND NOW, this 11th day of January, 2002, re: Civil Non-Jury Trial Fredric J. Ammerman scheduled for Mar. 7, 2002, at 9:00 a.m. by the Court, s/FJA,J. 1 cc McDermott, Bell	Fredric J. Ammerman
03/05/2002	Filing: Subpoena Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1839118 Dated: 03/05/2002 Amount: \$3.00 (Check)	Fredric J. Ammerman
03/11/2002	ORDER, NOW, this 7th day of March, 2002, re: Counsel for both parties have no more than 15 days from this date to supply the Court w/appropriate legal authority or letter brief. by the Court, s/FJA,J. 1 cc Atty F. C. Bell, III and Atty McDermott	Fredric J. Ammerman
04/03/2002	OPINION and ORDER, NOW, this 2nd day of April, 2002, the Court finds in Fredric J. Ammerman favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1,276.40 plus costs of suit. by the Court, s/FJA,J. 2 cc to Atty McDermott, Bell,III, 2 copies to Judge Ammerman, 1 copy to Atty D. Mikesell, 1 to CA, and 1 to Law Library	

Date: 05/22/2002

Time: 11:01 AM

Page 2 of 2

Childrenfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01392-CD

Current Judge: Fredric J. Ammerman

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber

District Justice Appeal

Date		Judge
05/01/2002	Filing: Notice of Appeal/Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1841897 Dated: 05/01/2002 Amount: \$45.00 (Check) One CC Commonwealth Court	Fredric J. Ammerman
05/06/2002	Case Number From Commonwealth Court of Pennsylvania: 1099 CD 2002	Fredric J. Ammerman

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

MAY 22 2002

Attest:

William J. Hudson
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1392-CD

Commonwealth of Pennsylvania,
Dept. of Labor and Industry, Bureau of
Labor Law Compliance o/b/o Lynndon Hubler
Vs.
Wayne Stuber d/b/a C-Wayne Fixtures

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	11/09/00	District Justice Appeals	03
02	11/17/00	Proof of Service of Notice of Appeal and Rule to File Complaint	01
03	11/22/00	Transcript from D.J. Rudella	02
04	11/29/00	Notice to Defend/Complaint	15
05	12/26/00	Acceptance of Service	01
06	01/15/01	Answer and New Matter to Plaintiff's Complaint	10
07	02/07/01	Answer to New Matter	09
08	07/20/01	Praecepice>List for Arbitration	02
09	08/14/01	Letters Mailed from CA office scheduling arbitration	02
10	10/05/01	Oath or Affirmation of Arbitrators, Award of Arbitrators, and Entry of Award	06
11	11/01/01	Arbitration Appeal/Notice of Appeal	04
12	11/01/01	Affidavit Pursuant to Local Rule 1308(a)(1)	03
13	01/11/02	Order, Re: Civil Non-Jury Trial	01
14	03/11/02	Order, Re: briefs	01
15	04/03/02	Opinion and Order, Re: Judgment for Plaintiff	06
16	05/01/02	Notice of Appeal	10
17	05/06/02	Case Number from Commonwealth Court of PA #1099 CD 2002	03



COMMONWEALTH COURT OF PENNSYLVANIA

May 29, 2002

OFFICE OF THE PROTHONOTARY
P.O. BOX 11730
HARRISBURG, PA 17108

TELEPHONE
(717) 255-1650

William A. Shaw, Prothonotary
Court of Common Pleas of Clearfield County
Courthouse
P.O. Box 549
Clearfield, PA 16830

Re: Department of Labor and Industry v. Wayne Stuber
Trial Court No. 00-1392-CD
Commonwealth Court No. 1099 C.D. 2002

Dear Mr. Shaw:

I am returning the enclosed record to you because it is incomplete. My review of the record indicates that a non-jury trial was conducted on March 7, 2002. The transcript of that trial is not included in the record. Please obtain the transcript and return the completed record to this court on or before June 18, 2002.

By copy of this letter, I am advising appellant's counsel of his responsibility to ensure that the transcript is completed.

Very truly yours,

C.R. Hostutler
Deputy Prothonotary/Chief Clerk

CRH/gb

Enclosure

cc: F. Cortez Bell, Esq.

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659

July 10, 2002

Commonwealth Court of Pennsylvania
Office of the Prothonotary
Attn: C. R. Hostutler, Deputy Prothonotary
PO Box 11730
Harrisburg, PA 17108

Re: Department of Labor and Industry vs. Wayne Stuber
Trial Court No. 00-1392-CD
Commonwealth Court No. 1099 CD 2002

Dear Mr. Hostutler:

This letter is in regards to the transcript deadline in this case. Following our conversation, I contacted the court reporter. She advised me that the transcript of the trial was requested and should be filed within one to two weeks. Upon filing of the transcript, I will forward the case to your office again. If you have any questions, please contact me at (814) 765-2641, ext. 1330.

Sincerely,

William A. Shaw
Prothonotary

WAS/brh

8-14-02

CHIP HOSTUTLER 717-255-1660 (ALL)

RE: TRANSCRIPTS

CASE HAS FINISHED TRANSCRIPT ON 8-12-02

COMMONWEALTH COURT IS ISSUING AN ORDER
FOR TRANSCRIPTS TO BE PAID WITHIN
14 DAY OR CASE WILL BE DISMISSED

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659

May 24, 2002

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

Re: Commonwealth of Pennsylvania, Dept. of Labor and Industry, Bureau of Labor Law
Compliance, o/b/o Lynndon Hubler
Vs.
Wayne Stuber, individually and d/b/a C-Wayne Fixtures
No. 00-1392-CD
Commonwealth Court No. 1099 CD 2002

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

A handwritten signature in black ink that appears to read "William A. Shaw".

William A. Shaw
Prothonotary/Clerk of Courts

2002 MAY 28 P 2:30
RECEIVED & FILED
COMMONWEALTH COURT
OF PENNSYLVANIA

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
FAX(814)-765-7659

DAVID S. AMMERMAN

SOLICITOR

May 24, 2002

COPY

Commonwealth Court of Pennsylvania
Office of the Prothonotary
PO Box 11730
Harrisburg, PA 17108

Re: Commonwealth of Pennsylvania, Dept. of Labor and Industry, Bureau of Labor Law
Compliance, o/b/o Lynndon Hubler
Vs.
Wayne Stuber, individually and d/b/a C-Wayne Fixtures
No. 00-1392-CD
Commonwealth Court No. 1099 CD 2002

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



P.O. Box 549
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641 Ext. 1330
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DAVID S. AMMERMAN

SOLICITOR

COPY

Fredric J. Ammerman, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Kathryn J. McDermott, Asst. Counsel
10th Floor, Labor & Industry Bldg.
Seventh and Forster Streets
Harrisburg, PA 17120

F. Cortez Bell, III, Esq.
318 E. Locust Street
PO Box 670
Clearfield, PA 16830

Commonwealth of Pennsylvania, Dept. of Labor ad Industry, Bureau of Labor Law
Compliance, o/b/o Lynndon Hubler
Vs.

Wayne Stuber, individually and d/b/a C-Wayne Fixtures

Court No. 00-1392-CD; Commonwealth Court No. 1099 CD 2002

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Commonwealth Court of Pennsylvania on May 24, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

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Fredric J. Ammerman, Judge
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Clearfield, PA 16830

Kathryn J. McDermott, Asst. Counsel
10th Floor, Labor & Industry Bldg.
Seventh and Forster Streets
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Commonwealth of Pennsylvania, Dept. of Labor ad Industry, Bureau of Labor Law
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Vs.
Wayne Stuber, individually and d/b/a C-Wayne Fixtures

Court No. 00-1392-CD; Commonwealth Court No. 1099 CD 2002

Dear Counsel:

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Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

JACQUELINE KENDRICK

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CLEARFIELD COUNTY



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Compliance, o/b/o Lynndon Hubler
Vs.

Wayne Stuber, individually and d/b/a C-Wayne Fixtures

Court No. 00-1392-CD; Commonwealth Court No. 1099 CD 2002

Dear Counsel:

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Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Current Judge: Fredric J. Ammerman

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber

District Justice Appeal

Date	Judge
11/09/2000	New Case Filed.
	(1) Filing: District Justice Appeals Paid by: Commonwealth of PA Receipt number: 0051204 Dated: 11/09/2000 Amount: \$80.00 (Check) 23
11/17/2000	(2) Proof of Service of Notice of Appeal and Rule to File Complaint, /s/Kathy McDermott, filed.
11/22/2000	(3) Transcript from District Justice Rudella, filed. 2
11/29/2000	(4) Notice to Defend. Complaint, filed by s/Kathryn J. McDermott, Esq. 15 Verification, s/Gerald A. Barnett 1 cert to Atty
12/26/2000	(5) Acceptance of Service, Complaint upon Defendant, filed by s/F. Cortez Bell, III, Esq. One CC Atty for Plaintiff
01/15/2001	(6) Answer and New Matter to Plaintiff's Complaint, filed by s/F. Cortez Bell, III, Esq. Two CC Atty Bell 10
02/07/2001	(7) Answer to New Matter, filed by s/Kathryn J. McDermott, Esq. Verification, s/Gerald A. Barnett Cert of Service. no cc
07/20/2001	(8) Filing: Praeclipe/List For Arbitration Paid by: Commonwealth of Pennsylvania Receipt number: 1828731 Dated: 07/20/2001 Amount: \$20.00 (Check) 2 cc atty McDermott Copy to CA
08/14/2001	(9) Letters Mailed from CA Office scheduling Arbitration hearing set for Friday, October 5, 2001, at 10:30 a.m., filed.
10/05/2001	(10) OATH OR AFFIRMATION OF ARBITRATORS, filed. s/Jeffrey S. DuBois, Esq., Chairman; Mark A. Falvo, Esq. & David R. Thompson
	Award of Arbitrators, filed.
	Judgment in favor of the Plaintiff in the amount of \$1,276.40. No interest or costs are awarded to Plaintiff. s/Jeffrey DuBois, Chairman, Mark Falvo & David R. Thompson
	Notice of Award to Atty. Bell (2) copies & Notice mailed to Atty. McDermott
	Entry of Award, Witness My Hand and the Seal of the Court, William A. Shaw, Prothonotary
11/01/2001	(11) Filing: Arbitration Appeal Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1833584 Dated: 11/01/2001 Amount: \$300.00 (Check) 4
	Notice of Appeal. Filed by s/F. Cortez Bell, III, Esq. Cert of Svc 3 cc Atty Bell
	(12) Affidavit Pursuant to Local Rule 1308 (a)(1) Filed by s/F. Cortez Bell, III, Esq. Cert of Svc 4 cc Atty Bell
01/11/2002	(13) ORDER, AND NOW, this 11th day of January, 2002, re: Civil Non-Jury Trial Fredric J. Ammerman scheduled for Mar. 7, 2002, at 9:00 a.m. by the Court, s/FJA,J. 1 cc McDermott, Bell
03/05/2002	(14) Filing: Subpoena Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Fredric J. Ammerman Receipt number: 1839118 Dated: 03/05/2002 Amount: \$3.00 (Check)
03/11/2002	(15) ORDER, NOW, this 7th day of March, 2002, re: Counsel for both parties Fredric J. Ammerman have no more than 15 days from this date to supply the Court w/appropriate legal authority or letter brief. by the Court, s/FJA,J. 1 cc Atty F. C. Bell, III and Atty McDermott
04/03/2002	(16) OPINION and ORDER, NOW, this 2nd day of April, 2002, the Court finds in Fredric J. Ammerman favor of the Plaintiff and against the Defendant. Judgment is entered against the Defendant in the amount of \$1,276.40 plus costs of suit. by the Court, s/FJA,J. 2 cc to Atty McDermott, Bell,III, 2 copies to Judge Ammerman, 1 copy to Atty D. Mikesell, 1 to CA, and 1 to Law Library 10

Date: 05/07/2002

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:16 AM

ROA Report

Page 2 of 2

Case: 2000-01392-CD

Current Judge: Fredric J. Ammerman

Commonwealth of Pennsylvania vs. C-Wayne Fixtures, Wayne Stuber

District Justice Appeal

Date	Judge
05/01/2002 10	Filing: Notice of Appeal/Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Stuber, Wayne) Receipt number: 1841897 Dated: 05/01/2002 10 Amount: \$45.00 (Check) One CC Commonwealth Court
05/06/2002 11 2002	Case Number From Commonwealth Court of Pennsylvania: 1099 CD 3 Fredric J. Ammerman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

00-1392-CJ

Commonwealth of Pennsylvania,
Department of Labor and
Industry, Bureau of Labor Law
Compliance, o/b/o Lynndon Hubler

FILED

MAY 05 2003

v. : No. 1099 C.D. 2002

William A. Shaw
Prothonotary

Wayne Stuber, individually and
d/b/a/ C-Wayne Fixtures,

Submitted: December 20, 2002

Appellant

BEFORE: HONORABLE JAMES GARDNER COLINS, President Judge
HONORABLE DORIS A. SMITH-RIBNER, Judge
HONORABLE RENÉE L. COHN, Judge

OPINION BY JUDGE COHN

FILED: May 2, 2003

This is an appeal by Wayne Stuber d/b/a C-Wayne Fixtures (Stuber) from an order of the Court of Common Pleas of Clearfield County that, after a non-jury trial, assessed damages in the amount of \$1276.40 against Stuber for violation of The Minimum Wage Act of 1968, Act of January 17, 1968, P.L. 11, as amended, 43 P.S. §§333.101-333.115 (Act).

The case began when the Department of Labor and Industry, Bureau of Labor Law Compliance (Bureau) received an assignment of wage claim from Lynndon Hubler. Stuber's company installs counters and fixtures in stores,

primarily CVS pharmacies. Hubler did work for Stuber, including unloading trucks, installing cabinetry, hanging pictures, setting up stockroom shelving, setting up the pharmacy area, painting, installing carpeting and cleaning up, in connection with the installation business. (N.T. 32.) He submitted statements to Stuber indicating the number of hours worked and received pay in exchange. No taxes were withheld. With only one exception, he was not paid any overtime. After its own investigation, the Bureau determined that Hubler was owed \$1276.40 for overtime wages. The Bureau lost before a district magistrate; however, on appeal to common pleas, mandatory *de novo* arbitration resulted in a ruling in favor of the Bureau and Hubler. Stuber then filed an appeal *de novo* and, after a bench trial, the court ruled that Hubler was an employee of Stuber for purposes of the minimum wage requirement of the Act and ordered judgment in favor of Hubler and the Bureau. Stuber appeals to this Court.

On appeal, the single issue presented is whether Huber was an employee (and therefore entitled to overtime wages) or an independent contractor (and not entitled to such wages) for purposes of the Act.¹ The Honorable Frederic J.

¹ Section 4(c) of the Act, 43 P.S. §333.104(c), pertinently states:

Employees shall be paid for overtime not less than one and one-half times the employee's regular rate as prescribed in regulations promulgated by the secretary: ... And provided further, That the secretary shall promulgate regulations with respect to overtime subject to the limitations that no pay for overtime in addition to the regular rate shall be required except for hours in excess of forty hours in a workweek.

Ammerman, in an insightful opinion, held that Huber was an employee and, thus, awarded the overtime. We affirm.²

We note, initially, that there is no Pennsylvania authority that establishes the standard that should be used to determine whether one is an employee or an independent contractor under the Act. While both sides agree that the federal “economic reality” standard should be employed in this case of first impression, and also agree that there is a presumption that the individual is an employee, (a presumption the employer must rebut), Stuber additionally argues that the Court should look to other Pennsylvania laws, such as those dealing with unemployment compensation, or the Bureau of Employer Tax Operations cases, to examine the independent contractor/employee question. While such other laws should not be entirely discounted, we must remain cognizant that they were not enacted for precisely the same purpose as the Minimum Wage Act.

The unemployment compensation system provides financial benefits for persons who lose their jobs through no fault of their own. Section 3 of the Unemployment Compensation Law, Act of December 5, 1936, P.L. 2897, as amended, 43 P.S. § 752 (U.C. Law). The Bureau of Employer Tax Operations considers employer-filed petitions for reassessment of unemployment compensation taxes. Section 304 of the U.C. Law, 43 P.S. § 784. However, the Act under review here was specifically enacted, *inter alia*, to address the unequal bargaining power between employees and employers in certain occupations,

² Our scope of review over questions of law is plenary. Serapiglia v. City of Clairton, 809 A.2d 1079, 1084 n.13 (Pa. Cmwlth. 2002).

particularly with regard to negotiating minimum wage standards, Section 1 of the Act, 43 P.S. § 333.101, a goal similar to, but not identical with that of the unemployment system.

We note that our state Act mirrors the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (FLSA), which is also designed to protect employees who do not have real bargaining power. In fact, the definitions of "employ," "employer" and "employee" in the two acts are virtually identical for purposes of the case *sub judice*.³ Similarly, neither act contains language discussing any distinction between an employee and an independent contractor. However, there is federal

³ Under Section 3 of the Act, 43 P.S. §333.103, the definitions are:

"Employ" includes to suffer or to permit to work.

"Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.

"Employee" includes any individual employed by an employer.

Under Section 3 of FLSA, 29 U.S.C. § 203, the definitions are:

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee....

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

.....

(g) "Employ" includes to suffer or permit to work.

The omitted language in (d) above refers to certain jurisdictional limitations unique to the federal courts and has no relevance here.

case law which does address this issue.⁴ In the past, this Court has indicated that it is proper to give deference to federal interpretation of a federal statute when the state statute substantially parallels it. See, e.g., Commonwealth v. Pennsylvania Labor Relations Board, 527 A.2d 1097 (Pa. Cmwlth. 1987) (referring to the National Labor Relations Act when interpreting the Public Employe Relations Act.) Therefore, because the state and federal acts have identity of purpose, we hold that federal case law, and the “economic reality” test employed by the federal courts, is the appropriate standard to use.⁵

Under the “economic reality” test, the relevant considerations are as follows:

- 1) the degree of control exercised by the employer over the workers;
- 2) the worker’s opportunity for profit or loss depending upon managerial skill;
- 3) the alleged worker’s investment in equipment or material required for the tasks or the employment of helpers;
- 4) whether the service rendered requires special skill;

⁴ For an excellent digest of case law in this area, see Landis, Debra T., Determination of “Independent Contractor” and “Employee” Status for Purposes of § 3(e)(1) of the Fair Labor Standards Act, 51 A.L.R. Fed. 702 (1981).

⁵ Even applying other law, the outcome would likely not change. For example, under Pennsylvania unemployment law, the inquiries are whether the claimant was free of the employer’s control, *i.e.*, does the employer direct the job and manner of performance, and whether the claimant was engaged in an independently established trade, *i.e.*, did the claimant have a proprietary interest in the business or was he free from control by the employer. Sharp Equipment Co. v. Unemployment Compensation Board of Review, 808 A.2d 1019 (Pa. Cmwlth. 2002). The inquiry, additionally, involves determining whether the claimant could perform the work for anyone, or whether the nature of the services is such that they could only be performed for the employer. Moreover, under both the Act and our state unemployment law, there is a statutory presumption of an employment relationship that the employer must overcome. Id. When these principles are applied to the facts in the case *sub judice*, a different outcome from the one we reach here is far from assured.

- 5) the degree of permanence of the working relationship; and
- 6) the extent to which the work is an integral part of the employer's business.

Real v. Driscoll Strawberry Associates, Inc., 603 F.2d 748, 754 (9th Cir. 1979);
Martin v. Selker Brothers, Inc., 949 F.2d 1286 (3rd Cir. 1991).

When applying the economic reality test, the federal courts have looked at the totality of the circumstances and a single factor, by itself, is not necessarily determinative. Moreover, merely because a worker initially calls the particular arrangement something different, does not mean that there was no employer/employee relationship. For example, in Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290 (1985), "volunteers," working for religious and evangelical reasons, denied their employee status. Despite their protestations, however, the High Court, in applying the economic reality test, determined the existence of an employer/employee relationship. Similarly, in Real, the workers signed sublicense agreements identifying themselves as independent contractors. Nonetheless, this factor, by itself, was not persuasive. Id.

Additionally, a worker cannot waive his or her status as an employee. Robicheaux v. Radcliffe Material, Inc., 697 F.2d 662, 667 (5th Cir. 1983). In that case, the employees, who were welders, had signed independent contractor agreements, had filed tax returns indicating they were self-employed and furnished their own equipment. However, they received an hourly wage and invoiced employer for hours worked. They worked virtually only for the employer and, thus, were judicially determined to be employees and not independent contractors.

Conceding that the economic reality test is the proper one, Stuber, nonetheless, argues that the trial court erred in reaching the conclusion that Hubler was an employee. In so doing, he relies on the testimony of Stephen Oberholtzer, a superintendent for a general contractor on many of the jobs where Stuber's company had won the bid. This witness stated that he thought Hubler was an independent contractor, that Hubler had access to the premises he was working on, had a key as well as his own tools, and thought Hubler had signed an independent contractor agreement.

Stuber also testified, stating that Hubler had signed Waivers of Mechanics' Liens, which an employee would not need to sign, that he had signed Labor and Industry and tax forms indicating he was an independent contractor, that he thought Hubler had signed an Independent Contractor Agreement with Stuber's company, that Hubler provided his own tools, that he did not directly supervise Hubler, and that he had only trained Hubler for the initial job. Finally, Stuber notes that the trial judge stated that, at times in his testimony, Hubler attempted to appear "uncertain" about his status, *i.e.*, that he appeared to be more knowledgeable about what was going on than he let on.

We now turn to the facts as actually found in the case *sub judice*. The trial court determined that Hubler signed some documentation indicating that he was an independent contractor. In addition, he filed tax returns indicating he was self-employed. However, Hubler was never in business for himself prior to working for Stuber; it was Stuber who taught him how to do the work and controlled where he worked. Stuber fixed an hourly wage and supervised Hubler

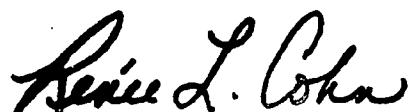
on a semi-regular basis. Hubler had no opportunity to make a profit or suffer a loss and did not enter into separate contracts for each store in which he worked. He received occasional raises from Stuber the longer he worked for him, and his lodgings and meals were paid for by Stuber. Hubler ended his employment before the project he was working on was completed, but Stuber had no legal recourse for breach of contract. Hubler did not perform work for anyone else during the relevant time period, and relied solely upon the income he received from Stuber. The services Hubler provided were integral to Stuber's business and Hubler did not possess any special skills.

While it is clear that both the facts asserted by Stuber and the ones found by the court have support in the record, it is the court's findings that are controlling where, as here, they are supported by the evidence. Pittsburgh Des Moines Steel Co. v. Board of Property Assessment, 519 A.2d 1080, 1082 (Pa. Cmwlth. 1987) ("Since the proceeding in the trial court was *de novo*, the credibility and weight of all the evidence is for the fact finder, the trial judge."). That being the case, we next focus on whether the findings, as evaluated by the economic reality test, lead to the conclusion that Hubler was an employee, rather than an independent contractor.

Regarding the degree of control exercised by Stuber over Hubler, the court found that Hubler worked for an hourly wage, was provided with meals and some training. Regarding the possibility of making a profit, the court's findings show that Hubler had no opportunity to do so and relied entirely on Stuber for his income. Concededly, under prong three of the test, the facts favor Stuber, since

Hubler *did* provide his own tools and a method for transporting them to the job site. The question of whether special skill was required is a close one, but the court did find that Hubler required initial training, which he received from Stuber. As to the permanency of the relationship, the court found that Hubler had never been in business for himself prior to working for Stuber, that he had worked for a year and a half and that he had no other source of income. These facts can certainly be viewed as indicia of permanency. Finally, the record demonstrates that the work performed by Hubler was an integral part of Stuber's business. Moreover, as Real and Robicheaux demonstrate, any documentation that Hubler may have signed indicating that he was an independent contractor is simply not controlling.

Based on the above discussion, we conclude that the economic reality test is the appropriate test to use under the Act and, under that test, the trial court could properly find that Hubler was an employee of Stuber. For this reason, we affirm its order.



RENÉE L. COHN, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania,	:	
Department of Labor and	:	
Industry, Bureau of Labor Law	:	
Compliance, o/b/o Lynndon Hubler	:	
	:	
v.	:	No. 1099 C.D. 2002
	:	
Wayne Stuber, individually and	:	
d/b/a/ C-Wayne Fixtures,	:	
	:	
		Appellant
	:	

ORDER

NOW, May 2, 2003, the order of the Court of Common Pleas of Clearfield County in the above-captioned matter is hereby affirmed.

Certified from the Record

MAY 02 2003

→ **Order Exit**

RENÉE L. COHN, Judge

FILED

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MAY 05 2003

William A. Shaw
Prethernotary

00-1392-CD



Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District
June 4, 2003

801 City County Building
Pittsburgh, PA 15219
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Mr. William A. Shaw
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Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Labor
Law
Compliance, o/b/o Lynndon Hubler, Respondents
v.
Wayne Stuber, individually and d/b/a/ C-Wayne Fixtures, Petitioner
Commonwealth Docket Number - 1099 CD 2002

Trial Court/Agency Dkt. Number: 2000-1392-CD
No. 261 WAL 2003

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: June 2, 2003

Disposition:
Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

/nt

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JOHN A. VASKOV
Deputy Prothonotary

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Judge Ammerman

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William A. Shaw
Prothonotary

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

00-1392-CD

COMMONWEALTH OF PENNSYLVANIA, : No. 261 WAL 2003
DEPARTMENT OF LABOR AND :
INDUSTRY, BUREAU OF LABOR LAW :
COMPLIANCE, O/B/O LYNNDON : Petition for Allowance of Appeal from the
HUBLER, : Order of the Commonwealth Court
: Respondents :
: v. :
: WAYNE STUBER, INDIVIDUALLY AND :
D/B/A C-WAYNE FIXTURES, :
: Petitioner :

ORDER

PER CURIAM

AND NOW, this 1st day of March, 2004, the Petition for Allowance of Appeal is
hereby GRANTED.

A True Copy Patricia Nicola
As of: March 1, 2004
Attest: *Patricia Nicola*
Chief Clerk
Supreme Court of Pennsylvania

FILED NO
m/11/2004
MAR 03 2004
cc
[Signature]

William A. Shaw
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

Western District
March 1, 2004

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Law
Compliance, o/b/o Lynndon Hubler, Respondents
v.
Wayne Stuber, individually and d/b/a/ C-Wayne Fixtures, Petitioner
Commonwealth Docket Number - 1099 CD 2002

Trial Court/Agency Dkt. Number: 2000-1392-CD
No. 261 WAL 2003

Appeal Docket No.: 12 WAP 2004

Date Petition for Allowance of Appeal Filed: June 2, 2003

Disposition: Order Granting Petition for Allowance of Appeal
Date: March 1, 2004

Reargument/Reconsideration Disposition:
Reargument/Reconsideration
Disposition Date:

/nt