

00-1532-CD
MANUFACTURES AND TRADERS TRUST COMPANY et al -vs- WILLIAM B.
KINDERMAN et al



Supreme Court of Pennsylvania

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

Western District

June 8, 2006

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

FILED

Ms. Eleanor R. Valecko
Deputy Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297

JUN 13 2006

PITTSBURGH OFFICE OF
SUPERIOR COURT

RE: Williamsport-Lycoming Foundation, Trustee Under The Will of James B. Graham,
Deceased

v.

William B. Kinderman, Roberta A. Kinderman and Clarence C. Daisher

Petition of: William B. Kinderman, and Roberta A. Kinderman
Superior Docket Number - 80 WDA 2005

Trial Court/Agency Dkt. Number: 00-1531 CD

No. 594 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 2, 2005

Disposition: Order Denying Petition for Allowance of Appeal
Date: May 9, 2006

Reargument/Reconsideration Disposition:

Reargument/Reconsideration
Disposition Date:

/wpf

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, DECEASED : No. 594 WAL 2005
: Petition for Allowance of Appeal from the Order of the Superior Court

v.

WILLIAM B. KINDERMAN, ROBERTA A. KINDERMAN AND CLARENCE C. DAISHER

PETITION OF: WILLIAM B. KINDERMAN, AND ROBERTA A. KINDERMAN

ORDER

PER CURIAM:

AND NOW, this 9th day of May, 2006, the Petition for Allowance of Appeal is hereby DENIED.

A True Copy Patricia Nicola

As of: May 9, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 80 WDA 2005



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January 13, 2005

Williamsport- Lycoming Foundation, Trustee Under The William Of James B. Graham, Deceased

v.

William B Kinderman, Roberta A. Kinderman and Clarence C. Daisher

00-1531-CD

Appeal of: William B Kinderman, and Roberta A. Kinderman

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 12, 2005

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

Beard - 1 (hansup) - 1 envelope

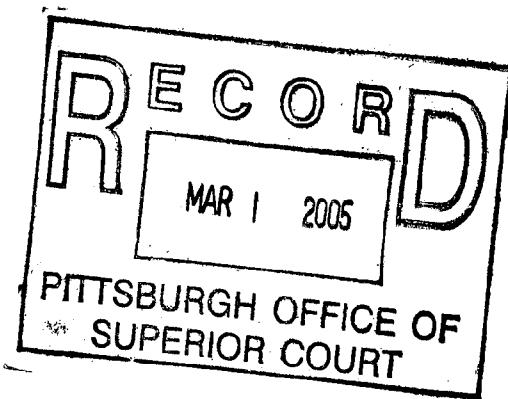
SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: January 27, 2005

Next Event Type: Original Record Received

Next Event Due Date: February 22, 2005



FILED *No cc*
6th fl 12:43 PM
 JAN 18 2005

William A. Shaw
 Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 80 WDA 2005



Page 2 of 3

January 13, 2005

COUNSEL INFORMATION

Appellant Kinderman, William B
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
 Address: 318 E Locust St PO Box 670
 Clearfield, PA 16830
 Phone No.: (814)765-5537 Fax No.: (814)765-9730
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellant Kinderman, Roberta A.
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
 Address: 318 E Locust St PO Box 670
 Clearfield, PA 16830
 Phone No.: (814)765-5537 Fax No.: (814)765-9730
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Williamsport- Lycoming Foundation
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Smith, Peter Fortune
 Bar No.: 34291 Law Firm:
 Address: 30 S 2nd Street
 PO Box 130
 Clearfield, PA 16830
 Phone No.: (814)765-5595 Fax No.: (814)765-6662
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
1/12/05	Notice of Appeal	60.00	60.00	2005SPRWD000057

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 80 WDA 2005



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January 13, 2005

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: December 10, 2004

Date Documents Received: January 12, 2005

Order Type: Judgment Entered

Judge: Reilly, Jr., John K.
Senior Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: January 10, 2005

OTN:

Lower Court Docket No.: 00-1531 CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
January 12, 2005	Notice of Appeal Filed	Appellant	Kinderman, William B
January 13, 2005	Docketing Statement Exited (Civil)		Western District Filing 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:

00-1531-CD

**Williamsport-Lycoming Foundation, Trustee Under the Will of James B. Graham,
Deceased**
VS.

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

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

The documents compromising the record have been numbered from **No. 1 to No.**
74, 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
February 28, 2005.



Prothonotary/Clerk of Courts

(seal)

Date: 02/22/2005

Time: 11:13 AM

Page 1 of 5

Clinton County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq. Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
04/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/29/2001	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
05/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
09/07/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	

Date: 02/22/2005

Time: 11:13 AM

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Clinton County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
09/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, Esq. Affidavit. s/Robert L. Kester 4 cc Atty	John K. Reilly Jr.
12/07/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. 4 cc to Atty	John K. Reilly Jr.
12/10/2001	RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith	John K. Reilly Jr.
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell	John K. Reilly Jr.
01/04/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc Atty Smith	John K. Reilly Jr.
01/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver	John K. Reilly Jr.
01/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver	John K. Reilly Jr.
01/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
03/19/2002	Praecipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call. Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,	John K. Reilly Jr.
03/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAISHER. by the Court, s/JKR,JR. P.J. no cc	John K. Reilly Jr.
04/01/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
07/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney	John K. Reilly Jr.
07/30/2002	Praecipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc Certificate of Service, Praecipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
08/01/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson	John K. Reilly Jr.
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.	John K. Reilly Jr.

Date: 02/22/2005

Time: 11:13 AM

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Clinton County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date		Judge
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson	John K. Reilly Jr.
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson	John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell	John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Pliffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell	John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING OREDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801	John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell	John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSPORT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell	John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc	John K. Reilly Jr.
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00	John K. Reilly Jr.

Date: 02/22/2005

Time: 11:13 AM

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Clintonfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA 2003 no cc
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR,JR.,P.J. 1 cc P. Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003.
10/27/2003	Domestic Return Receipt, Appeal at Superior Court.
11/13/2003	Filing: Praecept to Enter Verdict Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty.
12/17/2003	Praecept for Argument filed on behalf of Defendants. 6 CC to Atty. Bell.
12/31/2003	Letter from CA to Clarence Daisher scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30, P.M., returned by USPS
01/08/2004	SUPERIOR COURT OF PENNSYLVANIA. ORDER, AND NOW, this 20th day of November, 2003, it is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See Lenhart v. Cigna, 824 A.2d 1193 (Pa. Super 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered thereon, for appeal to be proper); see also L.B. Foster Co. v Lane Enterprises, Inc. 710 A.2d 55 (PA 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes). PER CURIAM" Date: November 20, 2003
	Certificate of Contents of Remanded Record And Notice Of Remand under Pennsylvania Rules Of Appellate Procedure 2571 and 2572. s/Eleanor R. Valecko, Deputy Prothonotary Copy to Superior Court
12/08/2004	Suggestion of Name Change, filed by Atty. Smith no cert. copies Plaintiff Suggests that the Williamsport-Lycoming Foundation has changed its name to First Community Foundation of Pennsylvania
	Certificate of Service, filed by Atty. Smith no Cert. Copies. Served copy of Suggestion of Name Change to Atty. Bell.
12/10/2004	Filing: Praecept for Entry of Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1892077 Dated: 12/10/2004 Amount: \$20.00 (Check). Judgment entered against Defendants William and Roberta Kinderman ONLY in the amount of \$25,211.00. Notice to Defs., Statement to Atty.
	Certificate of Service, copy of Praecept for Entry of Judgment by mail on Dec. 10, 2004 to F. Cortez Bell, III, Attorney for Defendants William and Roberta Kinderman. Filed by s/ Peter F. Smith, Esquire
01/10/2005	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1893506 Dated: 01/10/2005 Amount: \$45.00 (Check). Filed by s/ F. Cortez Bell, III, Esquire. 6CC Atty Bell, 1CC & \$60.00 (ck. # 1039) to Superior Court.
01/18/2005	Appeal Docket Sheet filed. no cc

Date: 02/22/2005

Time: 11:13 AM

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Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
01/24/2005	Order, NOW, this 17th day of Jan., 2005, it is the ORDER of this Court that John K. Reilly Jr. counsel for Defendants above named file with this Court a concise statement of matters complained of on appeal, in accordance with Rule of Appellate Procedure 1925 (b). BY THE COURT, /s/ The Honorable John K. Reilly, Jr., Senior judge, Specially Presiding. 2CC Attys: P. Smith, F. Bell; 1CC Def. C. Daisher
01/31/2005	Statement of Matters Complained of on Appeal, filed by s/F. Cortez Bell, III, John K. Reilly Jr. Esq. Three CC Attorney Bell
02/02/2005	Order Returned, forwarding expired, remailed to Clarence Daisher at RR 1, John K. Reilly Jr. Box 74 A, Grampian, PA 16838, filed.
02/03/2005	Order, NOW, this 3rd day of Feb., 2005, following receipt of Def. Kindermans' appeal this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place. BY THE COURT: /s/ John K. Reilly, Jr. Senior Judge. 1cc attys P Smith, F. Bell. 1cc Def. Daisher
02/07/2005	Order returned, copy of Jan. 17 2005 Order, addressed to Clarence Daisher, RR1, Box 74 A, Grampian, PA 16838,unable to forward. no CC
02/08/2005	Order dated February 3, 2005, re: Opinion mailed to Clarence Daisher returned by USPS, "Not Deliverable as Addressed." No better address on file.

I hereby certify this to be a true and accurate copy of the original
submitted in this case.

FEB 22 2005

Attest

John K. Reilly Jr.
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1531-CD

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased
VS.

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
40	11/04/02	Pursuant to PA R.C.P. 2252 (d)	
41	11/04/02	Amended Reply to New Matter of Defendants Kinderman, Pursuant to PA R.C.P. 2252 (d)	05
42	12/16/02	Motion for Summary Judgment and Order of Court, Re: Complaint and Claims dismissed with Prejudice, filed April 2, 2003	08
43	04/04/03	Answer to Plaintiff's Second Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to PA R.C.P. Rule 2252 (d)	27
44	04/08/03	Certificate of Service, Subpoena on Joseph R. Chamberlin	03
45	06/24/03	Opinion and Order, Re: Judgment in favor of Plaintiffs and against the Defendants William B. Kinderman and Robert A. Kinderman	03
46	06/30/03	Certified Copy of Opinion and Order mailed to Clarence C. Daisher returned by USPS, "Forwarding Order Expired", Re-mailed.	03
47	07/07/03	Post Trial Motion on behalf of Defendants, William B. Kinderman and Robert A. Kinderman	04
48	07/09/03	Rule Returnable, issued upon Plaintiff, Williamsport-Lycoming Foundation, returnable for hearing	01
49	07/10/03	Answer to Defendant Kindermans' Post Trial Motion	03
50	07/22/03	Notice of Appeal to High Court	09
51	07/25/03	Order, Re: Attorney for Appellant file a concise statement of the matters complained of on appeal	01
52	08/01/03	Appeal Docket Number form Superior Court of PA—1370 WDA 2003	03
53	08/04/03	Statement of Matters Complained of on Appeal	04
54	10/03/03	Transcript of Civil Non-Jury Trial held before Honorable John K. Reilly, Jr., P.J. on Monday, April 7, 2003	Separate Cover
55	10/21/03	Supplemental Opinion	02
		---Appeal mailed to Superior Court October 22, 2003---	
56	10/22/03	Certified Mail Receipt, Appeal mailed to Superior Court	01
57	10/27/03	Domestic Return Receipt	01
58	11/13/03	Praecipe to Enter Verdict	04
59	12/17/03	Praecipe for Argument	03
60	12/31/03	Letter from Court Administrator to Clarence Daisher scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30 p.m., returned by USPS	01
61	01/08/04	Superior Court of Pennsylvania Order	01
62	01/08/04	Certificate of Contents of Remanded Record and Notice of Remand	01
63	12/08/04	Suggestion of Name Change	01
64	12/08/04	Certificate of Service, Re: Suggestion of Name Change	01
65	12/10/04	Praecipe for Entry of Judgment	03
66	12/10/04	Certificate of Service, Re: Praecipe for Entry of Judgment	01
67	01/10/05	Appeal to High Court	09
68	01/18/05	Appeal Docket Sheet, Superior Court No. 80 WDA 2005	03
69	01/24/05	Order, Re: concise statement	01
70	01/31/05	Statement of Matters Complained of on Appeal	04
71	02/02/05	Order of January 17, 2005, Returned by USPS, re-mailed to Clarence Daisher	01
72	02/03/05	Order, Re: no further opinion to be issued; Post-Trial Motions not disposed of	01
73	02/07/05	Order of January 17, 2005 mailed to Clarence Daisher, returned by USPS	01
74	02/05/05	Order of February 3, 2005 mailed to Clarence Daisher, returned by USPS	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1531-CD

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased

VS.

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	12/08/00	Civil Complaint	07
02	01/15/01	Sheriff Return, Complaint served on Defendants	02
03	01/19/01	Praecipe for Entry of Appearance	03
04	02/20/01	Preliminary Objections to Plaintiff's Complaint	07
05	02/23/01	Amended Complaint	09
06	02/27/01	Certificate of Service, Amended Complaint	01
07	03/01/01	Certificate of Service, Defendant Clarence C. Daisher's Answer to Plaintiff's Amended Complaint and New Matter (missing from original record)	---
08	03/20/01	Answer to Defendant Daisher's New Matter	04
09	03/21/01	Certificate of Service, Answer to Defendant Daisher's New Matter	01
10	04/05/01	Answer to Amended Complaint filed on behalf of Defendant, Joseph R. Chamberlin with New Matter and New Matter Pursuant to PA R.C.P. 2252 (d)	09
11	04/05/01	Answer to Defendant, Clarence C. Daisher's New Matter filed on behalf of Joseph Chamberlin	04
12	04/20/01	Plaintiff's Answer to Defendant Chamberlin's New Matter	04
13	04/23/01	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter	01
14	05/18/01	Certificate of Service, Subpoena to Attend and Testify	01
15	05/18/01	Certificate of Service, Deposition Notice	01
16	05/29/01	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to PA R.C.P. Rule 2252 (d) filed on behalf of Defendants William and Roberta Kinderman	25
17	05/30/01	Preliminary Objections to Defendant Kindermans' Counterclaim	02
18	05/31/01	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim	01
19	06/20/01	Reply to New Matter of Defendants Kinderman Pursuant to PA R.C.P. Rule 2252 (d)	05
20	07/31/01	Certificate of Service; Plaintiff's Brief in Support of Preliminary Objections	01
21	09/07/01	Order, Re: Objections sustained and Defendants counter-claim seeking to recover attorney's fees and surveyor's costs stricken without prejudice	01
22	09/21/01	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter	01
23	09/21/01	Answer to Defendant Kindermans' New Matter	05
24	12/07/01	Plaintiff's Petition to Amend the Complaint with Rule Returnable scheduling written response and hearing filed December 10, 2001	15
25	12/19/01	Certificate of Service, Petition to Amend Complaint with Rule Returnable	01
26	12/31/01	Answer to Plaintiff's Petition to Amend the Complaint	07
27	01/04/02	Order, Re: Plaintiff's Petition to Amend the Complaint is Granted	01
28	01/21/02	Petition for Leave to Withdraw, with Rule for written response filed January 24, 2002	04
29	01/29/02	Certificate of Service, Petition for Leave to Withdraw with Rule	02
30	03/19/02	Praecipe to place case on non-jury list	01
31	03/19/02	Certificate of Service, Praecipe to place case on non-jury list	01
32	03/27/02	Order, Re: Mark S. Weaver, Esq. granted leave to withdraw as counsel for Clarence C. Daisher	01
33	04/01/02	Certificate of Service, Court Order dated March 27, 2002	01
34	07/26/02	Motion for Continuance on behalf of Joseph Chamberlin	05
35	07/30/02	Praecipe to Substitute Parties	01
36	07/30/02	Certificate of Service, Praecipe to Substitute Parties	01
37	08/01/02	Order, Re: Motion for Continuance is Granted	01
38	10/11/02	Motion to Amend Answer and New Matter of Joseph R. Chamberlin, with Order of Court granting leave to file an Amended Answer and New Matter filed October 18, 2002	06
39	11/04/02	Amended Answer to Plaintiff's Amended Complaint, New Matter, and New Matter	06

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

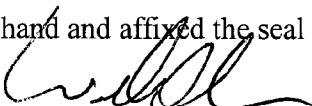
**Williamsport-Lycoming Foundation, Trustee Under the Will of James B. Graham,
Deceased**

VS.

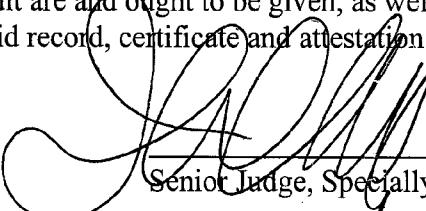
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher
00-1531-CD

So full and entire as the same remains of record before the said Court, at **No. 00-1531-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 22nd Day of February, 2005.


Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, Senior Judge, Specially Presiding, in 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 the proper officer.


Senior Judge, Specially Presiding

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, Senior Judge, Specially Presiding, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Senior Judge, Specially Presiding, 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 28th day of February, 2005


Prothonotary/Clerk of Courts

31 100-1

Appeal Docket Sheet

Docket Number: 1370 WDA 2003

Page 1 of 3

July 30, 2003

Superior Court of Pennsylvania

00-1531-1



Williamsport- Lycoming Foundation, Trustee
under the will of James B. Graham, Deceased.

v.

William B Kinderman, Roberta A. Kinderman, Appellant's

Appeal of: The Kinderman's.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 29, 2003 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

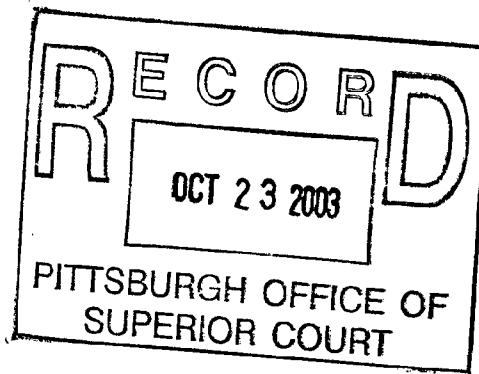
Record - Transcript - 1 envelope
SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: August 13, 2003

Next Event Type: Original Record Received

Next Event Due Date: September 2, 2003



FILED
m 11 12 2003
AUG 01 2003
NO CC
KA

William A. Shaw
Prothonotary/Clerk of Courts

31 P.M.

Appeal Docket Sheet

Docket Number: 1370 WDA 2003

Page 2 of 3

July 30, 2003

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Kinderman, William B
Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez
Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
Address: Bell Silberblatt & Wood
318 E Locust St PO Box 670
Clearfield, PA 16830

Phone No.: (814)765-5537 Fax No.: (814)765-9730

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellant Kinderman, Roberta A.
Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez
Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
Address: Bell Silberblatt & Wood
318 E Locust St PO Box 670
Clearfield, PA 16830

Phone No.: (814)765-5537 Fax No.: (814)765-9730

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

Appellee Williamsport- Lycoming Foundation
Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Smith, Peter Fortune
Bar No.: 34291 Law Firm:
Address: 30 S 2nd Street
PO Box 130
Clearfield, PA 16830

Phone No.: (814)765-5595 Fax No.: (814)765-6662

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEE INFORMATION

Appeal Docket Sheet

Docket Number: 1370 WDA 2003

Page 3 of 3

July 30, 2003

Superior Court of Pennsylvania



Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/22/03	Notice of Appeal	60.00	60.00	2003SPRWD000975

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: June 24, 2003

Date Documents Received: July 29, 2003

Order Type: Order Entered

Judge: Reilly, Jr., John K.

President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: July 22, 2003

OTN:

Lower Court Docket No.: No. 00-1531-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 29, 2003	Notice of Appeal Filed	Appellant	Kinderman, William B
July 30, 2003	Docketing Statement Exited (Civil)		Western District Filing 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:

00-1531-CD

**Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased**
VS.
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

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

The documents compromising the record have been numbered from **No. 1 to No.**
55, 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
Oct. 22, 2003.



Prothonotary/Clerk of Courts

(seal)

Date: 10/22/2003

Time: 09:06 AM

Page 1 of 4

Cliffield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

illiamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq. Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
04/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
	Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/29/2001	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
05/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
09/07/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	John K. Reilly Jr.
09/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.

Date: 10/22/2003

Time: 09:06 AM

Page 2 of 4

Cliffield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

illiamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge
09/21/2001	Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, John K. Reilly Jr. Esq. Affidavit. s/Robert L. Kester 4 cc Atty
12/07/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. 4 cc to Atty
12/10/2001	RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez John K. Reilly Jr. Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell
01/04/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc Atty Smith
01/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver
01/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver
01/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver
03/19/2002	Praeclipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call.
	Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A
	Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,
03/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAIISHER. by the Court, s/JKR,JR. P.J. no cc
04/01/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver
07/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney
07/30/2002	Praeclipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc
	Certificate of Service, Praeclipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc
08/01/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson

Date: 10/22/2003

Time: 09:06 AM

Page 3 of 4

Clinton County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson	John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell	John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Pliffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell	John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING OREDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801	John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell	John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSPORT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell	John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc	John K. Reilly Jr.
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00	John K. Reilly Jr.
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher	John K. Reilly Jr.
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA 2003 no cc	John K. Reilly Jr.
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell	John K. Reilly Jr.

Date: 10/22/2003

Time: 09:06 AM

Page 4 of 4

Cliffield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R John K. Reilly Jr.
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR,JR.,P.J. 1 cc P.Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher

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

OCT 22 2003

Attest.

William D. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1531-CD

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased

VS.

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	12/08/00	Civil Complaint	07
02	01/15/01	Sheriff Return, Complaint served on Defendants	02
03	01/19/01	Praeclipe for Entry of Appearance	03
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05	02/23/01	Amended Complaint	09
06	02/27/01	Certificate of Service, Amended Complaint	01
07	03/01/01	Certificate of Service, Defendant Clarence C. Daisher's Answer to Plaintiff's Amended Complaint and New Matter (missing from original record)	---
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11	04/05/01	Answer to Defendant, Clarence C. Daisher's New Matter filed on behalf of Joseph Chamberlin	04
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13	04/23/01	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter	01
14	05/18/01	Certificate of Service, Subpoena to Attend and Testify	01
15	05/18/01	Certificate of Service, Deposition Notice	01
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18	05/31/01	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim	01
19	06/20/01	Reply to New Matter of Defendants Kinderman Pursuant to PA R.C.P. Rule 2252 (d)	05
20	07/31/01	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections	01
21	09/07/01	Order, Re: Objections sustained and Defendants counter-claim seeking to recover attorney's fees and surveyor's costs stricken without prejudice	01
22	09/21/01	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter	01
23	09/21/01	Answer to Defendant Kindermans' New Matter	05
24	12/07/01	Plaintiff's Petition to Amend the Complaint with Rule Returnable scheduling written response and hearing filed December 10, 2001	15
25	12/19/01	Certificate of Service, Petition to Amend Complaint with Rule Returnable	01
26	12/31/01	Answer to Plaintiff's Petition to Amend the Complaint	07
27	01/04/02	Order, Re: Plaintiff's Petition to Amend the Complaint is Granted	01
28	01/21/02	Petition for Leave to Withdraw, with Rule for written response filed January 24, 2002	04
29	01/29/02	Certificate of Service, Petition for Leave to Withdraw with Rule	02
30	03/19/02	Praeclipe to place case on non-jury list	01
31	03/19/02	Certificate of Service, Praeclipe to place case on non-jury list	01
32	03/27/02	Order, Re: Mark S. Weaver, Esq. granted leave to withdraw as counsel for Clarence C. Daisher	01
33	04/01/02	Certificate of Service, Court Order dated March 27, 2002	01
34	07/26/02	Motion for Continuance on behalf of Joseph Chamberlin	05
35	07/30/02	Praeclipe to Substitute Parties	01
36	07/30/02	Certificate of Service, Praeclipe to Substitute Parties	01
37	08/01/02	Order, Re: Motion for Continuance is Granted	01
38	10/11/02	Motion to Amend Answer and New Matter of Joseph R. Chamberlin, with Order of	06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

No. 00-1531-CD

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased

VS.

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
39	11/04/02	Court granting leave to file an Amended Answer and New Matter filed October 18, 2002	
40	11/04/02	Amended Answer to Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA R.C.P. 2252 (d)	06
41	11/04/02	Amended Reply to New Matter of Defendants Kinderman, Pursuant to PA R.C.P. 2252 (d)	05
42	12/16/02	Amended Reply to Defendant, Clarence C. Daisher's New Matter filed on behalf of Joseph R. Chamberlin	05
43	04/04/03	Motion for Summary Judgment and Order of Court, Re: Complaint and Claims dismissed with Prejudice, filed April 2, 2003	08
44	04/08/03	Answer to Plaintiff's Second Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to PA R.C.P. Rule 2252 (d)	27
45	06/24/03	Certificate of Service, Subpoena on Joseph R. Chamberlin	03
46	06/30/03	Opinion and Order, Re: Judgment in favor of Plaintiffs and against the Defendants William B. Kinderman and Robert A. Kinderman	03
47	07/07/03	Certified Copy of Opinion and Order mailed to Clarence C. Daisher returned by USPS, "Forwarding Order Expired", Re-mailed.	03
48	07/09/03	Post Trial Motion on behalf of Defendants, William B. Kinderman and Robert A. Kinderman	04
49	07/10/03	Rule Returnable, issued upon Plaintiff, Williamsport-Lycoming Foundation, returnable for hearing	01
50	07/22/03	Answer to Defendant Kindermans' Post Trial Motion	03
51	07/25/03	Notice of Appeal to High Court	09
52	08/01/03	Order, Re: Attorney for Appellant file a concise statement of the matters complained of on appeal	01
53	08/04/03	Appeal Docket Number form Superior Court of PA—1370 WDA 2003	03
54	10/03/03	Statement of Matters Complained of on Appeal	04
55	10/21/03	Transcript of Civil Non-Jury Trial held before Honorable John K. Reilly, Jr., P.J. on Monday, April 7, 2003	Separate Cover
		Supplemental Opinion	02

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

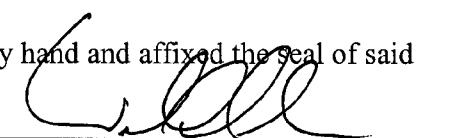
**Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased**

VS.

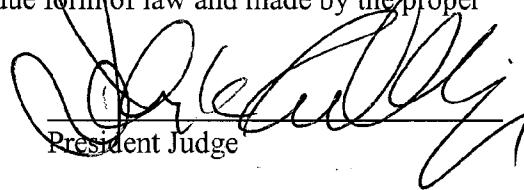
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher
00-1531-CD

So full and entire as the same remains of record before the said Court, at No. **00-1531-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 21st Day of August, 2003.

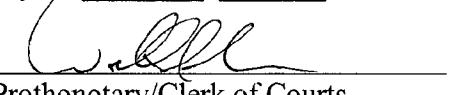

Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, President 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 the proper officer.


President 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 **John K. Reilly, Jr.**, President 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 President 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 22nd day of Oct., 2003.

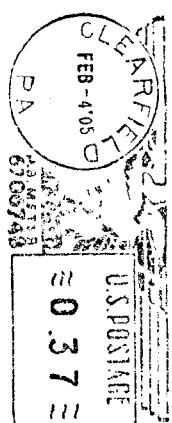

Prothonotary/Clerk of Courts

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

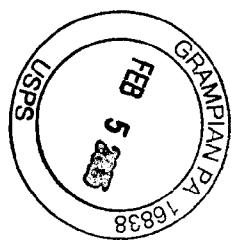
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William A. Shaw on file
Prothonotary/Clerk of Courts

Clarence Daisher
RR 1 Box 74 A
Franklin, PA 16838

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UNABLE TO FORWARD



ARTS
RETURN TO SENDER



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

WILLIAMSPORT-LYCOMING :
FOUNDATION, Trustee under the :
Will of JAMES B. GRAHAM, Dec'd. :
VS. : NO. 01-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER :
:

O R D E R

NOW, this 3rd day of February, 2005, following receipt of Defendant Kindermans' appeal in the above-captioned matter, this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.
Senior Judge
Specially Presiding

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

FEB 03 2005

Attest

[Signature]
P. Notary/
Clerk of Courts

#74

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

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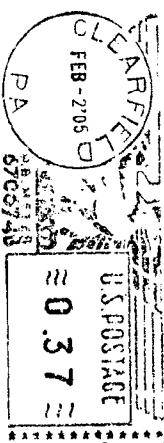
William A. Shaw
Prothonotary/Clerk of Courts

Clarence Daisher
RR 1, Box 74A
Grampian, PA 16838

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RTS



16830-0343

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

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER
THE WILL OF JAMES B.
GRAHAM, Deceased

-vs-

No. 00-1531-CD

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN, and
CLARENCE C. DAISHER

O R D E R

NOW, this 17th day of January, 2005, it is the
ORDER of this Court that counsel for Defendants above named
file with this Court a concise statement of matters
complained of on appeal, in accordance with Rule of
Appellate Procedure 1925(b).

BY THE COURT,

/s/ JOHN K. REILLY, JR.

THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

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

JAN 24 2005

Attest.

Clerk of Courts
Prothonotary/
Clerk of Courts

473

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

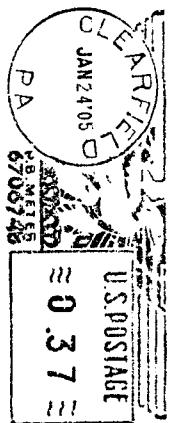
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110.3085
FEB 02 2005

William A. Shaw
Prothonotary/Clerk of Courts
Re-mailed to
RR 1, Box 74A
Grampian, PA
16838

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Clarence Daisher
RR 3, Box 188
DuBois, PA 15801

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16830/0543

16830/0543

16830/0543

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

WILLIAMS PORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. :
GRAHAM, Deceased :
-VS- : No. 00-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, and :
CLARENCE C. DAISHER :
:

O R D E R

NOW, this 17th day of January, 2005, it is the
ORDER of this Court that counsel for Defendants above named
file with this Court a concise statement of matters
complained of on appeal, in accordance with Rule of
Appellate Procedure 1925(b).

BY THE COURT,

/s/ JOHN K. REILLY, JR.

THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

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

JAN 24 2005

Attest:

John K. Reilly
Court of Courts

6711

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

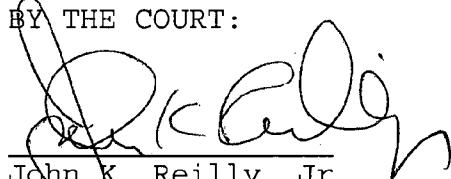
CIVIL DIVISION

WILLIAMSPORT-LYCOMING :
FOUNDATION, Trustee under the :
Will of JAMES B. GRAHAM, Dec'd. :
VS. : NO. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER :
:

O R D E R

NOW, this 3rd day of February, 2005, following receipt of Defendant Kindermans' appeal in the above-captioned matter, this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place.

BY THE COURT:


John K. Reilly, Jr.
Senior Judge
Specially Presiding

6K **FILED** ^{1CC}
03/24/05 ^{Attn: P. Smith}
FEB 03 2005 ^{F. Bell}

William A. Shaw
Prothonotary/Clerk of Courts

1CC Def. Daisher
RR1, Box 74A

Grampian, PA 16838

10

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO. 00-1531-CD

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM,
DECEASED,

Plaintiff

VS.

WILLIAM B. KINDELMAN, ROBERTA
A. KINDELMAN, AND CLARENCE C.
DAISHER,

Defendants

STATEMENT OF MATTERS COMPLAINED
OF ON APPEAL

F. CORTEZ BELL, III
ATTORNEY AT LAW
318 EAST LOCUST STREET
P.O. BOX 1088
CLEARFIELD, PA 16830

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, Deceased, Plaintiff v. WILLIAM B. KINDERMAN, ROBERTA A. KINDERMAN, and CLARENCE C. DAISHER, Defendants

NO. 00-1531-CD

Type of Case: Civil

Type of Pleading:
Statement of Matters
Complained of on Appeal

Filed on Behalf of:
William B. and Roberta A. Kinderman

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

318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

FILED
6/4/04 9:47 AM
JAN 31 2005

William A. Shaw
Prothonotary

10

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

STATEMENT OF MATTERS COMPLAINED OF ON APPEAL

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who for the Defendants' Statement of Matters Complained of on Appeal pursuant to the provisions of the Pennsylvania Rules of Appellate Procedure, Rule 1925(b) respectfully sets forth said statement as follows:

1. That the Trial Court erred in finding that the Defendant Kindermans had benefitted from the unlawful cutting of the Defendant Chamberlin in that there was no showing that the Defendant Kindermans had received any funds from the Defendant Chamberlin's cutting or removing timber from or on the Plaintiff's property.

2. That the Trial Court erred in finding that the Defendant Chamberlin had removed timber from the property of the Plaintiff as no specific evidence or testimony was presented

directly establishing that the same occurred.

3. That the Trial Court erred in finding that the Defendant Daisher took no part in the removal of timber from the property of the Plaintiff when in fact the testimony and evidence at time of trial specifically showed that the Defendant Daisher was observed in the act of removing timber from the property of the Plaintiff. In addition, the evidence introduced by the Plaintiff clearly established that the taking of timber occurred from the Plaintiff's property at a time that Defendant Chamberlin was no longer on the Kinderman tract and Defendant Daisher was the sole individual removing timber from the Kinderman tract.

4. That the Trial Court erred in finding that the Defendant Kindermans were unjustly enriched as a result of the loss suffered by the Plaintiff as the Defendants Kinderman had received less than the value of their own timber which had been harvested and as a result thereof there has been no unjust enrichment.

5. That the Trial Court erred in finding that unjust enrichment had occurred based upon the Trial Court's designation that as between Plaintiff and the Defendants Kinderman, it is not Plaintiff who should suffer a monetary loss. Such is not a valid basis upon which to find unjust enrichment.

Respectfully submitted,
By:

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Counsel for Defendants Kinderman

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Statement of Matters Complained of on Appeal upon the person and in the manner indicated below:

Service By First Class Mail, Postage Pre-paid

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

By

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Counsel for Defendants Kinderman

Dated: January 31, 2005

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

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER
THE WILL OF JAMES B.
GRAHAM, Deceased

-vs-

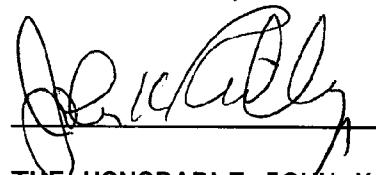
No. 00-1531-CD

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN, and
CLARENCE C. DAISHER

O R D E R

NOW, this 17th day of January, 2005, it is the
ORDER of this Court that counsel for Defendants above named
file with this Court a concise statement of matters
complained of on appeal, in accordance with Rule of
Appellate Procedure 1925(b).

BY THE COURT,



THE HONORABLE JOHN K. REILLY, JR.
Senior Judge, Specially Presiding

6/2/4881
JAN 24 2005
FILED
cc: Atty P. Smith
cc: Atty F. Bell
cc: Def. -
C. Daisher
William A. Shaw
Prothonotary/Clerk of Courts
RR 3 Box 188
DuBois, PA 15801
#14

11:05 A.M.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 80 WDA 2005

Page 1 of 3

January 13, 2005



Williamsport- Lycoming Foundation, Trustee Under The William Of James B. Graham, Deceased

v.

William B Kinderman, Roberta A. Kinderman and Clarence C. Daisher

00-1531-CD

Appeal of: William B Kinderman, and Roberta A. Kinderman

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 12, 2005

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: January 27, 2005

Next Event Type: Original Record Received

Next Event Due Date: February 22, 2005

JOHN
1/13/05
WCC
JAN 18 2005

William A. Straw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 80 WDA 2005

Page 2 of 3

January 13, 2005



COUNSEL INFORMATION

Appellant Kinderman, William B
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:
 Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
 Address: 318 E Locust St PO Box 670
 Clearfield, PA 16830
 Phone No.: (814)765-5537 Fax No.: (814)765-9730
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellant Kinderman, Roberta A.
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:
 Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
 Address: 318 E Locust St PO Box 670
 Clearfield, PA 16830
 Phone No.: (814)765-5537 Fax No.: (814)765-9730
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Williamsport- Lycoming Foundation
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellee Attorney Information:
 Attorney: Smith, Peter Fortune
 Bar No.: 34291 Law Firm:
 Address: 30 S 2nd Street
 PO Box 130
 Clearfield, PA 16830
 Phone No.: (814)765-5595 Fax No.: (814)765-6662

Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
1/12/05	Notice of Appeal	60.00	60.00	2005SPRWD000057

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 80 WDA 2005



Page 3 of 3

January 13, 2005

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: December 10, 2004

Date Documents Received: January 12, 2005

Order Type: Judgment Entered

Judge: Reilly, Jr., John K.
Senior Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: January 10, 2005

OTN:

Lower Court Docket No.: 00-1531 CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
January 12, 2005	Notice of Appeal Filed	Appellant	Kinderman, William B
January 13, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO: 00-1531-CD

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER
THE WILL OF JAMES B. GRAHAM
DECEASED,

Plaintiff

VS.
WILLIAM B. KINDELMAN,
ROBERTA A. KINDELMAN AND
CLARENCE DAISHER,
Defendants

NOTICE OF APPEAL

FILED

JAN 10 2005

Walter A. Straw
Prothonotary/Clerk of Courts

F. CORTEZ BELL, III
ATTORNEY AT LAW
318 EAST LOCUST STREET
P.O. BOX 1088
CLEARFIELD, PA 16830

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, Deceased, : NO. 00-1531-CD
Appellee : Type of Case: Civil
V. :
WILLIAM B. KINDELMAN, ROBERTA A. KINDELMAN, and CLARENCE C. DAISHER, : Filed on Behalf of:
Appellant : William B. and Roberta A. Kinderman
: Counsel of Record for
This Party:
F. Cortez Bell, III, Esquire
I.D. #30183
: F. CORTEZ BELL, III, ESQUIRE
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537
:
:

64 01/08/2005 FILED Atty Ad. 45.00
JAN 10 2005 (cc. Atty Bell
1 CC Ad. 60.00 (cc. #1039
William A. Shaw to Superior Court
Prothonotary/Clerk of Courts
#107

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

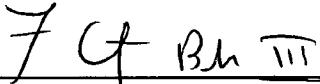
WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Appellee :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Appellants:

NOTICE OF APPEAL

Notice is hereby given that William B. Kinderman and Roberta A. Kinderman, Appellants in the above captioned matter, hereby appeal to the Superior Court of Pennsylvania from the entry of Judgment dated December 10, 2004. Said Judgment was entered pursuant to a Praeclipe For Entry of Judgment filed December 10, 2004, a copy of which is attached hereto, as well as is evidenced by the entry of said Judgment upon the docket in this matter as evidenced by the attached copy of the docket entries.

Respectfully submitted,

F. CORTEZ BELL, III, ESQUIRE
By:


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

F. Cortez Bell, III, Esquire
318 East Locust Street
P.O. Box 1088
Clearfield, PA. 16830
Telephone: 814-765-5537

Dated: January 10, 2005

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

WILLIAMS-SPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, DECEASED, Plaintiff vs WILLIAM B. KINDEMAN, ROBERTA A. KINDEMAN and CLARENCE C. DAISHER, Defendants

PRAECIPE FOR ENTRY OF JUDGMENT

1. Judgment was entered in favor of the Plaintiff and against the Defendants, WILLIAM B. KINDEMAN and ROBERTA A. KINDEMAN, in the amount of \$25,211.00 upon Plaintiff's Praecipe filed November 13, 2003 upon this Court's Opinion and Order dated June 24, 2003.
2. A Post-Trial Motion was filed on behalf of Defendants, WILLIAM B. KINDEMAN and ROBERTA A. KINDEMAN on July 7, 2003.
3. Argument on Defendant Kindermans' Post-Trial Motion was heard by this Honorable Court on January 14, 2004.
4. More than 120 days have elapsed since both the filing of the Defendant Kindermans' Post-Trial Motion and argument thereon.
5. The Court has not entered an Order disposing of the Post-Trial Motion.
6. Pursuant to Pa.R.C.P. 227.4(1)(b), I respectfully request that final judgment be entered in favor of the Plaintiff and against the Defendants, WILLIAM B. KINDEMAN and ROBERTA A. KINDEMAN in the amount of \$25,211.00.

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiff
P.O. Box 130, 30 South Second Street
Clearfield, PA 16830
(814) 765-5595

Date: December 10, 2004

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
12/8/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
1/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
1/19/2001	Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
2/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
2/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
2/27/2001	Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
3/1/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
3/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. No Judge 4 cc atty Smith	No Judge
3/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
4/5/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq.	No Judge
	Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
4/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
4/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
5/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
	Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
5/29/2001	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
5/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
5/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
6/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
7/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	No Judge

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
9/7/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	John K. Reilly Jr.
9/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. Affidavit. s/Robert L. Kester 4 cc Atty	John K. Reilly Jr.
12/7/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. 4 cc to Atty	John K. Reilly Jr.
12/10/2001	RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith	John K. Reilly Jr.
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez John K. Reilly Jr. Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell	John K. Reilly Jr.
1/4/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc Atty Smith	John K. Reilly Jr.
1/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver	John K. Reilly Jr.
1/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver	John K. Reilly Jr.
1/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
3/19/2002	Praeclipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call. Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,	John K. Reilly Jr.
3/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAISHER. by the Court, s/JKR,JR. P.J. no cc	John K. Reilly Jr.
4/1/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
7/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney	John K. Reilly Jr.
7/30/2002	Praeclipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc Certificate of Service, Praeclipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
8/1/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson
11/4/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc
	Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson
4/2/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty
4/4/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell
4/8/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc
6/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Pliffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell
6/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING ORDER EXPIRED": Re-mailed to RR 3, Box 188, DuBois, Pa. 15801
7/7/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell
7/9/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSOPRT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
7/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc John K. Reilly Jr.
7/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00 John K. Reilly Jr.
7/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR, JR., P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
8/1/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA 2003 no cc John K. Reilly Jr.
8/4/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell John K. Reilly Jr.
10/3/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R John K. Reilly Jr.
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR, JR., P.J. 1 cc P. Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003. John K. Reilly Jr.
10/27/2003	Domestic Return Receipt, Appeal at Superior Court. John K. Reilly Jr.
11/13/2003	Filing: Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty. John K. Reilly Jr.
12/17/2003	Praeclipe for Argument filed on behalf of Defendants. 6 CC to Atty. Bell. John K. Reilly Jr.
12/31/2003	Letter from CA scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30, P.M. John K. Reilly Jr.
1/8/2004	SUPERIOR COURT OF PENNSYLVANIA. ORDER, AND NOW, this 20th day of November, 2003, it is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See Lenhart v. Cigna, 824 A.2d 1193 (Pa. Super 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered thereon, for appeal to be proper); see also L.B. Foster Co. v. Lane Enterprises, Inc. 710 A.2d 55 (PA 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes). PER CURIAM" Date: November 20, 2003 John K. Reilly Jr.
	Certificate of Contents of Remanded Record And Notice Of Remand under Pennsylvania Rules Of Appellate Procedure 2571 and 2572. s/Eleanor R. Valecko, Deputy Prothonotary Copy to Superior Court John K. Reilly Jr.
12/8/2004	Suggestion of Name Change, filed by Atty. Smith no cert. copies Plaintiff Suggests that the Williamsport-Lycoming Foundation has changed its name to First Community Foundation of Pennsylvania John K. Reilly Jr.
	Certificate of Service, filed by Atty. Smith no Cert. Copies. Served copy of Suggestion of Name Change to Atty. Bell. John K. Reilly Jr.

Date: 1/5/2005
Time: 02:52 PM
Page 5 of 5

Field County Court of Common Pleas
ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
12/10/2004	Filing: Praeclipe for Entry of Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1892077 Dated: 12/10/2004 Amount: \$20.00 (Check). Judgment entered against Defendants William and Roberta Kinderman ONLY in the amount of \$25,211.00. Notice to Defs., Statement to Atty. John K. Reilly Jr.
	Certificate of Service, copy of Praeclipe for Entry of Judgment by mail on Dec. 10, 2004 to F. Cortez Bell, III, Attorney for Defendants William and Roberta Kinderman. Filed by s/ Peter F. Smith, Esquire John K. Reilly Jr.

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

JAN 10 2005

Attest.

William D. Bell
Prothonotary/
Clerk of Courts

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Appellee :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Appellants:

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Service By Personal Service

David Meholic
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

Cathy Warrick
Official Court Reporter
Clearfield County Courthouse
Clearfield, PA 16830

Honorable John K. Reilly, Jr.
Senior Judge
Court of Common Pleas of
Clearfield County
Clearfield County Courthouse
Clearfield, PA 16830

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

F. Cortez Bell, III, Esquire
By

F. C. Bell III

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

Dated: December 10, 2005

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

WILLIAMS-SPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER : No. 2000-1531- CD
THE WILL OF JAMES B. GRAHAM, :
DECEASED :
Plaintiff :
vs. :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER, :
Defendants :
:

EGK
FILED NO CC
13304
DEC 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have sent a true and correct copy of a **PRAECIPE FOR ENTRY OF JUDGMENT** by U. S. First Class Mail to the attorney for the Defendants, William B. Kinderman and Roberta A. Kinderman as follows:

F. Cortez Bell, III, Esquire
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second Street
Clearfield, PA 16830
(814) 765-5595

Date: December 10, 2004

1000

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, DECEASED, Plaintiff : No. 2000-1531-CD
vs :
WILLIAM B. KINDERMAN, ROBERTA A. KINDERMAN and CLARENCE C. DAISHER, Defendants :

FILED
01/3/2004
DEC 10 2004
EUK
William A. Shaw
Prothonotary/Clerk of Courts
Notice to Defs.
Atty pd. 20.00
Statement to Atty

PRAECIPE FOR ENTRY OF JUDGMENT

1. Judgment was entered in favor of the Plaintiff and against the Defendants, WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN, in the amount of \$25,211.00 upon Plaintiff's Praecipe filed November 13, 2003 upon this Court's Opinion and Order dated June 24, 2003.

2. A Post-Trial Motion was filed on behalf of Defendants, WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN on July 7, 2003.

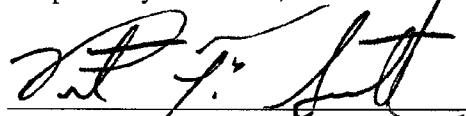
3. Argument on Defendant Kindermans' Post-Trial Motion was heard by this Honorable Court on January 14, 2004.

4. More than 120 days have elapsed since both the filing of the Defendant Kindermans' Post-Trial Motion and argument thereon.

5. The Court has not entered an Order disposing of the Post-Trial Motion.

6. Pursuant to Pa.R.C.P. 227.4(1)(b), I respectfully request that final judgment be entered in favor of the Plaintiff and against the Defendants, WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211.00.

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiff
P.O. Box 130, 30 South Second Street
Clearfield, PA 16830
(814) 765-5595

Date: December 10, 2004

#105

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

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER THE
THE WILL OF JAMES B. GRAHAM,
DECEASED,

Plaintiff

vs.

WILLIAM B. KINDEMAN, ROBERTA
A. KINDEMAN and CLARENCE C.
DAISHER,

Defendants

No. 2000-1531-CD

COPY

Notice is given that a judgment has been entered of record in Clearfield County against
WILLIAM B. KINDEMAN, ROBERTA A. KINDEMAN, Defendants, and in favor of the
Plaintiff in the amount of \$25,211.00, plus interest and costs.

Prothonotary

12/10/04

By _____, Deputy

Rule of Civil Procedure No. 236

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

Williamsport-Lycoming Foundation
James B. Graham
Plaintiff(s)

No.: 2000-01531-CD

Real Debt: \$25,211.00 against William B.
Kinderman and Roberta A. Kinderman
ONLY

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

William B. Kinderman
Roberta A. Kinderman
Clarence C. Daisher
Defendant(s)

Entry: \$20.00

Instrument: Court Order

Date of Entry: December 10, 2004

Expires: December 10, 2009

Certified from the record this 10th day of December, 2004.

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER : No. 2000-1531- CD
THE WILL OF JAMES B. GRAHAM, :
DECEASED :
Plaintiff :
vs. :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER, :
Defendants :
:

FILED

DEC 08 2004

0711:201

William A. Shaw

Prothonotary/Clerk of Courts

No. 1644 Copy

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have sent a true and correct copy of a **SUGGESTION OF NAME CHANGE** by U. S. First Class Mail to the attorney for the Defendants, William B. Kinderman and Roberta A. Kinderman as follows:

F. Cortez Bell, III, Esquire
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff
P. O. Box 130, 30 South Second Street
Clearfield, PA 16830
(814) 765-5595

Date: December 8, 2004

#164

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, DECEASED, Plaintiff vs WILLIAM B. KINDERMAN, ROBERTA A. KINDERMAN and CLARENCE C. DAISHER, Defendants

FILED *(Signature)*

DEC 08 2004

Officer

William A. Shaw

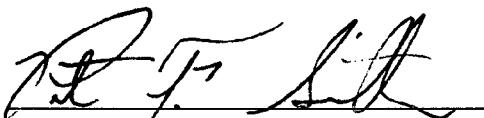
Prothonotary/Clerk of Courts

No Court - Copin

SUGGESTION OF NAME CHANGE

COMES NOW, Peter F. Smith, counsel of record for Plaintiff in the above-captioned matter, who suggests that the WILLIAMSPORT-LYCOMING FOUNDATION which is Trustee under the Will of James B. Graham and Plaintiff in the above-captioned matter, has changed its name to **FIRST COMMUNITY FOUNDATION OF PENNSYLVANIA**.

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiff
P.O. Box 130, 30 South Second Street
Clearfield, PA 16830
(814) 765-5595

Date: December 8, 2004

(Signature)

The Superior Court of Pennsylvania
Sitting at Pittsburgh

1015 Grant Building
Pittsburgh, Pennsylvania
15219

CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND

under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

RECORD, 1 TRANSCRIPT-1 ENVELOPE-CERTIFIED COPY ORDER OF COURT
DATED NOVEMBER 20, 2003

As remanded from said court in the following matter:

WILLIAMSPORT-LYCOMING FOUNDATION ET AL. V KINDERMAN ET AL.
NO. 1370 WDA 2003

COURT OF COMMON PLEAS, CIVIL DIVISION- CLEARFIELD COUNTY
NO. 1370 WDA 2003 - CLEARFIELD COUNTY NO. 00-1531 CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: **JANUARY 5, 2004**

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: 1-8-04

Eleanor R. Valecko
(Signature & Title)

FILED

JAN 08 2004

W. A. Shaw

Prothonotary/Clerk of Courts

Copy to

Susan R. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

#102



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

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

DAVID S. MEHOLICK
COURT ADMINISTRATOR

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

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

December 26, 2003

Peter F. Smith, Esquire
Attorney at Law
Post Office Box 130
Clearfield, PA 16830

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

FILED

11:00 AM
DEC 31 2003

William A. Shaw
Prothonotary/Clerk of Courts

RE: WILLIAMSORT-LYCOMING FOUNDATION
vs.
WILLIAM B. KINDERMAN, al
No. 00-1531-CD

Dear Counsel:

With regard to the above matter, please be advised that argument on Defendants' Post-Trial Motions has been scheduled for Wednesday, January 14, 2004 at 1:30 P.M. before a Specially Presiding Senior Judge in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

Very truly yours,
Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: David S. Meholick, Ct. Adm.
Clarence C. Daisher

160

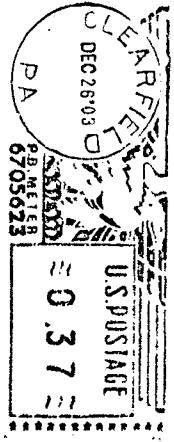
OFFICE OF COURT ADMINISTRATOR

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

Clarence C. Daisher
RR #1, Box 74A
Grampian, PA 16838

A INSUFFICIENT ADDRESS
 C ATTEMPTED NOT KNOWN
 O NO SUCH NUMBER/ STREET
 S NOT DELIVERABLE AS ADDRESSED
 U UNABLE TO FORWARD

RTS
RETURN TO SENDER



In the Superior Court of
Pennsylvania

Sitting at Pittsburgh

No. 1370

WESTERN DOCKET APPEAL, 2003

Williamsport-Lycoming Foundation, : Appeal from the Order of 6-24-2003 by the
Foundation, Trustee under the will of James : Honorable John K. Reilly, Jr
B. Graham, Deceased

vs

Court Of Common Pleas-Civil Div.
Clearfield County

William B. Kinderman, Roberta A.
Kinderman

: No. 00-1531-CD

FILED

JAN 08 2004
m/ *W.A. S. 2004*
William A. Scanlan
Prothonotary, Clerk of Courts

Certified from the Record

ORDER

AND NOW, this 20th day of November 2003, it is ordered that this court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See *Lenhart v. Cigna*, 824 A.2d 1193 (Pa. Super. 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered theron, for appeal to be proper); see also *L.B. Foster Co. v. Lane Enterprises, Inc.*, 710 A.2d 55 (PA.1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes).

Date: November 20, 2003

PER CURIAM"

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh,

Pa. this

5TH

Day of

JANUARY

2004

Eleanor P. Valecko
Deputy Prothonotary

(Signature)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

WILLIAMSPORT-LYCOMING FOUNDATION
TRUSTEE UNDER THE WILL OF JAMES
B. GRAHAM,

Plaintiff

vs.

WILLIAM B. KINDELMAN, ROBERTA A.
KINDELMAN, and CLARENCE C.
DAISHER,

Defendants

PRAECIPE FOR ARGUMENT

William A Shaw
Prothonotary Clerk of Courts
DEC 17 2003
10:00 AM
60C

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

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM,
Plaintiff

vs.

WILLIAM B. KINDERMAN, ROBERTA
A. KINDERMAN, and CLARENCE C.
DAISHER,
Defendants

: NO. 00-1531-CD
: Type of Case: Civil
: Type of Pleading:
: Praeclipe For Argument
:
:
: Filed on Behalf of:
: William B. Kinderman and
: Roberta A. Kinderman,
: Defendants
:
: 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

DEC 17 2003

William A. Shaw
Prothonotary/Clerk of Courts

#59

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

PRAECIPE FOR ARGUMENT

TO WILLIAM SHAW, PROTHONOTARY:

Please schedule the Post-trial Motions which were previously filed for argument before the Court. Estimated time for said argument is fifteen (15) minutes.

BELL, SILBERBLATT & WOOD
By

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

Dated: December 17, 2003

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

CERTIFICATE OF SERVICE

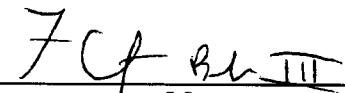
I hereby certify that I am this day serving a copy of the
Praecipe for Argument upon the following person(s) by mailing such
copy regular mail to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

Clarence C. Daisher
RR #1, Box 74A
Grampian, PA 16838

Mr. David Meholick
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

BELL, SILBERBLATT & WOOD
By


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

DATED: December 17, 2003

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER THE : No. 00-1531-CD
THE WILL OF JAMES B. GRAHAM, :
Plaintiff :
vs. :
: :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER, :
Defendants :
: :
:

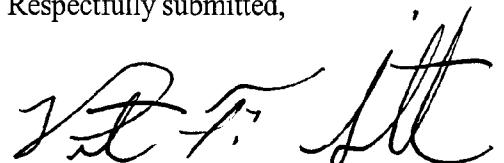
PRAECIPE TO ENTER VERDICT

TO: William A. Shaw, Prothonotary

Dear Sir:

As counsel for Plaintiff in the above-captioned matter, I appear and request that you enter judgment in favor of Plaintiff and against WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN, Defendants, in an amount of \$25,211.00 together with interest and costs pursuant to the Court's Opinion and Order entered June 24, 2003 .

Respectfully submitted,



Peter F. Smith, Esquire
Supreme Court ID #34291
P. O. Box 130, 30 South Second Street
Clearfield, PA 16830

FILED

NOV 13 2003

William A. Shaw
Prothonotary

#58

FILED

NOV 13 2003

*William A. Shaw
Prothonotary*

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

WILLIAMS-PORT-LYCOMING
FOUNDATION, TRUSTEE UNDER THE : No. 00-1531-CD
THE WILL OF JAMES B. GRAHAM,
Plaintiff :
vs. :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER, :
Defendants :
:

Notice is given that a judgment has been entered of record in Clearfield County against WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN, Defendants, and in favor of the Plaintiff in the amount of \$25,211.00, plus interest and costs.

Prothonotary

By _____, Deputy

Rule of Civil Procedure No. 236

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

WILLIAMS PORT-LYCOMING	:	
FOUNDATION, TRUSTEE UNDER THE	:	No. 00-1531-CD
THE WILL OF JAMES B. GRAHAM,	:	
Plaintiff	:	
vs.	:	
WILLIAM B. KINDELMAN, ROBERTA	:	
A. KINDELMAN and CLARENCE C.	:	
DAISHER,	:	
Defendants	:	
	:	
	:	

Notice is given that a judgment has been entered of record in Clearfield County against WILLIAM B. KINDELMAN and ROBERTA A. KINDELMAN, Defendants, and in favor of the Plaintiff in the amount of \$25,211.00, plus interest and costs.

Prothonotary

By _____, Deputy

Rule of Civil Procedure No. 236

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Williamsport-Lycoming Foundation

James B. Graham

Plaintiff(s)

No.: 2000-01531-CD

Real Debt: \$25,211.00

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

William B. Kinderman

Entry: \$20.00

Roberta A. Kinderman

Clarence C. Daisher

Defendant(s)

Instrument: Judgment

Date of Entry: November 13, 2003

Expires: November 13, 2008

Certified from the record this 13th day of November, 2003

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, ____, of defendant full satisfaction of this Judgment, Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

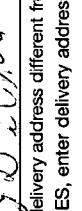
SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Superior Court of PA
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Del.
10-23	
C. Signature	
<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If YES, enter delivery address below:	

3. Service Type
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

2. Article Number (Copy from service label)	7002 2030 0004 5014 8279
PS Form 3811, July 1999	Domestic Return Receipt
102995-00-M-0952	



UNITED STATES POSTAL SERVICE



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

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

William A. Shaw
Office of the Prothonotary
PO Box 549
Clearfield, PA 16830

00-1531-CD

00-1531-0

FILED

10/9/00 8:41
OCT 27 2003

WAD
William A. Shaw
Prothonotary/Clerk of Courts

57

Certified Mail Provides:

169-1-A-2002 (Revised) Form 88-20-20-169-2020
PS

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years
- **Important Reminders:**
 - Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail®.
 - Certified Mail is not available for any class of International mail.
 - NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For values, please consider Insured or Registered Mail.
 - For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
 - For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
 - If a postmark on the Certified Mail receipt is desired, please present the article to the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, dotach and affix label with postage and mail.
- **IMPORTANT: Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.**

00-1531-CD

FILED

3115381
OCT 22 2003

William A. Shaw
Prothonotary/Clerk of Courts

at 5:00

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, Deceased :
:
-vs- : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER :
:

SUPPLEMENTAL OPINION

The Court files the following Supplemental Opinion to its Opinion and Order
dated June 27, 2003.

The Court would initially note that it found the testimony of Clarence C. Daisher
at the hearing of April 7, 2003, to be fully credible and particularly that portion in which he
testified that he told Defendant William B. Kinderman that someone had cut over the property
line and removed timber from Plaintiff's property (n.t. 179) thereby making said Defendant
aware of the unlawful cutting at least as of that time.

The Restatement (Second) of Torts imposes a duty upon adjoining landowners
to prevent harm to their neighbors. Section 414A states:

A possessor of land has employed or permitted an
independent contractor to do work on the land, and knows
or has reason to know that the activities of the contractor or
conditions created by him involve an unreasonable risk of
harm to those outside of the land, is subject to liability to
them for such harm if he fails to exercise reasonable care to
protect them against it.

FILED

OCT 21 2003

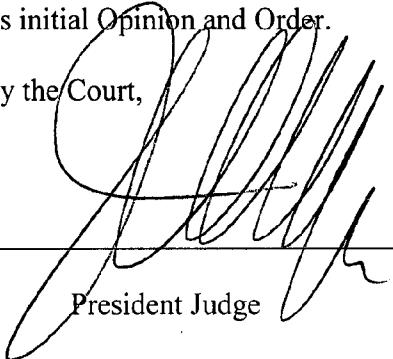
William A. Shaw
Prothonotary

6552

In spite of this, the Defendant Kinderman took no steps to insure that no harm occurred to Plaintiff's property other than initially making the line and showing it to Defendant Daisher and the initial timber cutter Chamberlin.

Whereupon the Court entered its initial Opinion and Order.

By the Court,


President Judge

Dated: October 21, 2003

FILED

0 1/22/04 1cc P Smith
1cc FC Bill
1cc D released
OCT 21 2003 1cc Clarence Daisher
1cc RR 3 (Box 88
Dubois PA

William A. Shaw
Prothonotary
WAS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE UNDER THE WILL OF JAMES B.
GRAHAM, Deceased,

Plaintiff

vs.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN, and CLARENCE C.
DATSHER,

Defendants

STATEMENT OF MATTERS COMPLAINED
OF ON APPEAL

FILED 5cc
08/02/03 Amy Bell
AUG 04 2003 EK25

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAMSPORT-LYCOMING : NO. 00-1531-CD
FOUNDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff :
V. : Type of Pleading:
WILLIAM B. KINDERMAN, ROBERTA : Statement of Matters
A. KINDERMAN, and CLARENCE C. : Complained of on Appeal
DAISHER, :
Defendants : Filed on Behalf of:
William B. and Roberta
A. Kinderman
Counsel of Record for
This Party:
F. Cortez Bell, III, Esquire
I.D. #30183
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA. 16830
Telephone: 814-765-5537

FILED

AUG 04 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAMS-SPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDELMAN, :
ROBERTA A. KINDELMAN and :
CLARENCE C. DAISHER, :
Defendants:

NOTICE OF APPEAL

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who for the Defendants' Statement of Matters Complained of on Appeal pursuant to the provisions of the Pennsylvania Rules of Appellate Procedure, Rule 1925(b) respectfully sets forth said statement as follows:

1. That the Trial Court erred in finding that the Defendant Kindermans had benefitted from the unlawful cutting of the Defendant Chamberlin in that there was no showing that the Defendant Kindermans had received any funds from the Defendant Chamberlin's cutting or removing timber from or on the Plaintiff's property.

2. That the Trial Court erred in finding that the Defendant Chamberlin had removed timber from the property of the Plaintiff as no specific evidence or testimony was presented directly establishing that the same occurred.

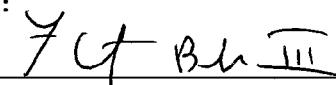
3. That the Trial Court erred in finding that the Defendant Daisher took no part in the removal of timber from the property of the Plaintiff when in fact the testimony and evidence at time of trial specifically showed that the Defendant Daisher was observed in the act of removing timber from the property of the Plaintiff. In addition, the evidence introduced by the Plaintiff clearly established that the taking of timber occurred from the Plaintiff's property at a time that Defendant Chamberlin was no longer on the Kinderman tract and Defendant Daisher was the sole individual removing timber from the Kinderman tract.

4. That the Trial Court erred in finding that the Defendant Kindermans were unjustly enriched as a result of the loss suffered by the Plaintiff as the Defendants Kinderman had received less than the value of their own timber which had been harvested and as a result thereof there has been no unjust enrichment.

5. That the Trial Court erred in finding that unjust enrichment had occurred based upon the Trial Court's designation that as between Plaintiff and the Defendants Kinderman, it is not Plaintiff who should suffer a monetary loss. Such is not a valid basis upon which to find unjust enrichment.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:


F. Cortez Bell, III, Esquire
Counsel for Defendants Kinderman

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Statement of Matters Complained of on Appeal upon the person and in the manner indicated below:

Service By First Class Mail, Postage Pre-paid

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

BELL, SILBERBLATT & WOOD
By

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Counsel for Defendants Kinderman

Dated: August 4, 2003

4:31 P.M.

COPY
Superior Court of Pennsylvania

Appeal Docket Sheet

Docket Number: 1370 WDA 2003

Page 1 of 3

July 30, 2003

00-1531-0



Williamsport- Lycoming Foundation, Trustee
under the will of James B. Graham, Deceased.

V.

William B Kinderman, Roberta A. Kinderman, Appellant's

Appeal of: The Kinderman's.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 29, 2003

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: August 13, 2003

Next Event Type: Original Record Received

Next Event Due Date: September 2, 2003

FILED
m 11 2003
AUG 01 2003
NO CC
KAS

William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet**Docket Number: 1370 WDA 2003****Page 2 of 3****July 30, 2003****Superior Court of Pennsylvania****COUNSEL INFORMATION**

Appellant Kinderman, William B
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
 Address: Bell Silberblatt & Wood
 318 E Locust St PO Box 670
 Clearfield, PA 16830

Phone No.: (814)765-5537 Fax No.: (814)765-9730

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellant Kinderman, Roberta A.
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Bell III, F. Cortez
 Bar No.: 30183 Law Firm: Bell, Silberblatt & Wood
 Address: Bell Silberblatt & Wood
 318 E Locust St PO Box 670
 Clearfield, PA 16830

Phone No.: (814)765-5537 Fax No.: (814)765-9730

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

Appellee Williamsport- Lycoming Foundation
 Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Smith, Peter Fortune
 Bar No.: 34291 Law Firm:
 Address: 30 S 2nd Street
 PO Box 130
 Clearfield, PA 16830

Phone No.: (814)765-5595 Fax No.: (814)765-6662

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEES INFORMATION

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1370 WDA 2003

Page 3 of 3

July 30, 2003



Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
7/22/03	Notice of Appeal	60.00	60.00	2003SPRWD000975

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: June 24, 2003

Date Documents Received: July 29, 2003

Order Type: Order Entered

Judge: Reilly, Jr., John K.

President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: July 22, 2003

OTN:

Lower Court Docket No.: No. 00-1531-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES			
Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 29, 2003	Notice of Appeal Filed	Appellant	Kinderman, William B
July 30, 2003	Docketing Statement Exited (Civil)		Western District Filing Office

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

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM,
Deceased

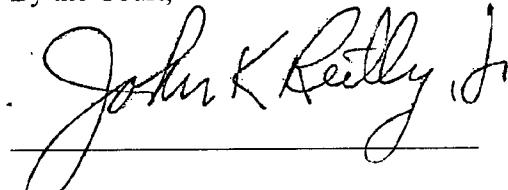
-vs- : No. 00-1531-CD

WILLIAM B. KINDERMAN, ROBERTA
A. KINDERMAN, and CLARENCE C.
DAISHER

ORDER

NOW, this 23rd day of July, 2003, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

By the Court,



President Judge

FILED

JUL 25 2003

William A. Shaw
Prothonotary/Clerk of Courts

(#5)

FILED

1cc Atty R. Smith

01/11/03
JUL 25 2003

1cc Atty F. Carter Bell

William A. Shaw
Prothonotary Clerk of Courts

1cc Dasher - RR 3 Box 188
Dobro, PA 15801

(Address as of 6/30/03)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE UNDER THE WILL OF JAMES
B. GRAHAM, Deceased, ^{Appellant} Appellee

vs.

WILLIAM B. KINDELMAN, ROBERTA A.
KINDELMAN, and CLARENCE C. DAISHER,
^{Appellant}

NOTICE OF APPEAL

7/22/03 100 to Superior Court
1:30 PM
w/ check #7790
for \$60.00
W. A. Shaw
Prothonotary
Bell

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM, Deceased, : NO. 00-1531-CD
Type of Case: Civil
Appellee : Type of Pleading:
V. : Notice of Appeal
WILLIAM B. KINDERMAN, ROBERTA A. KINDERMAN, and CLARENCE C. DAISHER, : Filed on Behalf of:
Appellant : William B. and Roberta A. Kinderman
: Counsel of Record for
: This Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA. 16830
: Telephone: 814-765-5537
:
:

FILED

JUL 22 2003

William A. Shaw
Prothonotary

#52

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Appellee :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Appellants:

NOTICE OF APPEAL

Notice is hereby given that William B. Kinderman and Roberta A. Kinderman, Appellants in the above captioned matter, hereby appeal to the Superior Court of Pennsylvania from the Opinion and Order of the Court of Common Pleas of Clearfield County, entered in this matter on June 24, 2003. 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 Opinion and Order dated June 24, 2003.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By:

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Counsel for Appellants Kinderman
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: July 22, 2003

Date: 07/22/2003

Warfield County Court of Common Pleas

User: ACCESS

Time: 09:48 AM

ROA Report

Page 1 of 3

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	Certificate of Service, Amended Complaint upon Atty Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq.	No Judge
	Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
04/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
	Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	
09/07/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	
09/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Atty's of Record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.

I hereby certify this day of JULY 22, 2003
and attested copy of the
statement filed in this case.

JUL 22 2003

Attest.



Prothonotary
Clerk of Courts

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

illiamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
09/25/2001	Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, John K. Reilly Jr. Esq. Affidavit. s/Robert L. Kester 4 cc Atty
12/07/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. 4 cc to Atty
12/10/2001	RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez John K. Reilly Jr. Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell
01/04/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc Atty Smith
01/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver
01/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver
01/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver
03/19/2002	Praeipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call.
	Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A
	Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,
03/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAIKER. by the Court, s/JKR,JR. P.J. no cc
04/01/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of John K. Reilly Jr. Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver
07/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney
07/30/2002	Praeipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc
	Certificate of Service, Praeipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc
08/01/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson

JUL 22 2003

William E. Chamberlin
Prothonotary
Clerk of Courts

Attest.

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

Date: 07/22/2003

Marfield County Court of Common Pleas

User: ACCESS

Time: 09:48 AM

ROA Report

Page 3 of 3

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc John K. Reilly Jr.
	Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc John K. Reilly Jr.
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Pliffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING ORDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801 John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSOPRT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc John K. Reilly Jr.

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

JUL 22 2003

Attest.

William B. Daisher
Prothonotary/
Clerk of Courts

RECEIVED JUN 25 2003

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

WILLIAMS-SPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, deceased :

: -vs- : No. 00-1531-CD

WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER :

OPINION AND ORDER

Plaintiff above-named owns a tract of land located in Penn Township, Clearfield County, Pennsylvania, which shares a common boundary with real estate owned by Defendants William and Roberta Kinderman, although the Kinderman property is located in Bloom Township, Clearfield County, Pennsylvania. On November 24, 1998, Defendants Kinderman entered into timber agreements with one Joseph R. Chamberlin to select-cut hardwoods on the Kinderman property. Upon the conclusion of their agreement with Chamberlin, the Kindermans, on May 19, 2000, entered into a similar timber agreement with Defendant Clarence Daisher who proceeded to remove further timber from the premises for the next several months. Subsequent thereto, Plaintiff discovered that in the course of removing timber from the Kinderman property, cutting had also occurred on Plaintiff's property and a significant number of trees cut thereon. Plaintiff thereupon commenced this action seeking to recover money damages from the Kindermans and Clarence Daisher. Joseph Chamberlin has been dismissed as a party Defendant as a result of his bankruptcy proceedings.

Plaintiff is now proceeding on several theories of recovery. First, it seeks treble damages for deliberate conversion of their timber; next double damages for the negligent taking of their timber and finally, compensatory damages in the absence of negligence or fault. This

Court herein will discuss only the claim for damages resulting from allegations of unjust enrichment.

Following hearing and briefs thereon, this Court finds that in fact timber was removed from Plaintiff's property by loggers employed by the Defendants Kinderman under the above agreements. The forester, Donald Klinger, employed by the Plaintiff who testified at trial found that the trees removed from both Plaintiff's property and the Kindermans' property were harvested at the same time and that logs from the Plaintiff's property were skidded to a landing on the Kindermans' property. Defendant William Kinderman testified that the landing had been made by Joseph Chamberlin at the beginning of his agreement. Klinger further testified that based on the imprint left by skidder tires the same machine was used to haul trees from Plaintiff's property as well as Kinderman's property. He further testified that the same logger cut the timber on both premises. It was Klinger's expert opinion that the value of the timber taken from Plaintiff's premises was \$38,384.54.

Based on the above, this Court concludes that it was, in fact, Joseph Chamberlin who removed the timber from Plaintiff's property without authority and that Defendant Clarence Daisher took no part therein. In fact, this Court notes that Daisher took several steps to report the unlawful cutting. In light of this, the Court will find in favor of the Defendant Clarence Daisher.

This Court is of the opinion that the Kindermans, however, must respond in damages to Plaintiff on the basis of an unjust enrichment. This Court cannot find, based on the evidence and testimony, that they deliberately converted Plaintiff's timber or were negligent in the manner in which they had the cutting done. This Court finds that they did, however, benefit

from the unlawful cutting and therefore finds in favor of the Plaintiff and against the Defendants Kinderman.

The issue remaining therefore is the amount of damages to be awarded. As noted above, it was undisputed at trial that the value of Plaintiff's timber unlawfully taken was \$38,384.54 and that the unlawful cutting was performed by Joseph Chamberlin. Although the records of the Defendant are certainly not exact, the records do reflect royalties received from Chamberlin in the amount of \$25,211. Clearly it is impossible to proportionately divide this figure as to trees removed from Plaintiff's premises and those removed from the Kindermans' property. However, the Court notes that this figure would not fully compensate Plaintiff for its loss nor place it in its original position and as between Plaintiff and the Kindermans, it is not Plaintiff who should suffer a monetary loss and therefore, the Court will award the sum of \$25,211 to the Plaintiff.

WHEREFORE, the Court enters the following:

O R D E R

NOW, this 24th day of June, 2003, following hearing and briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiff and against the Defendants William B. Kinderman and Roberta A. Kinderman in the amount of \$25,211 and further ORDERS judgment in favor of Defendant Clarence C. Daisher in accordance with the foregoing Opinion.

By the Court,

/s/ JOHN K. REILLY, JR.

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

JUN 24 2003

President Judge

Attest.

John K. Reilly
Prothonotary/
Clerk of Courts

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Appellee :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Appellants:

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Notice of Appeal upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Service By First Class Mail, Postage Pre-paid

David Meholick
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

Cathy Warrick
Official Court Reporter
Clearfield County Courthouse
Clearfield, PA 16830

Honorable John K. Reilly, Jr.
President Judge
Court of Common Pleas of
Clearfield County
Clearfield County Courthouse
Clearfield, PA 16830

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

BELL, SILBERBLATT & WOOD
By

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

Dated: July 22, 2003

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE THE WILL OF JAMES B. GRAHAM, Plaintiff : No. 00-1531-CD
vs. : Type of Case:
WILLIAM B. KINDERMAN, ROBERTA : CIVIL
A. KINDERMAN and CLARENCE C. :
DAISHER, Defendants : Type of Pleading:
: ANSWER TO DEFENDANT
: KINDERMANS' POST TRIAL
: MOTION
: Filed on Behalf of:
: PLAINTIFF
: COUNSEL FOR PLAINTIFF:
: Peter F. Smith, Esquire
: Supreme Court No. 34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595
: COUNSEL FOR DEFENDANTS:
: F. Cortez Bell, Esquire
: for the Kindermans
: 318 East Locust Street
: Clearfield, PA 16830
: (814) 765-5537

FILED

JUL 10 2003

William A. Shaw
Prethonotary

#49

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

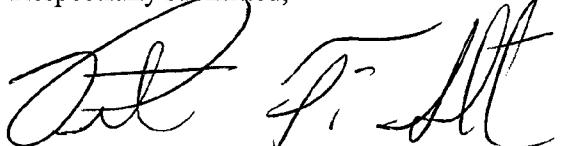
WILLIAMSPORT-LYCOMING	:	
FOUNDATION, TRUSTEE UNDER	:	No. 00-1531- CD
THE WILL OF JAMES B. GRAHAM,	:	
Plaintiff	:	
vs.	:	
WILLIAM B. KINDERMAN, ROBERTA	:	
A. KINDERMAN and CLARENCE C.	:	
DAISHER,	:	
Defendants	:	

PLAINTIFF'S ANSWER TO DEFENDANTS' MOTION FOR POST TRIAL RELIEF

COMES NOW, the Plaintiff, by its attorney, Peter F. Smith, who answers the Defendant Kindermans' Motion as follows:

1-5. Plaintiff believes that this Honorable Court's decision and verdict in its favor are supported by Pennsylvania law and the weight of the evidence admitted at trial.

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiff

Date: July 9, 2003

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

WILLIAMSPORT-LYCOMING	:	
FOUNDATION, TRUSTEE UNDER	:	No. 00-1531- CD
THE WILL OF JAMES B. GRAHAM,	:	
Plaintiff	:	
vs.	:	
WILLIAM B. KINDERMAN, ROBERTA	:	
A. KINDERMAN and CLARENCE C.	:	
DAISHER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have sent a true and correct copy of **ANSWER TO DEFENDANT KINDERMANS' POST TRIAL MOTION** by hand delivery or by U. S. First Class Mail to the following:

HAND DELIVER

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830

Clarence C. Daisher
Box 243
Luthersburg, PA 15848

Date:

7/10/03

Respectfully submitted,



Peter F. Smith
Attorney for Plaintiff

FILED
NO
cc
01/10/521
JUL 10 2003
EAT

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE UNDER THE WILL OF JAMES
B. GRAHAM, Deceased, Plaintiff
vs.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN and CLARENCE C. DAISHER
Defendants

RULE RETURNABLE

ED 500
130st Atty Bell
JUL 09 2013

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
CIVIL DIVISION

WILLIAMS PORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

FILED

JUL 09 2003

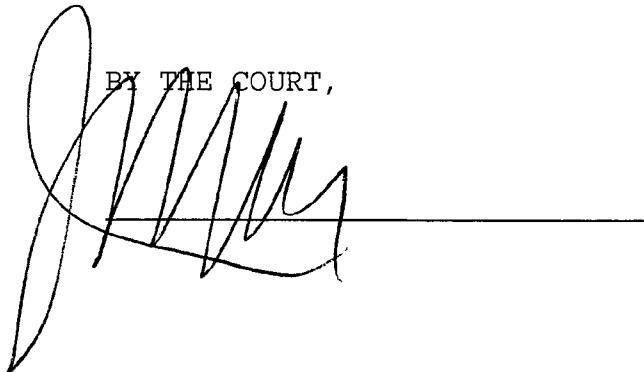
William A. Shaw
Prothonotary

RULE RETURNABLE

AND NOW, this 18th day of July, 2003 upon
consideration of the Post Trial Motions of Defendants William B.
Kinderman and Roberta A. Kinderman filed with regard to the above-
captioned matter, it is the Order of this Court that a Rule is
directed to the Plaintiff, Williamsport-Lycoming Foundation,
Trustee under the Will of James B. Graham, Deceased, to appear and
show cause why the prayer of said Post Trial Motions of Defendants
William B. Kinderman and Roberta A. Kinderman should not be
granted.

Said Rule Returnable on the 16 day of August,
2003 at 2:00 o'clock P.M. for hearing before this Court in
Courtroom No. 1.

BY THE COURT,



#48

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE UNDER THE WILL OF JAMES
B. GRAHAM, Deceased, Plaintiff

vs.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN, and CLARENCE C. DAISHER,
Defendants

POST TRIAL MOTION ON BEHALF OF
DEFENDANTS WILLIAM B. KINDERMAN
AND ROBERTA A. KINDERMAN

FILED 5cc
07/09/03
JUL 07 2003
SAC

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
CIVIL DIVISION

WILLIAMSPORT-LYCOMING : NO. 00-1531-CD
FOUDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff : Type of Pleading:
: Post Trial Motion on Behalf
: of Defendants William B.
: Kinderman and Roberta A.
: Kinderman
V. :
: Filed on Behalf of:
WILLIAM B. KINDERMAN, ROBERTA : William B. Kinderman and
A. KINDERMAN, and CLARENCE C. : Roberta A. Kinderman,
DAISHER, : Defendants
Defendants :
: 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

JUL 07 2003

William A. Shaw
Prothonotary

#41

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

POST TRIAL MOTION ON BEHALF OF DEFENDANTS, WILLIAM B.
KINDERMAN AND ROBERTA A. KINDERMAN

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, husband and wife, by and through their attorney, F. Cortez Bell, III, Esquire, who, respectfully sets forth their Post Trial Motion and avers as follows:

1. That the Trial Court erred in finding that the Defendant Kindermans had benefitted from the unlawful cutting of the Defendant Chamberlin in that there was no showing that the Defendant Kindermans had received any funds from the Defendant Chamberlin's cutting or removing timber from or on the Plaintiff's property.

2. That the Trial Court erred in finding that the Defendant Chamberlin had removed timber from the property of the Plaintiff as no specific evidence or testimony was presented directly establishing that the same occurred.

3. That the Trial Court erred in finding that the Defendant Daisher took no part in the removal of timber from the property of the Plaintiff when in fact the testimony and evidence at time of trial specifically showed that the Defendant Daisher was observed in the act of removing timber from the property of the Plaintiff. In addition, the evidence introduced by the Plaintiff clearly established that the taking of timber occurred from the Plaintiff's property at a time that Defendant Chamberlin was no longer on the Kinderman tract and Defendant Daisher was the sole individual removing timber from the Kinderman tract.

4. That the Trial Court erred in finding that the Defendant Kindermans were unjustly enriched as a result of the loss suffered by the Plaintiff as the Defendants Kinderman had received less than the value of their own timber which had been harvested and as a result thereof there has been no unjust enrichment.

5. That the Trial Court erred in finding that unjust enrichment had occurred based upon the Trial Court's designation that as between Plaintiff and the Defendants Kinderman, it is not Plaintiff who should suffer a monetary loss. Such is not a valid basis upon which to find unjust enrichment.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

Fct Bell III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

CERTIFICATE OF SERVICE

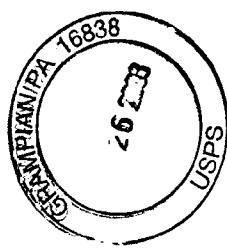
I hereby certify that I am this day serving a copy of the foregoing Post Trial Motions of Defendants William B. Kinderman and Roberta A. Kinderman filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

Clarence C. Daisher
RR #1, Box 74A
Grampian, PA 16838

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

DATED: July 7, 2003



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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, deceased :
:
-vs- : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER :
:

OPINION AND ORDER

Plaintiff above-named owns a tract of land located in Penn Township, Clearfield County, Pennsylvania, which shares a common boundary with real estate owned by Defendants William and Roberta Kinderman, although the Kinderman property is located in Bloom Township, Clearfield County, Pennsylvania. On November 24, 1998, Defendants Kinderman entered into timber agreements with one Joseph R. Chamberlin to select-cut hardwoods on the Kinderman property. Upon the conclusion of their agreement with Chamberlin, the Kindermans, on May 19, 2000, entered into a similar timber agreement with Defendant Clarence Daisher who proceeded to remove further timber from the premises for the next several months. Subsequent thereto, Plaintiff discovered that in the course of removing timber from the Kinderman property, cutting had also occurred on Plaintiff's property and a significant number of trees cut thereon. Plaintiff thereupon commenced this action seeking to recover money damages from the Kindermans and Clarence Daisher. Joseph Chamberlin has been dismissed as a party Defendant as a result of his bankruptcy proceedings.

Plaintiff is now proceeding on several theories of recovery. First, it seeks treble damages for deliberate conversion of their timber; next double damages for the negligent taking of their timber and finally, compensatory damages in the absence of negligence or fault. This

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Court herein will discuss only the claim for damages resulting from allegations of unjust enrichment.

Following hearing and briefs thereon, this Court finds that in fact timber was removed from Plaintiff's property by loggers employed by the Defendants Kinderman under the above agreements. The forester, Donald Klinger, employed by the Plaintiff who testified at trial found that the trees removed from both Plaintiff's property and the Kindermans' property were harvested at the same time and that logs from the Plaintiff's property were skidded to a landing on the Kindermans' property. Defendant William Kinderman testified that the landing had been made by Joseph Chamberlin at the beginning of his agreement. Klinger further testified that based on the imprint left by skidder tires the same machine was used to haul trees from Plaintiff's property as well as Kinderman's property. He further testified that the same logger cut the timber on both premises. It was Klinger's expert opinion that the value of the timber taken from Plaintiff's premises was \$38,384.54.

Based on the above, this Court concludes that it was, in fact, Joseph Chamberlin who removed the timber from Plaintiff's property without authority and that Defendant Clarence Daisher took no part therein. In fact, this Court notes that Daisher took several steps to report the unlawful cutting. In light of this, the Court will find in favor of the Defendant Clarence Daisher.

This Court is of the opinion that the Kindermans, however, must respond in damages to Plaintiff on the basis of an unjust enrichment. This Court cannot find, based on the evidence and testimony, that they deliberately converted Plaintiff's timber or were negligent in the manner in which they had the cutting done. This Court finds that they did, however, benefit

from the unlawful cutting and therefore finds in favor of the Plaintiff and against the Defendants Kinderman.

The issue remaining therefore is the amount of damages to be awarded. As noted above, it was undisputed at trial that the value of Plaintiff's timber unlawfully taken was \$38,384.54 and that the unlawful cutting was performed by Joseph Chamberlin. Although the records of the Defendant are certainly not exact, the records do reflect royalties received from Chamberlin in the amount of \$25,211. Clearly it is impossible to proportionately divide this figure as to trees removed from Plaintiff's premises and those removed from the Kindermans' property. However, the Court notes that this figure would not fully compensate Plaintiff for its loss nor place it in its original position and as between Plaintiff and the Kindermans, it is not Plaintiff who should suffer a monetary loss and therefore, the Court will award the sum of \$25,211 to the Plaintiff.

WHEREFORE, the Court enters the following:

O R D E R

NOW, this 24th day of June, 2003, following hearing and briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiff and against the Defendants William B. Kinderman and Roberta A. Kinderman in the amount of \$25,211 and further ORDERS judgment in favor of Defendant Clarence C. Daisher in accordance with the foregoing Opinion.

By the Court.

/s/ JOHN K. REILLY, JR.

President Judge

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

JUN 24 2003

Attest,

Willie C.
Prothonotary/
Clerk of Courts

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

FILED

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, deceased :
: :
-vs- : :
: :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN and CLARENCE C. :
DAISHER : :

JUN 24 2003
William A. Shaw
Prothonotary
No. 00-1531-CD

OPINION AND ORDER

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Plaintiff is now proceeding on several theories of recovery. First, it seeks treble damages for deliberate conversion of their timber; next double damages for the negligent taking of their timber and finally, compensatory damages in the absence of negligence or fault. This

245

Court herein will discuss only the claim for damages resulting from allegations of unjust enrichment.

Following hearing and briefs thereon, this Court finds that in fact timber was removed from Plaintiff's property by loggers employed by the Defendants Kinderman under the above agreements. The forester, Donald Klinger, employed by the Plaintiff who testified at trial found that the trees removed from both Plaintiff's property and the Kindermans' property were harvested at the same time and that logs from the Plaintiff's property were skidded to a landing on the Kindermans' property. Defendant William Kinderman testified that the landing had been made by Joseph Chamberlin at the beginning of his agreement. Klinger further testified that based on the imprint left by skidder tires the same machine was used to haul trees from Plaintiff's property as well as Kinderman's property. He further testified that the same logger cut the timber on both premises. It was Klinger's expert opinion that the value of the timber taken from Plaintiff's premises was \$38,384.54.

Based on the above, this Court concludes that it was, in fact, Joseph Chamberlin who removed the timber from Plaintiff's property without authority and that Defendant Clarence Daisher took no part therein. In fact, this Court notes that Daisher took several steps to report the unlawful cutting. In light of this, the Court will find in favor of the Defendant Clarence Daisher.

This Court is of the opinion that the Kindermans, however, must respond in damages to Plaintiff on the basis of an unjust enrichment. This Court cannot find, based on the evidence and testimony, that they deliberately converted Plaintiff's timber or were negligent in the manner in which they had the cutting done. This Court finds that they did, however, benefit

from the unlawful cutting and therefore finds in favor of the Plaintiff and against the Defendants Kinderman.

The issue remaining therefore is the amount of damages to be awarded. As noted above, it was undisputed at trial that the value of Plaintiff's timber unlawfully taken was \$38,384.54 and that the unlawful cutting was performed by Joseph Chamberlin. Although the records of the Defendant are certainly not exact, the records do reflect royalties received from Chamberlin in the amount of \$25,211. Clearly it is impossible to proportionately divide this figure as to trees removed from Plaintiff's premises and those removed from the Kindermans' property. However, the Court notes that this figure would not fully compensate Plaintiff for its loss nor place it in its original position and as between Plaintiff and the Kindermans, it is not Plaintiff who should suffer a monetary loss and therefore, the Court will award the sum of \$25,211 to the Plaintiff.

WHEREFORE, the Court enters the following:

ORDER

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By the Court,

President Judge

FILED

ice Atty P. Smith (PAES)

of 3:39 PM
JUN 24 2003

ice Amy E. Conner Bell (Kendsmans)

(No cc - Chamberlin dismissed)

William A. Shaw
Prothonotary

ice Daisher-RR1 Box 74 A, Champion, PA 16838

cc
her

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

WILLIAMSPORT-LYCOMING :
FOUNDATION, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, Deceased, :
Plaintiff :
: vs. : No. 2000-1531-CD
: :
WILLIAM B. KINDEMAN, :
ROBERTA A. KINDEMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
: :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I served an original Subpoena on Joseph R. Chamberlin by sending it to his counsel of record, Attorney John D. Gibson, together with a check in the amount of Forty and 00/100 Dollars (\$40.00) to cover the witness fee, mileage and a meal, by First Class Mail, Postage Pre-Paid on March 31, 2003. This mail was sent to Mr. Gibson at the following address:

John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, Pennsylvania 15901

Respectfully submitted,


Peter F. Smith
Attorney for Plaintiff

Date: April 8, 2003

cc. F. Cortez Bell, III, Esquire

FILED

APR 08 2003

William A. Shaw
Prothonotary

44

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595
FAX (814) 765-6662

E-mail
pfsatty@uplink.net

March 31, 2003

John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, PA 15901

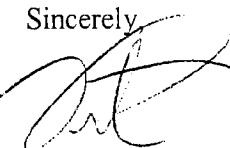
Re: M&T v. Kinderman et al.

Dear John:

I write to follow-up our telephone conversation this morning. I advised a non-jury trial is scheduled to be heard Monday, April 7 in the above-captioned matter. The Honorable John K. Reilly, Jr. will preside.

I have requested the attendance of your client Joseph R. Chamberlin. I enclose a subpoena. I also enclose my check payable to his order in the amount of \$40.00. This is to cover the witness fee, his mileage and lunch.

Sincerely,



Peter F. Smith

PFS/hab

cc: Robert Kester

COMMONWEALTH OF PENNSYLVANIA
CLEARFIELD COUNTY

Williamsport-Lycoming Foundation

Plaintiff(s)

Vs.

No. 2000-01531-CD

William B. Kinderman

Roberta A. Kinderman

Clarence C. Daisher

Joseph R. Chamberlin

Defendant(s)

SUBPOENA TO ATTEND AND TESTIFY

TO: Joseph R. Chamberlin
C/O John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, PA 15901

1. You are ordered by the Court to come to Courtroom No. 1

(Specify Courtroom or other place)
at Clearfield County, Pennsylvania, on April 7, 2003 at 9:00
o'clock, A.M., to testify on behalf of Plaintiff, as of cross-examination
in the
above case, and to remain until excused.

2. And bring with you the following: _____

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: Peter F. Smith, Esquire
ADDRESS: P. O. Box 130
Clearfield, PA 16830
TELEPHONE: 814-765-5595
SUPREME COURT ID # 34291

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

Deputy

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

DATE: Tuesday, April 01, 2003

Seal of the Court

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.

FILED NO CC
M 10:50 AM
APR 08 2003
FBI

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

MANUFACTURERS AND TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL OF
JAMES B. GRAHAM, DECEASED,
Plaintiff

vs.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN, CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,
Defendants

ANSWER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT, NEW MATTER AND
COUNTERCLAIM AND NEW MATTER
PURSUANT TO PA. R.C.P: RULE 2252(d)
~~FILED ON BEHALF OF DEFENDANTS~~
WILLIAM B. KINDERMAN AND
ROBERTA A. KINDERMAN

FILED

1cc
Q1/3/2003 Amy Bell
APR 04 2003 GRS

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
CIVIL DIVISION

MANUFACTURERS AND TRADERS TRUST : NO. 00-1531-CD
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff : Type of Pleading:
: Answer to Plaintiff's
: Second Amended
: Complaint, New Matter and
: Counterclaim and New Matter
: Pursuant to Pa. R.C.P. Rule
: 2252(d) filed on behalf of
: Defendants William B.
: Kinderman and Roberta A.
: Kinderman
: V.
: Filed on Behalf of:
: William B. Kinderman and
: Roberta A. Kinderman,
: Defendants
: Defendants
: 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

APR 04 2003

William A. Shaw
Prothonotary/Clerk of Courts

#413

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN :
CLARENCE C. DAISHER, and :
JOSEPH R. CHAMBERLIN, :
Defendants:

NOTICE TO PLEAD

TO THE WITHIN Plaintiff, MANUFACTURERS and TRADERS TRUST COMPANY,
Trustee under the Will of JAMES B. GRAHAM,

TO THE WITHIN Defendant, CLARENCE C. DAISHER,

TO THE WITHIN Defendant, JOSEPH R. CHAMBERLIN:

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants, William B. Kinderman and Roberta A. Kinderman, within twenty (20) days from service hereof or a judgment may be entered against you.

BELL, SILBERBLATT & WOOD

By,

7 Oct 1861

F. Cortez Bell, III, Esquire
Attorney for Defendants
Kinderman

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN :
CLARENCE C. DAISHER, and :
JOSEPH R. CHAMBERLIN, :
Defendants:

ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT, NEW MATTER
AND COUNTERCLAIM AND NEW MATTER PURSUANT TO
Pa. R.C.P. RULE 2252(d) FILED ON BEHALF OF DEFENDANTS
WILLIAM B. KINDERMAN AND ROBERTA A. KINDERMAN

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, husband and wife, who, by and through their attorney, F. Cortez Bell, III, Esquire, respectfully set forth and file the Defendants' Answer to Plaintiff's Second Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) and in support thereof aver as follows:

1. Paragraph 1 of the Second Amended Complaint is admitted.

2. Paragraph 2 of the Second Amended Complaint is admitted to the extent stated. It would be further by way of explanation averred that the true and correct mailing address of William B. Kinderman and Roberta A. Kinderman is RD #2, Box 19, Rockton, Pennsylvania, 15856.

3. Paragraph 3 of the Second Amended Complaint would be admitted in part and denied in part. It would be admitted that Clarence C. Daisher has been named as a third Defendant in the above captioned matter. It would be denied, however, that his current address is Box 243, Luthersburg, Pennsylvania, 15848. Based upon Defendant Daisher's Answer to Plaintiff's Amended Complaint, the Defendants Kinderman believe that the true and correct address for Defendant Clarence C. Daisher is RR #1, Box 74A, Grampian, Pennsylvania, 16838.

4. Paragraph 4 of the Second Amended Complaint would be admitted in part and denied in part. It would be admitted that Joseph R. Chamberlin has been named as a fourth Defendant in the above captioned matter. It would be denied, however, that his current address is RR #1, Box 294A-12, Keystone Road, Brockport, Elk County, Pennsylvania, 15823. Based upon Defendant Chamberlin's Answer to Plaintiff's Amended Complaint, the Defendants Kinderman believe that the true and correct address for Defendant Joseph R. Chamberlin is P.O. Box 386, Seward, Pennsylvania, 15954.

5. Paragraph 5 of the Second Amended Complaint would be admitted.

6. Paragraph 6 of the Second Amended Complaint would be admitted.

7. Paragraph 7 of the Second Amended Complaint would be denied. It is specifically denied that the Defendants, William B. Kinderman and/or Roberta A. Kinderman, or anyone acting on behalf of or through Defendant William B. Kinderman and/or Roberta A.

Kinderman, crossed the boundary line separating the Kinderman and the Graham Estate properties and cut and sold timber and kept the proceeds from sales thereof. Strict proof of the denied averments of Paragraph 7 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

8. Paragraph 8 of the Second Amended Complaint would be admitted in part and denied in part. It would be admitted that the Defendants, William B. Kinderman and Roberta A. Kinderman, do not have a lease or any other form of permission from the Graham Estate to enter the Graham Estate property and remove timber therefrom. It is denied however, that the Defendants, William B. Kinderman and Roberta A. Kinderman, or anyone acting on their behalf, or through them, entered the Graham Estate property and cut and sold timber therefrom. Strict proof of the denied averments of Paragraph 8 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

9. Paragraph 9 of the Second Amended Complaint sets forth a conclusion of law to which no response is required. To the extent that a response may be deemed necessary, it is specifically denied that the Defendants, William B. Kinderman and/or Roberta A. Kinderman entered the Graham Estate property and cut and sold timber therefrom at any time as well as it is specifically denied that the Defendants William B. Kinderman and Roberta A. Kinderman or anyone acting on their behalf or through them entered the Graham Estate property and cut and sold timber therefrom at anytime. It is further specifically denied that the Defendants, William B.

Kinderman and/or Roberta A. Kinderman, or anyone acting on their behalf or through them committed trespass under Pennsylvania Law. Strict proof of the denied averments of Paragraph 9 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

10. Paragraph 10 of the Second Amended Complaint would be admitted in part and denied in part. It is admitted that a survey map prepared by David L. Thorp, P.L.S. purports to demonstrate the property line between the Kinderman and Graham Estate properties. It is denied, however, that the Defendants William B. Kinderman and/or Roberta A. Kinderman, or anyone acting on their behalf or through them took timber from the shaded area on the survey map to the extent that the shaded area represents the Graham Estate property. Strict proof of the denied averments of Paragraph 10 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

11. Paragraph 11 of the Second Amended Complaint can neither be admitted nor denied. The Defendants, William B. Kinderman and Roberta A. Kinderman after reasonable investigation are without knowledge or information sufficient to form a belief as to the truth of the averments set forth within Paragraph 11 of the Second Amended Complaint. To the extent that a response may be deemed necessary, the Defendants, William B. Kinderman and Roberta A. Kinderman would deny the averments set forth within Paragraph 11 of the Second Amended Complaint. Strict proof of the denied averments of Paragraph 11 of the Second Amended Complaint would be

demanded at time of trial or hearing in this matter.

12. Paragraph 12 of the Second Amended Complaint would be denied. It would be specifically denied that Robert L. Kester, an agent for the Graham Estate, contacted the Defendants, William B. Kinderman and Roberta A. Kinderman, on or about June 21, 2000. Strict proof of the denied averment of Paragraph 12 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

13. Paragraph 13 of the Second Amended Complaint would be denied. It would be specifically denied that Robert L. Kester, an agent for the Graham Estate, on or about June 21, 2000 advised the Defendants, William B. Kinderman and/or Roberta A. Kinderman or anyone acting through them or on their behalf that they were trespassing upon the Graham Estate property and directed them to withdraw from the property, to cease from entering the property and to cease taking timber from it. It would further be specifically denied that Mr. Kester advised the Defendants Kinderman to compensate the Graham Estate for any and all timber taken the Graham Estate property. As no such conversation occurred the Defendants Kinderman would specifically deny all the averments set forth within Paragraph 13 of the Second Amended Complaint. Strict proof of the denied averments of Paragraph 13 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

14. Paragraph 14 of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants,

William B. Kinderman and/or Roberta A. Kinderman in any fashion removed or cut any timber whatsoever from the Graham Estate property as well as it would be specifically denied that the Defendants Kinderman have refused to compensate the Graham Estate for any timber so taken. It is denied, that the Defendants Kinderman in any fashion ever trespassed upon the Graham Estate property or took any timber therefrom. It is further specifically denied that the Defendants Kinderman or anyone acting on their behalf or through them continued to cut or take away any timber from the Graham Estate property. Strict proof of the denied averments of Paragraph 14 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

15. Paragraph 15 of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman in any fashion whatsoever or by or through others or others acting on their behalf removed any timber from the Graham Estate property and/or that the fair market value of any such timber allegedly taken is or exceeds the sum of \$30,000.00. Strict proof of the denied averments of Paragraph 15 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

16. Paragraph 16 of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman or those acting on their behalf or through them caused any additional damages to the premises allegedly owned by the Graham Estate due to logging in an

improper and unworkmen like manner. By way of further answer it is specifically denied that the Defendants Kinderman in any fashion ever trespassed on the property of the Graham Estate or that any individuals on behalf of the Defendants Kinderman or operating through them in any fashion ever trespassed on property alleged to be owned by the Graham Estate. It is further specifically denied on behalf of the Defendants Kinderman that the Kinderman's or any individuals acting by, through or on their behalf removed timber from the Graham Estate property. Strict proof of the denied averments of Paragraph 16 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

17. Paragraph 17 of the Second Amended Complaint would be denied as well as each of the specific sub-paragraphs thereunder would be denied.

A. The averments of Paragraph 17A of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman caused stream erosion and sedimentation by illegal stream crossings with equipment and dropping logs and tops in streams on the premises alleged to be owned by the Graham Estate and strict proof thereof is hereby demanded at time of trial or hearing in this matter;

B. The averments of Paragraph 17B of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman damaged younger trees left standing by dropping cut trees

on them and strict proof thereof is hereby demanded at time of trial or hearing in this matter;

C. The averments of Paragraph 17C of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman created hazardous conditions by leaving dead falls of cut trees and branches hanging in existing trees and strict proof thereof is hereby demanded at time of trial or hearing in this matter;

D. The averments of Paragraph 17D of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman failed to perform any clean-up whatsoever which left the property in an unsightly condition and creates a future fire hazard. It would be averred that the Defendants Kinderman were not involved in any fashion in any timber operation on any property asserted to be owned or owned by the Graham Estate. Strict proof of the denied averments of Paragraph 17D would be demanded at time of trial or hearing in this matter;

E. The averments of Paragraph 17E of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman did not reseed skid trails. It would be specifically denied that the Defendants Kinderman were in any fashion involved in the timbering or the removal of timber on properties asserted to be owned or owned by the Graham Estate such that reseeding would be

necessary. Strict proof thereof would be demanded at time of trial or hearing in this matter;

F. The averments of Paragraph 17F of the Second Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman did not block skid trails or their access into the property which leaves it open for additional trespass. It would be specifically denied that the Defendants Kinderman were in any fashion involved in timbering or the removal of timber from properties asserted to be owned or owned by the Graham Estate such that the Defendants Kinderman would be responsible for the blocking of skid trails or access onto the property. Strict proof thereof would be demanded at time of trial or hearing in this matter.

18. Paragraph 18 of the Second Amended Complaint can neither be admitted nor denied. The Defendants, William B. Kinderman and Roberta A. Kinderman after reasonable investigation are without knowledge or information sufficient to form a belief as to the truth of the averments set forth within Paragraph 18 of the Second Amended Complaint. To the extent that a response is deemed necessary, the Defendants Kinderman would specifically deny that an additional \$5,000.00 would be needed to correct any additional damages specifically referred to in Paragraph 17, subparagraphs A through F of the Second Amended Complaint and strict proof of the denied averments of Paragraph 18 of the Second Amended Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, the Defendants, William B. Kinderman and

Robert A. Kinderman respectfully request that your Honorable Court dismiss the Second Amended Complaint filed on behalf of the Plaintiff and enter judgement in favor of the Defendants, William B. Kinderman and Robert A. Kinderman along with award the Defendants Kinderman counsel fees, costs and expenses associated with regard to defending this matter.

ANSWER TO COUNT TWO

19. Paragraph 19 of the Plaintiffs Second Amended Complaint is merely an incorporating paragraph to which no response is necessary. The Defendants Kinderman would incorporate by reference those responses set forth within Paragraphs 1 through 18 above as if the same were set forth in full at this point.

20. Paragraph 20 of the Plaintiffs Second Amended Complaint would be admitted in part and denied in part. It would be admitted that the Defendants Daisher and Chamberlin did admit in depositions that they had made payment of certain royalties to the Defendants Kinderman for timber which had been harvested. It would be further admitted that Defendants Daisher and Chamberlin made those payments pursuant to their timber leases in effect with regard to the Defendants Kinderman's property which was being timbered. It would be specifically denied that any of said royalties constitute any payment for timber removed from properties of the Plaintiff and strict proof thereof would be demanded at time of trial or hearing in this matter.

21. Paragraph 21 of the Plaintiffs Second Amended

Complaint can neither be admitted nor denied. The Defendants, William B. Kinderman and Roberta A. Kinderman after reasonable investigation are without knowledge or information sufficient to form a belief as to the truth of the averments set forth within Paragraph 21 of the Plaintiff's Second Amended Complaint. To the extent that a response is deemed to be necessary, the Defendants Kinderman would specifically deny any allegations set forth in Paragraph 21 and demand strict proof thereof at time of trial or hearing in this matter.

22. Paragraph 22 of Plaintiffs Second Amended Complaint would be denied. It would be specifically denied that any of the royalties paid to the Defendants Kinderman by the Defendants Daisher and/or Chamberlin were obtained from, by or through the unlawful or improper removing of Plaintiff's timber. It would be averred that all royalties paid to the Defendants Kinderman were strictly as compensation for timber removed from the Kinderman property. Strict proof of the denied averments of Paragraph 22 would be demanded at time of trial or hearing in this matter.

23. Paragraph 23 of Plaintiffs Second Amended Complaint would be denied. It would be specifically denied that any payments were improperly received by the Defendants Kinderman as well as it would be specifically denied that the Defendants Kinderman were unjustly enriched as a result of the sale of timber which they did not own. Strict proof of the denied averments of Paragraph 23 would be demanded at time of trial or hearing in this matter.

24. Paragraph 24 of Plaintiffs Second Amended Complaint

would be denied. It would be specifically denied that the Defendants Kinderman in any fashion whatsoever are responsible for causing a loss to the Plaintiffs in any amount whatsoever or that the Defendants Kinderman in any fashion whatsoever are responsible for causing damages to the Plaintiffs property in any amount whatsoever. Strict proof thereof of the denied averments of Paragraph 24 would be demanded at time of trial or hearing in this matter.

WHEREFORE, the Defendants, William B. Kinderman and Roberta A. Kinderman respectfully request that your Honorable Court dismiss the Second Amended Complaint filed on behalf of the Plaintiff and enter judgement in favor of the Defendants, William B. Kinderman and Roberta A. Kinderman along with award the Defendants Kinderman counsel fees, costs and expenses associated with regard to defending this matter.

NEW MATTER

NOW, comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Defendant Kinderman's New Matter to the Second Amended Complaint and respectfully sets forth and avers as follows:

25. The averments of Paragraphs 1 through 24 of the Defendant Kinderman's Answer to the Second Amended Complaint are incorporated herein by reference as if the same were set forth in full at length and the same is made a part hereof.

26. That the Defendants, William B. Kinderman and Roberta A. Kinderman, are the owners of a certain tract or parcel of land located within Bloom Township, Clearfield County, Pennsylvania bearing Map Number E09-000-00006 and containing 149 acres, more or less. Said property was conveyed to the Defendants Kinderman by deed dated March 7, 1995 as is found recorded in the Office of the Register and Recorder of Deeds of Clearfield County to Document Number 1999-21180.

27. That the property of the Defendants Kinderman as set forth in the preceding paragraph above sits adjacent to and shares a common boundary line on several sides with that tract of ground asserted within the Plaintiff's Second Amended Complaint as being owned by the James B. Graham Estate.

28. That in the Fall of 1998 the Defendants, William B. Kinderman and Roberta A. Kinderman, in an attempt to determine the specific property lines of their property which they had acquired retained the services of Samuel B. Yost, Registered Surveyor, to review various maps which originally were in the possession of Thomas Coal Company, Inc. for whom Samuel B. Yost had done the original survey which included that tract of land which the Defendants Kinderman had acquired by deed.

29. That said Samuel B. Yost, registered surveyor, physically walked the property with the Defendants Kinderman at which time the original blaze markings were found on the trees consistent with the surveys which had previously been performed by Samuel B. Yost on behalf of Thomas Coal Company, Inc.

30. That as a result of the hiring of Samuel B. Yost, registered surveyor, and his designation of the property lines of the Kinderman tract, the Defendants Kinderman placed fluorescent ribbons along the property lines of the Kinderman tract consistent with the blaze markings and the survey as completed by Samuel B. Yost.

31. That said original blaze markings; the original survey of Samuel B. Yost, registered surveyor, and the fluorescent ribbons placed by the Defendants Kinderman all correspond with and it is believed and therefore averred are consistent and match that survey map prepared by David L. Thorp, P.L.S. on or about September 1, 2000 as revised January 23, 2001 which is attached as an exhibit to the Plaintiff's Second Amended Complaint and referred to within Paragraph 10 thereof.

32. That the Defendants Kinderman entered into two (2) specific agreements designated a Lumber Agreement and a Lumber & Timber Agreement with Joseph R. Chamberlin with each said Agreement dated November 24, 1998 and extending and being in existence for a period of one (1) year. Attached hereto and incorporated herein by reference as Exhibits A and B respectfully are complete copies of said Timber Agreement and Lumber & Timber Agreement.

33. That prior to commencement of work, the Defendant William B. Kinderman, advised Joseph R. Chamberlin that the property lines of the Kinderman tract followed a former blaze marking consistent with a survey and that the line had been flagged with fluorescent ribbons recently.

34. That the Defendants Kinderman entered into a Timber Lease Agreement with Clarence C. Daisher with said Agreement bearing the date of May 19, 2000 and having a term for a period of one (1) year. Attached hereto and incorporated herein by reference as Exhibit C is a complete copy of said Timber Lease Agreement.

35. That the Defendant, William B. Kinderman, specifically advised Clarence C. Daisher that the property lines of the Kinderman tract followed a former blaze marking consistent with a survey and that the line had been flagged with fluorescent ribbons recently.

36. That at no time did the Defendants, William B. Kinderman and/or Roberta A. Kinderman ever authorize any individuals contracted to them for the removal of timber to go beyond the property lines of the Kinderman tract and all timber operations were to be conducted within that property owned by the Kindermans.

37. That the Defendant, William B. Kinderman and the Defendant Roberta A. Kinderman never individually were involved in the physical removal of any timber whatsoever from any tracts of land whether owned by themselves or others within Bloom and/or Penn Township, Clearfield County, Pennsylvania.

38. That the Defendants, William B. Kinderman and Roberta A. Kinderman, have not received any funds from the Defendant Clarence C. Daisher and/or the Defendant Joseph R. Chamberlin for any timber which is alleged to have been removed from those premises asserted to be owned or owned by the Graham

Estate as set forth within the Plaintiff's Amended Complaint.

WHEREFORE, the Defendants, William B. Kinderman and Roberta A. Kinderman respectfully request that your Honorable Court dismiss the Second Amended Complaint filed on behalf of the Plaintiff and enter judgement in favor of the Defendants, William B. Kinderman and Roberta A. Kinderman along with award the Defendants Kinderman counsel fees, costs and expenses associated with regard to defending this matter.

NEW MATTER PURSUANT TO Pa. R.C.P. RULE 2252(d)

NOW, comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Defendant Kinderman's New Matter Pursuant to Pa. R.C.P. Rule 2252(d) and respectfully sets forth and avers as follows:

39. That Paragraphs 1 through 38 of the Defendant Kinderman's Answer to Second Amended Complaint and New Matter would be incorporated herein by reference as if the same were set forth in full at length at this point.

40. That the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, hereby assert a cross claim against the Defendants, Clarence C. Daisher and Joseph R. Chamberlin, for contribution and/or indemnification pursuant to Pa. R.C.P. Rule 2252(d).

41. That if the Plaintiffs suffered damages as alleged within the Second Amended Complaint, said damages were caused by the actions of the Defendant, Clarence C. Daisher, and/or the Defendant Joseph R. Chamberlin, as more particularly set forth within the allegations of Plaintiff's Second Amended Complaint.

42. That if, as a result of the matters complained of in Plaintiff's Second Amended Complaint, the Defendants, William B. Kinderman and/or Roberta A. Kinderman, are held liable to the Plaintiff for all or part of any such damages as set forth within the Second Amended Complaint, then, in that event, the Defendant, Clarence C. Daisher and/or the Defendant, Joseph R. Chamberlin, should by way of contribution and/or indemnification be liable to the Defendant William B. Kinderman and/or the Defendant Roberta A. Kinderman, for all such damages that the Defendant Kinderman's may be required to pay the Plaintiff since the Defendant Clarence C. Daisher and/or the Defendant Joseph R. Chamberlin, or parties acting under their control or direction are or would be specifically responsible for the timber which was unlawfully taken from the Graham Estate property as alleged in Plaintiff's Second Amended Complaint and as is set forth in the Defendant Daisher's New Matter and the Defendant Chamberlin's New Matter previously filed in response to the Plaintiff's Second Amended Complaint.

WHEREFORE, the Defendants William B. Kinderman and Roberta A. Kinderman respectfully request that your Honorable Court enter judgement over and against the Defendant Clarence C. Daisher

and/or the Defendant Joseph R. Chamberlin by way of indemnification and/or contribution for any amount which is recovered by the Plaintiff against the Defendant William B. Kinderman and/or the Defendant Roberta A. Kinderman.

COUNTERCLAIM

NOW, comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Defendant Kinderman's Counterclaim to the Plaintiff's Second Amended Complaint and in support thereof respectfully sets forth and avers as follows:

43. That Paragraphs 1 through 42 of the Answer, New Matter and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) would be incorporated herein by reference as if the same were set forth in full at length at this point.

44. That as a result of the filing of the instant action, the Defendants William B. Kinderman and Roberta A. Kinderman have been required to retain the services of instant counsel, F. Cortez Bell, III, Esquire in order to assert their Answer, New Matter and Counterclaim as to that action brought by the Plaintiffs.

45. That counsel for the Defendants Kinderman is billing the Defendants Kinderman at the rate of \$95.00 per hour for all work associated with regard to the instant matter.

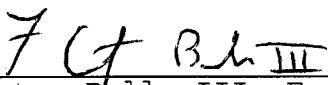
46. That should the matter proceed to trial it would be

anticipated that the Defendants Kinderman will have to retain and pay for the services of Samuel B. Yost as a Registered Surveyor should the same be necessary to establish the location of property lines and/or the attempts of the Defendants Kinderman to adhere to the property lines associated with regard to their premises.

47. That the Defendants Kinderman may be required to expend or undergo various other expenses and costs associated with regard to the defense of this matter.

WHEREFORE, it is respectfully requested that your Honorable Court grant judgment in favor of Defendants William B. Kinderman and Roberta A. Kinderman against the Plaintiff's Manufacturers and Traders Trust Company, Trustee under the Will of James B. Graham in such amount as is determined by the Court based upon hearing thereon as to the costs, expenses and counsel fees associated with regard to the defense of this instant matter.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,


F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

VERIFICATION

I, William B. Kinderman, verify that the statements made within the foregoing Answer to Second Amended 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: 3/25/03

William B. Kinderman
William B. Kinderman

VERIFICATION

I, Roberta A. Kinderman, verify that the statements made within the foregoing Answer to Second Amended 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: 3-25-03

Roberta A. Kinderman
Roberta A. Kinderman

LUMBER AGREEMENT

ARTICLES OF AGREEMENT made between Bill Kuckerlman
Reuter FA 15850, hereinafter referred to as Vendor.

A

N Vendor's SS # 230-66-8711

D

JOSEPH R. CHAMBERLIN, of RR 1, Box 294A-12 Keystone Rd., Brockport, Elk County, PA 15823, Phone (814) 265-1548 hereinafter referred to as Vendee, as follows:

Between both and all party's above all logs sawed into lumber all party's agree to pay sawing costs at 200,00 per 1,000 (one thousand) board feet for Cherry, red Oak, and 150,00 per 1,000 (one thousand) board feet for all Maple, Ash, White Oak, etc. and all Tie Logs which are rough and not profitable for lumber. Land owner will be shown why and will be paid \$ 1.00 per Tie Logs. All costs will be deducted from total (Lumber prices) then remaining profit will be split between Vendor and Vendee stated above and all Tie (Rough Logs) will be paid as stated above.

Amount paid to (Vendor or Vendor's) for timber or lumber said on property of

Bill Kuckerlman

Landowner's Names

will be at least \$ 30,000,00 and up.

All checks
RECEIVED FROM
SALE OF
TINBER LUM
be MADE OUT
IN VENDOR
AND VENDEE
NAMES
JRC, Joseph R. Chamberlin
William B. Kuckerlman

WITNESS our hands and seals, this 24 day of NOV year 1978.
Contract Binding for ONE YEAR past date above, and if Vendor
recommends Vendee for other timber on timber contract Vendee signs.

Paid 10% of Timber Profit

Witnessed:

Joseph R. Chamberlin
Joseph R. Chamberlin

LUMBER & TIMBER AGREEMENT

Bill Kindermann

ARTICLES OF AGREEMENT made between John Fox Jr
Rockton PA 15856, hereinafter referred to as a Vendor.

A Vendor's SS# 230-66-8711

N

D

JOSEPH R. CHAMBERLIN, of RR 1, Box 294A-12 Keystone Rd., Brockport, Elk County, Pennsylvania, 15823, Phone (814) 265-1548, hereinafter referred to as Vendee, as follows:

Vendor in consideration of the sum of will be set per ton for pulpwood to the said Vendor, whereof is hereby acknowledged; Vendor does grant and sell unto the said Vendee, his executors, administrators, and assigns all timber, hardwood, softwood logs down to 14 inches on the stump. All logs in consideration of the sum of 50 % (Fifty Percent) going rate per 1,000 (one thousand) board feet for Red Oak, Cherry, Ash, Maple, and all other hardwoods, and softwood logs of going rate per 1,000 (one thousand) board feet, now standing and growing upon the said land described as follows 70 acres lying in the County of CLEARFIELD, Township of Bloom. And if all timber is sold in (Log) (Form) not in (Lumber Form).

And the said Vendor does covenant, promise, and agree to and with the Vendee, that he ; said Vendee shall and may have free liberty into and from all lands and grounds belonging to the farm, aforesaid, with skidding tractors or trucks to take, cut down and carry away the said trees.

As additional consideration, the Vendor will save harmless the Vendee from any and all damage to said property, which might be incidental to the cutting and removing of said timber as aforementioned and the said Vendee shall save harmless the Vendor from any liability whatsoever in the removal and cutting of said timber. This mutual release between the parties is based upon normal circumstances and the exercise of due care be will be made each of the parties.

This agreement is to be binding as well as upon and in favor of the executors, administrators, and assigns, of both parties, as the parties themselves.

WITNESS our hands and seals, this 24 day of Nov year 78
Contract Bind for ONE YEAR past the date above.

Witnessed:

All checks RECEIVED FROM SALE OF TIMBER OCT IN VENDEE AND VENDEE NAMES JRC - Joseph Kindermann William B Kindermann

X Joseph R. Chamberlin
Joseph R. Chamberlin

Lumber Agreement
Next page

Timber Lease Agreement

THIS AGREEMENT made and entered into this May day of 19 1882, A.D. 1882,
between William B. Kinderman and Clarence C. Daisher,
Party of the First Part and William B. Kinderman Clarence C. Daisher
Party of the Second Part.

Witnesseth, that the said party, William B. Kinderman the first part, for and in consideration of the sum of 50% Clarence C. Daisher 50%.

Do by these presents grant, bargain and sell to the said Clarence C. Daisher

all the timber of whatever kind being upon all that certain tract of land owned or controlled by said party of the first part as recorded and described in deed book number 10 page 3 in and for the county of Clearfield at Germian, Pennsylvania.

The said timber to be cut and removed at the expense of the said Clarence C. Daisher, who with his employees, workmen and equipment is to have free ingress and egress into and over any portion of said land for such purposes, and also the like liberty to cut, saw and convert all or so many of said trees as he may think proper into marketable products upon the premises, and for these purposes to have the right to make roads necessary for the purposes of taking off the said premises.

It is understood and agreed, however, by and between the parties hereto that the said Clarence C. Daisher shall have a period of 1 years from this date in which to cut and remove the said timber, and at the expiration of said time he may remove all his improvements from said premises.

It is understood by and between the parties hereto that the provisions of this contract are extended to the heirs, executors, administrators and assigns of the parties hereto.

IT IS FURTHER UNDERSTOOD that the Party of the second part assumes full financial liability for any injuries for himself and his workmen arising from the logging operation being conducted on this property for the duration of this lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day of year aforesaid,

Signed William B. Kinderman
Signed Clarence C. Daisher
Witnessed R. H. Greenaway

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to Plaintiff's Second Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

Mr. Clarence C. Daisher
RR #1, Box 74A
Grampian, PA 16838

John B. Gibson, Esquire
131 Market Street
Suite 200
Johnstown, PA 15901

7 ct Bn III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

DATED: April 4, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS AND TRADERS
TRUST,

Plaintiff

VS.

KINDERMAN, et al

Defendants

MOTION FOR SUMMARY JUDGMENT

FILED

11/30/02
DEC 16 2002
John D. Gibson

William A. Shaw
Prothonotary

JOHN D. GIBSON

Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901
TELEPHONE: (814) 835-3513
FAX: (814) 835-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION *

Plaintiff *

No. 00-1531-CD *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

MOTION FOR SUMMARY JUDGMENT

Defendants *

* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
* Johnstown, PA 15901
* (814) 535-3513
* Counsel for Joseph R. Chamberlin

* PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
* Clearfield, PA 16830
* (814) 765-5595
* Counsel for Plaintiff

* CLARENCE C. DAISHER, Defendant
R.R.#3 Box 188
* DuBois, PA 15801-8811
* Unrepresented by Legal Counsel

* F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
* Clearfield, PA 16830
* (814) 765-5537
* Counsel for William & Roberta Kinderman

FILED

DEC 16 2002

William A. Shaw
Prothonotary

442

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased * CIVIL ACTION
*
Plaintiff *
* No. 00-1531-CD
* VS.
*
WILLIAM B. KINDERMAN, *
ROBERTA A. KINDERMAN, *
CLARENCE C. DAISHER and *
JOSEPH R. CHAMBERLIN, *
*
Defendants *
*
*

MOTION FOR SUMMARY JUDGMENT OF JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin, and files the following Motion for Summary Judgment:

1. Movant is one of the Defendants in the above captioned case.
2. The claim filed by the Plaintiff is a legal action to recover a sum of funds against the Defendant as well as other named Defendants.
3. Subsequent to the completion of the pleading and discovery stages of this case, the Defendant, Joseph R. Chamberlin, filed a Chapter 7 Bankruptcy proceeding in the Western District of Pennsylvania to Docket No. 02-25753-BM.
4. In the Bankruptcy Petition filed by the Defendant, Joseph R. Chamberlin, the claims of the Plaintiff as well as the claims of William and Roberta Kinderman and Clarence C. Daisher in the nature of counterclaims/contribution and/or indemnification and claims of any other nature were listed as debts of the Defendant, Joseph R. Chamberlin. Pursuant to Bankruptcy Rules, all parties including their attorneys of record were served with notice of the filing of the bankruptcy proceeding and the listing of the Plaintiff and other Defendants as creditors and parties to the Bankruptcy proceeding.
5. Counsel for the Defendant, Joseph R. Chamberlin, in this proceeding was also counsel of record for the Defendant, Joseph R.

Chamberlin, in the Bankruptcy proceeding. In that Bankruptcy proceeding, none of the Defendants, nor the Plaintiff filed an Objection or Complaint alleging that the alleged debt owed by Joseph R. Chamberlin should not be discharged.

6. On September 30, 2002, the Defendant, Joseph R. Chamberlin, and his attorney received a Discharge in Bankruptcy discharging any and all debts listed on the Petition.

7. Subsequent to receiving the Discharge Order, counsel filed a Motion for Leave of Court to Amend the Answer and New matter of Joseph R. Chamberlin in order to set forth a discharge in bankruptcy as New Matter in this proceeding.

8. The Court, by Order dated October 18, 2002, granted Leave of Court to Joseph R. Chamberlin to file an Amended Answer and New Matter which the Defendant has done alleging the defense of Discharge in Bankruptcy.

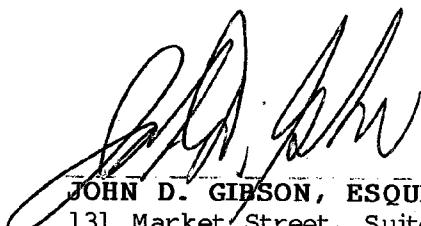
9. All counsel in the proceeding, including Clarence Daisher, were served with a true and correct copy of the Amended Answer and New Matter. As of this date, neither the Plaintiff nor the other Defendants have filed a Reply to New Matter denying that the Discharge in Bankruptcy is a complete defense to the claim of the Plaintiff and/or the other Defendants.

10. The Defendant, Joseph R. Chamberlin, therefore sets forth that as a matter of law, this Defendant should be dismissed from this proceeding due to the determination of Bankruptcy Court and he should receive a discharge from any and all debts of any nature including those of the Plaintiff and the Defendant.

11. A true and correct copy of the creditors' Schedules of the Defendant, Joseph R. Chamberlin, are attached hereto as Exhibit A to this Motion as well as a copy of the Discharge in Bankruptcy.

WHEREFORE, Joseph R. Chamberlin requests this Honorable Court to grant his Motion for Summary Judgment and to dismiss the claim of the Plaintiff, Manufacturers and Traders Trust Company with prejudice due to the discharge in bankruptcy issued to the Defendant. Further, Defendant, Joseph R. Chamberlin, requests this Honorable Court to dismiss the cross claims and claims for contribution and indemnification as well as any

counterclaims filed by Plaintiff and Defendants, William P. Kinderman, Roberta A. Kinderman and Clarence C. Daisher and to strike the name of Joseph R. Chamberlin as a Defendant in this proceeding.



JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
Attorney for Joseph R. Chamberlin

VERIFICATION

I verify that the attachments to this Motion for Summary Judgment setting forth my schedule of unsecured creditors is true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



JOSEPH R. CHAMBERLIN

Joseph R. Chamberlin
Debtors

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CREDITOR'S NAME AND ADDRESS	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. (IF CLAIM IS SUBJECT TO SETOFF, STATE)	AMOUNT OF CLAIM	
			CONTINGENT OR DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.	DuBois Regional Medical Ctr. P.O. Box 447 DuBois, PA 15801	Original creditor of Credit Bureau, Inc. for medical services rendered through 8-01		587.00
ACCOUNT NO.	DuBois Regional Medical Ctr. P.O. Box 447 DuBois, PA 15801	Original creditor of Credit Bureau, Inc. for medical services rendered through 8-01		158.00
ACCOUNT NO.	Manufactures & Traders Trust Co. Trustee under the Will of James B. Graham, deceased 101 W. Third Street Williamsport, PA 17701	Claim for timber proceeds and damages to property of Graham Estate located in Clearfield County and subject of lawsuit in Court of Common Pleas of Clearfield County, PA to No. 00-1531-CD and No. 00-1532-CD	XXX	35,000.00
ACCOUNT NO.	William B. Kinderman R.D.#2 Rockton, PA 15856	Claim for timber proceeds and damage to property as well as all claims for contribution and indemnification filed by Kinderman in proceedings filed to 00-1531 and 1532-CD in the court of Common Pleas of Clearfield County, Pennsylvania	XXX	35,000.00
ACCOUNT NO.	Prothonotary Clearfield County Courthouse Corner Market & 2nd Sts. Clearfield, PA 16830	NOTICE ONLY		1.00

Sheet no. 2 of continuation sheets attached
to Schedule F of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) > \$ 70,745.00
Total
(Complete only on last page of Schedule F) > \$
(Report total also on Summary of Schedules)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CREDITOR'S NAME AND ADDRESS	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM IF CLAIM IS SUBJECT TO SETOFF, SEE STATE	AMOUNT OF CLAIM	
			CONTINGENT OR UNREDUCED AMOUNT	NONPRIORITY AMOUNT
ACCOUNT NO.	Robert A. Kinderman R.D.#2 Rockton, PA 15856	Claim for timber proceeds and damage to property as well as all claims for contribution and indemnification filed by Kinderman in proceeds filed to No. 00-1531 and 1532-CD in the Court of Common Pleas of Clearfield County, Pennsylvania		XX 35,000.00
ACCOUNT NO.	Clarence C. Daisher R.R.#1 Box 74A Grampian, PA 16838	Claim for timber proceeds and damage to property as well as all claims for contribution and indemnification filed by Kinderman in proceedings filed to No. 00-1531 and 00-1532-CD in the Court of Common Pleas of Clearfield County, Pennsylvania		XX 35,000.00
ACCOUNT NO.	Peter F. Smith, Esquire 30 South Second Street P.O. Box 130 Clearfield, PA 16830	Attorney of record for Manufacturers and Traders Trust Company		1.00
ACCOUNT NO.	F. Cortez Bell, Esquire 318 Locust Street 00/670 Clearfield, PA 16830	Attorney of record for William B. Kinderman and Robert A. Kinderman		1.00

Sheet no. 4 of 4 continuation sheets attached
to Schedule F of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) > \$ 70,000.00

Total
(Complete only on last page of Schedule F) > \$

(Report total also on Summary of Schedules)

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

In Re:

Joseph R. Chamberlin
195 Fairfield Manor
Bolivar, PA 15923

) Case Number: 02-25753-BM

) Chapter: 7

Debtor)

Social Security Number:
Debtor: 199-52-4941

)

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 09/30/02

BY THE COURT

Bernard Markovitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property:*] [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are.

- a. Debts for most taxes;
- b. Debts that are in the nature of alimony, maintenance, or support;
- c. Debts for most student loans;
- d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- f. Some debts which were not properly listed by the debtor;
- g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

* CIVIL ACTION

* Plaintiff

* No. 00-1531-CD

* VS.

* WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

* MOTION FOR SUMMARY JUDGMENT

* Defendants

ORDER OF COURT

AND NOW, this 2 day of April, 2003, after
consideration of the Motion for Summary Judgment filed by Joseph R.
Chamberlin, the following ORDER is entered:

1. The Complaint filed by the Plaintiff, Manufacturers and Traders Trust Company, Trustee under the Will of James B. Graham against the Defendant, Joseph R. Chamberlin, is hereby dismissed with prejudice.
2. The claim of Clarence C. Daisher for indemnification and/or contribution against the Defendant, Joseph R. Chamberlin, is hereby dismissed with prejudice.
3. The claim of William B. Kinderman and Roberta A. Kinderman for indemnification and/or contribution or any other claims set forth in the pleadings of William B. Kinderman and Roberta A. Kinderman against the Defendant, Joseph R. Chamberlin, are dismissed with prejudice.

FILED

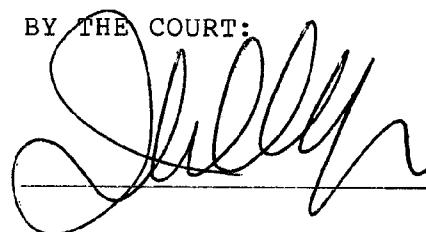
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013:30 (m)

William A. Shaw
Prothonotary
COURT OF COMMON PLEAS

ED
KRD

BY THE COURT:



J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS AND TRADERS TRUST,

Plaintiff

VS.

KINDERMAN, ET AL

Defendants

**AMENDED REPLY TO NEW MATTER OF
DEFENDANT, DAISHER**

MC
11/32/01
C
10/7/02
GAR

William A. Shaw
Prothonotary

JOHN D. GIBSON

Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901
TELEPHONE: (814) 535-9513
FAX: (814) 535-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

* Plaintiff

* VS.

* WILLIAM B. KINDEMAN,
ROBERTA A. KINDEMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

* Defendants

* AMENDED REPLY TO DEFENDANT,
CLARENCE C. DAISHER'S NEW MATTER
FILED ON BEHALF OF
JOSEPH R. CHAMBERLIN

* *****
* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
* Johnstown, PA 15901
* (814) 535-3513
* Counsel for Joseph R. Chamberlin

* *****
* PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
* Clearfield, PA 16830
* (814) 765-5595
* Counsel for Plaintiff

* *****
* CLARENCE C. DAISHER, Defendant
R.R.#1 Box 74A
* Grampian, PA 16838
* Unrepresented by Legal Counsel

* *****
* F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
* Clearfield, PA 16830
* (814) 765-5537
* Counsel for William & Roberta Kinderman

FILED

NOV 04 2002

William A. Shaw
Prothonotary

#41

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased * CIVIL ACTION
*
Plaintiff *
* No. 00-1531-CD
* VS.
*
* WILLIAM B. KINDERMAN, *
ROBERTA A. KINDERMAN, *
CLARENCE C. DAISHER and *
JOSEPH R. CHAMBERLIN, *
*
* Defendants *
*
*
AMENDED REPLY TO DEFENDANT,
CLARENCE C. DAISHER'S NEW MATTER
FILED ON BEHALF OF
JOSEPH R. CHAMBERLIN

AMENDED REPLY TO DEFENDANT, CLARENCE C. DAISHER'S NEW MATTER
FILED ON BEHALF OF JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin, through his attorney, John D. Gibson, and files the following Amended Reply to Defendant, Clarence C. Daisher's New Matter;

1. The Reply set forth by Joseph R. Chamberlin in his original Answer to Clarence C. Daisher's New Matter, Paragraphs 1 through 7, are incorporated herein by reference as if fully set forth at length herein.

2. By way of further defense, Defendant Joseph R. Chamberlin, sets forth that subsequent to the institution of proceedings in this matter, the Defendant, Joseph R. Chamberlin, had filed a Chapter 7 Liquidation proceeding in Western District Court of Pennsylvania.

3. In that proceeding, the Defendant, Joseph R. Chamberlin, did list the disputed claims of the Plaintiff and any and all other counterclaims/cross claims and claims of whatever nature of the Defendants including Clarence C. Daisher, as unsecured disputed claims on his Bankruptcy Petition.

4. Neither the Plaintiff nor other Defendants, including Clarence C. Daisher, filed Objections or any Complaint objecting to Discharge in the Bankruptcy proceeding.

5. On or about September 30, 2002 the Bankruptcy Court did issue a Discharge in Bankruptcy without reservation. On or about October 12, 2002, a Final Decree was issued by the Bankruptcy Judge terminating jurisdiction of the Court in this proceeding. A true and correct copy of the Discharge and Final Decree is attached hereto as Exhibit A to this proceeding.

WHEREFORE, Defendant requests this Honorable Court to dismiss the New Matter pursuant to Pa. R.C.P. 2252(d) filed by the Defendant, Clarence C. Daisher against Joseph R. Chamberlin.

JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
I.D. #21881
(814) 535-3513
Counsel for Joseph R. Chamberlin

VERIFICATION

I verify that the statements contained in the foregoing Amended Reply are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.


Joseph R. Chamberlin

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

In Re:

Joseph R. Chamberlin
195 Fairfield Manor
Bolivar, PA 15923

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Case Number: 02-25753-BM

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Chapter 7

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Debtor)
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Social Security Number:
Debtor: 199-52-4941

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 09/30/02

BY THE COURT

Bernard Markovitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

A

EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property:*] [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts that are in the nature of alimony, maintenance, or support;
- c. Debts for most student loans;
- d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- f. Some debts which were not properly listed by the debtor;
- g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

5414 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

John D. Gibson
131 Market Street, Suite 200
Johnstown, PA 15901

In re:

Bankruptcy Case No.: 02 - 25753-BM
Chapter: 7

Joseph R. Chamberlin
Social Security No.: 199-52-4941

Debtor(s)

FINAL DECREE

The estate of the above named debtor has been fully administered.

IT IS ORDERED THAT:

Lisa M. Swope is discharged as trustee of the estate of the above-named debtor and the bond is cancelled;

the chapter 7 case of the above named debtor is closed.

Dated: 10/12/02

Bernard Markovitz
U.S. Bankruptcy Judge

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS AND TRADERS TRUST

Plaintiff

58

KINDERMAN, ET AL.

Defendants

AMENDED REPLY TO NEW MATTER
OF DEFENDANTS, KINDERMAN

William A. Shaw
Prothonotary

JOHN D. GIBSON

Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901
TELEPHONE: (814) 535-9513

TELEPHONE: (914) 535-3513
FAX: (914) 535-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

Plaintiff *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

No. 00-1531-CD

AMENDED REPLY TO NEW MATTER OF
DEFENDANTS', KINDERMAN, PURSUANT
PA. R.C.P. 2252(d), FILED BY
JOSEPH R. CHAMBERLIN

* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
* Johnstown, PA 15901
* (814) 535-3513
* Counsel for Joseph R. Chamberlin

* PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
* Clearfield, PA 16830
* (814) 765-5595
* Counsel for Plaintiff

* CLARENCE C. DAISHER, Defendant
R.R.#1 Box 74A
* Grampian, PA 16838
* Unrepresented by Legal Counsel

* F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
* Clearfield, PA 16830
* (814) 765-5537
* Counsel for William & Roberta Kinderman

FILED

NOV 04 2002

William A. Shaw
Prothonotary

#40

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiff *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants *

CIVIL ACTION

No. 00-1531-CD

AMENDED REPLY TO NEW MATTER OF
DEFENDANTS', KINDERMAN, PURSUANT
TO PA. R.C.P. 2252(d) FILED BY
JOSEPH R. CHAMBERLIN

AMENDED REPLY TO NEW MATTER OF DEFENDANTS, WILLIAM B. KINDERMAN
AND ROBERTA A. KINDERMAN, PURSUANT TO
TO PA. R.C.P. 2252(d) FILED BY JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin, through his attorney, John D. Gibson, and files the following Amended Reply to New Matter pursuant to Pa. R.C.P. 2252(d), filed by William B. Kinderman and Robert A. Kinderman:

1. Defendant, Joseph R. Chamberlin, incorporates by reference paragraphs 1 through 8 of Defendant's original Reply to New Matter of Defendants, Kinderman.

2. The Defendant, Joseph R. Chamberlin, subsequent to the institution of proceedings in this matter, filed a Chapter 7 Liquidation proceeding in Western District Court of Pennsylvania to No. 02-25753-BM.

3. In that proceeding, the Defendant, Joseph R. Chamberlin, did list the disputed claims of the Plaintiff and all Defendants in this proceeding with respect to any and all claims including counterclaims and cross claims raised by the Defendants, Kinderman, in their pleadings. Said claims were listed as unsecured disputed claims on the Bankruptcy Petition.

4. Neither the Plaintiff nor other Defendants in this proceeding filed Objections or any Complaints objecting to discharge of the Defendant, Joseph R. Chamberlin, from their claim in the Bankruptcy proceeding.

5. On or about September 30, 2002, a Discharge in Bankruptcy was issued by the Bankruptcy Judge. On or about October 12, 2002, a Final

Decree was issued terminating jurisdiction of the Bankruptcy Court in this matter. A true and correct copy of the Discharge and Final Decree is attached hereto as Exhibit A to this proceeding. The entry of the Discharge in Bankruptcy dismisses the liability, if any, of Joseph R. Chamberlin, to the Defendants, Kinderman, in this proceeding.

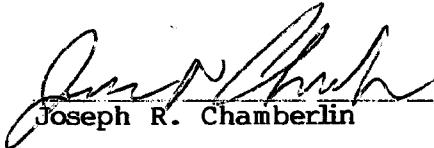
WHEREFORE, Defendant requests this Honorable Court to enter judgment in favor of Defendant, Joseph R. Chamberlin, and to dismiss any and all claims of the Plaintiff and other Defendants, particularly, William B. Kinderman and Robert A. Kinderman, against the Defendant, Joseph R. Chamberlin, in this proceeding.



JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
I.D. #21881
(814) 535-3513
Counsel for Joseph R. Chamberlin

VERIFICATION

I verify that the statements contained in the foregoing Amended Reply are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Joseph R. Chamberlin

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

In Re:

Joseph R. Chamberlin
195 Fairfield Manor
Bolivar, PA 15923

) Case Number: 02-25753-BM

) Chapter: 7

Debtor)

Social Security Number:
Debtor: 199-52-4941

)

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 09/30/02

BY THE COURT

Bernard Markovitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

J

EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property:*] [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts that are in the nature of alimony, maintenance, or support;
- c. Debts for most student loans;
- d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- f. Some debts which were not properly listed by the debtor;
- g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

U.S. Bankruptcy Court
5414 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

John D. Gibson
131 Market Street, Suite 200
Johnstown, PA 15901

In re: Bankruptcy Case No.: 02 - 25753-BM
Chapter: 7

Joseph R. Chamberlin
Social Security No.: 199-52-4941

Debtor(s)

FINAL DECREE

The estate of the above named debtor has been fully administered.

IT IS ORDERED THAT:

Lisa M. Swope is discharged as trustee of the estate of the above-named debtor and the bond is cancelled;

the chapter 7 case of the above named debtor is closed.

Dated: 10/12/02

Bernard Markovitz

U.S. Bankruptcy Judge

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS AND TRADERS TRUST,

Plaintiff

VS.

KINDERMAN, ET AL

DEFENDANTS

AMENDED REPLY TO NEW MATTER
OF DEFENDANT CHAMBERLIN

11-3981
NOV 04 2002
JAS
cc

William A. Shaw
Prothonotary

JOHN D. GIBSON

Attorney at Law
131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901
TELEPHONE: (814) 535-3513
FAX: (814) 535-3167

MANUFACTURERS and TRADERS
TRUST COMPANY, TRUSTEE UNDER
THE WILL OF JAMES B. GRAHAM,
Deceased

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

* CIVIL ACTION

* Plaintiff

* No. 00-1531-CD

* VS.

* WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

* Defendants

* AMENDED ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT, NEW MATTER
AND NEW MATTER PURSUANT TO
PA. R. C. P. 2252 (d) OF DEFENDANT,
JOSEPH R. CHAMBERLIN

* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
Counsel for Joseph R. Chamberlin

* PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
Clearfield, PA 16830
(814) 765-5595
Counsel for Plaintiff

* CLARENCE C. DAISHER, Defendant
R.R.#1 Box 74A
Grampian, PA 16838
Unrepresented by Legal Counsel

* F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
Clearfield, PA 16830
(814) 765-5537
Counsel for William & Roberta Kinderman

FILED

NOV 04 2002

William A. Shaw
Prothonotary

130

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased *

CIVIL ACTION

Plaintiff *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants *

No. 00-1531-CD *

AMENDED ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT, NEW MATTER
AND NEW MATTER PURSUANT TO
PA. R.C.P. 2252 (d) OF DEFENDANT,
JOSEPH R. CHAMBERLIN

AMENDED ANSWER TO PLAINTIFF'S AMENDED COMPLAINT, NEW
MATTER AND NEW MATTER PURSUANT TO PA. R.C.P. 2252 (d) OF
DEFENDANT, JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin, through his attorney, John D. Gibson, and files the following:

1. The Answers of Defendant, Joseph R. Chamberlin, set forth in Paragraphs 1 through 16 of his original Answer are incorporated herein by reference as if set forth at length herein.

WHEREFORE, DEFENDANT, Joseph R. Chamberlin prays this Honorable Court to dismiss the Amended Complaint of the Plaintiff and enter judgment in favor of the Defendant, Joseph R. Chamberlin, with costs assessed against the Plaintiff.

AMENDED NEW MATTER

2. The Defendant, Joseph R. Chamberlin, incorporates by reference Paragraph 1 of this Amended Answer as if the same were set forth at length herein.

3. The Defendant, Joseph R. Chamberlin, incorporates by reference Paragraphs 18 through 23 of Defendant, Joseph R. Chamberlin's, original New Matter as if the same were set forth at length herein.

4. The Defendant, Joseph R. Chamberlin, subsequent to the institution of proceedings in this matter filed a Chapter 7 Liquidation proceeding in the Western District Court of Pennsylvania, case No. 02-25753-BM.

5. In that proceeding, the Defendant, Joseph R. Chamberlin, did list the disputed claims of the Plaintiff and any and all other counterclaims/cross claims of the Defendants as unsecured disputed claims on his Bankruptcy Petition.

6. Neither the Plaintiff nor other Defendants filed Objections in the Bankruptcy proceeding or any Complaint objecting to discharge of the Plaintiff from any and all claims of the Plaintiff and other Defendants listed in this action.

7. On or about September 30, 2002, a Discharge in Bankruptcy was issued by the Bankruptcy Judge, Bernard Markovitz. Thereafter, a Final Decree on October 12, 2002 was issued by the Bankruptcy Court terminating all jurisdiction of Federal Court. A true and correct copy of the Discharge and Final Decree is attached hereto as Exhibit A to this proceeding.

8. The Defendant, Joseph R. Chamberlin, sets forth that with the issuance of the Discharge in Bankruptcy, the Defendant's liability for any and all claims of the Plaintiff raised in this proceeding has been discharged in bankruptcy and is a total bar to the Plaintiff proceeding against the Defendant in the instant action. Joseph R. Chamberlin further sets forth that the Discharge in Bankruptcy is a total bar to all Defendants, specifically, William and Roberta Kinderman and Clarence C. Daisher from pursuing against the Defendant, Joseph R. Chamberlin, any and all claims raised in this matter due to the Discharge in Bankruptcy and that said Bankruptcy acts as a total bar to said claim.

WHEREFORE, Defendant, Joseph R. Chamberlin, requests this Honorable Court to enter judgment in favor of the Defendant and to dismiss any and all claims of the Plaintiff and other Defendants in this proceeding.

NEW MATTER PURSUANT TO PA. R.C.P. 2252(d)

The Defendant, Joseph R. Chamberlin, by his attorney, John D. Gibson, hereby asserts a cross claim against the Defendant, Clarence C. Daisher, for contribution and/or indemnification pursuant to Pa. R.C.P. 2252(d) and in support thereof sets forth the following:

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

In Re:

Joseph R. Chamberlin
195 Fairfield Manor
Bolivar, PA 15923

) Case Number: 02-25753-BM

) Chapter: 7

) Debtor

Social Security Number:
Debtor: 199-52-4941

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 09/30/02

BY THE COURT

Bernard Markovitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

'A'

10F2

EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [In a case involving *community property*:] [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts that are in the nature of alimony, maintenance, or support;
- c. Debts for most student loans;
- d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- f. Some debts which were not properly listed by the debtor;
- g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

John D. Gibson
131 Market Street, Suite 200
Johnstown, PA 15901

In re:

Bankruptcy Case No.: 02 - 25753-BM
Chapter: 7

Joseph R. Chamberlin
Social Security No.: 199-52-4941

Debtor(s)

FINAL DECREE

The estate of the above named debtor has been fully administered.

IT IS ORDERED THAT:

Lisa M. Swope is discharged as trustee of the estate of the above-named debtor and the bond is cancelled;

the chapter 7 case of the above named debtor is closed.

Dated: 10/12/02

Bernard Markovitz

U.S. Bankruptcy Judge

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

**MANUFACTURERS AND TRADERS TRUST
CO.**

Plaintiff

VS.

KINDERMAN, et al

Defendants

**MOTION TO AMEND ANSWER AND
NEW MATTER OF JOSEPH R. CHAMBERLIN**

ED CC AJG
1/13/2002
OUT 11/2002

William A. Shaw
Prothonotary

JOHN D. GIBSON

Attorney at Law

131 MARKET STREET
SUITE 200
JOHNSTOWN, PA 15901

TELEPHONE: (814) 535-3513
FAX: (814) 535-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

Plaintiff

VS.

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants

No. 00-1531-CD

MOTION TO AMEND ANSWER AND NEW
MATTER OF JOSEPH R. CHAMBERLIN

* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
* Johnstown, PA 15901
* (814) 535-3513
* Counsel for Joseph R. Chamberlin

* PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
* Clearfield, PA 16830
* (814) 765-5595
* Counsel for Plaintiff

* CLARENCE C. DAISHER, Defendant
Box 243
* Luthersburg, PA 15848
* Unrepresented by Legal Counsel

* F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
* Clearfield, PA 16830
* (814) 765-5537
* Counsel for William & Roberta Kinderman

FILED

OCT 11 2002

William A. Shaw
Prothonotary

238

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION *

Plaintiff *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

MOTION TO AMEND ANSWER AND
NEW MATTER

Defendants *

*

MOTION TO AMEND ANSWER AND NEW MATTER OF JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin and files the following Motion to Amend Defendant's Answer and New Matter:

1. Subsequent to the filing of the Plaintiff's Complaint and the Defendant's Answer and New Matter, the Defendant filed a Chapter 7 Liquidation proceeding in United States Bankruptcy Court for the Western District of Pennsylvania on May 28, 2002.
2. On October 7, 2002, the Defendant did receive a Discharge of Debtor Order (Exhibit A to this Motion) from the United States Bankruptcy Judge, Bernard Markovitz.
3. The Debts listed by Joseph R. Chamberlin on the Bankruptcy Petition include the Plaintiff's Complaint against Defendant, Joseph R. Chamberlin, as well as any and all cross claims and counterclaims filed by other parties of record.
4. With the granting of the Defendant's Discharge in Bankruptcy, the Defendant maintains that any further action by the Plaintiff and other Defendants would be barred.
5. Under the Pennsylvania Rules of Civil Procedure, however, the defense of Discharge in Bankruptcy must be raised by way of New Matter in the Defendant's pleadings.
6. The Defendant was unable to raise this defense previously since a Discharge had not been granted until the date indicated, October 7, 2002.

WHEREFORE, Defendant, Joseph R. Chamberlin, requests this Honorable Court to grant the Defendant's Motion to Amend Defendant's Answer and New Matter to include Discharge in Bankruptcy as an affirmative defense under the heading of "New Matter".

Respectfully submitted,


JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
I.D. # 21881
(814) 535-3513 - Telephone
(824) 535-3167 - FAX
Counsel for Joseph R. Chamberlin

UNITED STATES BANKRUPTCY COURT
Western District of Pennsylvania

In Re:

Joseph R. Chamberlin
195 Fairfield Manor
Bolivar, PA 15923

) Case Number: 02-25753-BM

) Chapter: 7

Debtor)

Social Security Number:
Debtor: 199-52-4941

)

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: 09/30/02

BY THE COURT

Bernard Markovitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

"A"

**EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE**

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property:*] [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

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- c. Debts for most student loans;
- d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
- f. Some debts which were not properly listed by the debtor;
- g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

MANUFACTURERS and TRADERS
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased

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

Plaintiff

CIVIL ACTION

VS.

WILLIAM B. KINDELMAN,
ROBERTA A. KINDELMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

* No. 00-1531-CD

Defendants

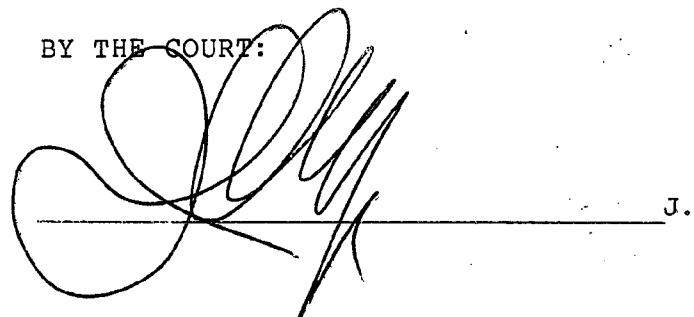
* MOTION TO AMEND ANSWER AND NEW
* MATTER OF JOSEPH R. CHAMBERLIN

ORDER OF COURT

AND NOW, this 18th day of October, 2002, after
consideration of the foregoing Motion of Joseph R. Chamberlin, to Amend his
Answer and New Matter, the following ORDER is granted:

1. The Defendant, Joseph R. Chamberlin, is hereby granted leave of
Court to file an amended Answer and New Matter raising the defense of
Discharge in Bankruptcy.

BY THE COURT:

A large, handwritten signature in black ink, appearing to read "WILLIAM A. SHAW", is written over a horizontal line. To the right of the signature, the letter "J." is written.

FILED

OCT 18 2002

William A. Shaw
Prothonotary

FILED

1CC

01/2:50 AM

Atty Gibson

OCT 18 2002

William A. Shaw
Prothonotary

tsr

CERTIFICATE OF SERVICE

I, John D. Gibson, do hereby certify that I have served upon counsel of record in this case a true and correct copy of the Motion to Amend Answer and New Matter of Joseph R. Chamberlin to the persons listed below.

Service was made postage pre-paid, ordinary mail addressed to counsel of record as follows:

PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
Clearfield, PA 16830
Counsel for Plaintiff

CLARENCE C. DAISHER, Defendant
Box 243
Luthersburg, PA 15848
Unrepresented by Legal Counsel

F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
Clearfield, PA 16830
Counsel for William & Roberta Kinderman

JOHN D. GIBSON, JR. ~~ESQ.~~
121 Market Street, Suite 200
Johnstown, PA 15901
Attorney for Joseph R. Chamberlin

DATED: October 8, 2002

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

MANUFACTURERS AND TRADERS :
TRUST, TRUSTEE UNDER THE WILL :
OF JAMES B. GRAHAM :
: :
-vs- : No. 00-1531-CD
: :
WILLIAM AND ROBERTA KINDERMAN:
CLARENCE C. DAISHER AND JOSEPH :
R. CHAMBERLIN :
:

ORDER

NOW, this 1st day of August, 2002, upon consideration of Motion for
Continuance filed on behalf of Joseph R. Chamberlin, Defendant above-named, it is the
ORDER of this Court that said Motion be and is hereby granted and the above-captioned matter
continued from the call of the list scheduled this date. It is the further ORDER of this Court
that further proceedings shall be scheduled at the request of any party.

Very truly yours,

President Judge

FILED

AUG 01 2002

William A. Shaw
Prothonotary

#31

FILED

AUG 01 2002

Officer at Smith
William A. Shaw
Administrator

Officer at Bell
Gott at Weaver
Officer at Gibson

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

MANUFACTURES and TRADERS TRUST,:
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

CERTIFICATE OF SERVICE

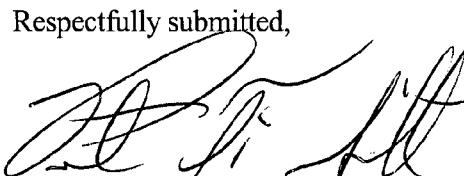
I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have filed an original **PRAECIPE TO SUBSTITUTE PARTIES** with the Clearfield County Prothonotary. I also certify that I sent by U. S. First Class Mail, a copy of the above-referenced document on the following:

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P. O. Box 670
Clearfield, PA 16830

John B. Gibson, Esquire
Attorney for Joseph R. Chamberlin
131 Market Street
Suite 200
Johnstown, PA 15901

Clarence C. Daisher
Box 243
Luthersburg, PA 15848

Respectfully submitted,


Peter F. Smith
Attorney for Plaintiff

FILED

Date: July 30, 2002

JUL 30 2002
07.04.1002
William A. Shaw
Prothonotary
KES
8/30/02

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

MANUFACTURERS AND TRADERS :
TRUST COMPANY, TRUSTEE UNDER : No. 2000-1531-CD
THE WILL OF JAMES B. GRAHAM, :
DECEASED, :
Plaintiff :
: vs :
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

PRAECIPE TO SUBSTITUTE PARTIES

To: William A. Shaw, Prothonotary

Dear Sir:

I appear on behalf of the Plaintiff and request that the WILLIAMSPORT-LYCOMING FOUNDATION be substituted as the new Plaintiff in this action. This substitution is based upon the succession by the Williamsport-Lycoming Foundation to the Trusteeship of the Graham Estate pursuant to a deed recorded at Clearfield County Instrument Number 200209354.

Respectfully,



Peter F. Smith, Attorney for Plaintiff

Date: July 29, 2002

FILED

JUL 30 2002
012041/NACC
William A. Shaw
Prothonotary
E81
#35

NO. 00-1531-CD

MANUFACTURERS AND TRADERS
TRUST, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM

vs.

WILLIAM B. KINDELMAN, ROBERTA
A. KINDELMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN

MOTION FOR CONTINUANCE

FILED
1/26/2002
10 AM
JUL 26 2002

WAS

William A. Shaw
Prothonotary

TELEPHONE: (814) 535-5513
FAX: (814) 535-3167

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

MANUFACTURERS AND TRADERS
TRUST, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM

PLAINTIFF

CIVIL ACTION
NO.00-1531-CD

VS.

WILLIAM AND ROBERTA KINDERMAN,
CLARENCE C. DAISHER AND JOSEPH R.
CHAMBERLIN

DEFENDANTS

TYPE OF PLEADING:

MOTION FOR CONTINUANCE
BY JOSEPH R. CHAMBERLIN

ATTORNEY FOR JOSEPH R. CHAMBERLIN
JOHN D. GIBSON, ESQ.

ATTORNEY FOR PLAINTIFFS
PETER F. SMITH, ESQ.

ATTORNEY FOR CLARENCE C. DAISHER
MARK S. WEAVER, ESQ.

ATTORNEY FOR WILLIAM AND ROBERTA KINDERMAN
F. CORTEZ BELL, III, ESQ.

FILED

JUL 26 2002

William A. Shaw
Prothonotary

34

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

MANUFACTURERS AND TRADERS ; CIVIL ACTION
TRUST, TRUSTEE UNDER THE WILL NO.00-1531-CD
OF JAMES B. GRAHAM

PLAINTIFF ;

VS.

WILLIAM AND ROBERTA KINDELMAN,
CLARENCE C. DAISHER AND JOSEPH R.
CHAMBERLIN ;

DEFENDANTS ;

MOTION FOR CONTINUANCE

AND NOW, COMES ONE OF THE DEFENDANTS, JOSEPH R. CHAMBERLIN, AND FILES THE FOLLOWING MOTION FOR CONTINUANCE OF WHICH THE FOLLOWING IS A STATEMENT:

1. ON JULY 23, 2002 DEFENDANT CHAMBERLIN, THROUGH HIS ATTORNEY JOHN D. GIBSON RECEIVED NOTICE OF THE NON-JURY TRIAL LIST SETTING THE ABOVE CASE FOR CALL OF THE LIST ON AUGUST 1, 2002.

2. IN JUNE OF 2002, DEFENDANT CHAMBERLIN DID FILE A CHAPTER 7 BANKRUPTCY PETITION IN FEDERAL COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. ALL DEFENDANTS AND THE PLAINTIFF WERE LISTED AS CREDITORS. NOTICE WAS SENT TO ALL COUNSEL OF RECORD, ALSO.

3. THE PROTHONOTARY AND THE COURT ADMINISTRATOR WERE SENT NOTICE OF THE FILING ALSO. RECEIPT OF NOTICE AS ACKNOWLEDGED BY THE COURT ADMINISTRATOR'S OFFICE ON JULY 23, 2002 IN RESPONSE TO AN INQUIRY BY COUNSEL FOR JOSEPH R. CHAMBERLIN.

4. THE BANKRUPTCY CODE PROVIDES THAT ALL LEGAL PROCEEDINGS AGAINST A FILING PARTY ARE STAYED PENDING THE OUTCOME OF THE BANKRUPTCY PROCEEDING.

5. ATTACHED HERETO AS EXHIBIT A IS A COPY OF THE MEETING OF CREDITORS NOTICE ISSUED BY BANKRUPTCY COURT. SAID NOTICE PROVIDES THAT ALL CREDITORS HAVE UNTIL AT LEAST SEPTEMBER , 2002 TO FILE ANY OBJECTIONS TO A

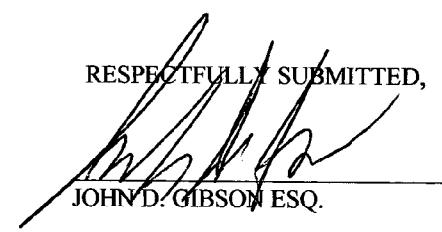
DISCHARGE OF THE DEFENDANT, JOSEPH R. CHAMBERLIN.

6. COUNSEL FOR JOSEPH R. CHAMBERLIN AVERS THAT THE PENDING ACTION IN THIS HONORABLE COURT SHOULD BE CONTINUED UNTIL THE BANKRUPTCY ACTION HAS BEEN COMPLETED. OTHERWISE, THE LEGAL RIGHTS OF DEFENDANT CHAMBERLIN WOULD BE SEVERELY PREJUDICED AND THE PROVISIONS OF THE BANKRUPTCY CODE VIOLATED.

WHEREFORE, JOSEPH R. CHAMBERLIN REQUESTS THIS HONORABLE COURT
TO:

1. GRANT THE MOTION FOR CONTINUANCE AND DIRECT THAT THIS CASE BE SCHEDULED FOR THE NEXT AVAILABLE TRIAL LIST SUBSEQUENT TO THE COMPLETION OF BANKRUPTCY PROCEEDINGS.

RESPECTFULLY SUBMITTED,


JOHN D. GIBSON, ESQ.

UNITED STATES BANKRUPTCY COURT

Western District of Pennsylvania (Pittsburgh)

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 5/28/02.

You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):

Joseph R. Chamberlin

195 Fairfield Manor
Bolivar, PA 15923Case Number:
02-25753-bmSocial Security/Taxpayer ID Nos.:
199-52-4941

Attorney for Debtor(s) (name and address):

John D. Gibson
131 Market Street, Suite 200
Johnstown, PA 15901

Bankruptcy Trustee (name and address):

Lisa M. Swope
219 South Center St.
Law Building
P.O. Box 270
Ebensburg, PA 15931

Telephone number:

Telephone number:

Meeting of Creditors:

Debtor's Photo ID and Social Security Card Must be Presented at the 341 Meeting

Date: 07/10/02 Time: 9:00 am

Location: Holiday Inn, 250 Market Street, Johnstown, PA 15901

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:Deadline to File a Complaint Objecting to Discharge of the Debtor *or* to Determine Dischargeability of Certain Debts:
09/09/02

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Address of the Bankruptcy Clerk's Office:

5414 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

Telephone number: (412) 644-2700

For the Court:

Clerk of the Bankruptcy Court:
Theodore S. HopkinsHours Open:
9:00am-4:30pm Mon-FriDate:
05/30/02

EXPLANATIONS

FORM B9A(9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code §362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code §727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code §523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Photo ID/Delays	For security reasons, you may encounter delays when attending court hearings. You should be prepared to show Photo Identification when attending these proceedings. Please plan accordingly.
...Refer to Other Side For Important Deadlines and Notices...	
A hearing on a reaffirmation agreement will be fixed only upon request by motion. A list of creditors can be obtained from T.J. Mackey's Copy Service, P.O. Box 3752, Pittsburgh, PA 15230. For copies, call (412)644-4874.	

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MANUFACTURERS AND TRADERS
TRUST, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM

PLAINTIFF ;

VS.

WILLIAM AND ROBERTA KINDELMAN,
CLARENCE C. DAISHER AND JOSEPH R.
CHAMBERLIN

DEFENDANTS ;

ORDER OF COURT

AND NOW, THIS DAY OF AUGUST, 2002, THE FOLLOWING ORDER IS
ENTERED:

1. THE MOTION FOR CONTINUANCE IS GRANTED.
2. COUNSEL FOR JOSEPH R. CHAMBERLIN SHALL FILE A COPY OF THE FINAL DECREE ISSUED BY THE BANKRUPTCY COURT, REGARDING THE BANKRUPTCY PROCEEDING, WITH THE COURT ADMINISTRATOR'S OFFICE UPON RECEIPT.
3. THEREAFTER, THE COURT ADMINISTRATOR'S OFFICE SHALL SCHEDULE THIS CASE ON THE NEXT AVAILABLE TRIAL LIST.

BY THE COURT:

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff :
vs. : No. 00-1531-CD :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the Court Order dated March 27, 2002 was served on the following individuals, by United States First Class Mail on March 28, 2002 at the addresses as follows:

Clarence C. Daisher
R. R. 1 Box 74A
Grampian, PA 16838

F. Cortez Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, PA 15901

Peter F. Smith, Esquire
30 South 2nd Street
Clearfield, PA 16830

Dated: 3-28-02



Mark S. Weaver, Esquire
Attorney for Petitioner
Pa Atty. ID #63044
211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830
(814) 768-9696

FILED

APR 01 2002

William A. Shaw
Prothonotary

433

FILED

OCT 24 2002
APR 01 2002

cc
Atty Weaver

cc

William A. Shaw
Prothonotary

MANUFACTURERS and TRADERS
TRUST COMPANY, TRUSTEE UNDER
THE WILL OF JAMES B. GRAHAM,
Deceased

Plaintiff

vs.

No. 00-1531-CD

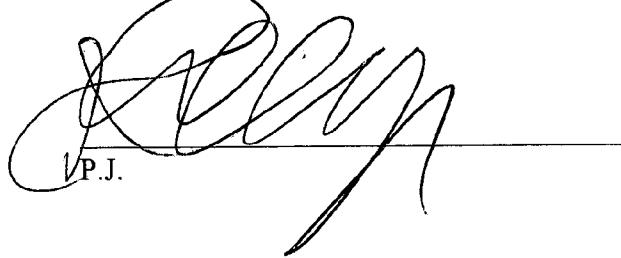
WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants

ORDER

AND NOW, this 27 day of March, 2002, upon consideration of the Petition for Leave to Withdraw filed by Mark S. Weaver, Esquire, counsel for Clarence C. Daisher, and this Court having issued a Rule returnable for written response and no response having been filed within the time set forth therein, it is the ORDER of this Court that Mark S. Weaver, Esquire, be and hereby is granted leave to withdraw as counsel for Clarence C. Daisher.

By the Court:



A handwritten signature in black ink, appearing to read "J. Kelly", is written over a horizontal line. Below the signature, the initials "P.J." are handwritten.

FILED

MAR 27 2002
01038100K
William A. Shaw
Prothonotary

*38

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

MANUFACTURES and TRADERS TRUST
COMPANY, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM, Deceased,

Plaintiff : No. 00-1531-CD

vs

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants :

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Plaintiff in the above captioned matter, hereby certify that I have filed an original **PRAECIPE** with the Clearfield County Prothonotary. I also certify that I sent by U.S. First Class Mail, a copy of the above referenced document on the Defendants' respective counsels on March 18, 2002, at the following addresses:

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Mark S. Weaver, Esquire
Attorney for Clarence C. Daisher
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

John B. Gibson, Esquire
Attorney for Joseph R. Chamberlin
131 Market Street
Suite 200
Johnstown, PA 15901

Date: March 18, 2002


Peter F. Smith, Esquire
Attorney for Plaintiff

FILED

MAR 19 2002

010143140cc

William A. Shaw
Prothonotary
Court of Common Pleas

31

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00-1531-CD
:
vs :
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

PRAECIPE

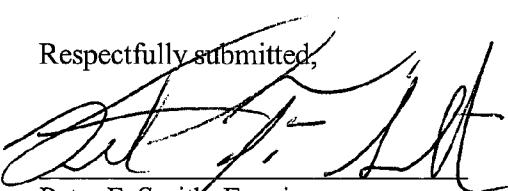
To: William Shaw, Prothonotary

Dear Mr. Shaw:

Please place this case on the non-jury trial list for the next Civil Call. All discovery has been completed. I estimate that one day will be required.

Dated: 3-18-02

Respectfully submitted,


Peter F. Smith, Esquire
Attorney for Plaintiff
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

cc: Robert Kester

Mark S. Weaver, Counsel for Clarence C. Daisher
John D. Gibson, Counsel for Joseph R. Chamberlin
F. Cortez Bell, Counsel for William B. & Roberta S. Kinderman

FILED

MAR 19 2002
010:43 PM CC
William A. Shaw
Prothonotary

Copy to CJA

(30)

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

MANUFACTURERS and TRADERS
TRUST COMPANY, TRUSTEE UNDER
THE WILL OF JAMES B. GRAHAM,
Plaintiffs

vs.

WILLIAM B. KINDERMAN, ROBERTA
A. KINDERMAN, CLARENCE C. DAISHER
and JOSEPH R. CHAMBERLIN,
Defendant

: CIVIL DIVISION
: No. 00-1531-CD
: CERTIFICATE OF SERVICE
: Filed on behalf of:
: Defendant, Clarence C. Daisher
: Counsel of Record for This Party:
: Mark S. Weaver, Esquire
: Pa. I.D. #63044
: 211 ½ East Locust Street
: P.O. Box 170
: Clearfield, PA 16830
: (814) 768-9696

FILED

JAN 29 2002
OB341/KC with Weaver
William A. Shaw
Prothonotary
G. G. S.

29

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

MANUFACTURERS and TRADERS	:	
TRUST COMPANY, TRUSTEE UNDER	:	
THE WILL OF JAMES B. GRAHAM,	:	
Plaintiffs	:	
vs.	:	No. 00-1531-CD
WILLIAM B. KINDERMAN, ROBERTA	:	
A. KINDERMAN, CLARENCE C. DAISHER	:	
and JOSEPH R. CHAMBERLIN,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the Petition for Leave to Withdraw together with Rule dated January 24, 2002 was served on Clarence C. Daisher, Peter F. Smith, Esquire, F. Cortez Bell, Esquire and John D. Gibson, Esquire by United States, First Class Mail on January 29, 2002 at the following addresses:

Clarence C. Daisher
R. R. 1 Box 74A
Grampian, PA 16838

Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

F. Cortez Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, PA 15901

Dated: 1-29-02



Mark S. Weaver, Esquire
Pa I.D. #63044
211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830
(814) 768-9696

MARK S. WEAVER

ATTORNEY AT LAW

212 EAST LOCUST STREET

P. O. BOX 170

SPRINGFIELD, PA 19080

CERT - DUE TO AND CORRECTION

ATTORNEY FOR

WA

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

MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, : CIVIL DIVISION
Plaintiffs :
vs. : No. 00-1531-CD
WILLIAM B. KINDERMAN, ROBERTA : PETITION FOR LEAVE TO
A. KINDERMAN, CLARENCE C. DAISHER : WITHDRAW
and JOSEPH R. CHAMBERLIN, :
Defendants : Filed on behalf of:
: Defendant, Clarence C. Daisher
: Counsel of Record for This Party:
: Mark S. Weaver, Esquire
: Pa. I.D. #63044
: 211 ½ East Locust Street
: P.O. Box 170
: Clearfield, PA 16830
: (814) 768-9696

FILED

JAN 21 2002

William A. Shaw
Prothonotary

28

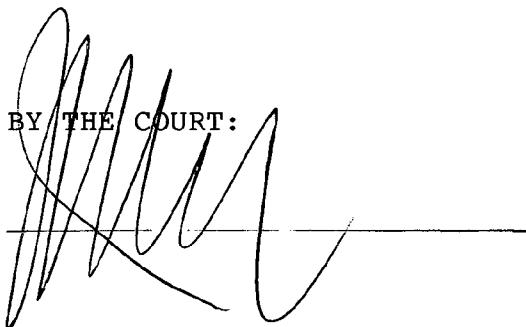
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Plaintiffs :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN, CLARENCE C. DAISHER :
and JOSEPH R. CHAMBERLIN, :
Defendants :
:

RULE

AND NOW, this 24th day of January, 2002, upon consideration of the attached Petition, a rule is hereby issued upon Plaintiff to show cause why the Petition should not be granted. Rule returnable the 13 day of February, 2002, for filing a written response.

FILED
JAN 24 2002
O/3/3/3cc atty
William A. Shaw
Prothonotary
E. Weaver

BY THE COURT:


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

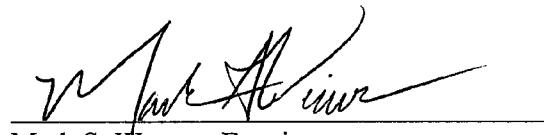
MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Plaintiffs :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN, CLARENCE C. DAISHER :
and JOSEPH R. CHAMBERLIN, :
Defendants :
:

PETITION FOR LEAVE TO WITHDRAW

NOW COMES, Mark S. Weaver, Esquire, attorney of record for Clarence C. Daisher,
Defendant above named, and Petitions your Honorable Court as follows:

1. Your Petitioner is the attorney of record for the above named party.
2. The above-captioned matter involves a number of cross-claims between Defendants and amended pleadings which require your undersigned counsel to respond in a timely fashion.
3. Despite repeated attempts, your undersigned counsel has been unable to contact the Defendant and the Defendant has failed to respond to numerous correspondences.
4. Defendant has also failed to provide payment to the undersigned for legal services already rendered and the prospect for payment for future legal services is questionable.
5. This matter is currently in the discovery phase and may proceed to trial in the Spring term of Court this year and your Petitioner cannot continue to represent the Defendant when he does not communicate with him or provide payment for legal services.

WHEREFORE, Petitioner respectfully requests that this Court grant him leave to withdraw as attorney for Clarence C. Daisher.



Mark S. Weaver
Attorney for Defendant

FILED

JAN 21 2002

0111364 cc at the wave,
William A. Shaw
Prothonotary

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

MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM :
Plaintiffs : No. 00-1531-CD
vs. :
: WILLIAM B. KINDEMAN, ROBERTA :
A. KINDEMAN, CLARENCE C. :
DAISHER and JOSEPH R. CHAMBERLIN :
:

ORDER

AND NOW, this 4th day of January, 2002, this being the date and time for the Rule
Returnable on Plaintiff's Petition to Amend the Complaint, it is,

ORDERED, that said Petition is granted.

By the Court,

John K. Reilly, Jr.
President Judge

FILED

JAN 04 2002
01/24/2015ccatty.
William A. Shaw Prothonotary Smith
G
JKT

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

MANUFACTURERS and TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM, Deceased,
Plaintiff

vs.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN, CLARENCE C. DAISHER
and JOSEPH R. CHAMBERLIN,
Defendants

ANSWER TO PLAINTIFF'S PETITION TO
AMEND THE COMPLAINT

FILED

DEC 31 2001

① 3/20/01
Kathy Bell
William A. Shaw
Prothonotary
EAS

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

MANUFACTURERS AND TRADERS TRUST : NO. 00-1531-CD
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff : Type of Pleading:
V. : Answer to Plaintiff's
: Petition to Amend the
: Complaint
: Filed on Behalf of:
WILLIAM B. KINDERMAN, ROBERTA : William B. Kinderman and
A. KINDERMAN, CLARENCE C. : Roberta A. Kinderman,
DAISHER and JOSEPH R. : Defendants
CHAMBERLIN, :
Defendants :
: 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

DEC 31 2001

**William A. Shaw
Prothonotary**

100

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN :
CLARENCE C. DAISHER, and :
JOSEPH R. CHAMBERLIN, :
Defendants:

ANSWER TO PLAINTIFF'S PETITION TO AMEND THE COMPLAINT

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, husband and wife, who, by and through their attorney, F. Cortez Bell, III, Esquire, respectfully set forth and file the Defendants' Answer to Plaintiff's Petition to Amend the Complaint and in support thereof aver as follows:

1. Paragraph 1 of Plaintiff's Petition to Amend the Complaint is admitted in part and denied in part. It is admitted that the Plaintiff initiated this action on December 8, 2000 in order to recover monetary damages alleged to be owed the Plaintiff. It would be specifically denied that the Defendants herein in any fashion were responsible for any unlawful removal of timber from the Plaintiff's real estate in Penn Township, Clearfield County nor would it be admitted that any timber was unlawfully removed. Strict proof of the denied averments of the Plaintiff's Petition would be demanded at time of trial or hearing in this matter.

2. Paragraph 2 of the Plaintiff's Petition to Amend the Complaint is admitted.

3. Paragraph 3 of the Plaintiff's Petition to Amend the Complaint is admitted.

4. Paragraph 4 of the Plaintiff's Petition to Amend the Complaint is admitted.

5. Paragraph 3 of the Plaintiff's Petition would be admitted. (Within Plaintiff's Petition there is a misnumbering such that Paragraph 5 is numbered as Paragraph 3 and that misnumbering continues throughout the balance of the Petition).

6. Paragraph 4 of the Plaintiff's Petition is admitted.

7. Paragraph 5 of the Plaintiff's Petition is admitted to the extent stated.

8. Paragraph 6 of the Plaintiff's Petition is admitted.

9. Paragraph 7 of the Plaintiff's Petition would be admitted in part and denied in part. It would be admitted that the Defendant, William B. Kinderman admitted that he did not have any knowledge of any trespass upon the Plaintiff's property during the times relevant to this case. It would further be admitted that he indicated pursuant to his written contracts that he had received royalty payments from the Defendants Daisher and Chamberlin for timber cut from his premises. It would further be admitted that Defendants Chamberlin and Daisher still owe Defendants Kinderman sums of money associated with regard to the contracts and monies due thereunder. It would be specifically denied that the Defendants Kinderman were paid any royalties for timber cut by the

Defendants Daisher and/or Chamberlin for any timber unlawfully removed from the Plaintiff's property. Strict proof of the denied averments of Paragraph 7 of the Plaintiff's Petition would be demanded at time of trial or hearing in this matter.

10. Paragraph 8 of the Plaintiff's Petition to Amend the Complaint is admitted.

11. Paragraph 9 of the Plaintiff's Petition would be denied. It would be specifically denied that there is any basis for the Plaintiff to claim that the Defendants Kinderman were paid any royalties by Defendants Chamberlin and/or Daisher for timber that was harvested from the Plaintiff's property. Strict proof of the denied averments of Paragraph 9 of the Plaintiff's Petition would be demanded at time of trial or hearing in this matter. It would be further averred by the Defendants Kinderman that any such averment does not act as a basis to allow the Plaintiff to amend its Complaint in this matter.

12. Paragraph 10 of the Plaintiff's Petition would be denied. It would be specifically denied that the Defendants Kinderman received any payments from the Defendant Chamberlin and/or Daisher and therefore there has been no unjust enrichment to the Defendants Kinderman nor has there been a basis for the amending of the Plaintiff's Complaint.

WHEREFORE, the Defendants, William B. Kinderman and Roberta A. Kinderman, respectfully request that your Honorable Court deny the Petition of the Plaintiff to Amend the Complaint

which has been filed in this matter.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

VERIFICATION

I, F. CORTEZ BELL, III, ESQUIRE, verify that the statements made within the foregoing Answer to Plaintiff's Petition to Amend the Complaint are true and correct to the best of my knowledge, information and belief based upon the facts supplied to me by the Defendants herein as well as the documents which have been attached as Exhibits.

This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 12-31-2001

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

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN :
CLARENCE C. DAISHER, and :
JOSEPH R. CHAMBERLIN, :
Defendants:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to Plaintiff's Petition to Amend the Complaint filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

Mark S. Weaver, Esquire
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

John D. Gibson, Esquire
131 Market Street
Suite 200
Johnstown, PA 15901

F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

DATED: December 31, 2001

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

MANUFACTURES and TRADERS TRUST, :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
: :

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have served true and correct copies of a **Petition to Amend the Complaint with Rule Returnable** by U. S. First Class Mail on the following:

F. Cortez Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

FILED

DEC 19 2001

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

William A. Shaw
Prothonotary

John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, PA 15901

Respectfully submitted,



Peter F. Smith
Attorney for Plaintiff

Date: December 17, 2001



FILED

01/03/2001
DEC 19 2001

no
cc
RECD

William A. Shaw
Prothonotary

PETER F. SMITH

ATTORNEY
CLEARFIELD, PA. 16830

814-765-5595

CERTIFIED TRUE AND CORRECT COPY

LPX

ATTORNEY FOR _____

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

MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM :
Plaintiffs : No. 00-1531-CD
vs. :
: Type of Case:
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN, CLARENCE C. :
DAISHER and JOSEPH R. CHAMBERLIN :
Defendants :
: Type of Pleading:
: PLAINTIFF'S PETITION TO
: AMEND THE COMPLAINT
: Filed on Behalf of:
: PLAINTIFF
: COUNSEL FOR PLAINTIFF:
: Peter F. Smith, Esquire
: Supreme Court No. 34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595
: COUNSEL FOR DEFENDANTS:
: F. Cortez Bell, Esquire
: for the Kindermans
: 318 East Locust Street
: Clearfield, PA 16830
: (814) 765-5537
: Mark S. Weaver, Esquire
: for Mr. Daisher
: 211 ½ East Locust Street
: P.O. Box 170
: Clearfield, PA 16830
: (814) 765-9696
: John D. Gibson, Esquire
: for Mr. Chamberlin
: 131 Market Street, Suite 200
: Johnstown, PA 15901
: (814) 535-3515

FILED

DEC 07 2001
0/315/wm
William A. Shaw
Prothonotary
4 cent to Atty
GRJ

#24

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

MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM :
Plaintiffs : No. 00-1531-CD
vs. :
: WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN, CLARENCE C. :
DAISHER and JOSEPH R. CHAMBERLIN :
Defendant :
:

RULE RETURNABLE

NOW, this 10th day of December, 2001, upon consideration of the Plaintiff's Motion for Order Directing Plaintiff's Petition to Amend the Complaint, it is entered upon William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher and Joseph R. Chamberlin, Defendants herein and directed to William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher and Joseph R. Chamberlin to show cause, if any, why said Motion should not be granted.

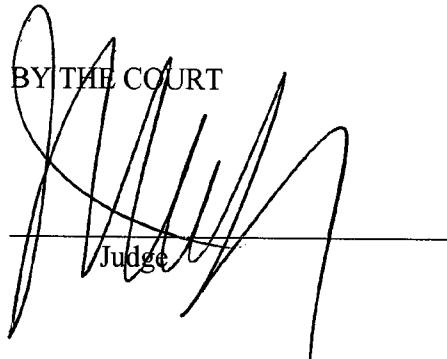
Written response to this Motion is due by the 31st day of December, 2001.

This Order shall be heard in Court on the 4th day of January, 2002 at 2:30 P.M.

FILED

DEC 10 2001
0130614CC att
William A. Shaw
Prothonotary Smith



BY THE COURT

Judge

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

MANUFACTURES and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM :
Plaintiffs : No. 00-1531-CD
vs. :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN, CLARENCE C. :
DAISHER and JOSEPH R. CHAMBERLIN :
:

PLAINTIFF'S PETITION TO AMEND THE COMPLAINT

COMES NOW, the Plaintiff, by its attorney, Peter F. Smith, who pursuant to PARCP 1033, petitions this court to grant Plaintiff permission to amend its Complaint and in support thereof states:

1. Plaintiff initiated this action on December 8, 2000 to recover monetary damages for timber that was unlawfully removed from the Plaintiff's real estate in Penn Township, Clearfield County, PA.
2. All Defendants are represented by counsel and have answered the Complaint.
3. None of the Defendants has initiated discovery, but counsel for Defendant Chamberlin advised at deposition that he intends to conduct discovery, and it is anticipated that the other Defendants will too.
4. Consequently, the grant of this Petition will not delay the proceedings, and Plaintiff anticipates that this case will be ready to list for trial in the spring of 2002.
3. Plaintiff took the depositions of all Defendants except Roberta A. Kinderman on June 21, 2001.

4. During the course of his deposition, Defendant William B. Kinderman, did acknowledge that he had entered separate contracts with Defendants Clarence C. Daisher and Joseph R. Chamberlin to cut, remove and sell timber from an adjoining property which the Kindermans own in Bell Township, Clearfield County, PA.

5. Plaintiff has averred in its Complaint that one or all of the Defendants, either jointly or individually, crossed the line dividing the Kinderman's property from Plaintiff's and unlawfully removed Plaintiff's timber.

6. The Defendants have denied those allegations.

7. Specifically, Bill Kinderman also denied any knowledge of the trespass upon Plaintiff's property during times relevant to this case. However, he did state that he received 50% of royalties for timber cut by Defendants Daisher and Chamberlin.

8. Defendant Clarence C. Daisher stated under oath during his deposition that Defendant Joseph R. Chamberlin admitted to him that Chamberlin crossed the boundary in question onto Plaintiff's property and removed timber during the course of Chamberlin's operations on the Kinderman property.

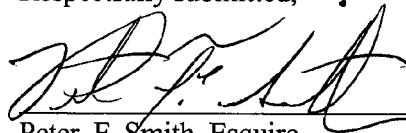
9. Plaintiff therefore believes and avers that Defendant Kinderman was paid royalties by Defendant Chamberlin and/or Daisher for timber that was actually harvested from the Plaintiff's property.

10. Plaintiff avers that these payments unjustly enrich the Defendants, William B. Kinderman and Roberta A. Kinderman because they were compensated for timber that did not belong to them.

WHEREFORE, Plaintiff prays this honorable Court to enter an Order permitting it to amend its Complaint to add an additional count against Defendant, William B. Kinderman and Roberta A.

Kinderman stating a cause of action against them for unjust enrichment. A true and correct copy of the Complaint with the proposed amendment is attached hereto and incorporated herein by reference as Exhibit A.

Respectfully submitted,



Peter F. Smith, Esquire

Dated: 12-7-01

AFFIDAVIT

STATE OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

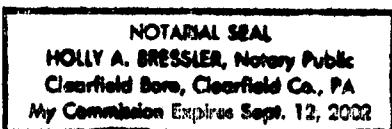
ROBERT L. KESTER, being duly sworn according to law, deposes and says that he is the Agent For The Graham Estate., and, as such, is duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Plaintiff's Petition to Amend the Complaint are true and correct to the best of his knowledge, information and belief.



Robert L. Kester
Agent for the Graham Estate

SWORN TO AND SUBSCRIBED
before me this 7th
day of Dec., 2001.

Holly A. Bressler
Notary Public



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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : NO. 00-1531-CD
Deceased :
: TYPE OF CASE:
vs : Civil
: :
WILLIAM B. KINDELMAN, :
ROBERTA A. KINDELMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
: TYPE OF PLEADING:
: Second Amended Complaint
: :
: FILED ON BEHALF OF:
: Plaintiff
: :
: COUNSEL FOR THIS PARTY:
: Peter F. Smith, Esquire
: Supreme Court I.D. #34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595
: :
: :
: COUNSEL FOR DEFENDANTS:
: F. Cortez Bell, Esquire
: for the Kindermans
: 318 East Locust Street
: Clearfield, PA 16830
: (814) 765-5537
: :
: Mark S. Weaver, Esquire
: for Mr. Daisher
: 211 ½ East Locust Street
: P.O. Box 170
: Clearfield, PA 16830
: (814) 765-9696
: :
: John D. Gibson, Esquire
: for Mr. Chamberlin
: 131 Market Street, Suite 200
: Johnstown, PA 15901
: (814) 535-3515

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00-1351-CD
:
vs :
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
NOTICE TO DEFEND

TO: William B. Kinderman
Roberta A. Kinderman
Clarence C. Daisher
Joseph R. Chamberlin

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

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

Clearfield County Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641 ext. 5982

Peter F. Smith
Attorney for Plaintiff

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Corner of Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, ext. 5982

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00-1351-CD
vs :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :

COMPLAINT

COMES NOW, Manufactures and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased, by its Attorney Peter F. Smith, which states in support of this Complaint:

1. The name of the Plaintiff, is Manufactures and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased. The Plaintiff's principle office at 101 West Third Street, Williamsport, Pennsylvania, 17701, and shall hereinafter be referred to as the "GRAHAM ESTATE."

2. The names of the first Defendants are William B. Kinderman and Roberta A. Kinderman, who are believed to be husband and wife, and who reside at RD 2, Rockton, Pennsylvania, 15856, and who shall hereinafter be referred to as the "KINDERMANS."

3. The third Defendant is Clarence C. Daisher, who resides at Box 243, Luthersburg, Pennsylvania, 15848, who shall hereinafter be referred to as "MR. DAISHER."

4. The fourth Defendant is Joseph R. Chamberlin who is said to reside at RR 1, Box 294A-12, Keystone Road, Brockport, Elk County, Pennsylvania, 15823.

5. The GRAHAM ESTATE owns a wooded parcel in Penn Township, Clearfield County, Pennsylvania, which is identified by Clearfield County Tax Map Number 125-E9-14 and to which the Plaintiff's decedent took title by deed in Clearfield County Deed Book 360, Page 448.

6. The KINDERMANS own a property which adjoins the property of the GRAHAM ESTATE described in the preceding paragraph. The KINDERMAN property is in Bloom Township, and they took title to it by deed recorded at Clearfield County Instrument Number 199921180.

7. For at least the preceding eleven (11) months the KINDERMANS, MR. DAISHER, MR. CHAMBERLIN and/or others acting through them or on their behalf crossed the boundary line separating the KINDERMAN property from the GRAHAM ESTATE property and cut timber on the GRAHAM ESTATE property. Those individuals then took and sold the timber and kept the proceeds from said sales.

8. Neither the KINDERMANS, MR. DAISHER, MR. CHAMBERLIN nor any others acting through them or on their behalf had or have a lease or other permission from the GRAHAM ESTATE to enter the GRAHAM ESTATE's property and cut timber.

9. The Defendants' entry on the GRAHAM ESTATE property and taking of timber from it constitute a trespass under Pennsylvania Law which makes them liable to the GRAHAM ESTATE for monetary

damages.

10. The GRAHAM ESTATE attaches to this Complaint and incorporates in it by reference a true and correct survey map prepared by David L. Thorp, P.L.S., which depicts the boundary between the KINDERMAN property and the GRAHAM ESTATE property. This map also has shaded the approximate area from which the Defendants took timber. Said survey map is identified as Plaintiff's Exhibit A.

11. The GRAHAM ESTATE did not discover this trespass until the beginning of November 1999.

12. On or about June 21, 2000, Robert L. Kester, who is an agent for the GRAHAM ESTATE, contacted the Defendants.

13. Mr. Kester advised the Defendants that they were trespassing upon the GRAHAM ESTATE property and directed them to withdraw from the property, to cease entering it and taking timber from it and to compensate the GRAHAM ESTATE for all timber taken.

14. The Defendants disregarded Mr. Kester's directions. They have continued to cut and take away timber from the GRAHAM ESTATE property and they have refused to compensate the GRAHAM ESTATE for timber so taken.

15. The GRAHAM ESTATE estimates that the fair market value of the timber taken by the Defendants from the GRAHAM ESTATE property exceeds \$30,000.00.

16. The Defendants or those acting under or through them caused additional damages to the PREMISES because they did not log in a proper and workmanlike manner.

17. Specifically, the Defendants or those acting under or through them:

- A. Defendants have caused stream erosion and sedimentation by illegal stream crossings with equipment and dropping logs and tops in streams on the PREMISES;
- B. Defendants damaged younger trees left standing by dropping cut trees on them;
- C. Defendants created hazardous conditions by leaving dead falls of cut trees and branches hanging in existing trees;
- D. Defendants failed to perform any clean-up whatsoever which left the property in an unsightly condition and creates a future fire hazard;
- E. Defendants did not reseed skid trails; and,
- F. Defendants did not block skid trails or their access into the property which leaves it open for additional trespass.

18. The GRAHAM ESTATE estimates that it will be required to expend an additional \$5,000.00 to correct these additional damages.

WHEREFORE, the GRAHAM ESTATE prays that this Honorable Court to enter judgment in its favor and against the Defendants in an excess of \$35,000.00 together with interest and costs.

COUNT TWO

19. The foregoing averment of paragraphs 1 through 18 are incorporated herein by reference as those set forth in full.

20. Defendants Clarence C. Daisher and Joseph R. Chamberlin have stated in depositions that they paid royalties to Defendants William B. Kinderman and Roberta A. Kinderman for timber harvested.

21. Plaintiff believes and avers that Defendants Daisher and Chamberlin, either jointly or severally, either individually or with the assistance of employees, crossed the boundary between the Kinderman property and Plaintiff's property and improperly and unlawfully removed timber from the Plaintiff's property.

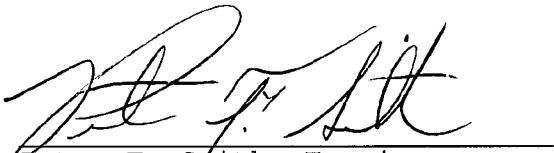
22. Plaintiff believes and therefore avers that proceeds or royalties from the sale of the timber which Defendants Daisher and/or Chamberlin unlawfully and improperly removed from the Plaintiff's property were paid to the Defendants Kindermans.

23. Those payments unjustly enriched the Defendants Kindermans because they did not own the timber sold.

24. Plaintiff estimates in paragraph 15 above that the fair market value of the timber taken by the Defendants from its property exceeds \$30,000.00 and in paragraph 18 that other damages to its premises caused by the logging operations are in excess of \$5,000.00.

WHEREFORE, Plaintiff prays this honorable Court to enter judgment in its favor and against the Defendants William B. Kinderman and Roberta A. Kinderman in excess of \$35,000.00 together with interest and costs.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Dated: 12-7-01

AFFIDAVIT

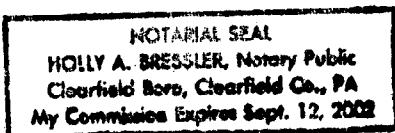
STATE OF PENNSYLVANIA :
:SS
COUNTY OF CLEARFIELD :

Robert L. Kester, being duly sworn according to law, depose and say that he is the Personal Representative of the James B. Graham Estate and the information contained in the foregoing Second Amended Complaint is true, correct and complete to the best of his information, knowledge and belief.

Robert L. Kester
Robert L. Kester

SWORN TO AND SUBSCRIBED
before me this 7th day
of Dec., 2001.

Harry A. Bressler
Notary Public



JAMES B. GRAHAM, HEIRS

DB 360/448

TIMBER ENCROACHMENT
APPROXIMATELY 2 ACRES

BLOOM TOWNSHIP
PENN TOWNSHIP

TIMBER ROAD
TINER ENCROACHMENT
APPROXIMATELY 19 ACRES

JAMES B. GRAHAM, HEIRS

DB 360/448

WILLIAM B. KINDERMAN
AND
ROBERTA A. KINDERMAN
INSTRUMENT #123/456

C. THOMAS WOODEL
INSTRUMENT #200/1893



LEGEND

-----	PROPERTY LINE
=====	LIMIT OF TIMBER ENCROACHMENT
-----	REFERENCE LINE
-----	TOWNSHIP BOUNDARY
IPF	IRON PIPE FOUND
DB 123/456	DEED BOOK 123 PAGE 456

JAMES B. GRAHAM, HEIRS
CURWENSVILLE, PENNSYLVANIA
MAP SHOWING TIMBER ENCROACHMENT
BLOOM AND PENN TOWNSHIP'S
CLEARFIELD COUNTY

0' 200' 400' 600'

3/4" IPF
WITNESSED
SEPTEMBER 1, 2000
FIELD BOOK 7D PAGE 57
TAX MAP #125-09-14
FILE NO. 2102B



DAVID J. THORP, PLS
NO. SU-37822-E
CURRY & ASSOCIATES
207 SOUTH THIRD STREET
(614) 765-7236

PLAINTIFF'S EXHIBIT "A"

4/10/01
4/10/01
4/10/01
FILED
SEP 21 2001

William A. Shaw
Prothonotary

*Atty
EAS*
PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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

MANUFACTURES and TRADERS
TRUST COMPANY, TRUSTEE UNDER
THE WILL OF JAMES B. GRAHAM
Plaintiffs

No. 00-1531-CD

vs.
WILLIAM B. KINDERMAN, ROBERTA
A. KINDERMAN, CLARENCE C.
DAISHER and JOSEPH R. CHAMBERLIN
Defendants

Type of Case:
CIVIL

Type of Pleading:
**ANSWER TO DEFENDANT
KINDELMANS' NEW MATTER**

Filed on Behalf of:
PLAINTIFF

COUNSEL FOR PLAINTIFF:
Peter F. Smith, Esquire
Supreme Court No. 34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

COUNSEL FOR DEFENDANTS:
F. Cortez Bell, Esquire
For The Kindermans
318 East Locust Street
Clearfield, PA 16830
(814) 765-5537

Mark S. Weaver, Esquire
For Mr. Daisher
211 ½ East Locust Street
P.O. Box 170
Clearfield, PA 16830
(814) 768-9696

John D. Gibson, Esquire
For Mr. Chamberlin
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3515

FILED

1

SEP 21 2001

William A. Shaw
Prothonotary

23

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

MANUFACTURES and TRADERS	:
TRUST COMPANY, TRUSTEE UNDER	:
THE WILL OF JAMES B. GRAHAM	:
Plaintiffs	No. 00-1531-CD
vs.	:
WILLIAM B. KINDERMAN, ROBERTA	:
A. KINDERMAN, CLARENCE C.	:
DAISHER and JOSEPH R. CHAMBERLIN	:
Defendants	:

***PLAINTIFF'S ANSWER TO DEFENDANT KINDERMAN'S
NEW MATTER***

COMES NOW, the Defendant, by its attorney, Peter F. Smith, who respectfully answers the Kindermans' New Matter as follows:

19. Paragraphs 1 through 18 of the complaint are incorporated herein as those set forth in full.
20. Admitted.
21. Admitted.
22. Admitted.
23. Neither admitted nor denied because the averment is beyond the scope of Plaintiff's acknowledge and information.
24. Admitted.
25. Admitted.

26. Admitted.

27. Neither admitted nor denied because the averment is beyond the scope of Plaintiff's acknowledge, but it is further averred that notwithstanding the blazes, the Defendants, either individually or jointly, went beyond the boundary onto the Plaintiff's real estate.

28. Admitted.

29. Neither admitted nor denied because the averment is beyond the scope of Plaintiff's acknowledge and information, but it is further averred that notwithstanding the blazes, the Defendants, either individually or jointly, went beyond the boundary on to the Plaintiff's real estate.

30. Denied, the Kindermans either knew or reasonability should have known that the other Defendants, either jointly or individually, trespassed upon Plaintiff's property and took timber from it, and Kinderman's where unjustly enriched from the proceeds from the sale of timber taken from the Plaintiff's property.

31. Denied, for the reason set forth in 30 above.

32. Denied. The other Defendants have stated under oath that they paid fifty (50) percent of all sales proceeds from timber harvested under their contracts to the Kindermans. Plaintiff's believes and averred that this would include proceeds from timber taken from Plaintiff's property.

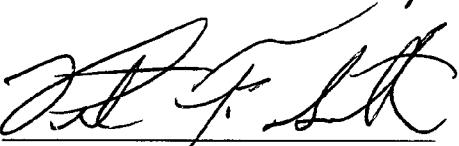
WHEREFORE, Plaintiff prays that judgment be entered against the Defendants, jointly and severally, in an amount exceeding \$30,000.00 dollars.

33. - 36. These averments assert a crossclaim between the Defendants which does not directly involve the Plaintiff. Therefore the Plaintiff makes no answer.

37. - 41. The Defendants Kindermans' claim for counsel fees and costs was stricken by order entered September 7, 2001. Therefore Plaintiff makes no answer to those averments but denies that the Defendants have or can prove facts which would entitle them to recover counsel fees and costs under Pennsylvania Statute and case law.

WHEREFORE, Plaintiffs praises this Honorable Court to enter judgment in its favor and against the Defendants, jointly and severally in an amount exceeding \$30,000.00 dollars.

Respectfully submitted,



Peter F. Smith, Esquire

Dated: 9-18-01

AFFIDAVIT

STATE OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

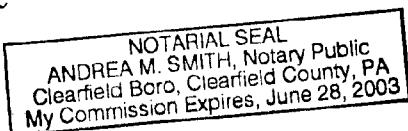
ROBERT L. KESTER, being duly sworn according to law, deposes and says that he is the Agent For The Graham Estate, and, as such, is duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Answer To Defendant Kinderman's New Matter are true and correct to the best of his knowledge, information and belief.

Robert L Kester

Robert L. Kester,
Agent for the Graham Estate

SWORN TO AND SUBSCRIBED
before me this 21st
day of September, 2001.

Andrea M. Smith
Notary Public



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

MANUFACTURES and TRADERS TRUST, :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff : 1531
vs. : No. 00-~~1351~~ CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I sent by First Class Mail, Postage, a true and correct copies of Plaintiff's Answers to defend Kinderman's New Matter to the following:

F. Cortez Bell II
BELL SILBERBLATT and WOOD
318 East Locust Street
Clearfield, PA 16830

John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, Pennsylvania 15901

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

Respectfully submitted,



Peter F. Smith
Attorney for Plaintiff

Date: 9-20-01

FILED

SEP 21 2001

William A. Shaw
Prothonotary

#22

FILED
02-54-04
SEP 21 2001

William A. Shaw
Prothonotary



*no
cc*

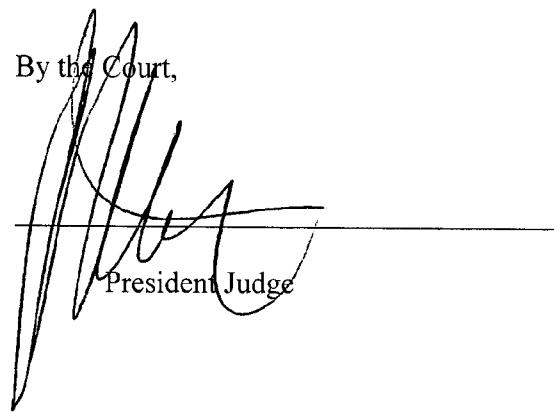
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM :
Deceased :
: -VS- : No. 00 - 1531 - CD
: :
WILLIAM B. KINDERMAN, ROBERTA :
A. KINDERMAN, CLARENCE C. :
DAISHER and JOSEPH R. CHAMBERLIN :

ORDER

NOW, this 7th day of September, 2001, following argument and briefs into Preliminary Objections filed on behalf of Plaintiff above-named, it is the ORDER of this Court that said Objections be and are hereby sustained and Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken without prejudice.

By the Court,

President Judge

FILED

SEP 07 2001

William A. Shaw
Prothonotary

21

FD 1cc Bell
134982 1cc Weavers
SEP 7 2001 1cc Gibson
William A. Sherry 1cc P. Smith
Proctorary

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

MANUFACTURES and TRADERS TRUST
COMPANY, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM, Deceased,
Plaintiff

1531
No. 00-1354-CD

vs

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,
Defendants

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Plaintiff in the above captioned matter, hereby certify that I have filed an original **PLAINTIFF'S BRIEF IN SUPPORT OF ITS PRELIMINARY OBJECTIONS** with the Court Administrator of Clearfield County. I also certify that I sent by U.S. First Class Mail, a certified copy of the above referenced document on the Defendants or their respective counsel on July 30, 2001, at the following addresses:

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Mark S. Weaver, Esquire
Attorney for Clarence C. Daisher
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

FILED

John B. Gibson, Esquire
Attorney for Joseph R. Chamberlin
131 Market Street
Suite 200
Johnstown, PA 15901

JUL 31 2001

o 10:00 AM

William A. Shaw

Prothonotary

no c/c

Date: July 30, 2001


Peter F. Smith, Esquire
Attorney for Plaintiff

*20

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS and TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM, DECEASED,

Plaintiff

VS.

KINDERMAN, DAISHER AND CHAMBERLIN,

Defendants

REPLY TO NEW MATTER OF
KINDERMAN

83 1/2
NO C/1
Prothonotary
William A. Shaw
M/100/MS
JUN 20 2001

FILED

TELEPHONE: (814) 535-9513
FAX: (814) 535-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiff *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN

Defendants *

CIVIL ACTION *

No. 00-1531-CD *

REPLY TO NEW MATTER OF DEFENDANTS
KINDERMAN PURSUANT TO
Pa. R.C.P. Rule 2252(d)

* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
* Johnstown, PA 15901
* (814) 535-3513
* Counsel for Joseph R. Chamberlin

* PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
* Clearfield, PA 16830
* (814) 765-5595
* Counsel for Plaintiff

* MARK S. WEAVER, ESQUIRE
211½ E. Locust St., P.O. Box 170
* Clearfield, PA 16830
* (814) 768-9696
* Counsel for Clarence C. Daisher

* F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
* Clearfield, PA 16830
* (814) 765-5537
* Counsel for William & Roberta Kinderman

FILED

JUN 20 2001

William A. Shaw
Prothonotary

#19

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased * CIVIL ACTION
*
Plaintiff *
* No. 00-1531-CD
* VS.
*
WILLIAM B. KINDERMAN, *
ROBERTA A. KINDERMAN, *
CLARENCE C. DAISHER and *
JOSEPH R. CHAMBERLIN, *
*
Defendants *
*
*

REPLY TO NEW MATTER

REPLY TO NEW MATTER OF DEFENDANTS, WILLIAM B. KINDERMAN AND
ROBERTA A. KINDERMAN PURSUANT TO PA. R.C.P. RULE 2252(d)

AND NOW, comes the Defendant, Joseph R. Chamberlin, and files the following Reply to New Matter pursuant to Pa. R.C.P. Rule 2252(d), filed by William B. Kinderman and Roberta A. Kinderman:

1. In response to Paragraphs 1 through 18 of Kindermans' New Matter, the Defendant, Joseph R. Chamberlin, would incorporate by reference his Answer and New Matter filed previously of record in this matter.
2. In response to Paragraphs 19 through 24 of Defendant Kindermans' New Matter, the Defendant, Joseph R. Chamberlin, states that after reasonable investigation, the Defendant Chamberlin is unable to form a belief as to the truth or falsity of the allegations set forth in Paragraphs 19 through 24 and therefore said allegations are denied and strict proof is demanded at the time of trial.
3. The allegations of Paragraphs 25, 26 and 27 are admitted to the extent that the Defendant Chamberlin was shown survey markings. However, Defendant Chamberlin saw no posts in the property. The remaining allegations of the said Paragraphs are admitted.
4. As to the allegations of Paragraphs 30 and 31, the Defendant Chamberlin, after reasonable investigation is without sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in those paragraphs of New Matter. Said allegations are therefore denied and strict proof is demanded at the time of trial.

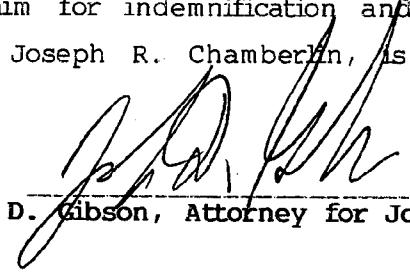
5. The allegations of Paragraph 32 are denied as they relate specifically to the Defendant, Joseph R. Chamberlin. To the extent that said paragraph directly or impliedly sets forth that the Defendant removed timber from the Graham Estate, said allegations are denied. On the contrary, the Defendant Chamberlin performed all obligations pursuant to an agreement referred to in Defendant's Answer and New Matter incorporated herein by reference.

6. The allegations set forth in Paragraph 34 of Defendant Kindermans' New Matter are denied to the extent that said allegations are a conclusion of law and a response need not be made. In the event a determination is made that a response is necessary, it is specifically denied that Defendants Kinderman can assert a cross claim against the Defendant, Joseph R. Chamberlin, for contribution and/or indemnification since Defendant Chamberlin is not liable to the Plaintiffs or any other party in this proceeding.

7. The allegations of Paragraph 35 are denied. On the contrary, the Plaintiff did not suffer damages as a result of any conduct of Joseph R. Chamberlin as set forth in the Plaintiff's Amended Complaint. In further response, the Defendant, Joseph R. Chamberlin, incorporates by reference the contents of his Answer and New Matter filed previously of record.

8. The allegations of Paragraph 36 are denied. On the contrary, the Defendant, Joseph R. Chamberlin, is not liable to the Plaintiff or any other party for any conduct alleged in the Plaintiff's Amended Complaint or any other pleading in this proceeding. On the contrary, at all times material, Joseph R. Chamberlin performed services pursuant to a written contract for the removal of timber and did not at any time remove timber not subject to that contract. As a result, the Defendant Chamberlin has not engaged in any conduct that would justify an award against him by any party. As a result, the Defendants' claim for indemnification/contribution while being a legal conclusion, is not justified since the Defendant is not liable to any party for damages.

WHEREFORE, the Defendant, Joseph R. Chamberlin, would request that the Defendants' Kindermans claim for indemnification and/or contribution be dismissed since the Defendant, Joseph R. Chamberlin, is not liable for any damages to any party.


John D. Gibson, Attorney for Joseph R. Chamberlin

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

Joseph R. Chamberlin
Joseph R. Chamberlin



JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased * CIVIL ACTION

Plaintiff *

VS. *

WILLIAM B. KINDERMAN, *
ROBERTA A. KINDERMAN, *
CLARENCE C. DAISHER and *
JOSEPH R. CHAMBERLIN, *

Defendants *

No. 00-1531-CD *

REPLY TO NEW MATTER

CERTIFICATE OF SERVICE

I, John D. Gibson, attorney for Joseph R. Chamberlin, do hereby certify that on the 19th day of June, 2001. I served a true and correct copy of the Reply to New Matter of Kinderman by ordinary mail, postage prepaid to the individuals listed below:

PETER F. SMITH, ESQUIRE
30 S. Second St., P.O. Box 130
Clearfield, PA 16830
Counsel for Plaintiff

MARK S. WEAVER, ESQUIRE
211½ E. Locust St., P.O. Box 170
Clearfield, PA 16830
Counsel for Clarence C. Daisher

F. CORTEZ BELL, III, ESQUIRE
318 E. Locust ST., P.O. Box 670
Clearfield, PA 16830
Counsel for William & Roberta Kinderman



JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
FAX (814-535-3167
Attorney for Joseph R. Chamberlin

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

MANUFACTURERS and TRADERS TRUST:

COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased : *1531*
Plaintiff : No. 00-1351-CD

:
vs :
:

WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Plaintiff in the above captioned matter, hereby certify that I sent by U.S. First Class Mail a true and correct copy of Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim on the Attorneys of record for the Defendants on May 30, 2001, at the following addresses:

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Mark S. Weaver, Esquire
Attorney for Clarence C. Daisher
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

John B. Gibson, Esquire
Attorney for Joseph R. Chamberlin
131 Market Street
Suite 200
Johnstown, PA 15901

FILED
MAY 31 2001
010100 NOCC
William A. Shaw
Prothonotary

Date: May 31, 2001


Peter F. Smith, Attorney for Plaintiff

#18

FILED

MAY 30 2001

William A. Shaw
Prothonotary

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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

MANUFACTURERS and TRADERS TRUST:

COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : No. 00-1531-CD

Deceased :
:

vs :
:

WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

TYPE OF CASE:
Civil

TYPE OF PLEADING:
**Preliminary Objections to Defendant
Kindermans' Counterclaim**

FILED ON BEHALF OF:
Plaintiff

COUNSEL FOR THIS PARTY:
**Peter F. Smith, Esquire
Supreme Court I.D. #34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595**

FILED

MAY 30 2001

William A. Shaw
Prothonotary

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

MANUFACTURERS and TRADERS TRUST:

COMPANY, TRUSTEE UNDER THE	:
WILL OF JAMES B. GRAHAM,	:
Deceased	:
Plaintiff	:
vs	:
WILLIAM B. KINDERMAN,	:
ROBERTA A. KINDERMAN,	:
CLARENCE C. DAISHER and	:
JOSEPH R. CHAMBERLIN,	:
Defendants	:

***PRELIMINARY OBJECTIONS TO DEFENDANT
KINDERMANS' COUNTERCLAIM***

COMES NOW, Manufacturers and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased, by its Attorney Peter F. Smith, which states in support of this Complaint:

1. Defendants WILLIAM B. KINDERMAN and ROBERT A. KINDERMAN answered the Amended Complaint on May 29, 2001, adding New Matter and a Counterclaim.
2. The KINDERMANS' counterclaim seeks to collect their attorney fees and surveyor's costs from Plaintiff.
3. The KINDERMANS' counterclaim fails to set forth specific facts or legal authority in support of their claim.

WHEREFORE, Plaintiff prays this Honorable Court that the counterclaim asserted by Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN be stricken due to insufficient specificity of their pleading and insufficiency legal sufficiency pursuant to Pa.R.C.P. 1028(a)(3)&(4).

Respectfully submitted,

Dated: 5-30-01


Peter F. Smith, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

MANUFACTURERS AND TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM, Deceased,
Plaintiff

VS.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN, CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants

ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT, NEW MATTER AND
~~CONTINGENT AND NEW MATTER~~
PURSUANT TO Pa. R.C.P. RULE
2252(d) FILED ON BEHALF OF
DEFENDANTS WILLIAM B. KINDERMAN
AND ROBERTA A. KINDERMAN

FILED

MAY 29 2001
133156CA
William A. Shaw
Prothonotary
Bell

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

MANUFACTURERS AND TRADERS TRUST : NO. 00-1531-CD
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff : Type of Pleading:
: Answer to Plaintiff's Amended
: Complaint, New Matter and
: Counterclaim and New Matter
: Pursuant to Pa. R.C.P. Rule
: 2252(d) filed on behalf of
: Defendants William B.
: Kinderman and Roberta A.
: Kinderman
V. :
: Filed on Behalf of:
WILLIAM B. KINDERMAN, ROBERTA : William B. Kinderman and
A. KINDERMAN, CLARENCE C. : Roberta A. Kinderman,
DAISHER and JOSEPH R. : Defendants
CHAMBERLIN, :
Defendants :
: 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 29 2001

William A. Shaw
Prothonotary

#10

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN :
CLARENCE C. DAISHER, and :
JOSEPH R. CHAMBERLIN, :
Defendants:

NOTICE TO PLEAD

TO THE WITHIN Plaintiff, MANUFACTURERS and TRADERS TRUST COMPANY,
Trustee under the Will of JAMES B. GRAHAM,
TO THE WITHIN Defendant, CLARENCE C. DAISHER,
TO THE WITHIN Defendant, JOSEPH R. CHAMBERLIN:

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants, William B. Kinderman and Roberta A. Kinderman, 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 Defendants
Kinderman

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
vs. : No. 00-1531-CD
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN :
CLARENCE C. DAISHER, and :
JOSEPH R. CHAMBERLIN, :
Defendants:

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT, NEW MATTER
AND COUNTERCLAIM AND NEW MATTER PURSUANT TO
Pa. R.C.P. RULE 2252(d) FILED ON BEHALF OF DEFENDANTS
WILLIAM B. KINDERMAN AND ROBERTA A. KINDERMAN

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, husband and wife, who, by and through their attorney, F. Cortez Bell, III, Esquire, respectfully set forth and file the Defendants' Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) and in support thereof aver as follows:

1. Paragraph 1 of the Amended Complaint is admitted.
2. Paragraph 2 of the Amended Complaint is admitted to the extent stated. It would be further by way of explanation averred that the true and correct mailing address of William B. Kinderman and Roberta A. Kinderman is RD #2, Box 19, Rockton, Pennsylvania, 15856.
3. Paragraph 3 of the Amended Complaint would be

admitted in part and denied in part. It would be admitted that Clarence C. Daisher has been named as a third Defendant in the above captioned matter. It would be denied, however, that his current address is Box 243, Luthersburg, Pennsylvania, 15848. Based upon Defendant Daisher's Answer to Plaintiff's Amended Complaint, the Defendants Kinderman believe that the true and correct address for Defendant Clarence C. Daisher is RR #1, Box 74A, Grampian, Pennsylvania, 16838.

4. Paragraph 4 of the Amended Complaint would be admitted in part and denied in part. It would be admitted that Joseph R. Chamberlin has been named as a fourth Defendant in the above captioned matter. It would be denied, however, that his current address is RR #1, Box 294A-12, Keystone Road, Brockport, Elk County, Pennsylvania, 15823. Based upon Defendant Chamberlin's Answer to Plaintiff's Amended Complaint, the Defendants Kinderman believe that the true and correct address for Defendant Joseph R. Chamberlin is P.O. Box 386, Seward, Pennsylvania, 15954.

5. Paragraph 5 of the Amended Complaint would be admitted.

6. Paragraph 6 of the Amended Complaint would be admitted.

7. Paragraph 7 of the Amended Complaint would be denied. It is specifically denied that the Defendants, William B. Kinderman and/or Roberta A. Kinderman, or anyone acting on behalf of or through Defendant William B. Kinderman and/or Roberta A. Kinderman, crossed the boundary line separating the Kinderman and the Graham

Estate properties and cut and sold timber and kept the proceeds from sales thereof. Strict proof of the denied averments of Paragraph 7 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

8. Paragraph 8 of the Amended Complaint would be admitted in part and denied in part. It would be admitted that the Defendants, William B. Kinderman and Roberta A. Kinderman, do not have a lease or any other form of permission from the Graham Estate to enter the Graham Estate property and remove timber therefrom. It is denied however, that the Defendants, William B. Kinderman and Roberta A. Kinderman, or anyone acting on their behalf, or through them, entered the Graham Estate property and cut and sold timber therefrom. Strict proof of the denied averments of Paragraph 8 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

9. Paragraph 9 of the Amended Complaint sets forth a conclusion of law to which no response is required. To the extent that a response may be deemed necessary, it is specifically denied that the Defendants, William B. Kinderman and/or Roberta A. Kinderman entered the Graham Estate property and cut and sold timber therefrom at any time as well as it is specifically denied that the Defendants William B. Kinderman and Roberta A. Kinderman or anyone acting on their behalf or through them entered the Graham Estate property and cut and sold timber therefrom at anytime. It is further specifically denied that the Defendants, William B. Kinderman and/or Roberta A. Kinderman, or anyone acting on their

behalf or through them committed trespass under Pennsylvania Law. Strict proof of the denied averments of Paragraph 9 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

10. Paragraph 10 of the Amended Complaint would be admitted in part and denied in part. It is admitted that a survey map prepared by David L. Thorp, P.L.S. purports to demonstrate the property line between the Kinderman and Graham Estate properties. It is denied, however, that the Defendants William B. Kinderman and/or Roberta A. Kinderman, or anyone acting on their behalf or through them took timber from the shaded area on the survey map to the extent that the shaded area represents the Graham Estate property. Strict proof of the denied averments of Paragraph 10 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

11. Paragraph 11 of the Amended Complaint can neither be admitted nor denied. The Defendants, William B. Kinderman and Roberta A. Kinderman after reasonable investigation are without knowledge or information sufficient to form a belief as to the truth of the averments set forth within Paragraph 11 of the Amended Complaint. To the extent that a response may be deemed necessary, the Defendants, William B. Kinderman and Roberta A. Kinderman would denied the averments set forth within Paragraph 11 of the Amended Complaint. Strict proof of the denied averments of Paragraph 11 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

12. Paragraph 12 of the Amended Complaint would be denied. It would be specifically denied that Robert L. Kester, an agent for the Graham Estate, contacted the Defendants, William B. Kinderman and Roberta A. Kinderman, on or about June 21, 2000. Strict proof of the denied averment of Paragraph 12 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

13. Paragraph 13 of the Amended Complaint would be denied. It would be specifically denied that Robert L. Kester, an agent for the Graham Estate, on or about June 21, 2000 advised the Defendants, William B. Kinderman and/or Roberta A. Kinderman or anyone acting through them or on their behalf that they were trespassing upon the Graham Estate property and directed them to withdraw from the property, to cease from entering the property and to cease taking timber from it. It would further be specifically denied that Mr. Kester advised the Defendants Kinderman to compensate the Graham Estate for any and all timber taken the Graham Estate property. As no such conversation occurred the Defendants Kinderman would specifically deny all the averments set forth within Paragraph 13 of the Amended Complaint. Strict proof of the denied averments of Paragraph 13 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

14. Paragraph 14 of the Amended Complaint would be denied. It would be specifically denied that the Defendants, William B. Kinderman and/or Roberta A. Kinderman in any fashion removed or cut any timber whatsoever from the Graham Estate

property as well as it would be specifically denied that the Defendants Kinderman have refused to compensate the Graham Estate for any timber so taken. It is denied, that the Defendants Kinderman in any fashion ever trespassed upon the Graham Estate property or took any timber therefrom. It is further specifically denied that the Defendants Kinderman or anyone acting on their behalf or through them continued to cut or take away any timber from the Graham Estate property. Strict proof of the denied averments of Paragraph 14 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

15. Paragraph 15 of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman in any fashion whatsoever or by or through others or others acting on their behalf removed any timber from the Graham Estate property and/or that the fair market value of any such timber allegedly taken is or exceeds the sum of \$30,000.00. Strict proof of the denied averments of Paragraph 15 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

16. Paragraph 16 of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman or those acting on their behalf or through them caused any additional damages to the premises allegedly owned by the Graham Estate due to logging in an improper and unworkmen like manner. By way of further answer it is specifically denied that the Defendants Kinderman in any fashion

ever trespassed on the property of the Graham Estate or that any individuals on behalf of the Defendants Kinderman or operating through them in any fashion ever trespassed on property alleged to be owned by the Graham Estate. It is further specifically denied on behalf of the Defendants Kinderman that the Kinderman's or any individuals acting by, through or on their behalf removed timber from the Graham Estate property. Strict proof of the denied averments of Paragraph 16 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

17. Paragraph 17 of the Amended Complaint would be denied as well as each of the specific sub-paragraphs thereunder would be denied.

A. The averments of Paragraph 17A of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman caused stream erosion and sedimentation by illegal stream crossings with equipment and dropping logs and tops in streams on the premises alleged to be owned by the Graham Estate and strict proof thereof is hereby demanded at time of trial or hearing in this matter;

B. The averments of Paragraph 17B of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman damaged younger trees left standing by dropping cut trees on them and strict proof thereof is hereby demanded at time of trial or hearing in this matter;

C. The averments of Paragraph 17C of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman created hazardous conditions by leaving dead falls of cut trees and branches hanging in existing trees and strict proof thereof is hereby demanded at time of trial or hearing in this matter;

D. The averments of Paragraph 17D of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman failed to perform any clean-up whatsoever which left the property in an unsightly condition and creates a future fire hazard. It would be averred that the Defendants Kinderman were not involved in any fashion in any timber operation on any property asserted to be owned or owned by the Graham Estate. Strict proof of the denied averments of Paragraph 17D would be demanded at time of trial or hearing in this matter;

E. The averments of Paragraph 17E of the Amended Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman did not reseed skid trails. It would be specifically denied that the Defendants Kinderman were in any fashion involved in the timbering or the removal of timber on properties asserted to be owned or owned by the Graham Estate such that reseeding would be necessary. Strict proof thereof would be demanded at time of trial or hearing in this matter;

F. The averments of Paragraph 17F of the Amended

Complaint would be denied. It would be specifically denied that the Defendants William B. Kinderman and/or Roberta A. Kinderman did not block skid trails or their access into the property which leaves it open for additional trespass. It would be specifically denied that the Defendants Kinderman were in any fashion involved in timbering or the removal of timber from properties asserted to be owned or owned by the Graham Estate such that the Defendants Kinderman would be responsible for the blocking of skid trails or access onto the property. Strict proof thereof would be demanded at time of trial or hearing in this matter.

18. Paragraph 18 of the Amended Complaint can neither be admitted nor denied. The Defendants, William B. Kinderman and Roberta A. Kinderman after reasonable investigation are without knowledge or information sufficient to form a belief as to the truth of the averments set forth within Paragraph 18 of the Amended Complaint. To the extent that a response is deemed necessary, the Defendants Kinderman would specifically deny that an additional \$5,000.00 would be needed to correct any additional damages specifically referred to in Paragraph 17, subparagraphs A through F of the Amended Complaint and strict proof of the denied averments of Paragraph 18 of the Amended Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, the Defendants, William B. Kinderman and Roberta A. Kinderman respectfully request that your Honorable Court dismiss the Amended Complaint filed on behalf of the Plaintiff and enter judgement in favor of the Defendants, William B. Kinderman

and Roberta A. Kinderman along with award the Defendants Kinderman counsel fees, costs and expenses associated with regard to defending this matter.

NEW MATTER

NOW, comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Defendant Kinderman's New Matter to the Amended Complaint and respectfully sets forth and avers as follows:

19. The averments of Paragraphs 1 through 18 of the Defendant Kinderman's Answer to the Amended Complaint are incorporated herein by reference as if the same were set forth in full at length and the same is made a part hereof.

20. That the Defendants, William B. Kinderman and Roberta A. Kinderman, are the owners of a certain tract or parcel of land located within Bloom Township, Clearfield County, Pennsylvania bearing Map Number E09-000-00006 and containing 149 acres, more or less. Said property was conveyed to the Defendants Kinderman by deed dated March 7, 1995 as is found recorded in the Office of the Register and Recorder of Deeds of Clearfield County to Document Number 1999-21180.

21. That the property of the Defendants Kinderman as set forth in the preceding paragraph above sits adjacent to and shares a common boundary line on several sides with that tract of ground asserted within the Plaintiff's Amended Complaint as being owned by

the James B. Graham Estate.

22. That in the Fall of 1998 the Defendants, William B. Kinderman and Roberta A. Kinderman, in an attempt to determine the specific property lines of their property which they had acquired retained the services of Samuel B. Yost, Registered Surveyor, to review various maps which originally were in the possession of Thomas Coal Company, Inc. for whom Samuel B. Yost had done the original survey which included that tract of land which the Defendants Kinderman had acquired by deed.

23. That said Samuel B. Yost, registered surveyor, physically walked the property with the Defendants Kinderman at which time the original blaze markings were found on the trees consistent with the surveys which had previously been performed by Samuel B. Yost on behalf of Thomas Coal Company, Inc.

24. That as a result of the hiring of Samuel B. Yost, registered surveyor, and his designation of the property lines of the Kinderman tract, the Defendants Kinderman placed fluorescent ribbons along the property lines of the Kinderman tract consistent with the blaze markings and the survey as completed by Samuel B. Yost.

25. That said original blaze markings; the original survey of Samuel B. Yost, registered surveyor, and the fluorescent ribbons placed by the Defendants Kinderman all correspond with and it is believed and therefore averred are consistent and match that survey map prepared by David L. Thorp, P.L.S. on or about September 1, 2000 as revised January 23, 2001 which is attached as an exhibit

to the Plaintiff's Amended Complaint and referred to within Paragraph 10 thereof.

26. That the Defendants Kinderman entered into two (2) specific agreements designated a Lumber Agreement and a Lumber & Timber Agreement with Joseph R. Chamberlin with each said Agreement dated November 24, 1998 and extending and being in existence for a period of one (1) year. Attached hereto and incorporated herein by reference as Exhibits A and B respectfully are complete copies of said Timber Agreement and Lumber & Timber Agreement.

27. That prior to commencement of work, the Defendant William B. Kinderman, advised Joseph R. Chamberlin that the property lines of the Kinderman tract followed a former blaze marking consistent with a survey and that the line had been flagged with fluorescent ribbons recently.

28. That the Defendants Kinderman entered into a Timber Lease Agreement with Clarence C. Daisher with said Agreement bearing the date of May 19, 2000 and having a term for a period of one (1) year. Attached hereto and incorporated herein by reference as Exhibit C is a complete copy of said Timber Lease Agreement.

29. That the Defendant, William B. Kinderman, specifically advised Clarence C. Daisher that the property lines of the Kinderman tract followed a former blaze marking consistent with a survey and that the line had been flagged with fluorescent ribbons recently.

30. That at no time did the Defendants, William B. Kinderman and/or Roberta A. Kinderman ever authorize any

individuals contracted to them for the removal of timber to go beyond the property lines of the Kinderman tract and all timber operations were to be conducted within that property owned by the Kindermans.

31. That the Defendant, William B. Kinderman and the Defendant Roberta A. Kinderman never individually were involved in the physical removal of any timber whatsoever from any tracts of land whether owned by themselves or others within Bloom and/or Penn Township, Clearfield County, Pennsylvania.

32. That the Defendants, William B. Kinderman and Roberta A. Kinderman, have not received any funds from the Defendant Clarence C. Daisher and/or the Defendant Joseph R. Chamberlin for any timber which is alleged to have been removed from those premises asserted to be owned or owned by the Graham Estate as set forth within the Plaintiff's Amended Complaint.

WHEREFORE, the Defendants, William B. Kinderman and Roberta A. Kinderman respectfully request that your Honorable Court dismiss the Amended Complaint filed on behalf of the Plaintiff and enter judgement in favor of the Defendants, William B. Kinderman and Roberta A. Kinderman along with award the Defendants Kinderman counsel fees, costs and expenses associated with regard to defending this matter.

NEW MATTER PURSUANT TO Pa. R.C.P. RULE 2252(d)

NOW, comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez

Bell, III, Esquire, who respectfully sets forth the Defendant Kinderman's New Matter Pursuant to Pa. R.C.P. Rule 2252(d) and respectfully sets forth and avers as follows:

33. That Paragraphs 1 through 32 of the Defendant Kinderman's Answer to Amended Complaint and New Matter would be incorporated herein by reference as if the same were set forth in full at length at this point.

34. That the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, hereby assert a cross claim against the Defendants, Clarence C. Daisher and Joseph R. Chamberlin, for contribution and/or indemnification pursuant to Pa. R.C.P. Rule 2252(d) .

35. That if the Plaintiffs suffered damages as alleged within the Amended Complaint, said damages were caused by the actions of the Defendant, Clarence C. Daisher, and/or the Defendant Joseph R. Chamberlin, as more particularly set forth within the allegations of Plaintiff's Amended Complaint.

36. That if, as a result of the matters complained of in Plaintiff's Amended Complaint, the Defendants, William B. Kinderman and/or Roberta A. Kinderman, are held liable to the Plaintiff for all or part of any such damages as set forth within the Amended Complaint, then, in that event, the Defendant, Clarence C. Daisher and/or the Defendant, Joseph R. Chamberlin, should by way of contribution and/or indemnification be liable to the Defendant William B. Kinderman and/or the Defendant Roberta A. Kinderman, for

full at length at this point.

38. That as a result of the filing of the instant action, the Defendants William B. Kinderman and Roberta A. Kinderman have been required to retain the services of instant counsel, F. Cortez Bell, III, Esquire in order to assert their Answer, New Matter and Counterclaim as to that action brought by the Plaintiffs.

39. That counsel for the Defendants Kinderman is billing the Defendants Kinderman at the rate of \$95.00 per hour for all work associated with regard to the instant matter.

40. That should the matter proceed to trial it would be anticipated that the Defendants Kinderman will have to retain and pay for the services of Samuel B. Yost as a Registered Surveyor should the same be necessary to establish the location of property lines and/or the attempts of the Defendants Kinderman to adhere to the property lines associated with regard to their premises.

41. That the Defendants Kinderman may be required to expend or undergo various other expenses and costs associated with regard to the defense of this matter.

WHEREFORE, it is respectfully requested that your Honorable Court grant judgment in favor of Defendants William B. Kinderman and Roberta A. Kinderman against the Plaintiff's Manufacturers and Traders Trust Company, Trustee under the Will of James B. Graham in such amount as is determined by the Court based upon hearing thereon as to the costs, expenses and counsel fees

associated with regard to the defense of this instant matter.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

VERIFICATION

I, William B. Kinderman, verify that the statements made within the foregoing Answer, New Matter and Counterclaim to Amended 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: May 22 2001

William B. Kinderman
William B. Kinderman

LUMBER & TIMBER AGREEMENT

Bill Kinderman
ARTICLES OF AGREEMENT made between RD # Box 19
Rockton PA 15856, hereinafter referred to as a Vendor.
A Vendor's SS# 230-66-8711
N _____
D _____

JOSEPH R. CHAMBERLIN, of RR 1, Box 294A-12 Keystone Rd., Brockport, Elk County, Pennsylvania, 15823, Phone (814) 265-1548, hereinafter referred to as Vendee, as follows:

Vendor in consideration of the sum of will be sold per ton for pulpwood to the said Vendor, whereof is hereby acknowledged; Vendor does grant and sell unto the said Vendee, his executors, administrators, and assigns all timber, hardwood, softwood logs down to 14 inches on the stump. All logs in consideration of the sum of 50 % (Fifty Percent) going rate per 1,000 (one thousand) board feet for Red Oak, Cherry, Ash, Maple, and all other hardwoods, and softwood logs of going rate per 1,000 (one thousand) board feet, now standing and growing upon the said land described as follows 70 acres lying in the County of CLEARFIELD, Township of Bloom. And if all timber is sold in (Log) (Form) not in (Lumber Form).

And the said Vendor does covenant, promise, and agree to and with the Vendee, that he ; said Vendee shall and may have free liberty into and from all lands and grounds belonging to the farm, aforesaid, with skidding tractors or trucks to take, cut down and carry away the said trees.

As additional consideration, the Vendor will save harmless the Vendee from any and all damage to said property, which might be incidental to the cutting and removing of said timber as aforementioned and the said Vendee shall save harmless the Vendor from any liability whatsoever in the removal and cutting of said timber. This mutual release OF TIMBER between the parties is based upon normal circumstances and the exercise of due care be will be MADE each of the parties.

This agreement is to be binding as well as upon and in favor of the executors, administrators, and assigns, of both parties, as the parties themselves.

WITNESS our hands and seals, this 24 day of Nov year 98.
Contract Bind for ONE YEAR past the date above.

Witnessed:

All checks
RECEIVED
FROM SALE
OF TIMBER
OUT IN VENDEE
AND VENDEE
NAMES
JRC - Joseph R. Chamberlin
William B. Kinderman

Joseph R. Chamberlin
Joseph R. Chamberlin

Lumber Agreement
Next page

Timber Lease Agreement

THIS AGREEMENT made and entered into this May day of 19 2000 A.D. 2000
between William B. Kinderman and Clarence C. Dasher
Party of the First Part and William B. Kinderman Clarence C. Dasher
Party of the Second Part.

Witnesseth, that the said party of the first part, for and in consideration of the sum of
50% Clarence C. Dasher 50%

Do by these presents grant, bargain and sell to the said Clarence C. Dasher

all the timber of whatever kind being upon all that certain tract of land owned or controlled by said party of the
first part as recorded and described in deed book number 16 page 3 in and for the county
of Clearfield at Crampian Pennsylvania.

The said timber to be cut and removed at the expense of the said Clarence C. Dasher,
who with his employees, workmen and
equipment is to have free ingress and egress into and over any portion of said land for such purposes, and also the
like liberty to cut, saw and convert all or so many of said trees as he may think proper into marketable products
upon the premises, and for these purposes to have the right to make roads necessary for the purposes of taking off
the said premises.

It is understood and agreed, however, by and between the parties hereto that the said
Clarence C. Dasher shall have a period of
1 years from this date in which to cut and remove the said timber, and at the expiration of said time
he may remove all his improvements from said premises.

It is understood by and between the parties hereto that the provisions of this contract are extended to the
heirs, executors, administrators and assigns of the parties hereto.

IT IS FURTHER UNDERSTOOD that the Party of the second part assumes full financial liability for any
injuries for himself and his workmen arising from the logging operation being conducted on this property for the
duration of this lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day of year aforesaid.

signed William B. Kinderman

signed Clarence C. Dasher

witnessed Rhonda R. Greenway

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman upon the following person by mailing such copy regular mail, postage prepaid to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

Mark S. Weaver, Esquire
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

John B. Gibson, Esquire
131 Market Street
Suite 200
Johnstown, PA 15901

7 Crt B.M. III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

DATED: May 29, 2001

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

MANUFACTURERS AND TRADERS :
TRUST COMPANY, TRUSTEE UNDER : No. 2000-1531-CD
THE WILL OF JAMES B. GRAHAM, :
DECEASED, :
Plaintiff :
: vs :
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

CERTIFICATE OF SERVICE

I, Peter F. Smith, Attorney for Plaintiff in the above captioned matter, certify that I served true and correct copies of the **Deposition Notice** dated May 17, 2001, on the following parties by First Class Mail, postage prepaid:

F. Cortez Bell, III, Esquire
Attorney for Kinderman
BELL, SILBERBLATT & WOOD
318 East Locust Street
Clearfield, PA 16830

John D. Gibson, Esquire
Attorney for Chamberlin
131 Market Street, Suite 200
Johnstown, PA 15901

Mark S. Weaver, Esquire
Attorney for Daisher
211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

SARA SARGENT COURT REPORTING
210 Main Street
Johnstown, PA 15901

Date: May 17, 2001


Peter F. Smith, Attorney for Plaintiff

FILED

MAY 18 2001
05/18/01 NOCC
William A. Shaw
Prothonotary


#15

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

MANUFACTURES and TRADERS TRUST, :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

CERTIFICATE OF SERVICE

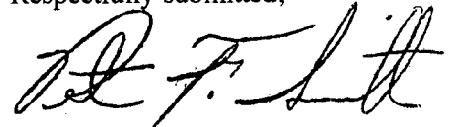
I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have served true and correct copies of a **SUBPOENA TO ATTEND AND TESTIFY** by U. S. First Class Mail on the following:

F. Cortez Bell, III, Esquire
Attorney for Kinderman
BELL, SILBERBLATT & WOOD
318 East Locust Street
Clearfield, PA 16830

Mark S. Weaver, Esquire
Attorney for Daisher
211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

John D. Gibson, Esquire
Attorney for Chamberlin
131 Market Street, Suite 200
Johnstown, PA 15901

Respectfully submitted,



Peter F. Smith
Attorney for Plaintiff

Date: May 18, 2001

FILED

MAY 18 2001

03/91/00

William A. Shaw
Prothonotary

E
KBS

14

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

MANUFACTURES and TRADERS TRUST,:	:
COMPANY, TRUSTEE UNDER THE	:
WILL OF JAMES B. GRAHAM,	:
Deceased,	:
Plaintiff	:
vs.	No. 00-1531-CD
WILLIAM B. KINDERMAN,	:
ROBERTA A. KINDERMAN,	:
CLARENCE C. DAISHER and	:
JOSEPH R. CHAMBERLIN,	:
Defendants	:

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, certify that I have served true and correct copies of **PLAINTIFF'S ANSWER TO DEFENDANT CHAMBERLIN'S NEW MATTER** by U. S. First Class Mail on the following:

F. Cortez Bell, III, Esquire
Attorney for Kinderman
BELL, SILBERBLATT & WOOD
318 East Locust Street
Clearfield, PA 16830

John D. Gibson, Esquire
Attorney for Chamberlin
131 Market Street, Suite 200
Johnstown, PA 15901

Mark S. Weaver, Esquire
Attorney for Daisher
211 1/2 East Locust Street
P.O. Box 170
Clearfield, PA 16830

FILED

APR 23 2001

William A. Shaw
Prothonotary

Respectfully submitted,



Peter F. Smith
Attorney for Plaintiff

Date: April 20, 2001

#13

FILED

APR 23 2001

W. A. Shaw
Prothonotary

W. A. Shaw
Prothonotary
Clerk

FILED

APR 20 2001
13:40 AM C.C. Cnty.
William A. Shaw
Prothonotary 
Peter F. Smith

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased : No. 00-1531-CD

Plaintiff :
vs :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN :
Defendants :
COUNSEL FOR THIS PARTY:
Peter F. Smith, Esquire
Supreme Court I.D. #34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-559

COUNSEL FOR JOSEPH R. CHAMBERLIN:
John D. Gibson, Esquire
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
I.D. #21881

COUNSEL FOR CLARENCE C. DAISHER:
Mark S. Weaver, Esquire
211 1/2 E. Locust Street, P.O. Box 170
Clearfield, PA 16830
(814) 768-9696
I.D. #63044

COUNSEL FOR WILLIAM B. & ROBERTA A.
KINDERMAN:
F. Cortez Bell, III, Esquire
BELL, SILBERBLATT & WOOD
318 East Locust Street, P.O. Box 670
Clearfield, PA 16830
(814) 765-5537
I.D. #30183

FILED

APR 20 2001

William A. Shaw
Prothonotary

#18

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

MANUFACTURERS and TRADERS	:	
TRUST COMPANY, TRUSTEE UNDER	:	
THE WILL OF JAMES B. GRAHAM,	:	
Deceased	:	
Plaintiff	:	No. 00-1351-CD
vs	:	
WILLIAM B. KINDERMAN,	:	
ROBERTA A. KINDERMAN,	:	
CLARENCE C. DAISHER and	:	
JOSEPH R. CHAMBERLIN,	:	
Defendants	:	

PLAINTIFF'S ANSWER TO DEFENDANT CHAMBERLIN'S NEW MATTER

COMES NOW, Plaintiff by its counsel Peter F. Smith who respectfully answers the Defendant's new matter as follows:

17. Plaintiff incorporates by reference paragraphs one through sixteen of its complaint as those set forth in full.
18. Denied, Plaintiff has no direct or personal knowledge of any alleged agreement between Defendants Daisher and Chamberlin and further averred that Defendant Chamberlin stated to Defendant Daisher that he had logged on the Plaintiff's property. The exact dates are unknown to Plaintiff but will be established at trial.
19. Admitted, but further averred that according to Defendant Daisher and according to Plaintiffs independent knowledge and belief, Defendant Chamberlin had already trespassed upon the Plaintiff's property to cut and take timber from it prior to Defendant Daisher.
20. Denied, for the reason set forth in paragraph nineteen.
21. Denied, on the basis of the averments of the complaint and the foregoing averments of this answer and further denied as a conclusion of law to which no answer is required.
22. Denied, because of the averments of the complaint and further denied because of the conditional or speculative nature of the averment.
23. Denied, because Plaintiff initiated this action within two years of the date of injury or

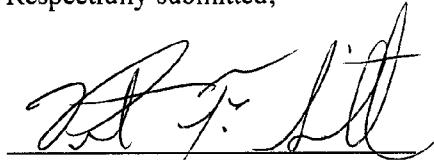
within two years of the date on which Plaintiff knew or reasonably should have known of the injuries described in the complaint.

NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

24 - 26. Plaintiff makes no answer to these averments because they describe defendant Chamberlin's claim against Defendant Daisher.

WHEREFORE, Plaintiff renews its original claim for damages against the Defendants jointly and severally in excess of Thirty Five Thousand (\$35,000.00) Dollars together with interest and costs.

Respectfully submitted,



Dated: 4-19-01

Peter F. Smith, Esquire
Attorney for Plaintiff
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

AFFIDAVIT

STATE OF PENNSYLVANIA

:SS

COUNTY OF CLEARFIELD

:

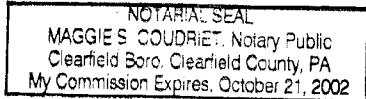
Robert L. Kester, being duly sworn according to law, depose and say that he is the Personal Representative for the James B. Graham Estate and the averments in the foregoing Answer to Defendant Chamberlin's New Matter are true, correct and complete to the best of his information, knowledge and belief.

Robert L. Kester
Robert L. Kester

SWORN TO AND SUBSCRIBED

before me this 19 day
of April, 2001.

Maggie Coudriet
Notary Public



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS AND TRADERS
TRUST COMPANY, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM,
Deceased,

Plaintiff

VS.

WILLIAM B. KINDERMAN, et al

Defendants

ANSWER TO DEFENDANT, CLARENCE C.
DAISHER'S NEW MATTER FILED
ON BEHALF OF JOSEPH R. CHAMBERLIN

FILED

APR 05 2001
106C
William A. Shaw
Prothonotary

TELEPHONE: (814) 535-3513
FAX: (814) 535-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

Plaintiff *

No. 2000-153/-CD *

VS. *

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants *

TYPE OF CASE: CIVIL *

TYPE OF PLEADING: *

ANSWER TO DEFENDANT, CLARENCE C.
DAISHER'S NEW MATTER FILED ON
BEHALF OF JOSEPH R. CHAMBERLIN

FILED ON BEHALF OF: *

Defendant, Joseph R. Chamberlin *

JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
I.D.# 21881
Counsel for Joseph R. Chamberlin

MARK S. WEAVER, ESQUIRE
211 1/2 E. Locust Street, P.O. Box 170
Clearfield, PA 16830
(814) 768-9696
I.D.# 63044
Counsel for Clarence C. Daisher

PETER F. SMITH, ESQUIRE
30 S. Second Street, P.O. Box 130
Clearfield, PA 16830
(814-765-5595
I.D.# 34291
Counsel for Plaintiff

FILED

APR 05 2001

William A. Shaw
Prothonotary

#11

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased * CIVIL ACTION
*
Plaintiff *
* VS. * No. 200-1537-CD
*
* WILLIAM B. KINDERMAN, *
ROBERTA A. KINDERMAN, *
CLARENCE C. DAISHER and *
JOSEPH R. CHAMBERLIN, *
*
Defendants *
*
*

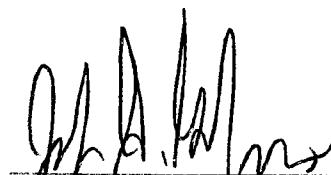
ANSWER TO DEFENDANT CLARENCE C. DAISHER'S NEW MATTER FILED ON
BEHALF OF DEFENDANT, JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin, through his attorney, John D. Gibson, and files the following Answer to Defendant Clarence C. Daisher's New Matter:

1. The Defendant, Joseph R. Chamberlin, hereby incorporates all Paragraphs of Joseph R. Chamberlin's Answer, New Matter and New Matter Pursuant to PA. R.C.P. 2252(d) by reference as if fully set forth herein in Answer to Paragraph 19 of New Matter.
2. The allegations of Paragraph 20, based upon Exhibit A to Plaintiff's New Matter, are admitted.
3. The allegations of Paragraph 21 are denied in that the Defendant after reasonable investigation is unable to form a belief as to the truth or falsity of the allegations set forth in Paragraph 21. As a result, said allegations are denied and strict proof is demanded at the time of trial.
4. The allegations of Paragraph 22 are admitted.
5. The allegations of Paragraph 23 are admitted.
6. The allegations of Paragraph 24 are denied in that the Defendant, after reasonable investigation, is unable to form a belief due to insufficient knowledge or information as to the truth of the allegations set forth in Paragraph 24. As a result, said allegations are denied and strict proof is demanded at the time of trial.

7. The allegations of Paragraph 25 are denied. On the contrary, the Defendant, Joseph R. Chamberlin, at no time material has in any manner stated to the Defendant Daisher that he had removed timber other than from the Kinderman property. At no time did the Defendant Chamberlin remove any timber from the Graham Estate property. As set forth in Plaintiff's Complaint, the Defendant Daisher has on various occasions been caught removing timber from the Graham Estate property.

WHEREFORE, Defendant Chamberlin respectfully requests this Honorable Court to dismiss the Plaintiff's Complaint against him with costs assessed against the Plaintiff.

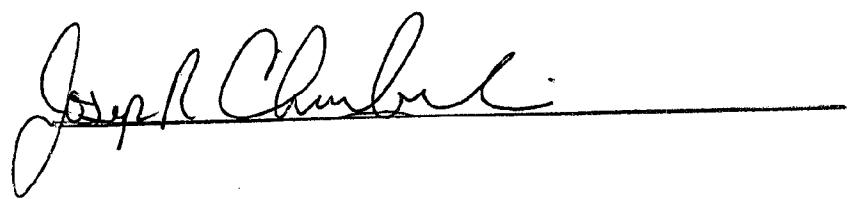


JOHN D. GIBSON, ESQUIRE
181 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
Counsel for Joseph R. Chamberlin

VERIFICATION

I, Joseph R. Chamberlin, Defendant, do hereby aver that on information and belief, the facts set forth in the foregoing Answer, New Matter and New Matter Pursuant to PA. R.C.P. 2252(d) are true and correct to the best of my knowledge, information and belief and are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

April 3, 2001



A handwritten signature in black ink, appearing to read "Joseph R. Chamberlin", is written over a horizontal line. The signature is fluid and cursive, with "Joseph" and "R." being more stylized, and "Chamberlin" being more clearly legible.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MANUFACTURERS AND TRADERS
TRUST COMPANY, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM,
Deceased,

Plaintiff

VS.

WILLIAM B. KINDEMAN, et al

Defendants

ANSWER TO AMENDED COMPLAINT FILED
ON BEHALF OF DEFENDANT, JOSEPH R.
CHAMBERLIN WITH NEW MATTER AND
NEW MATTER PURSUANT TO
PA. R.C.P. 2252(d)

FILED

APR 05 2001
M 1/55/nccc
William A. Shaw
Prothonotary

TELEPHONE: (814) 535-3513
FAX: (814) 535-3167

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

* Plaintiff

* VS.

* WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

* Defendants

* No. 2000-1531-CD

* TYPE OF CASE: CIVIL

* TYPE OF PLEADING:

* ANSWER TO AMENDED COMPLAINT FILED
ON BEHALF OF DEFENDANT, JOSEPH R.
CHAMBERLIN WITH NEW MATTER AND
NEW MATTER PURSUANT TO
PA. R.C.P. 2252(d)

* FILED ON BEHALF OF:

* Defendant, Joseph R. Chamberlin

* JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
I.D.# 21881
Counsel for Joseph R. Chamberlin

* MARK S. WEAVER, ESQUIRE
211 1/2 E. Locust Street, P.O. Box 170
Clearfield, PA 16830
(814) 768-9696
I.D.# 63044
Counsel for Clarence C. Daisher

* PETER F. SMITH, ESQUIRE
30 S. Second Street, P.O. Box 130
Clearfield, PA 16830
(814-765-5595
I.D.# 34291
Counsel for Plaintiff

FILED

APR 05 2001

William A. Shaw
Prothonotary

#10

MANUFACTURERS and TRADERS *
TRUST COMPANY, TRUSTEE UNDER *
THE WILL OF JAMES B. GRAHAM, *
Deceased *

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

Plaintiff *

No. 2000-1531-CD

VS. *

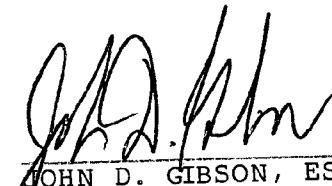
WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,

Defendants *

NOTICE TO PLEAD

TO: MANUFACTURES AND TRADERS TRUST COMPANY
WILLIAM B. KINDERMAN and
ROBERTA A. KINDERMAN
CLARENCE C. DAISHER

You are hereby notified to file a response to the enclosed New Matter and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin within twenty (20) days from service hereof or a judgment may be entered against you.



JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513
(814) 535-3167 - FAX
Counsel for Joseph R. Chamberlin

MANUFACTURERS and TRADERS * IN THE COURT OF COMMON PLEAS OF
TRUST COMPANY, TRUSTEE UNDER * CLEARFIELD COUNTY, PENNSYLVANIA
THE WILL OF JAMES B. GRAHAM, *
Deceased * CIVIL ACTION
*
Plaintiff *
* No. 2000-1531-CD
*
VS. *
*
WILLIAM B. KINDERMAN, *
ROBERTA A. KINDERMAN, *
CLARENCE C. DAISHER and *
JOSEPH R. CHAMBERLIN, *
*
Defendants *
*
*

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT, NEW MATTER, AND
NEW MATTER PURSUANT TO P.A.R.C.P. 2252(d) OF DEFENDANT
JOSEPH R. CHAMBERLIN

AND NOW, comes the Defendant, Joseph R. Chamberlin, through his attorney, John D. Gibson, and files the following Answer to the Plaintiff's Amended Complaint:

1. The allegations set forth in Paragraphs 1, 2 and 3 are admitted.
2. The allegations set forth in Paragraph 4 are denied. On the contrary, the Defendant, Joseph R. Chamberlin, resides at P.O. Box 386, Seward, Pennsylvania 15954.
3. The allegations of Paragraph 5 are admitted in part. The allegations in Paragraph 5 regarding title by deed and recording information are specifically denied in that the Answering Defendant, after reasonable investigation, is without sufficient knowledge and information to form a belief as to the truth of the allegations contained therein. Strict proof is demanded at the time of trial.
4. The allegations of Paragraph 6 are admitted.
5. The allegations of Paragraph 7 are denied as to the Answering Defendant, Joseph R. Chamberlin. On the contrary, in the preceding eleven months, based upon the filing date of the Amended Complaint of the Plaintiff, the Defendant, Joseph R. Chamberlin, was not engaged in any logging activities, specifically with respect to the Kinderman property. On the contrary, all logging activities by the Defendant were completed by November,

1999. As a result, it is further denied that the Defendant at any time material cut timber on the Graham Estate property and kept proceeds from said timbering. On the contrary, any and all activity was performed at all times material by Defendant, Daisher, his agents, servants or other individuals acting on his behalf.

6. The allegations of Paragraph 8 in that Defendant Chamberlin did not have a lease or other permission to enter the Graham Estate property is admitted. To the extent that said allegations imply that Joseph R. Chamberlin at any material time did engage in timbering on the Graham Estate property, said allegations are denied. On the contrary, the Defendant, Joseph R. Chamberlin, at no time material engage in timbering operations on the Graham Estate property.

7. The allegations of Paragraph 9 set forth a conclusion of law to which a response need not be made. To the extent a response is necessary, it is specifically denied that the Defendant Chamberlin entered the Graham Estate property and committed a trespass and is therefore not liable to the Graham Estate for monetary damages.

8. Concerning the allegations of Paragraph 10, said allegations are denied. After reasonable investigation, Answering Defendant Chamberlin is without sufficient knowledge or information to form a belief as to the allegations set forth in Paragraph 10 regarding a true and accurate survey map. As to the allegations of Paragraph 10 alleging the Defendants took timber from that area, said allegations are denied to the extent that the Defendant Chamberlin did not take timber from the shaded area on the survey map to the extent the shaded area represents the Graham Estate property. Strict proof is demanded of the allegations set forth in Paragraph 10 at the time of trial.

9. The allegations of Paragraph 11 are denied. After reasonable investigation, Defendant Chamberlin is without sufficient knowledge or information to form a belief as to the truth of the Plaintiff's allegations. As a result, said allegations are denied and strict proof is demanded at the time of trial.

10. The allegations of Paragraph 12 are denied. On the contrary, Robert L. Kester did not contact the Defendant Chamberlin on or about June 21, 2000.

11. As to the allegations of Paragraph 13, said allegations are denied. On the contrary, the Defendant Chamberlin never had a conversation with a Mr. Kester regarding timbering on the Graham Estate property at the time alleged by the Plaintiff.

12. The allegations of Paragraph 14 are denied. On the contrary, a Mr. Kester did not give any directions to the Defendant Chamberlin. Further, as set forth previously, any and all timbering activities by the Defendant Chamberlin ceased in November of 1999. As a result, the Defendant Chamberlin could not have continued any lumbering activities nor is there any basis for the Defendant Chamberlin to have to compensate the Graham Estate for timber since the Defendant Chamberlin has not removed any timber from the Graham Estate property.

13. The allegations of Paragraph 15 are denied. It is specifically denied that the Defendant Chamberlin removed any timber from the Graham Estate property. On the contrary, any removal of timber from the Graham Estate property was done by Defendant Daisher and any other individuals named or unnamed in any and all pleadings in this proceeding. As to the allegation of fair market value exceeding \$30,000.00, said allegations are denied. After reasonable investigation, Answering Defendant Chamberlin is without sufficient knowledge or information to form a belief as to said allegation and strict proof thereof is demanded at the time of trial.

14. The allegations of Paragraph 16 are denied. It is denied that the Defendant Chamberlin ever engaged in operations on the Graham Estate property. As a result, the Defendant Chamberlin would further deny that he engaged in any unworkmanlike or improper activities causing additional damages. On the contrary, any damages alleged by the Plaintiff were caused by the Defendant Daisher and other individuals.

15. With respect to Paragraph 17A, B, C, D, E and F, the allegations set forth in those paragraphs are denied. On the contrary, as set forth previously by Defendant Chamberlin, the Defendant Chamberlin has never engaged in logging activities on the Graham Estate property. As a result, Defendant Chamberlin could not have caused any damage set forth in Paragraph 17 A through 17 F. Said allegations are specifically denied. By way of further Answer, the Defendant Chamberlin sets forth that after reasonable investigation, the Answering Defendant Chamberlin is without sufficient knowledge or information to form a belief as to the allegations in

Paragraph 17A through 17F regarding specific items of damage. As a result, said allegations are denied and strict proof is demanded at the time of trial. As to any other allegations set forth in Paragraph 17A through 17F, Defendant Chamberlin sets forth that said damage was committed by the Defendant Daisher or other individuals and not Defendant Chamberlin.

16. After reasonable investigation, Defendant Chamberlin is without sufficient information, knowledge or belief to form a reasonable belief as to the allegations contained in Paragraph 18. As a result, said allegations are denied and strict proof is demanded at the time of trial.

WHEREFORE, the Defendant, Joseph R. Chamberlin, prays this Honorable Court to dismiss the Amended Complaint of the Plaintiff and enter judgment in favor of the Defendant, Joseph R. Chamberlin, with costs assessed against the Plaintiff.

NEW MATTER

17. The Defendant, Joseph R. Chamberlin, incorporates by reference Paragraphs 1 through 16 of this Answer as if the same were set forth herein at length.

18. The Defendant Daisher, as Defendant Daisher admits in Paragraph 20 of his New Matter, was hired on May 19, 2000 by the Defendant, Kinderman, to log 149 acres of the Kinderman property. As of that date, and some time prior to in November of 1999, the Defendant, Joseph R. Chamberlin, ceased any and all logging activities in the area.

19. As further set forth in Answer to Defendant Daisher's New Matter, the Plaintiff in Paragraph 25 of said Answer sets forth that the Defendant Daisher was found in the process of cutting and removing timber from the Graham Estate property, Plaintiff in this proceeding.

20. Defendant Joseph R. Chamberlin therefore alleges that any and all logging activity on the Graham Estate property was done by Defendant Daisher, individually, or his agents, servants or others acting at his request.

21. The Plaintiff's Complaint fails to set forth a claim upon which relief can be granted as to Defendant Joseph R. Chamberlin.

22. Some or all of Plaintiff's claims may be the result of acts of third parties over whom the Defendant Chamberlin had no control and for whose acts and/or omissions, the Defendant Chamberlin has no legal responsibility.

23. The Plaintiff's claim against Joseph R. Chamberlin is or may be barred by the applicable Statute of Limitations.

WHEREFORE, Defendant, Joseph R. Chamberlin, requests judgment in his favor and against the Plaintiff.

NEW MATTER PURSUANT TO PA.R.C.P. 2252(d)

24. The Defendant, Joseph R. Chamberlin, by his attorney, John D. Gibson, hereby asserts a cross claim against the Defendant, Clarence C. Daisher, for contribution and/or indemnification pursuant to PA.R.C.P. 2252(d) and in support thereof avers the following.

25. If the Plaintiff suffered damages as alleged in its Complaint, said damages were caused by the actions of the Defendant, Clarence C. Daisher, as more particularly set forth in the allegations of the Plaintiff's Amended Complaint.

26. If, as a result of the matters complained of in Plaintiff's Amended Complaint, Defendant, Joseph R. Chamberlin, is held liable to Plaintiff for all or part of such damages as may have been sustained, which liability is specifically denied, then, in that event, Clarence C. Daisher should by way of contribution and/or indemnification be liable to the Defendant, Joseph R. Chamberlin, for all such damages said Defendant may be required to pay the Plaintiff since the only party who was engaging in logging activity in the eleven month period prior to the filing of the Plaintiff's Amended Complaint was Clarence C. Daisher. As specifically set forth in Paragraph 7 of Plaintiff's Amended Complaint, said trespass occurred in that eleven month period prior to the filing of the Plaintiff's Complaint which would establish a date of some time in March, 2000 for the alleged trespass to have begun. As a result, since Joseph R. Chamberlin was not engaging in any logging activities during that period, the only party who could be legally liable for such trespass is Clarence C. Daisher who admits in his Answer to performing logging activities at the request and under contract to the Defendant William B. Kinderman.

WHEREFORE, the Defendant, Joseph R. Chamberlin, demands:

A. Judgment dismissing the Complaint against him and judgment in his favor together with costs; and/or

B. Judgment that if there is any liability to Plaintiff, the Defendant Clarence C. Daisher shall be held primarily liable and that the Defendant, Joseph R. Chamberlin, shall have judgment over and against the said Defendant by way of indemnification and/or contribution for the amount recovered by Plaintiff against him.



JOHN D. GIBSON, ESQUIRE
131 Market Street, Suite 200
Johnstown, PA 15901
(814) 535-3513

Attorney for Joseph R. Chamberlin

VERIFICATION

I, Joseph R. Chamberlain, Defendant, do hereby aver that, on information and belief, the facts set forth in the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA.R.C.P. 2252(d) are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa..C.S.A. §4904; relating to unsworn falsification to authorities.

Dated: April 2, 2001



Joseph R. Chamberlain
Joseph R. Chamberlain

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

MANUFACTURES and TRADERS TRUST
COMPANY, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM, Deceased,
Plaintiff

1531
No. 00-1351-CD

vs

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN,
CLARENCE C. DAISHER and
JOSEPH R. CHAMBERLIN,
Defendants

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for Plaintiff in the above captioned matter, hereby certify that I
sent by U.S. First Class Mail, a certified copy Plaintiff's **ANSWER TO DEFENDANT
DAISHER'S NEW MATTER** on the Defendants or their respective counsel on March 20, 2001,
at the following addresses:

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Mark S. Weaver, Esquire
Attorney for Clarence C. Daisher
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

John B. Gibson, Esquire
Attorney for Joseph R. Chamberlin
131 Market Street
Suite 200
Johnstown, PA 15901

Date: March 21, 2001



Peter F. Smith, Esquire
Attorney for Plaintiff

FILED

MAR 21 2001

William A. Shaw
Prothonotary

49

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

MANUFACTURES and TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM, Deceased
Plaintiff

vs

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN, CLARENCE C. DAISHER
and JOSEPH R. CHAMBERLIN
Defendants

No. 00-1531-CD

Plaintiff's Answer to Defendant
Daisher's New Matter

FILED

MAR 20 2001
O/L. 25/4CC a/H
William A. Shaw
Prothonotary
Peter F. Smith
Esq.

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased

vs

WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants

No. 00-1531-CD
TYPE OF CASE:
Civil

TYPE OF PLEADING:
Answer to Defendant
Daisher's New Matter

FILED ON BEHALF OF:
Plaintiff

COUNSEL FOR THIS PARTY:
Peter F. Smith, Esquire
Supreme Court I.D. #34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

FILED

MAR 20 2001

William A. Shaw
Prothonotary

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00-1531-CD
:
vs :
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
:

ANSWER TO DEFENDANT DAISHER'S NEW MATTER

COMES NOW, Plaintiff by its attorney Peter F. Smith who Answers Defendant Daisher's New Matter as follows:

- 1-19. Paragraphs one through nineteen of the complaint are referred to and incorporated herein as those set forth in full. Neither admitted nor denied because Plaintiff's were not privy to the actual contract between Defendant's Kinder man and Daisher.
20. Denied. Defendant Daisher certainly visited the property to evaluate it prior to May 19, 2000.
21. Denied. Defendant Daisher stated to Plaintiff's agents that he visited the property prior to entering his agreement with his Kinderman in order to evaluate it, and Plaintiff demands proof of the exact date on which Defendant Daisher commenced cutting on the property in question.
22. Neither admitted nor denied because Plaintiff's have no actual knowledge of discussions between Defendants Kinderman and Chamberlin.
23. Denied because Plaintiff has no actual knowledge of when Defendant Chamberlin may have logged the Kinderman property, but admitted to the extent that Mr. Chamberlin trespassed

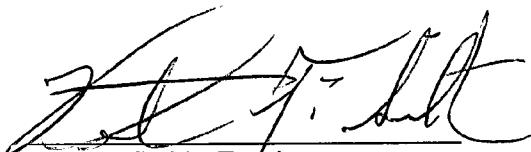
upon the Plaintiff's property during that period and other times as more specifically alleged in the complaint.

24. Although Plaintiff has no actual knowledge of discussions between Defendants Kinderman and Daisher, this averment is admitted to the extent that it is consistent with the averments of the complaint.

25. Although Plaintiff has no actual knowledge of discussions between Defendants Kinderman and Daisher, this averment is admitted to the extent that it is consistent with the averments of the complaint. However, Plaintiff's agents found Mr. Daisher in the process of cutting and removing timber from Plaintiffs property on several occasions.

WHEREFORE, Plaintiff respectfully requests that it be granted judgment in its favor and against Defendant Daisher either jointly or severely with the other defendants in an amount exceeding \$35,000.00.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Dated: 3-20-01

AFFIDAVIT

STATE OF PENNSYLVANIA

:SS

COUNTY OF CLEARFIELD

:

Robert L. Kester, being duly sworn according to law, depose and say that the averments in the foregoing Answer to Defendant Daisher's New Matter are true, correct and complete to the best of his knowledge, information and belief.

Robert L. Kester
Robert L. Kester

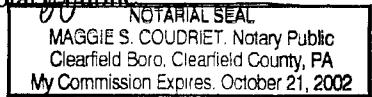
SWORN TO AND SUBSCRIBED

before me this 20th day

of March, 2001.

Maggie S. Coudriet

Notary Public



No. 00-1531-CD

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased
VS.
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

March 1, 2001: Certificate of Service, Defendant Clarence C. Daisher's Answer to Plaintiff's Amended Complaint and New Matter

(missing from original record)

(#7)

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased : *1531*
Plaintiff : No. 00-1351-CD

vs

WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :

FILED

FEB 27 2001

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

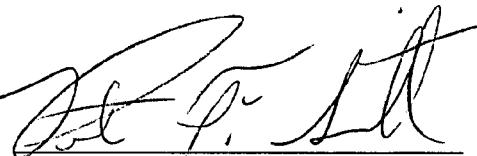
I, Peter F. Smith, attorney for Plaintiff in the above captioned matter, hereby certify that I sent by U.S. First Class Mail, a certified copy of Plaintiff's **AMENDED COMPLAINT** on the defendants or their respective counsel on February 23, 2001, at the following addresses:

F. Cortez Bell, III, Esquire
Attorney for Mr. & Mrs. Kinderman
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

Mark S. Weaver, Esquire
Attorney for Clarence C. Daisher
211½ East Locust Street
P.O. Box 170
Clearfield, PA 16830

John B. Gibson, Esquire
Attorney for Joseph R. Chamberlin
131 Market Street
Suite 200
Johnstown, PA 15901

Date: February 23, 2001


Peter F. Smith, Esquire
Attorney for Plaintiff

#16

FILED

FFB 27 2001
OII 108100 C
William A. Shaw
Ed
Prothonotary
KRS

FILED

FFB 2/3/2001
2/10/01 3cc atty
William A. Shaw
Prothonotary

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : No. 00-1531-CD
Deceased :
VS : TYPE OF CASE:
: Civil
WILLIAM B. KINDEMAN, :
ROBERTA A. KINDEMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, : TYPE OF PLEADING:
Defendants : Amended Complaint
: FILED ON BEHALF OF:
: Plaintiff
: COUNSEL FOR THIS PARTY:
: Peter F. Smith, Esquire
: Supreme Court I.D. #34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595

FILED

FEB 23 2001

William A. Shaw
Prothonotary

(#5)

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

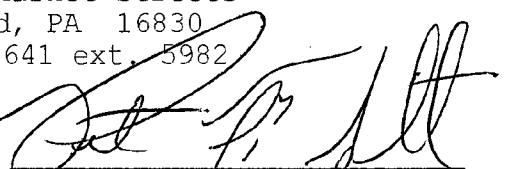
MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00-1351-CD
vs :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN, :
CLARENCE C. DAISHER and :
JOSEPH R. CHAMBERLIN, :
Defendants :
NOTICE TO DEFEND

TO: William B. Kinderman
Roberta A. Kinderman
Clarence C. Daisher
Joseph R. Chamberlin

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

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

Clearfield County Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641 ext. 5982


Peter F. Smith
Attorney for Plaintiff

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
Corner of Market and Second Streets
Clearfield, PA 16830
(814) 765-2641, ext. 5982

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

MANUFACTURES and TRADERS TRUST :	
COMPANY, TRUSTEE UNDER THE :	
WILL OF JAMES B. GRAHAM, :	
Deceased :	
Plaintiff :	No. 00-1351-CD
vs :	
WILLIAM B. KINDELMAN, :	
ROBERTA A. KINDELMAN, :	
CLARENCE C. DAISHER and :	
JOSEPH R. CHAMBERLIN, :	
Defendants :	

COMPLAINT

COMES NOW, Manufactures and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased, by its Attorney Peter F. Smith, which states in support of this Complaint:

1. The name of the Plaintiff, is Manufactures and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased. The Plaintiff's principle office at 101 West Third Street, Williamsport, Pennsylvania, 17701, and shall hereinafter be referred to as the "GRAHAM ESTATE."

2. The names of the first Defendants are William B. Kinderman and Roberta A. Kinderman, who are believed to be husband and wife, and who reside at RD 2, Rockton, Pennsylvania, 15856, and who shall hereinafter be referred to as the "KINDELMANS."

3. The third Defendant is Clarence C. Daisher, who resides at Box 243, Luthersburg, Pennsylvania, 15848, who shall hereinafter be referred to as "MR. DAISHER."

4. The fourth Defendant is Joseph R. Chamberlin who is said to reside at RR 1, Box 294A-12, Keystone Road, Brockport, Elk County, Pennsylvania, 15823.

5. The GRAHAM ESTATE owns a wooded parcel in Penn Township, Clearfield County, Pennsylvania, which is identified by Clearfield County Tax Map Number 125-E9-14 and to which the Plaintiff's decedent took title by deed in Clearfield County Deed Book 360, Page 448.

6. The KINDERMANS own a property which adjoins the property of the GRAHAM ESTATE described in the preceding paragraph. The KINDERMAN property is in Bloom Township, and they took title to it by deed recorded at Clearfield County Instrument Number 199921180.

7. For at least the preceding eleven (11) months the KINDERMANS, MR. DAISHER, MR. CHAMBERLIN and/or others acting through them or on their behalf crossed the boundary line separating the KINDERMAN property from the GRAHAM ESTATE property and cut timber on the GRAHAM ESTATE property. Those individuals then took and sold the timber and kept the proceeds from said sales.

8. Neither the KINDERMANS, MR. DAISHER, MR. CHAMBERLIN nor any others acting through them or on their behalf had or have a lease or other permission from the GRAHAM ESTATE to enter the GRAHAM ESTATE's property and cut timber.

9. The Defendants' entry on the GRAHAM ESTATE property and taking of timber from it constitute a trespass under Pennsylvania

Law which makes them liable to the GRAHAM ESTATE for monetary damages.

10. The GRAHAM ESTATE attaches to this Complaint and incorporates in it by reference a true and correct survey map prepared by David L. Thorp, P.L.S., which depicts the boundary between the KINDERMAN property and the GRAHAM ESTATE property. This map also has shaded the approximate area from which the Defendants took timber. Said survey map is identified as Plaintiff's Exhibit A.

11. The GRAHAM ESTATE did not discover this trespass until the beginning of November 1999.

12. On or about June 21, 2000, Robert L. Kester, who is an agent for the GRAHAM ESTATE, contacted the Defendants.

13. Mr. Kester advised the Defendants that they were trespassing upon the GRAHAM ESTATE property and directed them to withdraw from the property, to cease entering it and taking timber from it and to compensate the GRAHAM ESTATE for all timber taken.

14. The Defendants disregarded Mr. Kester's directions. They have continued to cut and take away timber from the GRAHAM ESTATE property and they have refused to compensate the GRAHAM ESTATE for timber so taken.

15. The GRAHAM ESTATE estimates that the fair market value of the timber taken by the Defendants from the GRAHAM ESTATE property exceeds \$30,000.00.

16. The Defendants or those acting under or through them caused additional damages to the PREMISES because they did not log in a proper and workmanlike manner.

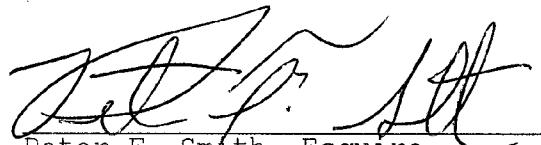
17. Specifically, the Defendants or those acting under or through them:

- A. Defendants have caused stream erosion and sedimentation by illegal stream crossings with equipment and dropping logs and tops in streams on the PREMISES;
- B. Defendants damaged younger trees left standing by dropping cut trees on them;
- C. Defendants created hazardous conditions by leaving dead falls of cut trees and branches hanging in existing trees;
- D. Defendants failed to perform any clean-up whatsoever which left the property in an unsightly condition and creates a future fire hazard;
- E. Defendants did not reseed skid trails; and,
- F. Defendants did not block skid trails or their access into the property which leaves it open for additional trespass.

18. The GRAHAM ESTATE estimates that it will be required to expend an additional \$5,000.00 to correct these additional damages.

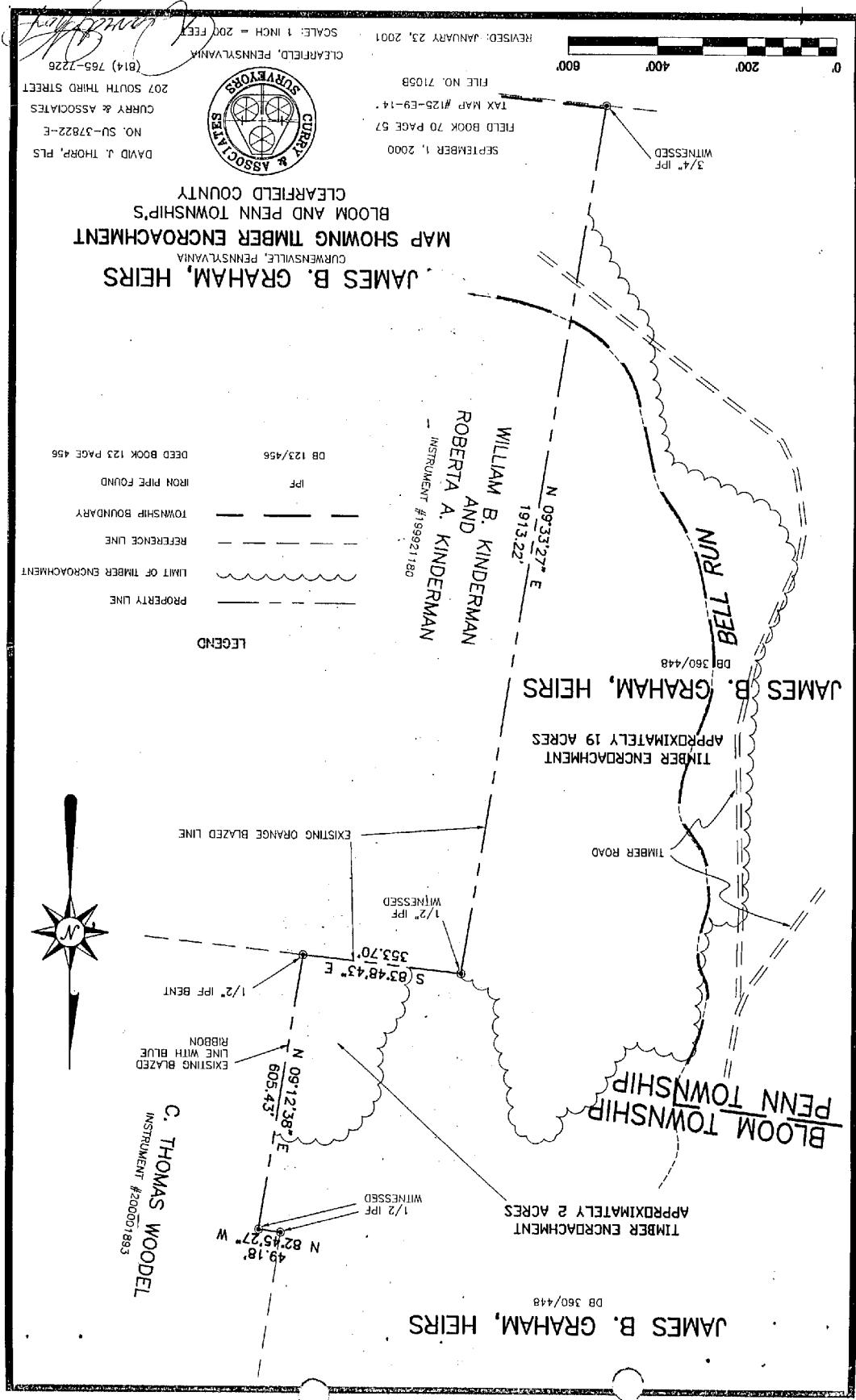
WHEREFORE, the GRAHAM ESTATE prays that this Honorable Court to enter judgment in its favor and against the Defendants in an excess of \$35,000.00 together with interest and costs.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Dated: 2-22-01



AFFIDAVIT

STATE OF PENNSYLVANIA :
:SS
COUNTY OF CLEARFIELD :

Robert L. Kester, being duly sworn according to law, depose and say that he is the Personal Representative of the James B. Graham Estate and the information contained in the foregoing Amended Complaint is true, correct and complete to the best of his information, knowledge and belief.

Robert L. Kester
Robert L. Kester

SWORN TO AND SUBSCRIBED
before me this 5th day
of February, 2001.

Maggie S. Coudriet
Notary Public
NOTARY SEAL
MAGGIE S. COUDRIET, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires: October 21, 2002

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
NO: 00-1531-CD

MANUFACTURERS AND TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM, DECEASED,
Plaintiff

v.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN AND CLARENCE C. DAISHER
Defendants

Preliminary Objections to
Plaintiff's Complaint

FILED

FEB 20 2001
1/25/01 3:30 AM
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
CIVIL DIVISION

MANUFACTURERS AND TRADERS TRUST : NO. 00-1531-CD
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff : Type of Pleading:
V. : Preliminary Objections to
WILLIAM B. KINDERMAN, ROBERTA : Plaintiff's Complaint
A. KINDERMAN and CLARENCE C. :
DAISHER, : Filed on Behalf of:
Defendants : William B. Kinderman and
: Roberta A. Kinderman,
: Defendants
: :
: 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

FEB 20 2001

William A. Shaw
Prothonotary

#4

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: :
vs. : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

NOW comes the Defendants, William B. Kinderman and Roberta A. Kinderman, by and through their attorney, F. Cortez Bell, III, Esquire, who, pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1028, set forth the Defendants' Preliminary Objections to the Plaintiff's Complaint and aver as follows:

1. That a Complaint was filed to the above captioned term and number by the Plaintiff on or about December 8, 2000.

2. That said Complaint was incorporated within a Motion for Preliminary Injunction and served upon the Defendants, William B. Kinderman and Roberta A. Kinderman, on or about January 8, 2001.

3. That the Defendants pursuant to the Pennsylvania Rules of Civil Procedure, Rule 1028 and Rule 1509 respectfully set forth the following Preliminary Objections:

MOTION FOR MORE SPECIFIC PLEADING

4. The averments of Paragraphs 1 through 3 set forth within this Preliminary Objection to Plaintiff's Complaint would be incorporated herein by reference as if the same were set forth in full at length.

5. That Paragraph 9 of the Plaintiff's Complaint specifically indicates that attached to the Complaint and incorporated therein by reference was a true and correct copy of a survey map prepared by David L. Thorp, P.L.S. depicting the boundary line between the property of the Plaintiffs and the property of the Defendants. The Paragraph continues to indicate that the map has been shaded to show the approximate area from which it is alleged that the Defendants improperly removed timber.

6. That following a complete review of the Plaintiff's Complaint served upon the Defendants there is no such map or survey attached thereto such that the Defendants could be fully and completely informed as to the establishment of the line between the Plaintiff's and the Defendant's property as well as such that the Defendants could be advised as to that area or those areas in which the Plaintiffs allege that the Defendants improperly removed timber from property of the Plaintiffs. It should be noted that as a result of other proceedings filed to term and number 00-1532-CD the Defendants have been supplied with a copy of the survey map in question, but said map has not been made a part of the record pleadings to the instant term and docket number.

7. That without a complete copy of the survey establishing the property line between the properties and well as indicating where, if at all, timber was removed from the property of the Plaintiffs, the Defendants are not in a position to fully and completely respond to the Complaint which has been filed.

8. That the Defendants would respectfully that the Plaintiffs either file an Amended Complaint within twenty (20) days from the service of a copy of these Preliminary Objections containing the missing items not found within their original Complaint and/or that the Court issue an Order directing that an Amended Complaint be filed.

NON JOINDER OF A NECESSARY PARTY

9. Paragraphs 1 through 8 of the Preliminary Objections to Plaintiff's Complaint set forth above would be incorporated herein by reference as if the same were set forth in full at length.

10. That the Plaintiff's Complaint is filed against the Defendants William B. Kinderman, Roberta A. Kinderman and Clarence C. Daisher.

11. That the Defendants William B. Kinderman and Roberta A. Kinderman are the property owners of property which adjoins property owned or under the control of the Plaintiff.

12. That Clarence C. Daisher is currently engaged in timbering operations on the Kinderman property pursuant to a Timber

Lease Agreement dated May 19, 2000.

13. That the Plaintiff's Complaint avers that timber was taken or is believed to have been taken as early as early November of 1999.

14. That in early 1999, the Defendant, Clarence Daisher, was not under lease or removing timber from the property to the knowledge of the Defendants Kinderman.

15. That the Kinderman's previously had a Lumber and Timber Agreement executed November 24, 1998 for a period of one (1) year with Joseph R. Chamberlin of RR #1, Box 294A-12, Keystone Road, Brockport, Pennsylvania, 15823.

16. That if any timber was removed prior to or around early November of 1999, said Joseph R. Chamberlin would be a necessary and appropriate party to be included within the Plaintiff's Complaint as well as within the Plaintiff's Complaint in Equity seeking a Preliminary Injunction.

17. That the Defendants would respectfully request that your Honorable Court direct that the Plaintiff's amend their original Complaint to include Joseph R. Chamberlin as a Defendant such that any and all parties associated with regard to this matter have an opportunity to present their positions to your Honorable Court as well as such that at the time the Court issues any Orders in this matter that all the necessary parties have had the opportunity of notice and a right to be heard thereon.

WHEREFORE, it is respectfully requested that your Honorable Court grant the Preliminary Objections of the Defendants, William B. Kinderman and Roberta A. Kinderman, and that the Plaintiff be directed to file an Amended Complaint within twenty (20) days from the date of the Court Order.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
: :
vs. : : No. 00-1531-CD
: :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the
Praeclipe for Entry of Appearance upon the following person by
mailing such copy regular mail, postage prepaid to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

DATED: February 20, 2001

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 00-1531-CD

MANUFACTURERS AND TRADERS TRUST
COMPANY, TRUSTEE UNDER THE WILL
OF JAMES B. GRAHAM, Deceased,
Plaintiff

vs.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN and CLARENCE C. DAISHER
Defendants

PRAECIPE FOR ENTRY OF
APPEARANCE

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

William A. Shaw
Prothonotary

JAN 19 2001

FILE

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

MANUFACTURERS AND TRADERS TRUST : NO. 00-1531-CD
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, : Type of Case: Civil
Deceased, :
Plaintiff : Type of Pleading:
V. : Praeclipe for Entry of
Defendants : Appearance
: Filed on Behalf of:
WILLIAM B. KINDERMAN, ROBERTA : William B. Kinderman and
A. KINDERMAN and CLARENCE C. : Roberta A. Kinderman,
DAISHER, : Defendants
: 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 19 2001
c/12:55/ wjs
William A. Shaw
Prothonotary
3 CLERK TO ATTY

JKC
#3

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants:

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-captioned matter
on behalf of the Defendants, William B. Kinderman and Roberta A.
Kinderman.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

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

Dated: 1-19-2001

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

MANUFACTURERS and TRADERS :
TRUST COMPANY, TRUSTEE UNDER :
THE WILL OF JAMES B. GRAHAM, :
Deceased, :
Plaintiff :
:
vs. : No. 00-1531-CD
:
WILLIAM B. KINDELMAN, :
ROBERTA A. KINDELMAN and :
CLARENCE C. DAISHER, :
Defendants:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the
Praecipe for Entry of Appearance upon the following person by
mailing such copy regular mail, postage prepaid to:

Mr. Peter F. Smith, Esquire
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

F G Bell III
F. Cortez Bell, III, Esquire
Attorney for Defendants William
B. Kinderman and Roberta A.
Kinderman

DATED: 1-19-2001

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10488

MANUFACTURERS and TRADERS TRUST COMPANY

00-1531-CD

VS.

KINDERMAN, WILLIAM B., ROBERTA A. & CLARENCE C. DAISHER

COMPLAINT

SHERIFF RETURNS

NOW JANUARY 4, 2001 AT 4:45 PM EST SERVED THE WITHIN COMPLAINT ON WILLIAM B. KINDERMAN, DEFENDANT AT RESIDENCE, RD2, ROCKTON, DRAUCKER BOTTOM ROAD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM B. KINDERMAN A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: SNYDER

NOW JANUARY 4, 2001 AT 4:45 PM EST SERVED THE WITHIN COMPLAINT ON ROBERTA A. KINDERMAN, DEFENDANT AT RESIDENCE, RD 2, ROCKTON, DRAUCKER BOTTOM RD., CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM KINDERMAN, HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: SNYDER

NOW JANUARY 4, 2001 AT 7:40 PM EST SERVED THE WITHIN COMPLAINT ON CLARENCE C. DAISHER, DEFENDANT AT RESIDENCE, BOX 243, LUTHERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RHONDA GREENAWAY, GIRLFRIEND A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: SNYDER

Return Costs

Cost	Description
43.86	SHFF. HAWKINS PD.BY:KEYSTONE FINANC
30.00	SURCHARGE:PD BY: KEYSTONE FINANCIAL



In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10488

MANUFACTURERS and TRADERS TRUST COMPANY

00-1531-CD

VS.

KINDERMAN, WILLIAM B., ROBERTA A. & CLARENCE C. DAISHER

COMPLAINT

SHERIFF RETURNS

Sworn to Before Me This

15th Day Of January, 2001
William A. Shaw

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

So Answers,

Chester Hawkins
by Marly Harry
Chester A. Hawkins
Sheriff

FILED

JAN 15 2001

10591
William A. Shaw
Prothonotary

EAS

FILED

Dec 08 2000
Peter F. Smith
William A. Shaw
Prothonotary
PA \$80.00

4cc with Smith

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PA. 16830

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased : No. 00-1531-CD
VS :
TYPE OF CASE:
Civil
WILLIAM B. KINDELMAN, :
ROBERTA A. KINDELMAN and :
CLARENCE C. DAISHER :
Defendants :
TYPE OF PLEADING:
Complaint
FILED ON BEHALF OF:
Plaintiff
COUNSEL FOR THIS PARTY:
Peter F. Smith, Esquire
Supreme Court I.D. #34291
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595
:

FILED

DEC 08 2000

William A. Shaw
Prothonotary

#1

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00- -CD
vs :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER :
Defendants :

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

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

Clearfield County Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641 ext. 5982

Peter F. Smith
Attorney for Plaintiff

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

MANUFACTURES and TRADERS TRUST :
COMPANY, TRUSTEE UNDER THE :
WILL OF JAMES B. GRAHAM, :
Deceased :
Plaintiff : No. 00- -CD
vs :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER :
Defendants :

COMPLAINT

COMES NOW, Manufactures and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased, by its Attorney Peter F. Smith, which states in support of this Complaint:

1. The name of the Plaintiff, is Manufactures and Traders Trust Company, as Trustee under the Will of James B. Graham, deceased. The Plaintiff's principle office at 101 West Third Street, Williamsport, Pennsylvania, 17701, and shall hereinafter be referred to as the "GRAHAM ESTATE."

2. The names of the first Defendants are William B. Kinderman and Roberta A. Kinderman, who are believed to be husband and wife, and who reside at RD 2, Rockton, Pennsylvania, 15856, and who shall hereinafter be referred to as the "KINDERMANS."

3. The third Defendant is Clarence C. Daisher, who resides at Box 243, Luthersburg, Pennsylvania, 15848, who shall hereinafter be referred to as "MR. DAISHER."

4. The GRAHAM ESTATE owns a wooded parcel in Penn Township, Clearfield County, Pennsylvania, which is identified by Clearfield

County Tax Map Number 125-E9-14 and to which the Plaintiff's decedent took title by deed in Clearfield County Deed Book 360, Page 448.

5. The KINDERMANS own a property which adjoins the property of the GRAHAM ESTATE described in the preceding paragraph. The KINDERMAN property is in Bloom Township, and they took title to it by deed recorded at Clearfield County Instrument Number 199921180.

6. For at least the preceding eleven (11) months the KINDERMANS, MR. DAISHER and/or others acting through them or on their behalf crossed the boundary line separating the KINDERMAN property from the GRAHAM ESTATE property and cut timber on the GRAHAM ESTATE property. Those individuals then took and sold the timber and kept the proceeds from said sales.

7. Neither the KINDERMANS, MR. DAISHER nor any others acting through them or on their behalf had or have a lease or other permission from the GRAHAM ESTATE to enter the GRAHAM ESTATE's property and cut timber.

8. The Defendants' entry on the GRAHAM ESTATE property and taking of timber from it constitute a trespass under Pennsylvania Law which makes them liable to the GRAHAM ESTATE for monetary damages.

9. The GRAHAM ESTATE attaches to this Complaint and incorporates in it by reference a true and correct survey map prepared by David L. Thorp, P.L.S., which depicts the boundary between the KINDERMAN property and the GRAHAM ESTATE property.

This map also has shaded the approximate area from which the Defendants took timber.

10. The GRAHAM ESTATE did not discover this trespass until the beginning of November 1999.

11. On or about June 21, 2000, Robert L. Kester, who is an agent for the GRAHAM ESTATE, contacted the Defendants.

12. Mr. Kester advised the Defendants that they were trespassing upon the GRAHAM ESTATE property and directed them to withdraw from the property, to cease entering it and taking timber from it and to compensate the GRAHAM ESTATE for all timber taken.

13. The Defendants disregarded Mr. Kester's directions. They have continued to cut and take away timber from the GRAHAM ESTATE property and they have refused to compensate the GRAHAM ESTATE for timber so taken.

14. The GRAHAM ESTATE estimates that the fair market value of the timber taken by the Defendants from the GRAHAM ESTATE property exceeds \$30,000.00.

15. The Defendants or those acting under or through them caused additional damages to the PREMISES because they did not log in a proper and workmanlike manner.

16. Specifically, the Defendants or those acting under or through them:

A. Defendants have caused stream erosion and sedimentation by illegal stream crossings with equipment and dropping logs and tops in streams on the PREMISES;

B. Defendants damaged younger trees left standing by dropping cut trees on them;

C. Defendants created hazardous conditions by leaving dead falls of cut trees and branches hanging in existing trees;

D. Defendants failed to perform any clean-up whatsoever which left the property in an unsightly condition and creates a future fire hazard;

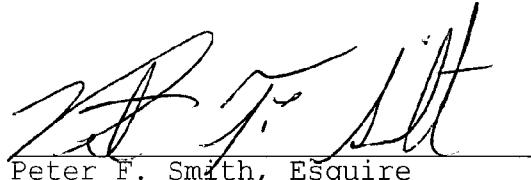
E. Defendants did not reseed skid trails; and,

F. Defendants did not block skid trails or their access into the property which leaves it open for additional trespass.

17. The GRAHAM ESTATE estimates that it will be required to expend an additional \$5,000.00 to correct these additional damages.

WHEREFORE, the GRAHAM ESTATE prays that this Honorable Court to enter judgment in its favor and against the Defendants in an excess of \$35,000.00 together with interest and costs.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Dated: 12 - 6 - 00

AFFIDAVIT

STATE OF PENNSYLVANIA

:

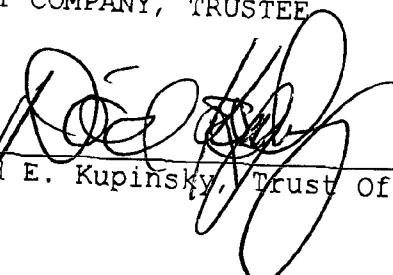
COUNTY OF LYCOMING

: SS

:

David E. Kupinsky, being duly sworn according to law, depose and say that he is the Trust Officer of Manufacturers and Traders Trust Company and the information contained in the foregoing Complaint is true, correct and complete to the best of his information, knowledge and belief.

James B. Graham Trust
MANUFACTURERS AND TRADERS
TRUST COMPANY, TRUSTEE

By: 
David E. Kupinsky, Trust Officer

SWORN TO AND SUBSCRIBED
before me this 4th
day of December, 2000.

Diana M. Rovito
Notary Public

Notarial Seal
Diana M. Rovito, Notary Public
Williamsport, Lycoming County
My Commission Expires Sept. 23, 2002

Member, Pennsylvania Association of Notaries

U.S. Postal Service™
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(Endorsement Required)	Here
Total Postage & Fees	\$ 81.65

7002 0000 7855 5008

7002 William A. Shaw 02/28/2005
Sent to **William A. Shaw** 00-1531-0
5200 Grant Building
Street, Apt. No.:
or P.O. Box No. 5000 Grant Building
City, State, ZIP+4 Pittsburgh, PA 15219

PS Form 3800, June 2002

See Reverse for Instructions

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FILED

FEB 28 2005

6/3:05/wes
William A. Shaw
Prothonotary

00-1531-C0

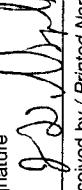
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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

COMPLETE THIS SECTION ON DELIVERY

A. Signature X 	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name) John W. Kenderman	C. Date of Delivery 3-1
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	

3. Service Type
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

2. Article Number (Transfer from service label)	7002 3150 0000 7855 5008
Domestic Return Receipt	

PS Form 3811, August 2001 102595-02-M-1540

00-1531-03 Kenderman

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William A. Shaw
Prothonotary/Clerk of Courts
P.O. Box 549
Clearfield, PA 16830

DD-1531-1A Williamsport vs. Kindersman

DD-1531-CD

FILED

3/10/05
MAR 03 2005

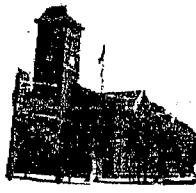
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

CLEARFIELD COUNTY
OFFICE OF THE PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW
PROTHONOTARY/
CLERK OF COURTS

DAVID S. AMMERMAN
SOLICITOR



JACKI KENDRICK
DEPUTY PROTHONOTARY

BONNIE HUDSON
ADMINISTRATIVE ASSISTANT

P.O. Box 549, Clearfield, PA 16830
Phone: (814) 765-2641 Ext. 1330 Fax: (814) 765-7659

John K. Reilly, Jr., Senior Judge, S.P.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, PA 16830

F. Cortez Bell, III, Esq.
PO Box 670
Clearfield, PA 16830

Clarence C. Daisher
RR 1, Box 74
Grampian, PA 16838

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased
Vs.
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

Court No. 00-1531-CD; Superior Court No. 80 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on February 28, 2005.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 02/28/2005

Time: 10:08 AM

Page 1 of 5

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	Praecipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq. Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
04/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/29/2001	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
05/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
09/07/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	

Date: 02/28/2005

Time: 10:08 AM

Page 2 of 5

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date		Judge
09/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, Esq. Affidavit. s/Robert L. Kester 4 cc Atty	John K. Reilly Jr.
12/07/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. 4 cc to Atty	John K. Reilly Jr.
12/10/2001	RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith	John K. Reilly Jr.
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell	John K. Reilly Jr.
01/04/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc Atty Smith	John K. Reilly Jr.
01/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver	John K. Reilly Jr.
01/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver	John K. Reilly Jr.
01/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
03/19/2002	Praecept, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call. Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,	John K. Reilly Jr.
03/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAIISHER. by the Court, s/JKR,JR. P.J. no cc	John K. Reilly Jr.
04/01/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
07/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney	John K. Reilly Jr.
07/30/2002	Praecept to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc Certificate of Service, Praecept to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
08/01/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson	John K. Reilly Jr.
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.	John K. Reilly Jr.

Date: 02/28/2005

Time: 10:08 AM

Page 3 of 5

Clearfield County Court of Common Pleas

ROA Report

Case: 2000-01531-CD

User: BHUDSON

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson	John K. Reilly Jr.
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson	John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell	John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Plffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell	John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING ORDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801	John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell	John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSPORT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell	John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc	John K. Reilly Jr.
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00	John K. Reilly Jr.

Date: 02/28/2005

Time: 10:08 AM

Page 4 of 5

Clearfield County Court of Common Pleas

ROA Report

Case: 2000-01531-CD

User: BHUDSON

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR, JR., P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA John K. Reilly Jr. 2003 no cc
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR, JR., P.J. 1 cc P. Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003. John K. Reilly Jr.
10/27/2003	Domestic Return Receipt, Appeal at Superior Court. John K. Reilly Jr.
11/13/2003	Filing: Praeclipe to Enter Verdict Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty.
12/17/2003	Praeclipe for Argument filed on behalf of Defendants. 6 CC to Atty. Bell. John K. Reilly Jr.
12/31/2003	Letter from CA to Clarence Daisher scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30, P.M., returned by USPS
01/08/2004	SUPERIOR COURT OF PENNSYLVANIA. ORDER, AND NOW, this 20th day of November, 2003, it is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See Lenhart v. Cigna, 824 A.2d 1193 (Pa. Super 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered thereon, for appeal to be proper); see also L.B. Foster Co. v Lane Enterprises, Inc. 710 A.2d 55 (PA 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes). PER CURIAM" Date: November 20, 2003
	Certificate of Contents of Remanded Record And Notice Of Remand under Pennsylvania Rules Of Appellate Procedure 2571 and 2572. s/Eleanor R. Valecko, Deputy Prothonotary Copy to Superior Court John K. Reilly Jr.
12/08/2004	Suggestion of Name Change, filed by Atty. Smith no cert. copies Plaintiff Suggests that the Williamsport-Lycoming Foundation has changed its name to First Community Foundation of Pennsylvania
	Certificate of Service, filed by Atty. Smith no Cert. Copies. Served copy of Suggestion of Name Change to Atty. Bell. John K. Reilly Jr.
12/10/2004	Filing: Praeclipe for Entry of Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1892077 Dated: 12/10/2004 Amount: \$20.00 (Check). Judgment entered against Defendants William and Roberta Kinderman ONLY in the amount of \$25,211.00. Notice to Defs., Statement to Atty.
	Certificate of Service, copy of Praeclipe for Entry of Judgment by mail on Dec. 10, 2004 to F. Cortez Bell, III, Attorney for Defendants William and Roberta Kinderman. Filed by s/ Peter F. Smith, Esquire John K. Reilly Jr.
01/10/2005	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1893506 Dated: 01/10/2005 Amount: \$45.00 (Check). Filed by s/ F. Cortez Bell, III, Esquire. 6CC Atty Bell, 1CC & \$60.00 (ck. # 1039) to Superior Court. John K. Reilly Jr.
01/18/2005	Appeal Docket Sheet filed. no cc John K. Reilly Jr.

Date: 02/28/2005

Time: 10:08 AM

Page 5 of 5

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
01/24/2005	Order, NOW, this 17th day of Jan., 2005, it is the ORDER of this Court that John K. Reilly Jr. counsel for Defendants above named file with this Court a concise statement of matters complained of on appeal, in accordance with Rule of Appellate Procedure 1925 (b). BY THE COURT, /s/ The Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding. 2CC Attys: P. Smith, F. Bell; 1CC Def. C. Daisher
01/31/2005	Statement of Matters Complained of on Appeal, filed by s/F. Cortez Bell, III, John K. Reilly Jr. Esq. Three CC Attorney Bell
02/02/2005	Order Returned, forwarding expired, remailed to Clarence Daisher at RR 1, John K. Reilly Jr. Box 74 A, Grampian, PA 16838, filed.
02/03/2005	Order, NOW, this 3rd day of Feb., 2005, following receipt of Def. Kindermans' appeal this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place. BY THE COURT: /s/ John K. Reilly, Jr. Senior Judge. 1cc attys P Smith, F. Bell. 1cc Def. Daisher
02/07/2005	Order returned, copy of Jan. 17 2005 Order, addressed to Clarence Daisher, RR1, Box 74 A, Grampian, PA 16838,unable to forward. no CC
02/08/2005	Order dated February 3, 2005, re: Opinion mailed to Clarence Daisher returned by USPS, "Not Deliverable as Addressed." No better address on file.
02/28/2005	Appeal mailed to Superior Court February 28, 2005. Letters mailed to counsel and Clarence Daisher.

I hereby certify this to be a true and accurate copy of the original statement of facts in this case

FEB 28 2005

Attest

Priscilla M. Hudson
Clerk of Courts



Supreme Court of Pennsylvania

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

Western District

November 2, 2005

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

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Williamsport-Lycoming Foundation, Trustee Under The Will of James B. Graham,
Deceased

v.

William B Kinderman, Roberta A. Kinderman and Clarence C. Daisher

Petition of: William B Kinderman, and Roberta A. Kinderman
Superior Docket Number - 80 WDA 2005

Trial Court/Agency Dkt. Number: 00-1531 CD
No. 594 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 2, 2005

Disposition:
Date:

Reargument/Reconsideration Disposition:
Reargument/Reconsideration
Disposition Date:

/wpf

FILED

NOV 04 2005
m/1351 wa
William A. Shaw
Prothonotary/Clerk of Courts

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

00-1531-CD

WILLIAMS-SPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER THE
WILL OF JAMES B. GRAHAM,
DECEASED

: No. 594 WAL 2005
:
:
: Petition for Allowance of Appeal from the
: Order of the Superior Court

v.

WILLIAM B. KINDERMAN, ROBERTA A.
KINDERMAN AND CLARENCE C.
DAISHER

PETITION OF: WILLIAM B.
KINDERMAN, AND ROBERTA A.
KINDERMAN

ORDER

PER CURIAM:

AND NOW, this 9th day of May, 2006, the Petition for Allowance of Appeal is
hereby DENIED.

A True Copy Patricia Nicola
As of: May 9, 2006
Attest: *Patricia Nicola*
Chief Clerk
Supreme Court of Pennsylvania

FILED
M 12:43 PM
JUN 14 2006

William A. Shaw
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

John A. Vaskov, Esq.

Deputy Prothonotary

Patricia A. Nicola

Chief Clerk

Western District

June 8, 2006

801 City-County Building

Pittsburgh, PA 15219

412-565-2816

www.aopc.org

Mr. William A. Shaw

Prothonotary

Clearfield County Courthouse

230 East Market Street

Clearfield, PA 16830

RE: Williamsport-Lycoming Foundation, Trustee Under The Will of James B. Graham,
Deceased

v.

William B. Kinderman, Roberta A. Kinderman and Clarence C. Daisher

Petition of: William B. Kinderman, and Roberta A. Kinderman
Superior Docket Number - 80 WDA 2005

Trial Court/Agency Dkt. Number: 00-1531 CD

No. 594 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: November 2, 2005

Disposition: Order Denying Petition for Allowance of Appeal

Date: May 9, 2006

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/wpf

The Superior Court of Pennsylvania

Sitting at Pittsburgh

6th floor Grant Building

Suite 600

Pittsburgh, Pennsylvania

15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND**

under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

RECORD 2 PARTS, 1 TRANSCRIPT, 1 ENVELOPE

SUPERIOR COURT JUDGMENT ORDER AND OPINION

SUPREME COURT DATA SHEET

FILED

JUN 16 2006

William A. Shaw
Prothonotary/Clerk of Courts

As remanded from said court in the following matter:

WILLIAMSPORT-LYCOMING V KINDERMAN

NO. 80 WDA 2005

COURT OF COMMON PLEA-CIVIL DIVISION-CLEARFIELD COUNTY
NO. 00-1531 CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded June 15, 2006

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: 6/16/06

William A. Shaw

(Signature & Title)

J-S40027-05

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P.
65.37**

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILLIAM OF JAMES B. GRAHAM DECEASED,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
WILLIAM B KINDERMAN, ROBERTA A. KINDERMAN AND CLARENCE C. DAISHER	:	
APPEAL OF: WILLIAM B KINDERMAN, AND ROBERTA A. KINDERMAN,	:	
Appellants	:	No. 80 WDA 2005

FILED

JUN 16 2006
M 1:30 pm 6K
William A. Shaw
Prothonotary/Clerk of Courts

Appeal from the Judgment entered December 10, 2004
In the Court of Common Pleas of Clearfield County
Civil at No.: 00-1531 CD

BEFORE: HUDDOCK, STEVENS, and MONTEMURO*, JJ.

MEMORANDUM:

Filed: October 3, 2005

This is an appeal from the December 10, 2004 judgment entered in the Court of Common Pleas of Clearfield County in favor of Appellee Manufacturers and Traders Trust Company, trustees for the estate of James B. Graham, and against Appellants William B. Kinderman and Roberta A. Kinderman in the amount of \$25,211.00. Appellants raise various issues concerning the sufficiency of the evidence and allege the trial court erred in concluding Appellants were liable under Section 414A of the Restatement (Second) of Torts. We affirm.

*Retired Justice assigned to the Superior Court.

The relevant facts and procedural history are as follows: On December 8, 2000, Appellee filed a complaint averring that Mr. Graham's estate owned a wooded parcel in Penn Township, Clearfield County, which was adjacent to property owned by Appellants. Appellee alleged that, for at least eleven months prior to the filing of their complaint, Appellants and Clarence C. Daisher, who is in the logging business, crossed the boundary line separating the two properties and, without authorization, improperly cut and removed timber from Mr. Graham's estate's property. Appellee further alleged that one of its representatives, Robert L. Kester, contacted Appellants and Mr. Daisher on June 21, 2000, and informed them they were trespassing on property owned by Mr. Graham's estate, ordered them to compensate Mr. Graham's estate for any timber removed from the property, and directed them to cease entering property owned by Mr. Graham's estate. Appellee indicated Appellants and Mr. Daisher disregarded Mr. Kester's directions, continued to remove timber from property owned by Mr. Graham's estate, and owed money to Mr. Graham's estate in excess of \$30,000.00. Appellee also indicated that Appellants and Mr. Daisher caused damage to the property owned by Mr. Graham's estate in that they removed the timber in a manner causing stream erosion, damaged younger trees left behind, left pieces of trees dangling from surrounding trees, failed to clean-up the

property, and did not reseed skid trails. Appellee requested judgment in the additional amount of \$5,000.00 to correct the damage caused by Appellants and Mr. Daisher to Mr. Graham's estate's property.

Appellants and Mr. Daisher filed preliminary objections requesting that Joseph R. Chamberlin, who is in the logging business, be added as a defendant to Appellee's complaint since Mr. Chamberlin and Appellants had a lumber and timber agreement from November 24, 1998, to November 24, 1999, under which Mr. Chamberlin agreed to remove timber from Appellants' property. Mr. Daisher executed a lumber and timber agreement with Appellants on May 19, 2000. On February 23, 2001, Appellee filed an amended complaint adding Mr. Chamberlin as a defendant, and Appellants, Mr. Daisher, and Mr. Chamberlin filed answers with regard thereto.¹

The matter proceeded to a bench trial on April 7, 2003, and on June 24, 2003, the trial court filed an opinion and order indicating, *inter alia*, that Mr. Chamberlin had removed timber from the property owned by Mr. Graham's estate, Appellants had been unjustly enriched, and Mr. Daisher had taken no part in the removal of the timber. The trial court specifically found in favor of Appellee as against Appellants

¹ On December 16, 2002, Mr. Chamberlin filed a motion for summary judgment indicating that he had filed a Chapter 7 Bankruptcy Petition in the federal court listing the instant action as a debt and the federal court had granted his petition, thereby discharging the debt. Subsequently, the trial court granted Mr. Chamberlin's motion for summary judgment and dismissed him as a defendant.

in the amount of \$25,211.00 and entered judgment in favor of Mr. Daisher.

On July 7, 2003, Appellants filed timely post-trial motions,² and on July 10, 2003, Appellee filed an answer thereto. On July 22, 2003, Appellants filed a notice of appeal with this Court, and on November 13, 2003, Appellee filed a praecipe to enter judgment.³ By order entered on November 20, 2003, this Court dismissed Appellants' appeal. Specifically, in a *per curiam* order, this Court stated:

[I]t is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. **See *Lenhart v. Cigna***, 824 A.2d 1193 (Pa.Super. 2003) (stating that post-trial motions must be filed and disposed of, and judgment entered thereon, for appeal to be proper); **see also *L.B. Foster Co. v. Lane Enterprises, Inc.***, 710 A.2d 55 (Pa. 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes).

On January 5, 2004, this Court remitted the record back to the trial court, and on January 14, 2004, the trial court heard argument on Appellants' post-trial motions, which were filed on July 7, 2003. The

² Pursuant to Pa.R.C.P. 227.1(c)(2), post-trial motions must be filed within ten days after "notice of nonsuit or the filing of the decision or adjudication in the case of a trial without jury or equity trial." Here, the tenth day for Appellants to file their post-trial motions was on Friday, July 4, 2003, which is a legal holiday. 1 Pa.C.S.A. § 1908. Therefore, Appellants were permitted to file their post-trial motions on Monday, July 7, 2003. 1 Pa.C.S.A. § 1908.

³ The trial court filed a supplemental opinion on October 21, 2003 specifically finding Mr. Daisher's testimony to be credible, particularly the portion wherein Mr. Daisher testified he had told Appellant William B. Kinderman that someone had crossed over the boundary line and removed timber from Mr. Graham's estate's property.

trial court failed to enter an order disposing of the post-trial motions, and on December 10, 2004, Appellants filed a praecipe for the entry of judgment averring that more than 120 days had elapsed since the filing of the post-trial motions and the trial court had not disposed of the motions. On January 10, 2005, Appellants filed the instant notice of appeal indicating they were appealing from the judgment entered on December 10, 2004. The trial court ordered Appellants to file a statement pursuant to Pa.R.A.P. 1925(b), Appellants filed the requested statement, and the trial court filed a Pa.R.A.P. 1925(a) opinion indicating that it was not going to file any further opinions.

Initially, before addressing the merits of Appellants' appeal, we must address a procedural mishap presented in this case. As indicated *supra*, by order entered on November 20, 2003, this Court dismissed Appellants' initial appeal on the basis that Appellants did not file timely post-trial motions. Upon review, we conclude that Appellants did, in fact, file timely post-trial motions. However, we further conclude that Appellants' initial appeal to this Court was premature in that the trial court did not dispose of the post-trial motions and more than 120 days had not yet passed under Pa.R.C.P. 227.4. Therefore, while this Court properly dismissed the appeal on November 20, 2003 in a *per curiam* order, this Court did so on in improper basis. Apparently recognizing the procedural error, the trial court and the parties proceeded as if this

Court had dismissed the initial appeal on the basis that it was prematurely filed. Since we are not bound by the *per curiam* order and in the interest of fairness, we shall proceed as such as well. **See** I.O.P. 65.21(A).

Appellants contend (1) the evidence was insufficient to establish Mr. Chamberlin trespassed on and removed timber from property owned by Mr. Graham's estate, (2) to the extent the evidence establishes Mr. Chamberlin removed timber from Mr. Graham's estate, the evidence fails to establish Appellants received any proceeds therefrom since the money they received from Mr. Chamberlin was less than the amount their own timber was worth, and (3) the trial court erred in determining that Appellants were liable to Appellee under Section 414A of the Restatement (Second) of Torts in that Appellants did not properly supervise Mr. Chamberlin's logging activities.⁴

Regarding Appellants' sufficiency of the evidence claims, we find the claims to be waived. Aside from rehashing the facts in the light most favorable to themselves, the losing party, Appellants have failed to develop their claims on appeal. Specifically, Appellants have failed to provide this Court with any citation to or analysis of relevant

⁴ Appellants have divided their arguments into five separate headings; however, a comprehensive review of their appellate brief reveals that Appellants are raising the specific issues delineated by this Court.

authority and have otherwise failed to explain how the trial court misapplied the law. Therefore, we find Appellants' sufficiency of the evidence claims to be waived. **See** Pa.R.A.P. 2119; ***Harris v. Toys "R" Us-Penn, Inc.***, 2005 WL 1819962 (Pa.Super. filed Aug. 3, 2005).

Appellants also claim they were not liable under Section 414A of the Restatement (Second) of Torts. Specifically, Appellants allege they had no duty to control Mr. Chamberlin's activities, or in the alternative, the evidence establishes they met their duty to control such activities.

Aside from citing to Section 414A of the Restatement (Second) of Torts, Appellants have failed to cite any authority supporting their argument and they have not otherwise developed their claim. In addition, Appellants failed to raise this specific claim in their post-trial motions and court-ordered Pa.R.A.P. 1925(b) statement. Therefore, the issue has been waived. **See** Pa.R.A.P. 2119; ***Cerniga v. Mon Valley Speed Boat Club, Inc.***, 862 A.2d 1272 (Pa.Super. 2004); ***McKeeman v. Corestates Bank, N.A.***, 751 A.2d 655 (Pa.Super. 2000).

Affirmed.

J-S40027-05

Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

DATE: October 3, 2005

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

WILLIAMSPORT-LYCOMING FOUNDATION, :
TRUSTEE Under the Will of JAMES B. GRAHAM, : No. 2000-1531-CD
DECEASED, :
Plaintiff :
vs. :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants :
:

FILED Atty pd.
m 10:09 AM 20.00
SEP 05 2006 ICC & 6 want
William A. Shaw packages
Prothonotary/Clerk of Courts to Shiff
GK

PRAECIPE FOR WRIT OF EXECUTION

To: Clearfield County Prothonotary

Dear Sir:

Kindly issue a Writ of Execution in the above-captioned matter directed to the Sheriff of Clearfield County as follows:

1. Index this Writ against:

WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN

2. Property owned by the Defendants **William B. Kinderman and Roberta A. Kinderman** as follows:

PROPERTY 1

ALL that certain piece, pieces or parcel of land situate in the Township of Bloom, County of Clearfield and State of Pennsylvania, with exceptions and reservation hereinafter mentioned, bounded and described as follows:

BEGINNING at a post corner, being the southeast corner of tract herein conveyed; thence North three (3) degrees forty-five (45) minutes East, one hundred twenty-three and seventy-five one hundredths (123.75) perches to a maple corner (now gone); thence North eighty-five (85) degrees West, thirty-one (31) perches to a post corner; thence North five (5) degrees East sixty-three and seventy-one hundredths (63.70) perches to a post corner; thence North eighty-three (83) degrees forty-five (45) minutes West, one hundred twenty-one and seventy-one hundredths (121.70) perches to a corner (beech,

now gone); thence South three (3) degrees thirty (30) minutes West seventy and two tenths (70.2) perches to a corner, formerly a white pine stump, now hemlock witness; thence North eighty-five (85) degrees West, twenty-five (25) perches to a corner formerly hemlock (now gone); thence South six (6) degrees West, one hundred sixteen (116) perches to a hemlock corner (now gone); thence South eighty-four (84) degrees East, one hundred eighty and fifty-seven one hundredths (180.57) perches to a corner and place of beginning, containing one hundred eighty-three (183) acres and one hundred one (101) perches, more or less.

EXCEPTING and **RESERVING**, nevertheless, from this sale and conveyance all the merchantable coal of whatever kind lying and being in and under the land hereinabove described together with the right of ingress and egress and regress over, through and upon said land to make roads, erect buildings and deposit dirt on the surface of said land, in mining and removing said coal, without liability for damages resulting from the mining and removal of said coal, or injury that may result to the streams of water, or the surface of said land or buildings and improvements thereon, which may result to the owners of said land by reason of the taking, mining and removing of said coal as mentioned, stipulated and described in Deed from Frank McBride to James D. Ake bearing date the 22nd day of September A.D. 1906, recorded in the office of the Recorder of Deeds for Clearfield County, November 21st A.D. 1906 in Deed Book No. 159, page 409, which deed is referred to for full information as to the rights of the owner of the said coal and mining rights underlying the surface of the land hereby conveyed.

EXCEPTING AND RESERVING from the premises hereinabove described, the following two parcels.

- (1) **Deed from William E. Thomas and Annie Thomas, his wife to Anna M. Thomas dated the 22nd day of September 1937 and recorded in Deed Book 319, page 326.**
- (2) **Deed from William E. Thomas and Annie Thomas, his wife, to Harry J. Charles dated 11th day of April 1914, and recorded in Deed Book 203, page 104.**

BEING the same premises conveyed to William B. Kinderman and Robert A. Kinderman by Deed dated March 7, 1995 and recorded December 30, 1999 at Clearfield County Instrument Number 199921180.

ALSO identified by Clearfield County Tax Map No. 104-0-E09-000-00006.

PROPERTY 2

ALL that certain tract of land situated in Union Township, Clearfield County, Pennsylvania bounded and described as follows:

BEGINNING at a post in Public Road; THENCE along line of Shivelys, North 960 feet to post corner of lands of Shivelys and Wells; THENCE along Wells line, East 435 feet to a post stone in Public Road; THENCE along Public Road, South 24 degrees 15 minutes West 1,053 feet to post and place of beginning.

CONTAINING four acres and 79 perches more or less.

BEING the same premises conveyed to William B. Kinderman and Roberta A. Kinderman by Deed dated May 31, 1995 and recorded at Clearfield County Record Volume 1679, page 247

ALSO identified by Clearfield County Tax Map No. 129-0-E07-000-00002.

PROPERTY 3

ALL that certain piece or parcel of land situate, lying and being in Union Township, Clearfield County, Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a post; thence South 35 perches to a post (a corner of land now or formerly of Irvin); thence by the same or partly by the same West, 176 perches to a post; thence North, 63 perches to a post; thence East by land now or formerly of Henry Pentz 76 perches to a post; thence by same South 30 perches to a post; thence by same, East 100 perches to the place of beginning.

CONTAINING 52 3/4 acres, more or less.

EXCEPTING AND RESERVING, nevertheless, unto the grantor herein all of the gas and oil and the rights thereto.

BEING the same premises conveyed to William B. Kinderman and Roberta A. Kinderman by deed dated August 25, 1973 and recorded in Clearfield County Deed Book 657, page 214.

ALSO identified by Clearfield County Tax Map No. 129-0-E07-000-00003.

3. Amounts due:

a)	Judgment amt entered 12/10/04	\$25,211.00
b)	Interest at 6% per annum from 12/10/04 to 7/12/06	\$ 2,312.50

c)	Interest accruing after 7/13/06 at \$4.1443 per day (to be added)	\$ _____
d)	Court costs	\$ 238.86
e)	Costs of execution (to be added)	\$ _____

PRELIMINARY TOTAL \$27,762.36

Date: Prothonotary's costs \$ 230.00

FINAL TOTAL \$ _____

Dated: 8/1/06



Peter F. Smith, Esquire
Attorney for Plaintiff
30 South Second Street
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

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

CC-1

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE Under the Will of JAMES B. GRAHAM,
DECEASED, : No. 2000-1531-CD
Plaintiff
vs.
WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN and
CLARENCE C. DAISHER,
Defendants

**WRIT OF EXECUTION
NOTICE**

This paper is a Writ of Execution. It has been issued because there is a judgment against you. It may cause your property to be held or taken to pay the judgment. You may also have legal rights to prevent your property from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

The law provides that certain property cannot be taken. Such property is said to be exempt. There is a debtor's exemption of \$300.00. There are other exemptions which may be applicable to you. Attached is a summary of some of the major exemptions. You may have other exemptions or other rights.

If you have an exemption, you should do the following promptly: (1) Fill out the attached claim form and demand for a prompt hearing; and, (2) Deliver the form or mail it to the Sheriff's Office at the address noted.

You should come to Court ready to explain your exemption. If you do not come to Court to prove your exemptions, you may lose some of your property.

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Corner of Second and Market Streets
Clearfield, PA 16830
(814) 765-2641

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

WILLIAMSPORT-LYCOMING FOUNDATION, :
TRUSTEE Under the Will of JAMES B. GRAHAM, : No. 2000-1531-CD
DECEASED, :
Plaintiff :
vs. :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants :
:

WRIT OF EXECUTION

Commonwealth of Pennsylvania/County of Clearfield
To the Sheriff of Clearfield County

To satisfy the judgment, interest, costs and attorney's commission against the Defendants above:

1. You are directed to levy upon the real estate owned by the Defendants **WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN** as follows and sell their interest therein:

PROPERTY 1

ALL that certain piece, pieces or parcel of land situate in the Township of Bloom, County of Clearfield and State of Pennsylvania, with exceptions and reservation hereinafter mentioned, bounded and described as follows:

BEGINNING at a post corner, being the southeast corner of tract herein conveyed; thence North three (3) degrees forty-five (45) minutes East, one hundred twenty-three and seventy-five one hundredths (123.75) perches to a maple corner (now gone); thence North eighty-five (85) degrees West, thirty-one (31) perches to a post corner; thence North five (5) degrees East sixty-three and seventy-one hundredths (63.70) perches to a post corner; thence North eighty-three (83) degrees forty-five (45) minutes West, one hundred twenty-one and seventy-one hundredths (121.70) perches to a corner (beech, now gone); thence South three (3) degrees thirty (30) minutes West seventy and two tenths (70.2) perches to a corner, formerly a white pine stump, now hemlock witness; thence North eighty-five (85) degrees West, twenty-five

(25) perches to a corner formerly hemlock (now gone); thence South six (6) degrees West, one hundred sixteen (116) perches to a hemlock corner (now gone); thence South eighty-four (84) degrees East, one hundred eighty and fifty-seven one hundredths (180.57) perches to a corner and place of beginning, containing one hundred eighty-three (183) acres and one hundred one (101) perches, more or less.

EXCEPTING and RESERVING, nevertheless, from this sale and conveyance all the merchantable coal of whatever kind lying and being in and under the land hereinabove described together with the right of ingress and egress and regress over, through and upon said land to make roads, erect buildings and deposit dirt on the surface of said land, in mining and removing said coal, without liability for damages resulting from the mining and removal of said coal, or injury that may result to the streams of water, or the surface of said land or buildings and improvements thereon, which may result to the owners of said land by reason of the taking, mining and removing of said coal as mentioned, stipulated and described in Deed from Frank McBride to James D. Ake bearing date the 22nd day of September A.D. 1906, recorded in the office of the Recorder of Deeds for Clearfield County, November 21st A.D. 1906 in Deed Book No. 159, page 409, which deed is referred to for full information as to the rights of the owner of the said coal and mining rights underlying the surface of the land hereby conveyed.

EXCEPTING AND RESERVING from the premises hereinabove described, the following two parcels.

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- (2) **Deed from William E. Thomas and Annie Thomas, his wife, to Harry J. Charles dated 11th day of April 1914, and recorded in Deed Book 203, page 104.**

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ALSO identified by Clearfield County Tax Map No. 104-0-E09-000-00006.

PROPERTY 2

ALL that certain tract of land situated in Union Township, Clearfield County, Pennsylvania bounded and described as follows:

BEGINNING at a post in Public Road; THENCE along line of Shivelys, North 960 feet to post corner of lands of Shivelys and Wells; THENCE along Wells line, East 435 feet to a post stone in Public Road; THENCE along Public Road, South 24 degrees 15 minutes West 1,053 feet to post and place of beginning.

CONTAINING four acres and 79 perches more or less.

BEING the same premises conveyed to William B. Kinderman and Roberta A. Kinderman by Deed dated May 31, 1995 and recorded at Clearfield County Record Volume 1679, page 247

ALSO identified by Clearfield County Tax Map No. 129-0-E07-000-00002.

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BEGINNING at a post; thence South 35 perches to a post (a corner of land now or formerly of Irvin); thence by the same or partly by the same West, 176 perches to a post; thence North, 63 perches to a post; thence East by land now or formerly of Henry Pentz 76 perches to a post; thence by same South 30 perches to a post; thence by same, East 100 perches to the place of beginning.

CONTAINING 52 3/4 acres, more or less.

EXCEPTING AND RESERVING, nevertheless, unto the grantor herein all of the gas and oil and the rights thereto.

BEING the same premises conveyed to William B. Kinderman and Roberta A. Kinderman by deed dated August 25, 1973 and recorded in Clearfield County Deed Book 657, page 214.

ALSO identified by Clearfield County Tax Map No. 129-0-E07-000-00003.

3. Amounts due:

a)	Judgment amt entered 12/10/04	\$25,211.00
b)	Interest at 6% per annum from 12/10/04 to 7/12/06	\$ 2,312.50
c)	Interest from 7/13/06 at \$4.1443 per day	\$ _____

d)	Court costs	\$ 238.86
e)	Costs of execution (to be added)	\$ _____
PRELIMINARY TOTAL		\$27,762.36
Date:	Prothonotary's costs	\$ <u>230.00</u>
FINAL TOTAL		\$ _____

4. If Social Security or Supplemental Security Income funds are directly deposited into an account of the Defendants, the levy and attachment shall not include any funds that may be traced to such direct deposits. In addition, the levy and attachment shall not include \$300.00 in the amount of Defendants.

Prothonotary

By: William H. Sharpen 9/15/06
Deputy

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

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE Under the Will of JAMES B. GRAHAM, : No. 2000-1531-CD
DECEASED, :
Plaintiff :
vs. :
:

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN and
CLARENCE C. DAISHER,
Defendants :
:

CLAIM FOR EXEMPTION

To the Sheriff:

I, the above-named Defendant, claim exemption of property from levy or attachment:

(1) From my personal property in my possession which had been levied upon,

(a) I desire that my \$300.00 statutory exemption be

 ____ (i) Set aside in kind (specify property to be set aside in kind):

 ____ (ii) paid in cash following the sale of the property levied upon; or

 (b) I claim the following exemption (specify property and basis of exemption): _____

(2) From my property which is in the possession of a third party, I claim the following exemptions:

 (a) my \$300.00 statutory exemption: ____ in cash ____ in kind (specify property): _____

 (b) Social Security benefits on deposit in the amount of \$ _____.
 (c) Other (specify amount and basis of exemption):

I request a prompt court hearing to determine the exemption. Notice of hearing should be given to me at:

Address

Phone Number

I verify that the statements made in this Claim for Exemption are true and correct. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsifications to authorities.

Date: _____

Defendant

**THIS CLAIM TO BE FILED WITH
THE OFFICE OF THE SHERIFF OF CLEARFIELD COUNTY**

Clearfield County Sheriff
Clearfield County Courthouse
Corner of Second and Market Streets
Clearfield, PA 16830

MAJOR EXEMPTIONS UNDER PENNSYLVANIA AND FEDERAL LAW

1. \$300.00 statutory exemption
2. Bibles, schoolbooks, sewing machines, uniforms, and equipment
3. Most wages and unemployment compensation
4. Social security benefits
5. Certain retirements funds and accounts
6. Certain veteran and armed forces benefits
7. Certain insurance proceeds
8. Such other exemptions as may be provided by law

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

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE Under the Will of JAMES B. GRAHAM,
DECEASED,

Plaintiff

vs.

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN and
CLARENCE C. DAISHER,

Defendants

No. 2000-1531-CD

FILED
01/10/05/2011
SEP 05 2006
cc

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT PURSUANT TO RULE 3129

1. Name and address of Plaintiff in the judgment:

Williamsport-Lycoming Foundation & James B. graham
n/k/a First Community Foundation of PA
330 Pine Street, Suite 401
Williamsport, PA 17701

2. Name and addresses of Defendants in the judgment:

William B. Kinderman
R. R. #2 Box 19
Rockton, PA 15856

Robert A. Kinderman
R.R. #2 Box 19
Rockton, PA 15856

Clarence C. Daisher
R.R. # 1, Box 74 A
Grampian, PA 16838

3. Name and last known address of every judgment creditor whose judgment is
a record lien on the real estate to be sold:

Williamsport-Lycoming Foundation & James B. Graham
n/k/a First Community Foundation of Pa
330 Pine Street, Suite 401
Williamsport, PA 17701
2000-01531-CD
Entered- 12/10/00
\$25,211.00

4. Name and address of the last recorded holder of every mortgage on record:

NONE

5. Name and address of every other person who has any record interest in or record lien on the property and whose interest may be affected by the sale:

NONE

6. Name and address of every other person of whom the Plaintiff has knowledge who has any interest in the property which may be affected by the sale:

NONE

I verify that the statements made in this Affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S §4904 relating to unsworn falsifications to authorities.

Dated: 9/11/06



Peter F. Smith, Attorney for Plaintiff
30 South Second Street,
P.O. Box 130
Clearfield, PA 16830
(814) 765-5595

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

BILL OF COSTS

Williamsport-Lycoming Foundation, James B.
Graham,

Vs.

2000-01531-CD

William B. Kinderman, Roberta A. Kinderman, Total \$303.86
Clarence C. Daisher,

<u>Amount</u>	<u>Document</u>	<u>Paid By</u>
\$80.00	Complaint	Peter F. Smith, Esq.
\$45.00	Appeal to High Court	Cortez F. Bell III, Esq.
\$20.00	Judgment	Peter F. Smith, Esq.
\$20.00	Judgment	Peter F. Smith, Esq.
\$45.00	Appeal to High Court	Cortez F. Bell III, Esq.
\$20.00	Writ of Execution	Peter F. Smith, Esq.
\$73.86	Sheriff Return	Keystone Financial

Certified from the record this 16th Day of November, 2006.

WILLIAM A. SHAW
PROTHONOTARY

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

WILLIAMSPORT-LYCOMING
FOUNDATION, TRUSTEE UNDER
THE WILL OF JAMES B. GRAHAM,
DECEASED

Plaintiff
vs.

WILLIAM B. KINERMAN, ROBERTA
A. KINERMAN and CLARENCE C.
DAISHER,

Defendants

: No. 2000-1531- CD

FILED
OCT 13 2006
NOCC

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I, Peter F. Smith, attorney for the Plaintiff in the above-captioned matter, being duly sworn according to law, depose and say that I sent by Certified Mail and by First Class Mail, Postage Prepaid, a true and correct copy of the Rule 3129 Notice & Sheriff's Handbill on the following parties at the following addresses on September 27, 2006:

The U.S. Postal Forms 3800, 3811 and 3817 certifying this mailing are attached hereto and incorporated herein.

70050390000372305233
Certified Mail and
U.S. First Class Mail
William B. Kinerman
Rockton, PA 15856

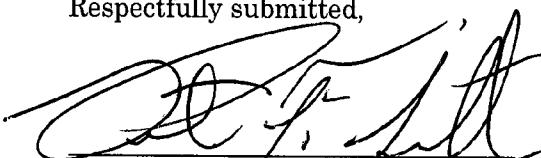
Clarence C. Daisher
R.R. #1 Box 74 A
Grampian, PA 16838

70050390000372305240
Certified Mail and
U.S. First Class Mail
Roberta A. Kinderman
Rockton, PA 15856

First Community Foundation of PA
330 Pine Street, Suite 401
Williamsport, PA 17701

Date: September 27, 2006

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff
30 South Second St., P. O. Box 130
Clearfield, PA 16830
(814) 765-5595

Sworn to and subscribed before me this
27th day of September, 2006.

Holly A. Bressler
Notary Public

NOTARIAL SEAL
HOLLY A. BRESSLER, Notary Public
Clearfield Boro, Clearfield, Co., PA
My Commission Expires Sept. 12, 2010

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Robert A. Kinderman
R. R. # 2 Box 19
Rockton, PA 15856

COMPLETE THIS SECTION ON DELIVERY

A. Signature 
Robert A. Kinderman

C. Date of Delivery

1/13/04

D. Is delivery address different from item 1? Yes
 No

If YES, enter delivery address below:
1633 Drawers Bottom Rd

3. Service Type

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

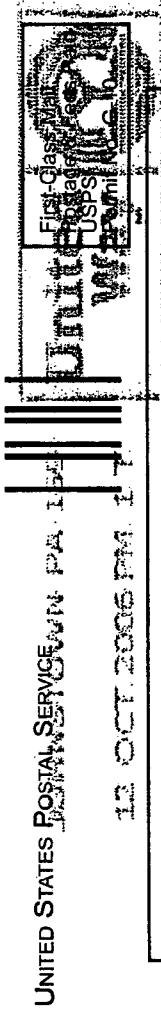
4. Restricted Delivery? (Extra Fee)

- Yes

2. Article Number
(Transfer from service label) **7005 0390 0003 7230 5240**

Domestic Return Receipt

102595-02-M-1540



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

Peter F. Smith, Attorney
30 South Second Street
P.O. Box 130
Clearfield, PA 16830

graham est v. kinderman

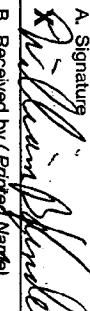
SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

William B. Kinderman
R. R. # 2 Box 19
Rockton, PA 15856

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent
 Addressee

B. Received by (Printed Name) **William B. Kinderman** C. Date of Delivery **10-20-06**

D. Is delivery address different from item 1? Yes No

1633 Drawers South Rd
Rockton PA 15856

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

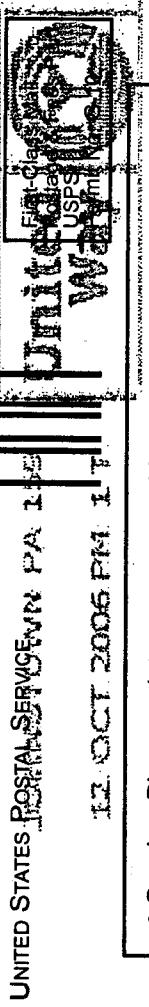
Yes

2. Article Number <i>(Transfer from service label)</i>	7005 0390 0003 7230 5233
---	--------------------------

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



graham est vs. kindermar

Williamsport-Lycoming Foundation, Trustee
Under Will of James B. Graham

vs.

William B. Kinderman,
Roberta A. Kinderman, h/w and
Clarence C. Daisher
No. 2000-1531- CD

Attachment to the Certificate of Service

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

For delivery information visit our website at www.usps.com

OFFICIAL USE	
Postage	\$ 0.63
Certified Fee	\$ 2.40
Return Receipt Fee (Endorsement Required)	\$ 1.85
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 4.88

Postmark
06/27/2006
PA 16830
ROCKTON, PA
Here
U.S. POSTAL SERVICE

PS Form 3800, June 2002
See Reverse for Instructions

7005 0300 0600 0000 2230 2525

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

For delivery information visit our website at www.usps.com

OFFICIAL USE	
Postage	\$ 0.63
Certified Fee	\$ 2.40
Return Receipt Fee (Endorsement Required)	\$ 1.85
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 4.88

Postmark
06/27/2006
PA 16830
ROCKTON, PA
Here
U.S. POSTAL SERVICE

PS Form 3800, June 2002
See Reverse for Instructions

7005 0300 0600 0000 2230 2525

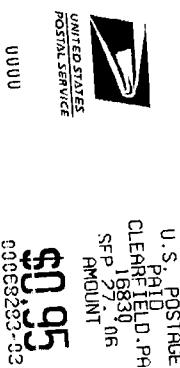
Williamsport-Lycoming Foundation, Trustee
Under Will of James B. Graham
vs.

William B. Kinderman,
Roberta A. Kinderman, h/w and
Clarence C. Daisher
No. 2000-1531- CD

Attachment to the Certificate of Service

U.S. POSTAL SERVICE CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	PETER F. SMITH, ATTORNEY
	P.O. BOX 130
	CLEARFIELD, PA 16830
One piece of ordinary mail addressed to:	
<u>WILLIAM B. KINDERMAN</u> <u>R.R. #2 BOX 19</u> <u>ROCKTON, PA 15856</u>	

PS Form 3817, January 2001

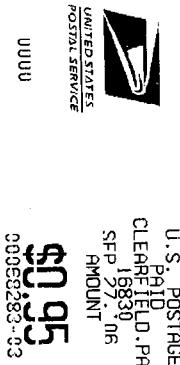


U.S. POSTAL SERVICE CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	PETER F. SMITH, ATTORNEY
	P.O. BOX 130
	CLEARFIELD, PA 16830
One piece of ordinary mail addressed to:	
<u>CLARENCE C. DAISHER</u> <u>R.R. #1 Box 74A</u> <u>Grampian, PA 16838</u>	

PS Form 3817, January 2001

U.S. POSTAL SERVICE CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	PETER F. SMITH, ATTORNEY
	P.O. BOX 130
	CLEARFIELD, PA 16830
One piece of ordinary mail addressed to:	
<u>ROBERTA A. KINDERMAN</u> <u>R.R. #2 BOX 19</u> <u>ROCKTON, PA 15856</u>	

PS Form 3817, January 2001



U.S. POSTAL SERVICE CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	PETER F. SMITH, ATTORNEY
	P.O. BOX 130
	CLEARFIELD, PA 16830
One piece of ordinary mail addressed to:	
<u>First Community Foundation of PA</u> <u>ATTN: Sheryl Hoff, CFO</u> <u>330 Pine Street, Suite 401</u> <u>Williamsport, PA 17701</u>	

PS Form 3817, January 2001

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

WILLIAMSPORT-LYCOMING FOUNDATION, :
TRUSTEE Under the Will of JAMES B. GRAHAM, : No. 2000-1531-CD
DECEASED, :
Plaintiff :
vs. :
WILLIAM B. KINDERMAN, :
ROBERTA A. KINDERMAN and :
CLARENCE C. DAISHER, :
Defendants :
:

PRAECIPE TO DISCONTINUE and SATISFY JUDGMENT

TO: William A. Shaw, Sr., Clearfield County Prothonotary
Chester A. Hawkins, Clearfield County Sheriff

Dear Prothonotary and Sheriff of Clearfield County:

I appear as counsel for the Plaintiff in the above-captioned matter, and request that you Discontinue the Writ of Execution and Satisfy the judgment in this matter. The Defendants have exercised their statutory right to cure this judgment. I further request the Sheriff to return the Writ of Execution to the Prothonotary and refund any excess cost.

Please Discontinue the Sheriff Sale scheduled for December 1, 2006.

Respectfully submitted,



Peter F. Smith, Esquire
Attorney for Plaintiff

Date: 11/22/06
cc: First Community Foundation of Pa.
F. Cortez Bell, III

FILED NO CC
10/24/06
NOV 28 2006 4 Certificates
of Sat. to
William A. Shaw
Prothonotary/Clerk of Courts
Atty.

Copy to Shff
6W

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

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

No.: 2000-01531-CD

Williamsport-Lycoming Foundation, Trustee
Under the Will of James B. Graham, Deceased

Vs.

William B. Kinderman,
Roberta A. Kinderman, and
Clarence C. Daisher

Cost: \$7.00

NOW, Tuesday, November 28, 2006 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 28th day of November, A.D. 2006.

©, A.D. 2006.

Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20437
NO: 00-1531-CD

PLAINTIFF: WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM,
DECEASED

vs.

DEFENDANT: WILLIAM B. KINDERMAN AND ROBERTA A. KINDERMAN AND CLARENCE C. DAISHER

Execution REAL ESTATE

SHERIFF RETURN

DATE RECEIVED WRIT: 09/05/2006

LEVY TAKEN 10/04/2006 @ 10:27 AM

POSTED 10/04/2006 @ 10:27 AM

SALE HELD

SOLD TO

SOLD FOR AMOUNT PLUS COSTS

WRIT RETURNED 01/18/2007

DATE DEED FILED **NOT SOLD**

FILED
01/21/2007
JAN 18 2007

William A. Shaw
Prothonotary/Clerk of Courts

DETAILS

10/26/2006 @ 2:51 PM SERVED WILLIAM B. KINDERMAN

SERVED WILLIAM B. KINDERMAN, DEFENDANT, AT THE CLEARFIELD COUNTY COURTHOUSE, 1 NORTH SECOND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM B. KINDERMAN

A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION, NOTICE OF SALE, AND COPY OF THE LEVY AND BY MAKING KNOW TO HIM / HER THE CONTENTS THEREOF.

10/26/2006 @ 2:50 PM SERVED ROBERTA A. KINDERMAN

SERVED ROBERTA A. KINDERMAN, DEFENDANT, AT THE CLEARFIELD COUNTY COURTHOUSE, 1 NORTH SECOND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM B. KINDERMAN, HUSBAND/CO-DEFENDANT WHO

A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION, NOTICE OF SALE, AND COPY OF THE LEVY AND BY MAKING KNOW TO HIM / HER THE CONTENTS THEREOF.

10/25/2006 @ 9:45 AM SERVED CLARENCE C. DAISHER

SERVED CLARENCE C. DAISHER, DEFENDANT, AT HIS RESIDENCE 7198 COAL HILL ROAD, LUTHERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RHONDA GREENAWAY, FIANCÉ/AAR

A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION, NOTICE OF SALE, AND COPY OF THE LEVY AND BY MAKING KNOW TO HIM / HER THE CONTENTS THEREOF.

@ SERVED

NOW, NOVEMBER 21, 2006 RECEIVED A LETTER FROM THE PLAINTIFF'S ATTORNEY TO CANCEL THE SHERIFF SALE SCHEDULED FOR DECEMBER 1, 2006. THE DEFENDANTS SATISFIED THEIR JUDGMENT.

@ SERVED

NOW, JANUARY 18, 2006 RETRUN WRIT AS JUDGMENT SATISFIED. PRAEICE FILED TO DISCONTINUE AND SATISFY.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20437

NO: 00-1531-CD

PLAINTIFF: WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE UNDER THE WILL OF JAMES B. GRAHAM,
DECEASED

vs.

DEFENDANT: WILLIAM B. KINDERMAN AND ROBERTA A. KINDERMAN AND CLARENCE C. DAISHER

Execution REAL ESTATE

SHERIFF RETURN

SHERIFF HAWKINS \$260.96

SURCHARGE \$60.00 PAID BY ATTORNEY

So Answers,

Chester A. Hawkins
Sgt. Cynthia Butler Aphendak
Chester A. Hawkins
Sheriff

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

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE Under the Will of JAMES B. GRAHAM,
DECEASED, : No. 2000-1531-CD

Plaintiff

vs.

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN and
CLARENCE C. DAISHER,
Defendants

**WRIT OF EXECUTION
NOTICE**

This paper is a Writ of Execution. It has been issued because there is a judgment against you. It may cause your property to be held or taken to pay the judgment. You may also have legal rights to prevent your property from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

The law provides that certain property cannot be taken. Such property is said to be exempt. There is a debtor's exemption of \$300.00. There are other exemptions which may be applicable to you. Attached is a summary of some of the major exemptions. You may have other exemptions or other rights.

If you have an exemption, you should do the following promptly: (1) Fill out the attached claim form and demand for a prompt hearing; and, (2) Deliver the form or mail it to the Sheriff's Office at the address noted.

You should come to Court ready to explain your exemption. If you do not come to Court to prove your exemptions, you may lose some of your property.

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Corner of Second and Market Streets
Clearfield, PA 16830
(814) 765-2641

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

WILLIAMSPORT-LYCOMING FOUNDATION, TRUSTEE Under the Will of JAMES B. GRAHAM, DECEASED,	:	No. 2000-1531-CD
Plaintiff	:	
vs.	:	
WILLIAM B. KINDERMAN, ROBERTA A. KINDERMAN and CLARENCE C. DAISHER,	:	
Defendants	:	

WRIT OF EXECUTION

Commonwealth of Pennsylvania/County of Clearfield
To the Sheriff of Clearfield County

To satisfy the judgment, interest, costs and attorney's commission against the Defendants above:

1. You are directed to levy upon the real estate owned by the Defendants **WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN** as follows and sell their interest therein:

PROPERTY 1

ALL that certain piece, pieces or parcel of land situate in the Township of Bloom, County of Clearfield and State of Pennsylvania, with exceptions and reservation hereinafter mentioned, bounded and described as follows:

BEGINNING at a post corner, being the southeast corner of tract herein conveyed; thence North three (3) degrees forty-five (45) minutes East, one hundred twenty-three and seventy-five one hundredths (123.75) perches to a maple corner (now gone); thence North eighty-five (85) degrees West, thirty-one (31) perches to a post corner; thence North five (5) degrees East sixty-three and seventy-one hundredths (63.70) perches to a post corner; thence North eighty-three (83) degrees forty-five (45) minutes West, one hundred twenty-one and seventy-one hundredths (121.70) perches to a corner (beech, now gone); thence South three (3) degrees thirty (30) minutes West seventy and two tenths (70.2) perches to a corner, formerly a white pine stump, now hemlock witness; thence North eighty-five (85) degrees West, twenty-five

(25) perches to a corner formerly hemlock (now gone); thence South six (6) degrees West, one hundred sixteen (116) perches to a hemlock corner (now gone); thence South eighty-four (84) degrees East, one hundred eighty and fifty-seven one hundredths (180.57) perches to a corner and place of beginning, containing one hundred eighty-three (183) acres and one hundred one (101) perches, more or less.

EXCEPTING and **RESERVING**, nevertheless, from this sale and conveyance all the merchantable coal of whatever kind lying and being in and under the land hereinabove described together with the right of ingress and egress and regress over, through and upon said land to make roads, erect buildings and deposit dirt on the surface of said land, in mining and removing said coal, without liability for damages resulting from the mining and removal of said coal, or injury that may result to the streams of water, or the surface of said land or buildings and improvements thereon, which may result to the owners of said land by reason of the taking, mining and removing of said coal as mentioned, stipulated and described in Deed from Frank McBride to James D. Ake bearing date the 22nd day of September A.D. 1906, recorded in the office of the Recorder of Deeds for Clearfield County, November 21st A.D. 1906 in Deed Book No. 159, page 409, which deed is referred to for full information as to the rights of the owner of the said coal and mining rights underlying the surface of the land hereby conveyed.

EXCEPTING AND RESERVING from the premises hereinabove described, the following two parcels.

- (1) **Deed from William E. Thomas and Annie Thomas, his wife to Anna M. Thomas dated the 22nd day of September 1937 and recorded in Deed Book 319, page 326.**
- (2) **Deed from William E. Thomas and Annie Thomas, his wife, to Harry J. Charles dated 11th day of April 1914, and recorded in Deed Book 203, page 104.**

BEING the same premises conveyed to William B. Kinderman and Robert A. Kinderman by Deed dated March 7, 1995 and recorded December 30, 1999 at Clearfield County Instrument Number 199921180.

ALSO identified by Clearfield County Tax Map No. 104-0-E09-000-00006.

PROPERTY 2

ALL that certain tract of land situated in Union Township, Clearfield County, Pennsylvania bounded and described as follows:

BEGINNING at a post in Public Road; **THENCE** along line of Shivelys, North 960 feet to post corner of lands of Shivelys and Wells; **THENCE** along Wells line, East 435 feet to a post stone in Public Road; **THENCE** along Public Road, South 24 degrees 15 minutes West 1,053 feet to post and place of beginning.

CONTAINING four acres and 79 perches more or less.

BEING the same premises conveyed to William B. Kinderman and Roberta A. Kinderman by Deed dated May 31, 1995 and recorded at Clearfield County Record Volume 1679, page 247

ALSO identified by Clearfield County Tax Map No. 129-0-E07-000-00002.

PROPERTY 3

ALL that certain piece or parcel of land situate, lying and being in Union Township, Clearfield County, Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a post; thence South 35 perches to a post (a corner of land now or formerly of Irvin); thence by the same or partly by the same West, 176 perches to a post; thence North, 63 perches to a post; thence East by land now or formerly of Henry Pentz 76 perches to a post; thence by same South 30 perches to a post; thence by same, East 100 perches to the place of beginning.

CONTAINING 52 3/4 acres, more or less.

EXCEPTING AND RESERVING, nevertheless, unto the grantor herein all of the gas and oil and the rights thereto.

BEING the same premises conveyed to William B. Kinderman and Roberta A. Kinderman by deed dated August 25, 1973 and recorded in Clearfield County Deed Book 657, page 214.

ALSO identified by Clearfield County Tax Map No. 129-0-E07-000-00003.

3. Amounts due:

a)	Judgment amt entered 12/10/04	\$25,211.00
b)	Interest at 6% per annum from 12/10/04 to 7/12/06	\$ 2,312.50
c)	Interest from 7/13/06 at \$4.1443 per day	\$ _____

d)	Court costs	\$ 238.86
e)	Costs of execution (to be added)	\$ _____

PRELIMINARY TOTAL	\$27,762.36
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Date:	Prothonotary's costs	\$ <u>230.00</u>
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FINAL TOTAL	\$ _____
-------------	----------

4. If Social Security or Supplemental Security Income funds are directly deposited into an account of the Defendants, the levy and attachment shall not include any funds that may be traced to such direct deposits. In addition, the levy and attachment shall not include \$300.00 in the amount of Defendants.

Prothonotary

By: William Shan B# 915100
Deputy

Received September 5, 2006 @ 3:00 P.M.
Chester A. Matthews
by Cynthia Butler-Augherbaugh

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

WILLIAMSPORT-LYCOMING FOUNDATION,
TRUSTEE Under the Will of JAMES B. GRAHAM,
DECEASED, : No. 2000-1531-CD

Plaintiff

vs.

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN and
CLARENCE C. DAISHER,
Defendants

CLAIM FOR EXEMPTION

To the Sheriff:

I, the above-named Defendant, claim exemption of property from levy or attachment:

(1) From my personal property in my possession which had been levied upon,

(a) I desire that my \$300.00 statutory exemption be

_____ (i) Set aside in kind (specify property to be set aside in kind):

_____ (ii) paid in cash following the sale of the property levied upon; or

(b) I claim the following exemption (specify property and basis of exemption): _____

(2) From my property which is in the possession of a third party, I claim the following exemptions:

(a) my \$300.00 statutory exemption: _____ in cash _____ in kind (specify property): _____

(b) Social Security benefits on deposit in the amount of \$_____.

(c) Other (specify amount and basis of exemption):

I request a prompt court hearing to determine the exemption. Notice of hearing should be given to me at:

Address

Phone Number

I verify that the statements made in this Claim for Exemption are true and correct. I understand that false statements herein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsifications to authorities.

Date: _____

Defendant

**THIS CLAIM TO BE FILED WITH
THE OFFICE OF THE SHERIFF OF CLEARFIELD COUNTY**

Clearfield County Sheriff
Clearfield County Courthouse
Corner of Second and Market Streets
Clearfield, PA 16830

MAJOR EXEMPTIONS UNDER PENNSYLVANIA AND FEDERAL LAW

1. \$300.00 statutory exemption
2. Bibles, schoolbooks, sewing machines, uniforms, and equipment
3. Most wages and unemployment compensation
4. Social security benefits
5. Certain retirements funds and accounts
6. Certain veteran and armed forces benefits
7. Certain insurance proceeds
8. Such other exemptions as may be provided by law

**REAL ESTATE SALE
SCHEDULE OF DISTRIBUTION**

NAME WILLIAM B. KINDERMAN

NO. 00-1531-CD

NOW, January 18, 2007, by virtue of the Writ of Execution hereunto attached, after having given due and legal notice of time and place of sale by publication in a newspaper published in this County and by handbills posted on the premises setting for the date, time and place of sale at the Court House in Clearfield on , I exposed the within described real estate of William B. Kinderman And Roberta A. Kinderman And Clarence C. Daisher to public venue or outcry at which time and place I sold the same to he/she being the highest bidder, for the sum of and made the following appropriations, viz:

SHERIFF COSTS:

RDR	15.00
SERVICE	15.00
MILEAGE	11.57
LEVY	15.00
MILEAGE	11.57
POSTING	15.00
CSDS	10.00
COMMISSION	0.00
POSTAGE	4.68
HANDBILLS	15.00
DISTRIBUTION	25.00
ADVERTISING	15.00
ADD'L SERVICE	30.00
DEED	
ADD'L POSTING	15.00
ADD'L MILEAGE	23.14
ADD'L LEVY	15.00
BID/SETTLEMENT AMOUNT	
RETURNS/DEPUTIZE	
COPIES	15.00
	5.00
BILLING/PHONE/FAX	5.00
CONTINUED SALES	
MISCELLANEOUS	
TOTAL SHERIFF COSTS	\$260.96

DEED COSTS:

ACKNOWLEDGEMENT	
REGISTER & RECORDER	
TRANSFER TAX 2%	0.00
TOTAL DEED COSTS	\$0.00

PLAINTIFF COSTS, DEBT AND INTEREST:

DEBT-AMOUNT DUE	25,211.00
INTEREST @ 4.1400	(3,032,570.7
FROM 07/13/2006 TO	
PROTH SATISFACTION	
LATE CHARGES AND FEES	
COST OF SUIT-TO BE ADDED	
FORECLOSURE FEES	
ATTORNEY COMMISSION	
REFUND OF ADVANCE	
REFUND OF SURCHARGE	60.00
SATISFACTION FEE	
ESCROW DEFICIENCY	
PROPERTY INSPECTIONS	
INTEREST	2,312.50
MISCELLANEOUS	238.86
TOTAL DEBT AND INTEREST	(\$3,004,748.34)
COSTS:	
ADVERTISING	3,137.23
TAXES - COLLECTOR	
TAXES - TAX CLAIM	
DUE	
LIEN SEARCH	
ACKNOWLEDGEMENT	
DEED COSTS	0.00
SHERIFF COSTS	260.96
LEGAL JOURNAL COSTS	225.00
PROTHONOTARY	230.00
MORTGAGE SEARCH	
MUNICIPAL LIEN	
TOTAL COSTS	\$3,853.19

DISTRIBUTION WILL BE MADE IN ACCORDANCE WITH THE ABOVE SCHEDULE UNLESS EXCEPTIONS ARE FILED WITH THIS OFFICE **WITHIN TEN (10) DAYS FROM THIS DATE.**

CHESTER A. HAWKINS, Sheriff

PETER F. SMITH
ATTORNEY
30 SOUTH SECOND STREET
P.O. BOX 130
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595
FAX (814) 765-6662

E-mail
pfsatty@uplink.net

November 21, 2006

HAND DELIVER
Cindy Butler-Aughenbaugh
Clearfield County Sheriff
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Williamsport-Lycoming Foundation,
Trustee under the Will of James B. Graham
vs. Kinderman et al
Clearfield County No. 2000-01531-CD

Dear Cindy:

I am pleased to advise that Mr. & Mrs. Kinderman have satisfied my client's judgment against them. Please cancel the Sheriff Sale of their real estate scheduled for December 1, 2006. I enclose a Praeclipe to discontinue and satisfy this matter. Another counterpart is filed with the Prothonotary.

Sincerely,



Peter F. Smith

PFS/jac

Enclosure

cc: First Community Foundation of PA
F. Cortez, Bell, III, Esquire

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

WILLIAMSPORT-LYCOMING FOUNDATION, :
TRUSTEE Under the Will of JAMES B. GRAHAM, : No. 2000-1531-CD
DECEASED, :
Plaintiff :
:

vs.

WILLIAM B. KINDERMAN,
ROBERTA A. KINDERMAN and
CLARENCE C. DAISHER,
Defendants

PRAEICE TO DISCONTINUE and SATISFY JUDGMENT

TO: William A. Shaw, Sr., Clearfield County Prothonotary
Chester A. Hawkins, Clearfield County Sheriff

Dear Prothonotary and Sheriff of Clearfield County:

I appear as counsel for the Plaintiff in the above-captioned matter, and request that you Discontinue the Writ of Execution and Satisfy the judgment in this matter. The Defendants have exercised their statutory right to cure this judgment. I further request the Sheriff to return the Writ of Execution to the Prothonotary and refund any excess cost.

Please Discontinue the Sheriff Sale scheduled for December 1, 2006.

Respectfully submitted,

Date: 11/22/06

Peter F. Smith, Esquire
Attorney for Plaintiff

cc: First Community Foundation of Pa.
F. Cortez Bell, III

Certified No. 7002 3150 0000 7855 5008

COPY

February 28, 2005

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased
Vs.
William B. Kinderman, Roberta A. Kinderman and Clarence C. Daisher
No. 00-1531-CD
Superior Court No. 80 WDA 2005

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your
office. Please also find enclosed one transcript with exhibits.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

COPY

John K. Reilly, Jr., Senior Judge, S.P.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

F. Cortez Bell, III, Esq.
PO Box 670
Clearfield, PA 16830

Peter F. Smith, Esq.
PO Box 130
Clearfield, PA 16830

Clarence C. Daisher
RR 1, Box 74
Grampian, PA 16838

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased
Vs.
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

Court No. 00-1531-CD; Superior Court No. 80 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on February 28, 2005.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Date: 02/28/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:08 AM

ROA Report

Page 1 of 5

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq.	No Judge
	Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
04/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
	Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/29/2001	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
05/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	No Judge
09/07/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	No Judge

Date: 02/28/2005

Time: 10:08 AM

Page 2 of 5

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date		Judge
09/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, Esq. Affidavit. s/Robert L. Kester 4 cc Atty	John K. Reilly Jr.
12/07/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. 4 cc to Atty	John K. Reilly Jr.
12/10/2001	RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith	John K. Reilly Jr.
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell	John K. Reilly Jr.
01/04/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc Atty Smith	John K. Reilly Jr.
01/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver	John K. Reilly Jr.
01/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver	John K. Reilly Jr.
01/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
03/19/2002	Praeclipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call. Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,	John K. Reilly Jr.
03/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAISHER. by the Court, s/JKR,JR. P.J. no cc	John K. Reilly Jr.
04/01/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
07/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney	John K. Reilly Jr.
07/30/2002	Praeclipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc Certificate of Service, Praeclipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
08/01/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson	John K. Reilly Jr.
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.	John K. Reilly Jr.

Date: 02/28/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:08 AM

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date		Judge
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson	John K. Reilly Jr.
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson	John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell	John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Pliffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell	John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING OREDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801	John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell	John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSPORT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell	John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc	John K. Reilly Jr.
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00	John K. Reilly Jr.

Date: 02/28/2005

Clearfield County Court of Common Pleas

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Time: 10:08 AM

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA 2003 no cc
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR,JR.,P.J. 1 cc P. Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003.
10/27/2003	Domestic Return Receipt, Appeal at Superior Court.
11/13/2003	Filing: Praecept to Enter Verdict Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty.
12/17/2003	Praecept for Argument filed on behalf of Defendants. 6 CC to Atty. Bell.
12/31/2003	Letter from CA to Clarence Daisher scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30, P.M., returned by USPS
01/08/2004	SUPERIOR COURT OF PENNSYLVANIA. ORDER, AND NOW, this 20th day of November, 2003, it is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See Lenhart v. Cigna, 824 A.2d 1193 (Pa. Super 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered thereon, for appeal to be proper); see also L.B. Foster Co. v. Lane Enterprises, Inc. 710 A.2d 55 (PA 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes). PER CURIAM" Date: November 20, 2003
	Certificate of Contents of Remanded Record And Notice Of Remand under Pennsylvania Rules Of Appellate Procedure 2571 and 2572. s/Eleanor R. Valecko, Deputy Prothonotary Copy to Superior Court
12/08/2004	Suggestion of Name Change, filed by Atty. Smith no cert. copies Plaintiff Suggests that the Williamsport-Lycoming Foundation has changed its name to First Community Foundation of Pennsylvania
	Certificate of Service, filed by Atty. Smith no Cert. Copies. Served copy of Suggestion of Name Change to Atty. Bell.
12/10/2004	Filing: Praecept for Entry of Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1892077 Dated: 12/10/2004 Amount: \$20.00 (Check). Judgment entered against Defendants William and Roberta Kinderman ONLY in the amount of \$25,211.00. Notice to Defs., Statement to Atty.
	Certificate of Service, copy of Praecept for Entry of Judgment by mail on Dec. 10, 2004 to F. Cortez Bell, III, Attorney for Defendants William and Roberta Kinderman. Filed by s/ Peter F. Smith, Esquire
01/10/2005	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1893506 Dated: 01/10/2005 Amount: \$45.00 (Check). Filed by s/ F. Cortez Bell, III, Esquire. 6CC Atty Bell, 1CC & \$60.00 (ck. # 1039) to Superior Court.
01/18/2005	Appeal Docket Sheet filed. no cc

Date: 02/28/2005

Time: 10:08 AM

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
01/24/2005	Order, NOW, this 17th day of Jan., 2005, it is the ORDER of this Court that John K. Reilly Jr. counsel for Defendants above named file with this Court a concise statement of matters complained of on appeal, in accordance with Rule of Appellate Procedure 1925 (b). BY THE COURT, /s/ The Honorable John K. Reilly, Jr., Senior judge, Specially Presiding. 2CC Atty's: P. Smith, F. Bell; 1CC Def. C. Daisher
01/31/2005	Statement of Matters Complained of on Appeal, filed by s/F. Cortez Bell, III, John K. Reilly Jr. Esq. Three CC Attorney Bell
02/02/2005	Order Returned, forwarding expired, remailed to Clarence Daisher at RR 1, John K. Reilly Jr. Box 74 A, Grampian, PA 16838, filed.
02/03/2005	Order, NOW, this 3rd day of Feb., 2005, following receipt of Def. Kindermans' appeal this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place. BY THE COURT: /s/ John K. Reilly, Jr. Senior Judge. 1cc attys P Smith, F. Bell. 1cc Def. Daisher
02/07/2005	Order returned, copy of Jan. 17 2005 Order, addressed to Clarence Daisher, RR1, Box 74 A, Grampian, PA 16838,unable to forward. no CC
02/08/2005	Order dated February 3, 2005, re: Opinion mailed to Clarence Daisher returned by USPS, "Not Deliverable as Addressed." No better address on file.
02/28/2005	Appeal mailed to Superior Court February 28, 2005. Letters mailed to counsel and Clarence Daisher.

Date: 02/22/2005

Clearfield County Court of Common Pleas

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq. Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq. no cc	No Judge
04/20/2001	Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc Certificate of Service, Deposition Notice, upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/29/2001	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/30/2001	Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
05/31/2001	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, John K. Reilly Jr. upon counsel of record. s/Peter F. Smith, Esq. no cc	
09/07/2001	ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	

Date: 02/22/2005

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge	
09/21/2001	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. Affidavit. s/Robert L. Kester 4 cc Atty	John K. Reilly Jr.
12/07/2001	Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. 4 cc to Atty	John K. Reilly Jr.
12/10/2001	RULE RETURNABLE, NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Smith	John K. Reilly Jr.
12/19/2001	Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon John K. Reilly Jr. attorneys of record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
12/31/2001	Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell	John K. Reilly Jr.
01/04/2002	ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR, JR., P.J. 5 cc Atty Smith	John K. Reilly Jr.
01/21/2002	Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver	John K. Reilly Jr.
01/24/2002	RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR, JR., P.J. 3 cc Atty Weaver	John K. Reilly Jr.
01/29/2002	Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
03/19/2002	Praeclipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call. Certificate of Service Filed, filed by Atty. Smith No Cert. Copies. Copy to C/A Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002,	John K. Reilly Jr.
03/27/2002	ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAISHER. by the Court, s/JKR, JR. P.J. no cc	John K. Reilly Jr.
04/01/2002	Certificate of Service, Court Order dated March 27, 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
07/26/2002	Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney	John K. Reilly Jr.
07/30/2002	Praeclipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc Certificate of Service, Praeclipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
08/01/2002	ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR, JR., P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson	John K. Reilly Jr.
10/11/2002	Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.	John K. Reilly Jr.

Date: 02/22/2005

Clearfield County Court of Common Pleas

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date		Judge
10/18/2002	ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson	John K. Reilly Jr.
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson	John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell	John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Plffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell	John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING ORDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801	John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell	John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSPORT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell	John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc	John K. Reilly Jr.
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00	John K. Reilly Jr.

Date: 02/22/2005

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR, JR., P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA John K. Reilly Jr. 2003 no cc
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R John K. Reilly Jr.
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR, JR., P.J. 1 cc P. Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003. John K. Reilly Jr.
10/27/2003	Domestic Return Receipt, Appeal at Superior Court. John K. Reilly Jr.
11/13/2003	Filing: Praecept to Enter Verdict Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty.
12/17/2003	Praecept for Argument filed on behalf of Defendants. 6 CC to Atty. Bell. John K. Reilly Jr.
12/31/2003	Letter from CA to Clarence Daisher scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30, P.M., returned by USPS John K. Reilly Jr.
01/08/2004	SUPERIOR COURT OF PENNSYLVANIA. ORDER, AND NOW, this 20th day of November, 2003, it is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See Lenhart v. Cigna, 824 A.2d 1193 (Pa. Super 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered thereon, for appeal to be proper); see also L.B. Foster Co. v. Lane Enterprises, Inc. 710 A.2d 55 (PA 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes). PER CURIAM" Date: November 20, 2003
	Certificate of Contents of Remanded Record And Notice Of Remand under Pennsylvania Rules Of Appellate Procedure 2571 and 2572. s/Eleanor R. Valecko, Deputy Prothonotary Copy to Superior Court John K. Reilly Jr.
12/08/2004	Suggestion of Name Change, filed by Atty. Smith no cert. copies Plaintiff Suggests that the Williamsport-Lycoming Foundation has changed its name to First Community Foundation of Pennsylvania John K. Reilly Jr.
	Certificate of Service, filed by Atty. Smith no Cert. Copies. Served copy of Suggestion of Name Change to Atty. Bell. John K. Reilly Jr.
12/10/2004	Filing: Praecept for Entry of Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1892077 Dated: 12/10/2004 Amount: \$20.00 (Check). Judgment entered against Defendants William and Roberta Kinderman ONLY in the amount of \$25,211.00. Notice to Defs., Statement to Atty. John K. Reilly Jr.
	Certificate of Service, copy of Praecept for Entry of Judgment by mail on Dec. 10, 2004 to F. Cortez Bell, III, Attorney for Defendants William and Roberta Kinderman. Filed by s/ Peter F. Smith, Esquire John K. Reilly Jr.
01/10/2005	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1893506 Dated: 01/10/2005 Amount: \$45.00 (Check). Filed by s/ F. Cortez Bell, III, Esquire. 6CC Atty Bell, 1CC & \$60.00 (ck. # 1039) to Superior Court. John K. Reilly Jr.
01/18/2005	Appeal Docket Sheet filed. no cc John K. Reilly Jr.

Date: 02/22/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 11:13 AM

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ROA Report

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
01/24/2005	Order, NOW, this 17th day of Jan., 2005, it is the ORDER of this Court that John K. Reilly Jr. counsel for Defendants above named file with this Court a concise statement of matters complained of on appeal, in accordance with Rule of Appellate Procedure 1925 (b). BY THE COURT, /s/ The Honorable John K. Reilly, Jr., Senior judge, Specially Presiding. 2CC Attys: P. Smith, F. Bell; 1CC Def. C. Daisher
01/31/2005	Statement of Matters Complained of on Appeal, filed by s/F. Cortez Bell, III, John K. Reilly Jr. Esq. Three CC Attorney Bell
02/02/2005	Order Returned, forwarding expired, remailed to Clarence Daisher at RR 1, John K. Reilly Jr. Box 74 A, Grampian, PA 16838, filed.
02/03/2005	Order, NOW, this 3rd day of Feb., 2005, following receipt of Def. Kindermans' appeal this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place. BY THE COURT: /s/ John K. Reilly, Jr. Senior Judge. 1cc attys P Smith, F. Bell. 1cc Def. Daisher
02/07/2005	Order returned, copy of Jan. 17 2005 Order, addressed to Clarence Daisher, RR1, Box 74 A, Grampian, PA 16838,unable to forward. no CC
02/08/2005	Order dated February 3, 2005, re: Opinion mailed to Clarence Daisher returned by USPS, "Not Deliverable as Addressed." No better address on file.

PROOF OF SERVICE - 2000-01531-CD
RECEIVED
CLERK OF COURTS
FEB 22 2005

FEB 22 2005

CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1531-CD

**Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased
VS.**

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
40	11/04/02	Pursuant to PA R.C.P. 2252 (d)	
40	11/04/02	Amended Reply to New Matter of Defendants Kinderman, Pursuant to PA R.C.P. 2252 (d)	05
41	11/04/02	Amended Reply to Defendant, Clarence C. Daisher's New Matter filed on behalf of Joseph R. Chamberlin	05
42	12/16/02	Motion for Summary Judgment and Order of Court, Re: Complaint and Claims dismissed with Prejudice, filed April 2, 2003	08
43	04/04/03	Answer to Plaintiff's Second Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to PA R.C.P. Rule 2252 (d)	27
44	04/08/03	Certificate of Service, Subpoena on Joseph R. Chamberlin	03
45	06/24/03	Opinion and Order, Re: Judgment in favor of Plaintiffs and against the Defendants William B. Kinderman and Robert A. Kinderman	03
46	06/30/03	Certified Copy of Opinion and Order mailed to Clarence C. Daisher returned by USPS, "Forwarding Order Expired", Re-mailed.	03
47	07/07/03	Post Trial Motion on behalf of Defendants, William B. Kinderman and Robert A. Kinderman	04
48	07/09/03	Rule Returnable, issued upon Plaintiff, Williamsport-Lycoming Foundation, returnable for hearing	01
49	07/10/03	Answer to Defendant Kindermans' Post Trial Motion	03
50	07/22/03	Notice of Appeal to High Court	09
51	07/25/03	Order, Re: Attorney for Appellant file a concise statement of the matters complained of on appeal	01
52	08/01/03	Appeal Docket Number form Superior Court of PA—1370 WDA 2003	03
53	08/04/03	Statement of Matters Complained of on Appeal	04
54	10/03/03	Transcript of Civil Non-Jury Trial held before Honorable John K. Reilly, Jr., P.J. on Monday, April 7, 2003	Separate Cover
55	10/21/03	Supplemental Opinion	02
		---Appeal mailed to Superior Court October 22, 2003---	
56	10/22/03	Certified Mail Receipt, Appeal mailed to Superior Court	01
57	10/27/03	Domestic Return Receipt	01
58	11/13/03	Praecipe to Enter Verdict	04
59	12/17/03	Praecipe for Argument	03
60	12/31/03	Letter from Court Administrator to Clarence Daisher scheduling argument on Defendants' Post-Trial Motions for January 14, 2004, at 1:30 p.m., returned by USPS	01
61	01/08/04	Superior Court of Pennsylvania Order	01
62	01/08/04	Certificate of Contents of Remanded Record and Notice of Remand	01
63	12/08/04	Suggestion of Name Change	01
64	12/08/04	Certificate of Service, Re: Suggestion of Name Change	01
65	12/10/04	Praecipe for Entry of Judgment	03
66	12/10/04	Certificate of Service, Re: Praecipe for Entry of Judgment	01
67	01/10/05	Appeal to High Court	09
68	01/18/05	Appeal Docket Sheet, Superior Court No. 80 WDA 2005	03
69	01/24/05	Order, Re: concise statement	01
70	01/31/05	Statement of Matters Complained of on Appeal	04
71	02/02/05	Order of January 17, 2005, Returned by USPS, re-mailed to Clarence Daisher	01
72	02/03/05	Order, Re: no further opinion to be issued; Post-Trial Motions not disposed of	01
73	02/07/05	Order of January 17, 2005 mailed to Clarence Daisher, returned by USPS	01
74	02/05/05	Order of February 3, 2005 mailed to Clarence Daisher, returned by USPS	01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1531-CD

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham, Deceased

VS.

William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	12/08/00	Civil Complaint	07
02	01/15/01	Sheriff Return, Complaint served on Defendants	02
03	01/19/01	Praeclipe for Entry of Appearance	03
04	02/20/01	Preliminary Objections to Plaintiff's Complaint	07
05	02/23/01	Amended Complaint	09
06	02/27/01	Certificate of Service, Amended Complaint	01
07	03/01/01	Certificate of Service, Defendant Clarence C. Daisher's Answer to Plaintiff's Amended Complaint and New Matter (missing from original record)	---
08	03/20/01	Answer to Defendant Daisher's New Matter	04
09	03/21/01	Certificate of Service, Answer to Defendant Daisher's New Matter	01
10	04/05/01	Answer to Amended Complaint filed on behalf of Defendant, Joseph R. Chamberlin with New Matter and New Matter Pursuant to PA R.C.P. 2252 (d)	09
11	04/05/01	Answer to Defendant, Clarence C. Daisher's New Matter filed on behalf of Joseph Chamberlin	04
12	04/20/01	Plaintiff's Answer to Defendant Chamberlin's New Matter	04
13	04/23/01	Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter	01
14	05/18/01	Certificate of Service, Subpoena to Attend and Testify	01
15	05/18/01	Certificate of Service, Deposition Notice	01
16	05/29/01	Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to PA R.C.P. Rule 2252 (d) filed on behalf of Defendants William and Roberta Kinderman	25
17	05/30/01	Preliminary Objections to Defendant Kindermans' Counterclaim	02
18	05/31/01	Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim	01
19	06/20/01	Reply to New Matter of Defendants Kinderman Pursuant to PA R.C.P. Rule 2252 (d)	05
20	07/31/01	Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections	01
21	09/07/01	Order, Re: Objections sustained and Defendants counter-claim seeking to recover attorney's fees and surveyor's costs stricken without prejudice	01
22	09/21/01	Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter	01
23	09/21/01	Answer to Defendant Kindermans' New Matter	05
24	12/07/01	Plaintiff's Petition to Amend the Complaint with Rule Returnable scheduling written response and hearing filed December 10, 2001	15
25	12/19/01	Certificate of Service, Petition to Amend Complaint with Rule Returnable	01
26	12/31/01	Answer to Plaintiff's Petition to Amend the Complaint	07
27	01/04/02	Order, Re: Plaintiff's Petition to Amend the Complaint is Granted	01
28	01/21/02	Petition for Leave to Withdraw, with Rule for written response filed January 24, 2002	04
29	01/29/02	Certificate of Service, Petition for Leave to Withdraw with Rule	02
30	03/19/02	Praeclipe to place case on non-jury list	01
31	03/19/02	Certificate of Service, Praeclipe to place case on non-jury list	01
32	03/27/02	Order, Re: Mark S. Weaver, Esq. granted leave to withdraw as counsel for Clarence C. Daisher	01
33	04/01/02	Certificate of Service, Court Order dated March 27, 2002	01
34	07/26/02	Motion for Continuance on behalf of Joseph Chamberlin	05
35	07/30/02	Praeclipe to Substitute Parties	01
36	07/30/02	Certificate of Service, Praeclipe to Substitute Parties	01
37	08/01/02	Order, Re: Motion for Continuance is Granted	01
38	10/11/02	Motion to Amend Answer and New Matter of Joseph R. Chamberlin, with Order of Court granting leave to file an Amended Answer and New Matter filed October 18, 2002	06
39	11/04/02	Amended Answer to Plaintiff's Amended Complaint, New Matter, and New Matter	06

Date: 02/22/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:24 AM

ROA Report

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Selected Items	Judge
01/10/2005	Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1893506 Dated: 01/10/2005 Amount: \$45.00 (Check). Filed by s/ F. Cortez Bell, III, Esquire. 6CC Atty Bell, 1CC & \$60.00 (ck. # 1039) to Superior Court.	John K. Reilly Jr.
01/18/2005	Appeal Docket Sheet filed. no cc 3	John K. Reilly Jr.
01/24/2005	Order, NOW, this 17th day of Jan., 2005, it is the ORDER of this Court that counsel for Defendants above named file with this Court a concise statement of matters complained of on appeal, in accordance with Rule of Appellate Procedure 1925 (b). BY THE COURT, /s/ The Honorable John K. Reilly, Jr., Senior judge, Specially Presiding. 2CC Attys: P. Smith, F. Bell; 1CC Def. C. Daisher	John K. Reilly Jr.
01/31/2005	10 Statement of Matters Complained of on Appeal, filed by s/F. Cortez Bell, III, Esq. Three CC Attorney Bell	John K. Reilly Jr.
02/02/2005	11 Order Returned, forwarding expired, remailed to Clarence Daisher at RR 1, Box 74 A, Grampian, PA 16838, filed.	John K. Reilly Jr.
02/03/2005	12 Order, NOW, this 3rd day of Feb., 2005, following receipt of Def. Kindermans' appeal this Court will be filing no further Opinion but notes that the reason Defendants' Post-Trial Motions were not disposed of by this Court is that the Court was of the understanding that ongoing settlement discussions were taking place. BY THE COURT: /s/ John K. Reilly, Jr. Senior Judge. 1cc attys P Smith, F. Bell. 1cc Def. Daisher	John K. Reilly Jr.
02/07/2005	13 Notice returned, copy of Jan. 17 2005 Order, addressed to Clarence Daisher, RR1, Box 74 A, Grampian, PA 16838,unable to forward. no CC	John K. Reilly Jr.
02/08/2005	14 Order dated February 3, 2005, re: Opinion mailed to Clarence Daisher returned by USPS, "Not Deliverable as Addressed." No better address on file.	John K. Reilly Jr.

Date: 01/13/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:14 PM

ROA Report

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Judge
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR, JR., P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA 2003 no cc John K. Reilly Jr.
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, III, Esquire Proof of Service 5 cc Atty Bell John K. Reilly Jr.
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R John K. Reilly Jr.
10/21/2003	<u>55</u> SUPPLEMENTAL OPINION. by the Court, s/JKR, JR., P.J. 1 cc P. Smith, John K. Reilly Jr. F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	<u>56</u> Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003. John K. Reilly Jr.
10/27/2003	<u>57</u> Domestic Return Receipt, Appeal at Superior Court. Praecep to Enter Verdict John K. Reilly Jr.
11/13/2003	<u>58</u> Filing: Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty. John K. Reilly Jr.
12/17/2003	<u>59</u> Praecep for Argument filed on behalf of Defendants. 6 CC to Atty. Bell. John K. Reilly Jr.
12/31/2003	<u>60</u> Letter from CA scheduling argument on Defendants' Post-Trial Motions for / John K. Reilly Jr. January 14, 2004, at 1:30, P.M. mailed returned by USPS
01/08/2004	<u>61</u> SUPERIOR COURT OF PENNSYLVANIA. ORDER, AND NOW, this 20th day of November, 2003, it is ordered that this Court hereby DISMISSES this appeal as no issues have been preserved for appellate review. See Lenhart v. Cigna, 824 A.2d 1193 (Pa. Super 2003) (stating that post-trial motions must be filed and disposed of, and judgement entered thereon, for appeal to be proper); see also L.B. Foster Co. v. Lane Enterprises, Inc. 710 A.2d 55 (PA 1998) (stating that, if an issue has not been raised in a post-trial motion, it is waived for appeal purposes). PER CURIAM" Date: November 20, 2003
01/08/2004	<u>62</u> Certificate of Contents of Remanded Record And Notice Of Remand under Pennsylvania Rules Of Appellate Procedure 2571 and 2572. s/Eleanor R. Valecko, Deputy Prothonotary Copy to Superior Court John K. Reilly Jr.
12/08/2004	<u>63</u> Suggestion of Name Change, filed by Atty. Smith no cert. copies Plaintiff Suggests that the Williamsport-Lycoming Foundation has changed its name to First Community Foundation of Pennsylvania John K. Reilly Jr.
12/10/2004	<u>64</u> Certificate of Service, filed by Atty. Smith no Cert. Copies. Served copy of Suggestion of Name Change to Atty. Bell. John K. Reilly Jr.
12/10/2004	<u>65</u> Filing: Praecep for Entry of Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1892077 Dated: 12/10/2004 Amount: \$20.00 (Check). Judgment entered against Defendants William and Roberta Kinderman ONLY in the amount of \$25,211.00. Notice to Defs., Statement to Atty. John K. Reilly Jr.
12/10/2004	<u>66</u> Certificate of Service, copy of Praecep for Entry of Judgment by mail on Dec. 10, 2004 to F. Cortez Bell, III, Attorney for Defendants William and Roberta Kinderman. Filed by s/ Peter F. Smith, Esquire John K. Reilly Jr.
01/10/2005	<u>67</u> Filing: Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1893506 Dated: 01/10/2005 Amount: \$45.00 (Check). Filed by s/ F. Cortez Bell, III, Esquire. 6CC Atty Bell, 1CC & \$60.00 (ck. # 1039) to Superior Court. John K. Reilly Jr.

Date: 07/22/2003

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:38 PM

ROA Report

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge	
12/08/2000	Filing: Civil Complaint Paid by: Smith, Peter F. (attorney for Manufacturers and Traders Trust Co.) Receipt number: 0052689 Dated: 12/08/2000 Amount: \$80.00 (Check) Four Certified Copies to Attorney Smith	No Judge
01/15/2001	② Sheriff Return, Complaint served on Defendants. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/19/2001	③ Praeclipe for Entry of Appearance, on behalf of Defendants William B. & Roberta A. Kinderman. s/F. Cortez Bell, III, Esq. 3 cc to Atty	No Judge
02/20/2001	④ Preliminary Objections to Plaintiff's Complaint. Filed by s/F. Cortez Bell, III, Esq. 3 cc atty Bell	No Judge
02/23/2001	⑤ Amended Complaint. Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
02/27/2001	⑥ Certificate of Service, Amended Complaint upon Attys Bell, III, Gibson, and Weaver no cc	No Judge
03/01/2001	⑦ Certificate of Service, Defendant Clarence C. Daisher's Answer To Plaintiff's Amended Complaint and New Matter, upon Atty Smith, Bell, III, and Joseph R. Chamberlin. Filed by s/Mark S. Weaver, Esq. no cc	No Judge
03/20/2001	⑧ Answer to Defendant Daisher's New Matter. Filed by s/Peter F. Smith, Esq. 4 cc atty Smith	No Judge
03/21/2001	⑨ Certificate of Service, Answer to Defendant Daisher's New Matter upon counsel of record. Filed by s/Peter F. Smith, Esq. no cc	No Judge
04/05/2001	⑩ Answer to Amended Complaint Filed on Behalf of Defendant, Joseph R. Chamberlin With New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). Filed by s/John D. Gibson, Esq.	No Judge
	⑪ Answer to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. Filed by s/John D. Gibson, Esq no cc	No Judge
04/20/2001	⑫ Plaintiff's Answer to Defendant Chamberlin's New Matter. filed by s/Peter F. Smith, Esq. Verification, Robert L. Kester. 4 cc atty Smith	No Judge
04/23/2001	⑬ Certificate of Service, Plaintiff's Answer to Defendant Chamberlin's New Matter upon Counsel of Record. s/Peter F. Smith, Esq. no cc	No Judge
05/18/2001	⑭ Certificate of Service, Subpoena to Attend and Testify upon Attorneys of Record. s/Peter F. Smith, Esq. no cc	No Judge
	⑮ Certificate of Service, Deposition Notice, upon Attorneys of Record, s/Peter F. Smith, Esq. no cc	No Judge
05/30/2001	⑯ Preliminary Objections to Defendant Kindermans' Counterclaim. filed by s/Peter F. Smith, Esq. no cc	No Judge
	⑰ Answer to Plaintiff's Amended Complaint, New Matter and Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) filed on behalf of Defendants William B. Kinderman and Roberta A. Kinderman. Filed by s/F. Cortez Bell, III, Esq. Cert. of Svc. 5 cc atty Bell	No Judge
05/31/2001	⑱ Certificate of Service, Plaintiff's Preliminary Objections to Defendant Kindermans' Counterclaim upon atty Bell, III, Esq., Gibson, and Weaver. s/Peter F. Smith, Esq. no cc	No Judge
06/20/2001	⑲ Reply to New Matter of Defendants Kinderman Pursuant to Pa. R.C.P. Rule 2252(d) filed by s/John D. Gibson, Esq. Verification, s/Joseph R. Chamberlin s/John D. Gibson, Esq. Cert of Svc no cc	No Judge
07/31/2001	⑳ Certificate of Service, Plaintiff's Brief in Support of Preliminary Objections, upon counsel of record. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
09/07/2001	㉑ ORDER, NOW, this 7th day of Sept. 2001, re: Objections are sustained and John K. Reilly Jr. Defendants counter-claim seeking to recover attorney's fees and surveyor's costs shall be and is hereby stricken w/o prejudice. by the Court, s/JKR,JR., P.J. 1 cc Atty Bell, Weaver, Gibson, and P. Smith	
09/21/2001	㉒ Certificate of Service, Plaintiff's Answers to defend Kinderman's New Matter to Attys of Record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.

Current Judge: John K. Reilly Jr.

illiamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge
09/25/2001 21 ②3 Answer To Defendant Kindermans' New Matter. Filed by s/Peter F. Smith, Esq. Affidavit. s/Robert L. Kester 4 cc Atty	John K. Reilly Jr.
12/07/2001 ②4 Plaintiff's Petition to Amend the Complaint. Filed by s/Peter F. Smith, Esq. John K. Reilly Jr. 4 cc to Atty	
12/10/2001 ②5 RULE RETURNABLE,NOW, this 10th day of Dec., 2001, RE: Written Response to Motion is due by the 31st day of Dec. 2001. Order shall be heard in Court on the 4th day of Jan. 2002, at 2:30 p.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Smith	John K. Reilly Jr.
12/19/2001 ②6 Certificate of Service, Petition to Amend Complaint w/Rule Returnable upon attorneys of record. Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
12/31/2001 ②7 Answer to Plaintiff's Petition to Amend the Complaint. Filed by s/F. Cortez Bell, III, Esq. Verification. s/F. Cortez Bell, III, Esq. Cert of Svc 1 cc Atty Bell	John K. Reilly Jr.
01/04/2002 ②8 ORDER, AND NOW, this 4th day of January, 2002 re: Plaintiff's Petition to Amend the Complaint is GRANTED. by the Court, s/JKR,JR.,P.J. 5 cc / Atty Smith	John K. Reilly Jr.
01/21/2002 ②9 Petition For Leave to Withdraw. Filed by s/Mark S. Weaver, Esq. 4 cc Atty Weaver	John K. Reilly Jr.
01/24/2002 ③0 RULE, AND NOW, this 24th day of Jan. 2002, re: Issued upon Plaintiff, returnable the 13th day of Feb. 2002, for filing a written response. by the Court, s/JKR,JR.,P.J. 3 cc Atty Weaver	John K. Reilly Jr.
01/29/2002 ③1 Certificate of Service, Petition for Leave to Withdraw w/Rule dated Jan 24, 2002, served upon Clarence C. Daisher, F. Cortez Bell, III, Esq., Peter F. Smith, Esq. and John D. Gibson, Esq. s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
03/19/2002 ③2 Praeclipe, filed, filed by Atty. Smith No Cert. Copies. copy to C/A Please place this case on the non-jury list for the next Civil Call.	John K. Reilly Jr.
③3 Certificate of Service Filed, filed by Atty. Smith No Cert. Copies Copy to C/A	John K. Reilly Jr.
③4 Sent by first class mail a copy of the above referenced document on the Defendants on March 18, 2002.	
03/27/2002 ③5 ORDER, AND NOW, this 27th day of March, 2002, re: MARK S. WEAVER, John K. Reilly Jr. ESQ. is GRANTED leave to withdraw as counsel for CLARENCE C. DAISHER. by the Court, s/JKR,JR. P.J. no cc	
04/01/2002 ③6 Certificate of Service, Court Order dated March 27,m 2002, upon Parties of Record. Filed by s/Mark S. Weaver, Esq. 1 cc Atty Weaver	John K. Reilly Jr.
07/26/2002 ③7 Motion for Continuance on behalf of Joseph R. Chamberlin, filed by s/John D. Gibson, Esq. One CC Attorney	John K. Reilly Jr.
07/30/2002 ③8 Praeclipe to Substitute Parties. Filed by s/Peter F. Smith, Esq. no cc ③9 Certificate of Service, Praeclipe to Substitute Parties upon: Atty F. Cortez Bell, III, Esq., John B. Gibson, Esq. and Clarence C. Daisher Filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
08/01/2002 ④0 ORDER, NOW, this 1st day of August, 2002, re: Motion for Continuance is GRANTED, further proceedings shall be scheduled at the request of any party. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Bell, Weaver, and Gibson	John K. Reilly Jr.
10/11/2002 ④1 Filing: Motion to Amend Answer and New Matter of Joseph R. Chamberlin. One CC to Atty. Gibson.	John K. Reilly Jr.
10/18/2002 ④2 ORDER OF COURT, AND NOW, this 18th day of October, 2002, re: Defendant, JOSEPH R. CHAMBERLIN, is hereby GRANTED leave of Court to file an Amended Answer and New Matter raising the defense of Discharge in Bankruptcy. by the Court, s/JKR,JR.,P.J. 1 cc Atty Gibson	John K. Reilly Jr.

Date: 07/22/2003

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 01:38 PM

ROA Report

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Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge	
11/04/2002	Amended Answer To Plaintiff's Amended Complaint, New Matter, and New Matter Pursuant to PA. R.C.P. 2252(d) of Defendant, Joseph R. Chamberlin. filed by s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to New Matter of Defendants' Kinderman, Pursuant PA. R.C.P. 2252(d), Filed by Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
	Amended Reply to Defendant, Clarence C. Daisher's New Matter Filed on Behalf of Joseph R. Chamberlin. s/John D. Gibson, Esq. Verification s/Joseph R. Chamberlin no cc	John K. Reilly Jr.
12/16/2002	Motion For Summary Judgment, filed by Atty. Gibson, 1 Cert. to Atty. Gibson	John K. Reilly Jr.
04/02/2003	ORDER OF COURT, AND NOW, this 2nd day of April, 2003, re: Complaint and Claims are DISMISSED WITH PREJUDUCE. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr.
04/04/2003	Answer To Plaintiff's Second Amended Complaint, New Matter And Counterclaim and New Matter Pursuant to Pa. R.C.P. Rule 2252(d) Filed On Behalf Of Defendants William B. Kinderman And Roberta A. Kinderman filed by s/F. Cortez Bell, III, Esq. Verification s/William B. Kinderman s/Roberta A. Kinderman Certificate of Service 1 cc Atty Bell	John K. Reilly Jr.
04/08/2003	Certificate of Service, Subpoena served on Joseph R. Chamberlin upon JOHN D. GIBSON, ESQ. filed by s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
06/24/2003	OPINION AND ORDER, NOW, this 24th day of June, 2003, following Hearing and Briefs into the above-captioned matter, this Court enters judgment in favor of the Plaintiffs and against the Defendants WILLIAM B. KINDERMAN and ROBERTA A. KINDERMAN in the amount of \$25,211 and further ORDERS judgment in favor of Defendant, Clarence C. Daisher in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith (Pliffs) 1 cc Atty F. Cortez Bell (Kindermans) (no cc Chamberlin dismissed), 1 cc Daisher, and 1 cc D. Mikesell	John K. Reilly Jr.
06/30/2003	Certified Copy Of Opinion and Order Mailed To Clarence C. Daisher Returned By USPS "FORWARDING ORDER EXPIRED". Re-mailed to RR 3, Box 188, DuBois, Pa. 15801	John K. Reilly Jr.
07/07/2003	Post Trial Motion On Behalf Of Defendants, William B. Kinderman and Roberta A. Kinderman. filed by s/F. Cortez Bell, III, Esquire Certificate of Service 5 cc Atty Bell	John K. Reilly Jr.
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon Plaintiff. WILLIAMSOPRT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell	John K. Reilly Jr.
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. Smith, Esquire Certificate of Service no cc	John K. Reilly Jr.
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00	John K. Reilly Jr.

Date: 08/19/2003

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:55 AM

ROA Report

Page 1 of 1

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher

Civil Other

Date	Selected Items	Judge
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified of John K. Reilly Jr. Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/FJR,JR.,P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher	1
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 WDA-3 2003 no cc	John K. Reilly Jr.
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, John K. Reilly Jr. III, Esquire Proof of Service 5 cc Atty Bell	4

(51)

(52)

(53)

Date: 01/08/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 01:48 PM

ROA Report

Page 4 of 4

Case: 2000-01531-CD

Current Judge: John K. Reilly Jr.

Williamsport-Lycoming Foundation, James B. Graham vs. William B. Kinderman, Roberta A. Kinderman, Clarence C. Daisher
Civil Other

Date	Judge
07/09/2003	RULE RETURNABLE, AND NOW, this 9th day of July, 2003, issued upon John K. Reilly Jr. Plaintiff. WILLIAMSPORT-LYCOMING FOUNDATION, Trustee. Said Rule Returnable on the 6th day of August, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 5 cc to Atty Bell
07/10/2003	Answer To Defendant Kindermans' Post Trial Motion. filed by s/Peter F. John K. Reilly Jr. Smith, Esquire Certificate of Service no cc
07/22/2003	Filing: Notice of Appeal to High Court Paid by: Bell, F. Cortez III (attorney John K. Reilly Jr. for Kinderman, William B.) Receipt number: 1863390 Dated: 07/22/2003 Amount: \$45.00 (Check) 7 CC Attorney Bell; One CC to Superior Court with check #7790 for \$60.00
07/25/2003	ORDER, NOW, this 23rd day of July, 2003, the Court having been notified John K. Reilly Jr. of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that F. Cortez Bell, Jr., Esquire, Attorney for Appellant above-named, file a concise statement of the matters complained of on Appeal as set forth in Rule 1925(b) of the Rules of Appellate Procedure. by the Court, s/JKR,JR.,P.J. 1 cc Atty P. Smith, F. Cortez Bell, and Defendant Daisher
08/01/2003	Appeal Docket Number From Superior Court of Pennsylvania: 1370 John K. Reilly Jr. WDA 2003 no cc
08/04/2003	Statement of Matters Complained of on Appeal. filed by s/F. Cortez Bell, John K. Reilly Jr. III, Esquire Proof of Service 5 cc Atty Bell
10/03/2003	Transcript of Civil Non-Jury Trial on April 7, 2003, filed by T. Snyder, C/R John K. Reilly Jr.
10/21/2003	SUPPLEMENTAL OPINION. by the Court, s/JKR,JR.,P.J. 1 cc John K. Reilly Jr. P. Smith, F.C. Bell, D. Mikesell, and Clarence Daisher
10/22/2003	Certified Mail Receipt, Appeal mailed to Superior Court, October 22, 2003. John K. Reilly Jr. ✓
10/27/2003	Domestic Return Receipt, Appeal at Superior Court. John K. Reilly Jr. ✓
11/13/2003	Filing: Judgment Paid by: Smith, Peter F. (attorney for Williamsport-Lycoming Foundation) Receipt number: 1869064 Dated: 11/13/2003 Amount: \$20.00 (Check) Judgment entered against defendants in the amount \$25,211.00. Notice to Def. Stmt. to Atty. John K. Reilly Jr. ✓
12/17/2003	Praeclipe for Argument filed on behalf of Defendants. 6 CC to Atty. Bell. John K. Reilly Jr. ✓ <i>wp stars</i>

COPIED

October 22, 2003

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased
Vs.
William B. Kinderman, Roberta A. Kinderman, and Clarence C. Daisher
No. 00-1531-CD
Superior Court No. 1370 WDA 2003

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your
office. Please also find enclosed one transcript.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

John K. Reilly, Jr. P.J.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

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

Peter F. Smith, Esq.
PO Box 130
30 S. Second Street
Clearfield, PA 16830

Clarence C. Daisher
RR 3, Box 188
DuBois, PA 15801

Williamsport-Lycoming Foundation, Trustee under the will of James B. Graham,
Deceased
Vs.
William B. Kinderman, Roberta Kinderman, and Clarence C. Daisher

Court No. 00-1531-CD; Superior Court No. 1370 WDA 2003

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on October 22, 2003.

Sincerely,

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Prothonotary/Clerk of Courts

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