

01-466-CD

James Lux vs Ort Trucking Inc. al

01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUK,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.



CIVIL DIVISION

Case No. 01-466-C.D.

NOTIFICATION OF BANKRUPTCY

Filed on behalf of EDDIE C.
ROBERTS, Defendant

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

050130A 2005

FILED

JAN 24 2002

011:30/1000

William A. Shaw
Prothonotary

Feb 12/02

#28

NOTIFICATION OF BANKRUPTCY

To: ALL PARTIES

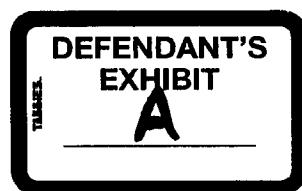
AND NOW, comes EDDIE C. ROBERTS, Defendant, by and through his attorneys, ANSTANDIG, MCDYER, BURDETTE & YURCON, P.C., and files this official Notification of the pending Voluntary Petition for Bankruptcy filed in the United States Bankruptcy Court for the Northern District of Indiana, South Bend Division at Docket No. 01-36387 involving Defendant Eddie Roberts. A copy of the Petition is attached hereto as Exhibit "A".

You are hereby notified that pursuant to the provisions of Title 11 of the United States Code, Section 362, the filing of this Bankruptcy Petition operates as an automatic stay of further civil proceedings against Eddie C. Roberts.

Anstandig, McDyer, Burdette & Yurcon P.C

By: 

Edward A. Yurcon, Esquire
Attorney for EDDIE C. ROBERTS,
Defendant



United States Bankruptcy Court
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

VOLUNTARY PETITION

IN RE
Eddie Charles Roberts
ALL OTHER NAMES

NAME OF JOINT DEBTOR

NO JOINT DEBTOR

SOC. SEC./TAX I.D. NO.
306-64-7484

STREET ADDRESS OF DEBTOR
23700 Marquette Blvd
Lot 64

South Bend IN 46628
COUNTY OF RESIDENCE
St. Joseph

MAILING ADDRESS OF DEBTOR
23700 Marquette Blvd
Lot 64

South Bend IN 46628

VENUE

Debtor has had a residence in this District for 180 days immediately preceding the date of this petition.

INFORMATION REGARDING DEBTOR

TYPE OF DEBTOR

Individual

NATURE OF DEBT

Non-Business/Consumer

A. TYPE OF BUSINESS

N/A

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

N/A

STATISTICAL/ADMINISTRATIVE INFORMATION--
Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

CHAPTER OF BANKRUPTCY CODE
UNDER WHICH THE PETITION
IS FILED

7

FILING FEE

Attached

ATTORNEY NAME AND ADDRESS--
Thomas F. Grabb
8200-71
108 N. Main, Ste 509
South Bend IN 46601

(219) 239-6475

ATTORNEYS DESIGNATED TO
REPRESENT DEBTOR

range (sard code)
NO. OF CREDITORS 1-15 (1)

ASSETS (thousands) Under 50 (1)

LIABIL. (thousands) Under 50 (1)

NO. OF EMPLOYEES N/A

EQUITY SEC. HOLDERS N/A

THIS SPACE FOR COURT USE ONLY

01-36387

2001 OCT 22 PM 2:10

----- United States Bankruptcy Court ----- VOLUNTARY PETITION -----
NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

IN RE -----

Eddie Charles Roberts

ALL OTHER NAMES -----

NAME OF JOINT DEBTOR

NO JOINT DEBTOR

SOC. SEC./TAX I.D. NO. -----

306-64-7484

STREET ADDRESS OF DEBTOR -----

23700 Marquette Blvd

Lot 64

South Bend IN 46628

COUNTY OF RESIDENCE -----

St. Joseph

MAILING ADDRESS OF DEBTOR -----

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Lot 64

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TYPE OF DEBTOR

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NATURE OF DEBT

Non-Business/Consumer

A. TYPE OF BUSINESS

N/A

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

N/A

STATISTICAL/ADMINISTRATIVE INFORMATION--

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1-15 (1)

ASSETS (thousands) Under 50 (1)

LIABIL. (thousands) Under 50 (1)

NO. OF EMPLOYEES N/A

EQUITY SEC. HOLDERS N/A

THIS SPACE FOR COURT USE ONLY

01-36387

2001 DEC 28 PM 2:10

Name of Debtor: Eddie Charles Roberts
Case No.:

----- PRIOR BANKRUPTCY CASES FILED WITHIN LAST 6 YEARS -----
NONE
--- PENDING BANKRUPTCY CASE FILED BY SPOUSE, PARTNER, OR AFFILIATE ---
NONE

----- REQUEST FOR RELIEF -----
Debtor requests relief in accordance with the chapter of title 11
United States Code specified in this petition.

----- SIGNATURES -----

Thomas F. Grabb
8200-71
ATTORNEY

Date: 12-14-01

----- INDIVIDUAL DEBTOR -----
I declare under penalty of perjury that the information provided in
this petition is true and correct.

Eddie Charles Roberts
Eddie Charles Roberts

Date: 12-14-01

I am aware that I may proceed under chapter 7, 11, 12, or 13 of title
11, United States Code, understand the relief available under such
chapter, and choose to proceed under chapter 7 of such title.

Exhibit B has been completed.

Eddie Charles Roberts
Eddie Charles Roberts

Date: 12-14-01

----- EXHIBIT B -----
I, the attorney for the debtor in the foregoing petition, declare that
I have informed the debtor that the debtor may proceed under chapter
7, 11, 12, or 13 of title 11, United States Code, and have explained
the relief available under such chapter.

Thomas F. Grabb
Thomas F. Grabb
8200-71

Date: 12-14-01

Thomas F. Grabb
Thomas F. Grabb
108 N. Main, Ste 509
South Bend IN 46601
(219) 239-6475
Attorney for the Petitioner

8200-71

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In re
Eddie Charles Roberts
Debtor
Social Security No.: 306-64-7484

Case No.:
Statement of Financial Affairs
Chapter 7

1. Income from employment or operation of business.

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year.

This year: 19 1	Amount:	14,500.00
Source: August 17, 2001		
Last year: 19 0	Amount:	52,000.00
Source:		
Previous year: 1999	Amount:	51,000.00
Source:		

2. Income other than from employment or operation of business.

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case.

This year: 19 1	Amount:	0.00
Source:		
Last year: 19 0	Amount:	0.00
Source:		
Previous year: 1999	Amount:	0.00
Source:		

3. Payments to creditors.

- a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within 90 days immediately preceding the

commencement of this case.

NONE

- b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders.

NONE

4. Suits, executions, garnishments, and attachments.

- a. List all suits to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case.

Status: Lawsuit is pending.
Ort v. Roberts, etal.

- b. Describe all property that has been attached, garnished, or seized under any legal or equitable process within one year immediately preceding the commencement of this case.

NONE

5. Repossessions, foreclosures, and returns.

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case.

NONE

6. Assignments and receiverships.

- a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case.

NONE

- b. List all property which has been in the hands of a receiver or court-appointed official within one year immediately preceding the commencement of this case.

NONE

7. Gifts.

List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in

value per individual family member and charitable contributions aggregating less than \$100 per recipient.

NONE

8. Losses.

List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case.

NONE

9. Payments related to debt counseling or bankruptcy.

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

Thomas F. Grabb
108 N. Main, Ste 509
South Bend IN 46601
(219) 239-6475

Filing fee: 200.00
Attorney's fees: 375.00
Source was: Debtor's earnings
Date(s) of payment: August 17, 2001 \$100.00, Sept 18, 2001
\$100.00, Nov 16, 2001 \$100.00, Dec 4, 2001
\$150.00, Dec 11, \$125.00

10. Other transfers.

List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor transferred either absolutely or as security within one year immediately preceding the commencement of this case.

NONE

11. Closed financial accounts.

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case.

NONE

12. Safe deposit boxes.

List each safe deposit box or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case.

NONE

13. Setoffs.

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case.

NONE

14. Property held for another person.

List all property owned by another person that the debtor holds or controls.

NONE

15. Prior address of debtor.

If the debtor has moved within the two years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case.

NONE

16. Nature, location, and name of business.

- a. For individuals, list the names and addresses of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the two years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the two years immediately preceding the commencement of this case.

NONE

- b. If the debtor is a partnership, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within the two years immediately preceding the commencement of this case.

N/A

- c. If the debtor is a corporation, list the names and addresses

of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within the two years immediately preceding the commencement of this case.

N/A

17. Books, records, and financial statements.

- a. List all bookkeepers and accountants who within the six years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

N/A

- b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

N/A

- c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor.

N/A

- d. List all financial institutions, creditors, and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

N/A

18. Inventories.

- a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

N/A

- b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

N/A

19. Current Partners, Officers, Directors, and Shareholders.

- a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

N/A

- b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

N/A

20. Former partners, officers, directors, and shareholders.

- a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NA

- b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

N/A

21. Withdrawals from a partnership or distributions by a corporation.

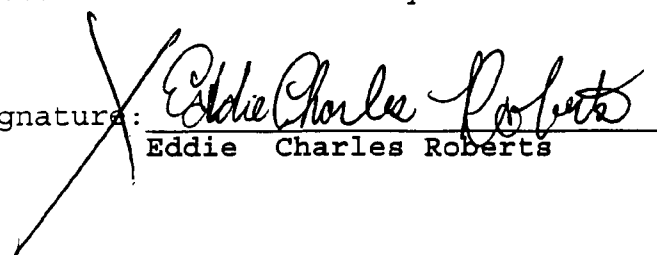
If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

N/A

(The penalties for making a false statement or concealing property is a fine of up to \$500,000 or imprisonment for up to 5 years or both.
- 18 U.S.C. secs. 152 and 3571.)

DECLARATION

I, **Eddie Charles Roberts**, named as the debtor in this case, declare under penalty of perjury that I have read the foregoing **Statement of Financial Affairs**, consisting of 6 sheets, and that it is true and correct to the best of my information and belief.

Signature: 

Eddie Charles Roberts

Date: 12-14-01

In re: **Eddie Charles Roberts**

Case No:

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

===== SUMMARY OF SCHEDULES =====				
Schedule name	No. Sheets	Assets	Liabilities	Other
X (mark if attached)				
_____ A - Real Property	1	0.00		
_____ B - Personal Property	3	2,455.00		
_____ C - Property Claimed as Exempt	1			
_____ D - Creditors Holding Secured Claims	1		0.00	
_____ E - Creditors Holding Unsecured Priority Claims	2		0.00	
_____ F - Creditors Holding Unsecured Non- priority Claims	1		21,585.10	
_____ G - Executory Contracts and Unexpired Leases	1			
_____ H - Codebtors	1			
_____ I - Current Income of Individual Debtors	2			1,906.67
_____ J - Current Expenditures of Individual Debtors	2			1,523.00
Summary Sheet	1	*****		
Total No. Sheets	16	*****		
Total Assets ->		2,455.00	*****	
Total Liabilities ->			21,585.10	*****
Total No. of Creditors ->			6	*****
Excess Income (if any) ->				383.67
=====				

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE A - REAL PROPERTY

Description and location of property	Current market value of debtor's interest in the property without deducting any secured claim or exemption
Nature of debtor's interest in property	Amount of secured claim

NONE

Total:

0.00

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE B - PERSONAL PROPERTY

Type of property	Current market value of debtor's interest in property without deducting any secured claim or exemption
Description and location of property	

1. Cash on hand.

cash on debtor

Debtor's interest: 20.00
Total debt on property: 0.00

Location: **In debtor's possession.**

2. Checking, savings, or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.

checking

Debtor's interest: 100.00
Total debt on property: 0.00

Possession: **In debtor's possession.**
AAA FCU

savings

Debtor's interest: 35.00
Total debt on property: 0.00

Possession: **In debtor's possession.**
AAA FCU

3. Security deposits with public utilities, telephone companies, landlords, and others.
NONE

4. Household goods and furnishings, including audio, video, and computer equipment.

tv, entertainment center and dresser

Debtor's interest: 200.00
Total debt on property: 0.00

Location: **In debtor's possession.**

5. Books, pictures, and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.
NONE

6. Wearing apparel.

misc clothing

Debtor's interest: 100.00
Total debt on property: 0.00

Location: **In debtor's possession.**

7. Furs and jewelry.

In re: **Eddie Charles Roberts**

Case No:

NONE

8. Firearms and sports, photographic, and other hobby equipment.
NONE
9. Interests in insurance policies.
NONE
10. Annuities.
NONE
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans.
NONE
12. Stock and interests in incorporated and unincorporated businesses.
NONE
13. Interests in partnerships or joint ventures.
NONE
14. Government and corporate bonds and other negotiable and non-negotiable instruments.
NONE
15. Accounts receivable.
NONE
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled.
NONE
17. Other liquidated debts owing debtor including tax refunds.
NONE
18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.
NONE
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.
NONE
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims.
NONE
21. Patents, copyrights, and other intellectual property.
NONE
22. Licenses, franchises, and other general intangibles.
NONE
23. Automobiles, trucks, trailers, and other vehicles or accessories.
1993 Dodge Caravan

Debtor's interest: 2,000.00

Total debt on property: 0.00

Location: **In debtor's possession.**

24. Boats, motors, and accessories.
NONE
25. Aircraft and accessories.
NONE
26. Office equipment, furnishings, and supplies.

In re: **Eddie Charles Roberts**

Case No:

NONE

27. Machinery, fixtures, equipment, and supplies used in business.

NONE

28. Inventory.

NONE

29. Animals.

NONE

30. Crops - growing or harvested.

NONE

31. Farming equipment and implements.

NONE

32. Farm supplies, chemicals, and feed.

NONE

33. Other personal property of any kind not already listed.

NONE

Total: 2,455.00

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

11 U.S.C. sec. 522(b)(2)

Exemptions available under applicable non-bankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition or for a longer portion of the 180 day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable non-bankruptcy law.

Debtor is single.

=====	
Description of property	Value of claimed exemption

Specify law providing each exemption	Current market value of property without deducting exemption
=====	

cash on debtor

Debtor's interest:	20.00	Value exempt:	20.00
Law:	IC 34-2-28-1		

checking

Debtor's interest:	100.00	Value exempt:	100.00
Law:	IC34-2-28-1		

1993 Dodge Caravan

Debtor's interest:	2,000.00	Value exempt:	2,000.00
Law:	IC 34-2-28-1		

misc clothing

Debtor's interest:	100.00	Value exempt:	100.00
Law:	IC34-2-28-1		

savings

Debtor's interest:	35.00	Value exempt:	35.00
Law:	IC 34-2-28-1		

tv, entertainment center and dresser

Debtor's interest:	200.00	Value exempt:	200.00
Law:	IC34-2-28-1		

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

=====	
Creditor's name and complete mailing address including zip code	Amount of claim without deducting value of collateral
-----	-----
Date claim was incurred, nature of lien, and description and market value of property subject to the lien	Unsecured portion, if any
=====	

NONE

Subtotal this page:	0.00
Total:	0.00

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

TYPES OF PRIORITY CLAIMS:

Wages, Salaries, and Commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees, up to a maximum of \$2000 per employee, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. sec. 507(a)(3).

Contributions to Employee Benefit Plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first to the extent provided in 11 U.S.C. sec. 507(a)(4).

Certain Farmers or Fishermen

Claims of certain farmers or fishermen, up to a maximum of \$2000 per farmer or fisherman, against the debtor, as provided in 11 U.S.C. sec. 507(a)(5).

Deposits by Individuals

Claims of individuals up to a maximum of \$900 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. sec. 507(a)(6).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. sec. 507(a)(7).

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

Creditor's name and complete mailing address including zip code	Amount entitled to priority
Date claim was incurred and consideration for claim	Total amount of claim

1. Wages, Salaries, and Commissions.

NONE

2. Contributions to Employee Benefit Plans.

NONE

3. Certain Farmers or Fishermen.

NONE

4. Deposits by Individuals.

NONE

5. Taxes and Certain Other Debts Owed to Governmental Units.

NONE

Subtotal this page: 0.00
Total: 0.00

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

Creditor's name and complete mailing address including zip code	Amount of claim
Date claim was incurred and consideration for claim. If claim is subject to setoff, so state.	

Account no.: 5291151620459352

Amount of claim: 3,100.00

Capital One

P.O. Box 26074

Richmond VA23260

Claim is: Fixed and liquidated.

Account no.: 40267482

Amount of claim: 416.37

Centennial Wireless

P.O. Box 1901

LaPorte IN 46352

Claim is: Fixed and liquidated.

Account no.: 443489000566655

Amount of claim: 10,068.73

FNANB

P.O. box 42365

Richmond VA 23242

Claim is: Fixed and liquidated.

Account no.:

Amount of claim: notice

G. Ort Trucking &

Samuel Knight

c/o Michael F. Nerone

Two PPG Place Ste 400

Pittsburgh PA 15222-5402

Claim is: Fixed and liquidated.

Account no.:

Amount of claim: notice

James Lux

c/oJeffrey R. Owen Esq

1600 Benedum Trees Bldg

223 Fourth Ave.

Pittsburgh PA 15222

Claim is: Fixed and liquidated.

Account no.:

Amount of claim: notice

Ms Kari Roberts

3720 Generations Drive W

South Bend IN 46635

Consideration for claim: auto accident

Subtotal this page: 13,585.10

In re: Eddie Charles Roberts

Case No:

Claim is: Fixed and liquidated.

Account no.:

R & F Miller Inc.

58255 Crunstown Highway

South Bend IN 46619-9541

Amount of claim:

notice

Claim is: Fixed and liquidated.

Account no.: 5121071776543161

Sears (Mastercard)

P.O. Box 182156

Columbus OH 43218

Amount of claim:

2,924.70

Consideration for claim: debtor desires to reaffirm

Claim is: Fixed and liquidated.

Account no.:

Simon Transportation

6100 Neil Road

Reno NV 89511

Amount of claim:

notice

Claim is: Fixed and liquidated.

Account no.: 5491130022620306

ATT Universal

200 Brookstone Centre

Suite 110

Columbus GA 31904

Amount of claim:

7,600.00

Claim is: Fixed and liquidated.

Subtotal this page:

10,524.70

Total:

24,109.80

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Name and mailing address, including zip code, of other parties to lease or contract.	Description of contract or lease and nature of debtor's interest. State whether lease is for non- residential real property. State contract number of any government contract.
--	---

NONE

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE H - CODEBTORS

=====	
| Name and address of codebtor	| Name and address of creditor |
=====	

NONE

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTORS

DEBTOR'S MARITAL STATUS: **Single**

DEPENDENTS OF DEBTOR
NONE

EMPLOYMENT:

Occupation:
Employer name: **R and F Miller**
How long employed:
Address of employer: **South Bend**

INCOME:

Current monthly gross wages, salary, and commissions.....	3,466.67
--	----------

Estimated monthly overtime.....	0.00
---------------------------------	------

SUBTOTAL.....	3,466.67
---------------	----------

LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security.....	1,014.00
--	----------

b. Insurance.....	0.00
-------------------	------

c. Union dues.....	0.00
--------------------	------

d. Other: child support	546.00
-----------------------------------	--------

SUBTOTAL OF DEDUCTIONS.....	1,560.00
-----------------------------	----------

TOTAL NET MONTHLY TAKE HOME PAY.....	1,906.67
--------------------------------------	----------

Regular income from operation of business or profession or farm.....	0.00
---	------

Income from real property.....	0.00
--------------------------------	------

Interest and dividends.....	0.00
-----------------------------	------

Alimony, maintenance, or support payments payable to the debtor for the debtor's use or that of dependents listed above.....	0.00
---	------

Social security or other government
assistance:
 NONE

In re: **Eddie Charles Roberts**

Case No:

Pension or retirement income

0.00

Other monthly income:

NONE

TOTAL MONTHLY INCOME.....

1,906.67

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

NONE

In re: **Eddie Charles Roberts**

Case No:

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTORS

The following expenditures are for **DEBTOR**

Rent/home mortgage payments..... 400.00

REAL ESTATE TAXES ARE NOT INCLUDED.

PROPERTY INSURANCE IS NOT INCLUDED.

Utilities: Electricity and heating fuel..... 0.00
Water and sewer..... 0.00
Telephone..... 0.00

Other:

NONE

Home maintenance..... 0.00
Food..... 435.00
Clothing..... 50.00
Laundry and dry cleaning..... 30.00
Medical and dental expenses..... 50.00
Transportation..... 175.00
Recreation, clubs, and entertainment,
newspapers, magazines, etc..... 100.00
Charitable contributions..... 5.00

Insurance:

Homeowner's or renter's..... 0.00
Life..... 0.00
Health..... 200.00
Auto..... 78.00

Other:

NONE

Taxes:

NONE

Installment payments:

Auto..... 0.00

Other:

NONE

Alimony, maintenance, and support paid to others..... 0.00

Payments for support of additional dependents
not living at your home..... 0.00

Regular expenses from operation of business,
profession, or farm..... 0.00

In re: **Eddie Charles Roberts**

Case No:

Other:

NONE

TOTAL MONTHLY EXPENSES..... 1,523.00

(The penalties for making a false statement or concealing property is a fine of up to \$500,000 or imprisonment for up to 5 years or both.
- 18 U.S.C. secs. 152 and 3571.)

DECLARATION

I, **Eddie Charles Roberts**, named as the debtor in this case, declare under penalty of perjury that I have read the foregoing **Summary and Schedules**, consisting of 16 sheets, and that it is true and correct to the best of my information and belief.

Signature:

Eddie Charles Roberts
Eddie Charles Roberts

Date: 12-14-01

Thomas F. Grabb
Thomas F. Grabb
108 N. Main, Ste 509
South Bend IN 46601
(219) 239-6475
Attorney for the Petitioner

8200-71

RECEIVED
DEC 14 2001
JAMES A. HARRIS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In re
Eddie Charles Roberts
Debtor
Social Security No.: 306-64-7484

Case No.:

Mailing Matrix

Chapter 7

01-36387

(The penalties for making a false statement or concealing property is a fine of up to \$500,000 or imprisonment for up to 5 years or both.
- 18 U.S.C. secs. 152 and 3571.)

DECLARATION

I, **Eddie Charles Roberts**, named as the debtor in this case, declare under penalty of perjury that I have read the foregoing **Mailing Matrix**, consisting of 2 sheets, and that it is true and correct to the best of my information and belief.

Signature: *Eddie Charles Roberts*
Eddie Charles Roberts

Date: 12-14-01

Capital One
P.O. Box 26074
Richmond VA23260

Centennial Wireless
P.O. Box 1901
LaPorte IN 46352

FNANB
P.O. box 42365
Richmond VA 23242

G. Ort Trucking &
amuel Knight
c/o Michael F. Nerone
Two PPG Place Ste 400
Pittsburgh PA 15222-5402

James Lux
c/oJeffrey R. Owen Esq
1600 Benedum Trees Bldg
223 Fourth Ave.
Pittsburgh PA 15222

Ms Kari Roberts
3720 Generations Drive W
South Bend IN 46635

R & F Miller Inc.
58255 Crunstown Highway
South Bend IN 46619-9541

Sears (Mastercard)
P.O. Box 182156
Columbus OH 43218

Simon Transportation
6100 Neil Road
Reno NV 89511

ATT Universal
200 Brookstone Centre
Suite 110
Columbus GA 31904

Thomas F. Grabb
Thomas F. Grabb
108 N. Main, Ste 509
South Bend IN 46601
(219) 239-6475
Attorney for the Petitioner

8200-71

2001 DEC 20 PM 2:10

FILED
U.S. BANKRUPTCY COURT
N. DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In re
Eddie Charles Roberts
Debtor
Social Security No.: 306-64-7484

Case No.:

01-36387

Individual Debtor's Statement of
Intention

Chapter 7

1. I, the debtor, have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
2. My intention with respect to the property of the estate which secures those consumer debts is as follows:

a. Property to be surrendered.

Description of property	Creditor's name and address
-------------------------	-----------------------------

NONE

b. Property to be retained.

Description of property	Creditor's name and address
-------------------------	-----------------------------

Method of retention:

The debt will be reaffirmed pursuant to sec. 524(c) (Reaffirm)

The property is claimed exempt and will be redeemed pursuant to sec. 722. (Redeem)

Lien will be avoided pursuant to sec. 522(f) and property claimed as exempt.

Judicial lien (Judicial lien avoidance)

Nonpossessory, nonpurchase-money security interest (N.P.M.S.I. lien)

NONE

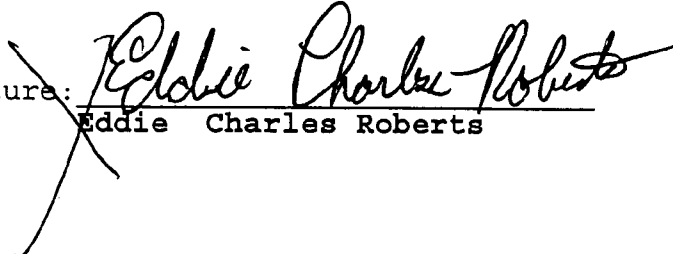
3. I understand that section 521(2)(B) of the Bankruptcy Code requires

that I perform the above stated intentions within 45 days of the filing of this statement with the court, or within such additional time as the court, for cause, within such 45-day period fixes.

(The penalties for making a false statement or concealing property is a fine of up to \$500,000 or imprisonment for up to 5 years or both.
- 18 U.S.C. secs. 152 and 3571.)

DECLARATION

I, **Eddie Charles Roberts**, named as the debtor in this case, declare under penalty of perjury that I have read the foregoing **Individual Debtor's Statement of Intention**, consisting of 2 sheets, and that it is true and correct to the best of my information and belief.

Signature: 

Eddie Charles Roberts

Date: 12-14-01

Thomas F. Grabb
Thomas F. Grabb
108 N. Main, Ste 509
South Bend IN 46601
(219) 239-6475
Attorney for the Petitioner

8200-71

2001 DEC 20 PM 2:10

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

01-36387

In re
Eddie Charles Roberts
Debtor
Social Security No.: 306-64-7484

Case No.:
Rule 2016(b) - Statement of
Attorney Compensation

Chapter 7

Pursuant to 11 U.S.C. sec. 329 and Rule of Bankruptcy Procedure 2016(b), the undersigned, attorney for the debtor in this case, makes this statement setting forth the compensation paid or agreed to be paid to the undersigned for service rendered or to be rendered in contemplation of and in connection with the case by the undersigned, and the source of such compensation.

1. Prior to the filing of this disclosure statement, the debtor in this case has paid to the undersigned the sum of \$375.00 plus \$200.00 for the filing fee in this case.

The source of the PAID sum was: **Debtor's earnings**

2. In addition, the debtor has agreed to pay the following:

NOT APPLICABLE

3. The undersigned has not shared or agreed to share any portion of such compensation with any other person who is not a member or regular associate of the undersigned's law firm.
4. The undersigned has not received any other payment in this case, and has no other agreement, except as set out herein.

Signature: _____

Thomas F. Grabb
8200-71

Date: 12-14-01

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within NOTIFICATION OF BANKRUPTCY has been served upon counsel of record, by First Class Mail, this 23rd day of January, 2002, at the following address(es):

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15222

Nancy Heilman, Esquire
Cohen & Grigsby
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

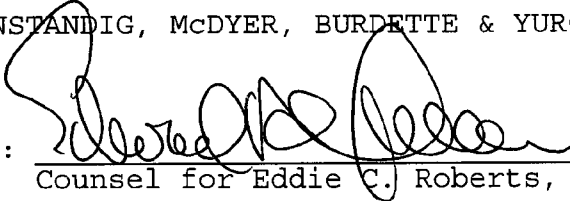
Michael F. Nerone, Esquire
Dickie, McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

The Honorable John K. Reilly, Jr.
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(Overnight Mail)

ANSTANDIG, MCDYER, BURDETTE & YURCON, P.C.

BY:


Counsel for Eddie C. Roberts, Defendant

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
Defendants

FILED

JAN 14 2002

William A. Shaw
Prothonotary

OPINION AND ORDER

Introduction

This action arises out of two motor vehicle accidents that took place on October 24, 2000, on Interstate 80 between DuBois and Clearfield, Pennsylvania. The first accident occurred when a tractor and trailer owned by Defendant R&F Miller, Inc. and operated by Defendant Jamie Harvey Parker was rear-ended by a tractor and trailer owned and driven by Defendant Eddie C. Roberts. The second accident occurred when a truck driven by Defendant Samuel Thomas Knight collided with a Sandy Township Fire truck positioned on the highway for purposes of cleaning debris from the first accident. During the second collision, three volunteer firemen, Plaintiff, Jeffrey Kennedy and Randy Wells, all of whom were passengers in the rescue squad truck, were severely injured. On April 3, 2001, Plaintiff filed a Complaint setting forth claims for negligence relating to the accidents described above resulting in serious and permanent injuries. On November 2, 2001, Petitioners, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight, filed a Petition for Interpleader pursuant to

#27

Pennsylvania Rule of Civil Procedure 2302, *et seq.*, requesting that this Court enter an Order directing Petitioners to pay into the Court the aggregate coverage limits under their liability insurance.

Opinion

In support of its Petition for Interpleader and in accordance with Pennsylvania Rule of Civil Procedure 2303¹, Petitioners allege that (1) there are several parties not of record that have made or are expected to make a demand upon Petitioners that will have the result of exposing Petitioners to multiple liability to the Plaintiff and such claimant, (2) that the petition is filed in good faith and not in collusion with the Plaintiff or any other claimant; (3) that Defendant Gerald E. Ort Trucking, Inc. (incorrectly referred to as Ort Trucking, Inc. in Plaintiff's Complaint) is insolvent, no longer actively conducts business, and owes substantial sums to a secured creditor, and that Defendant Samuel Knight possesses no assets from which any potential judgments obtained could be satisfied. Accordingly, Petitioner asserts that the only asset available for recovery for these claims from Defendant Gerald E. Ort Trucking, Inc. or Defendant Samuel Knight, is a policy of liability insurance having aggregate coverage limits of \$1,000,000. Petitioners assert that they have no interest in such fund and that such funds would be paid into the Court or to such person as this Court would direct; (4) that Petitioners have not subjected themselves to independent liability to the Plaintiff or any claimant with

¹ Rule 2303(a) of the Pennsylvania Rules of Civil Procedure provides that a petition for interpleader shall allege the following:

- (1) that a claimant not a party of record has made or expected to make a demand upon the defendant such that the defendant is or may be exposed to multiple liability to the plaintiff and to such claimant as to all or any part of the claim asserted by the plaintiff.
- (2) that the petition is filed in good faith and not in collusion with the plaintiff or any claimant.
- (3) The interest which the defendant claims in the money in controversy and whether the defendant is able to pay (or if not, the reasons therefore) or deliver that part of the money as to which he claims no interest into court or to such person as the court may direct.
- (4) Whether the defendant has admitted the claim of, or has subjected himself to independent liability to the plaintiff or any claimant in respect to the subject matter of the action.

respect to the second accident. Petitioners assert that upon information and belief, the aggregate value of these potential claims exceeds the \$1,000,000 in insurance proceeds, and that if these claims are permitted to proceed separately, Petitioners will be exposed to conflicting claims for the same property. Accordingly, in order to resolve the conflicting claims to the insurance proceeds, and claiming no interest in the money in controversy, Petitioners request that this Court enter an order interpleading the Plaintiff and the other claimants, directing that Petitioners pay into Court or other entity that this Court may designate the \$1,000,000 policy limits and discharging Petitioners from any further involvement or participation in this action.

Pennsylvania Rule of Civil Procedure 2306(a) provides that upon receipt of a petition for interpleader, "[t]he court shall direct an interpleader if the petition is in conformity with these rules and the allegations thereof are established either by proof or by failure of the plaintiff to file a sufficient answer." However, the court may deny such petition where the defendant has "subjected himself . . . to independent liability to, the plaintiff or any claimant, with knowledge that an inconsistent claim would be later asserted against him . . . by any known or unknown person." Pa.R.Civ.P. 2306(a)(2). The decision to grant or deny a petition for interpleader is within the "sound discretion" of this Court. Lewandowski v. Life Ins. Co. of North America, 608 A.2d 1087, 1088-89 (Pa. Super. 1992), citing U.S. Nat'l Bank in Johnstown v. Robel Constr., Inc., 482 A.2d 1037 (Pa. Super. 1984).

The Pennsylvania Superior Court has stated that the purpose of interpleader is "the avoidance of the expense of multiple actions arising out of identical claims of entitlement to a "stake" of money, property or debt." Lewandowski, 608 A.2d at 1089. Accordingly, interpleader is only appropriate where a claimant's claim is adverse to both the defendant and

to the claim made against the defendant by the plaintiff, because only one of such claims can be meritorious. Drobnak v. McKool, 28 D. & C.4th 553, 556 (Somerset County 1993), *citing* Genro Inc. v. Int'l Chem. and Nuclear Corp., 302 A.2d 466, 468 n.1 (Pa. Super. 1973); Goodrich-Amram 2d §2303(a):5, at 255 (1992). Where the facts indicate that the defendant may be liable to each claimant, and recovery by one claimant will not preclude recovery by another, interpleader is an inappropriate remedy because the purpose of interpleader is not to prevent a defendant from exposure to separate liability arising from independent obligations but rather is the prevention of "vexatious litigation and multiple liability" arising out of competing claims relating to the same obligation. Drobnak, 28 D. & C.4th at 556-57, *quoting* Goodrich-Amram 2d §2303(a):5, at 255.

In the case at hand, Petitioners allege that because the proceeds from Petitioners' liability insurance policy are the only source of recovery and because any potential cause of action asserted by any of the claimants will arise out of the second accident resulting in competing claims to the same fund, interpleader is an appropriate remedy. The Court disagrees. The facts at hand indicate that Petitioners have "independent liability to the plaintiff or any claimant in respect to the subject matter of the action." Pa.R.Civ.P. 2306(a)(2). While there may well be multiple claims against Petitioners arising out of the second accident, the Court finds that such claims are not competing claims. Petitioners may be independently liable to the Plaintiff and several or all of the claimants, or perhaps none of the claimants, and recovery by the Plaintiff in this action will not preclude recovery by any of the other claimants in this action.

The Common Pleas Court of Somerset County dealt with a similar scenario in Drobnak v. McKool, 28 D. & C. 4th 553 (1993), where the defendant's vehicle collided with another

vehicle after defendant drove through an intersection without stopping. The plaintiff in the case was a passenger in defendant's car. Defendant's insurance carrier sought to interplead five potential claimants who also sustained injuries in the accident, claiming that the defendant was at risk of multiple liability and lawsuits arising out of the same accident. The court refused to order interpleader, stating as follows:

Any claims which the potential claimants have arising out of defendant's operation of his automobile are multiple but not inconsistent with each other or with plaintiffs' claim even though they may be in excess of defendant's insurance coverage. To be inconsistent, the claims asserted against defendant must be mutually exclusive such that recovery by one precludes recovery by any and all other claimants and potential claimants. . . . [Here,] . . . any multiple liability that defendant may face arises out of the fact that he incurred independent liability to each of the potential claimants as a result of the accident.

Id. at 558-59.

Similarly, any liability that Petitioners may have incurred to Plaintiff and/or the claimants is a result of Petitioners' involvement in the second accident and its impact on the claimants, and is an independent claim specific to each such claimant. Accordingly, the Court finds that Petitioners have failed to satisfy the requisites of Pennsylvania Rule of Civil Procedure 2303, and that such Petition for Interpleader is and shall be denied.

WHEREFORE, this Court enters the following:

ORDER

NOW, this 9th day of January 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED.

BY THE COURT:



President Judge

FILED

013:31 ~~811~~
JAN 14 2002

William A. Shaw
Prothonotary

WAS

1 cc Jeffrey R. Owen, Esq.
1 cc Michael Neane, Esq.
1 cc John T. Pion, Esq.
1 cc Nancy L. Helman
1 cc Edward Yusteen
1 cc Robert A. Seifert
1 cc John P. Benty
1 cc D. Mikesell

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CO

ANSWER TO PETITION FOR INTERPLEADER

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:
Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713
(412) 281-9696

FILED

DEC 04 2001
o/ 1:00 PM
William A. Shaw
Prothonotary
w/ C/C

[Handwritten signature]

#23

PLAINTIFFS' BRIEF IN OPPOSITION TO PETITION FOR INTERPLEADER

AND NOW, comes the Plaintiff, James U. Lux, by and through counsel Jeffrey R. Owen, Esquire and COOPER OWEN & RENNER, P.C. and files his Answer to the Petition for Interpleader filed by Defendants Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc. and Samuel Thomas Knight, of which the following is a statement:

1. Admitted.

3. Admitted

4. Admitted

5. Admitted in part and denied in part. It is admitted that Randy Wells was an occupant of the Sandy Township Volunteer fire truck in question. As to the extent of and claims he has made as to his injuries, after reasonable investigation, the Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averments contained in paragraph 5 of the Petition, and the same are therefore denied, with strict proof thereof demanded at time of hearing or trial.

6. Admitted in part and denied in part. It is admitted that Jeffrey Kennedy was an occupant of the Sandy Township Volunteer fire truck in question. As to the extent of and claims he has made as to his injuries, after reasonable investigation, the Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averments contained in paragraph 6 of the Petition, and the same are therefore denied, with strict proof thereof demanded at time of hearing or trial.

7-13. After reasonable investigation, the Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averments contained in paragraphs 7 through 13 of the

Petition, and the same are therefore denied, with strict proof thereof demanded at time of hearing or trial.

14. These averments constitute conclusions of law to which no response is required. However, to the extent a response is deemed necessary, they are denied. To the contrary, these defendants are not exposed to conflicting claims, but are rather potentially subject to several independent claims which are not mutually exclusive. These claims are not claims for the same property, but are potential claims for separate and independent liability upon these defendants for acts of negligence.

15. These averments constitute conclusions of law to which no response is required. However, to the extent a response is deemed necessary, they are admitted in part and denied in part. It is admitted that these Defendants wish to pay \$1,000,000.00 into the registry of the court. However, it is denied that such a mechanism would resolve any "conflicting claims". To the contrary, the potential claims set forth in the Petition are not conflicting, but are separate and independent.

16. These averments constitute conclusions of law to which no response is required. However, to the extent a response is deemed necessary, they are denied. To the contrary, these defendants have indeed subjected themselves to independent liability to the Plaintiff and other potential claimants through their acts of negligence and/or the negligence of their employee and agent. The reference to "conflicting claims" is also denied. To the contrary, the potential claims set forth in the Petition are not conflicting, but are separate and independent.

17. These averments constitute conclusions of law to which no response is required. However, to the extent a response is deemed necessary, they are denied. To the contrary, these defendants are not exposed to conflicting claims, but are rather potentially subject to several

independent claims which are not mutually exclusive. In further response as to the remaining averments contained in paragraph 17 of the Petition, after reasonable investigation, the Plaintiff is without information sufficient to form a belief as to the truth or falsity of these remaining averments, and the same are therefore denied, with strict proof thereof demanded at time of hearing or trial.

18. After reasonable investigation, the Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averments contained in paragraph 18 of the Petition, and the same are therefore denied, with strict proof thereof demanded at time of hearing or trial.

19. After reasonable investigation, the Plaintiff is without information sufficient to form a belief as to the truth or falsity of the averments contained in paragraph 19 of the Petition, and the same are therefore denied, with strict proof thereof demanded at time of hearing or trial.

WHEREFORE, the Plaintiff James U. Lux respectfully requests that the Petition for Interpleader be denied.

Respectfully Submitted,
COOPER OWEN & RENNER, P.C.

BY: 

Jeffrey R. Owen
1600 Benedum Trees Building
223 Fourth Ave.
Pittsburgh, PA 15222
(412) 281-9696

COUNSEL FOR PLAINTIFF, JAMES U. LUX

CERTIFICATE OF SERVICE

I, Jeffrey R. Owen, Esquire, hereby certify that true and correct copies of the Foregoing Answer to Petition For Interpleader have been served this ~~3rd~~ day of December, 2001 by United States First Class Mail, postage prepaid, to counsel of record listed below.

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15222


Nancy Heilman, Esquire
Cohen & Grigsby
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Michael F. Nerone, Esquire
DickieMcCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Edward A. Yurcon, Esquire
Anstandig, McDyer, Burdette & Yurcon, P.C.
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

COOPER OWEN & RENNER, P.C.

By: 
Jeffrey R. Owen, Esquire
Counsel for Plaintiff, James U. Lux

CP

D O

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

JAMES U. LUX

vs.

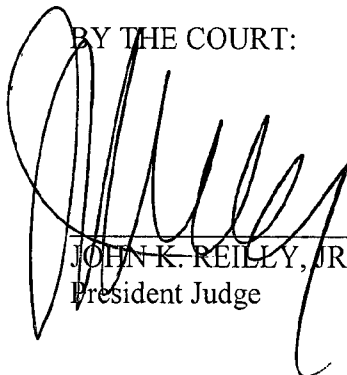
:
:
: No. 01-466-CD
:
:

GERALD E. ORT TRUCKING, INC., :
ORT TRUCKING, INC., SIMON :
TRANSPORTATION SERVICES, :
INC., R. AND F. MILLER, INC., :
SAMUEL THOMAS KNIGHT, EDDIE :
C. ROBERTS, JAMIE HARVEY :
PARKER, and PENNSYLVANIA :
DEPARTMENT OF :
TRANSPORTATION :

ORDER

NOW, this 13th day of November, 2001, upon consideration of Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight's Motion to Join in Plaintiff's Motion to Reconsider in the above matter, a Rule is hereby issued upon the parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 7th day of December, 2001, at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


JOHN K. REILLY, JR.
President Judge

FILED

NOV 13 2001

William A. Shaw
Prothonotary

#24

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

**MOTION TO JOIN IN PLAINTIFF'S
MOTION TO RECONSIDER**

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT TRUCKING,
INC. AND SAMUEL THOMAS KNIGHT

Defendants.

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

NOV 09 2001
William A. Shaw
Prothonotary

#23

MOTION TO JOIN IN PLAINTIFF'S MOTION TO RECONSIDER


AND NOW, come the Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc., and Samuel Thomas Knight, and file this Motion to Join in Plaintiff's Motion to Reconsider, in support of which they aver the following:

1. On or about October 24, 2001, Plaintiff filed a Motion to Reconsider pertaining to this Court's ruling on Defendant Parker's Preliminary Objections.
2. These Defendants do hereby join in Plaintiff's Motion to Reconsider and incorporate all of the averments set forth in Plaintiff's Motion to Reconsider herein by reference, as if the same were set forth herein at length.

WHEREFORE, Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight, respectfully request that this Honorable Court reconsider its Order granting Defendant Parker's Preliminary Objections and enter a revised Order denying the same.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY:



Michael F. Nerone, Esquire
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Motion to Join in Plaintiff's Motion to Reconsider have been served this 7 day of November, 2001, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
COHEN & GRIGSBY
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By



Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-CD

Issue No.

PETITION FOR INTERPLEADER

Code:

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT
TRUCKING, INC. AND SAMUEL
THOMAS KNIGHT

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

NOV 02 2001

William A. Shaw
Prothonotary

#22

1. This personal injury action arises out of two related motor vehicle accidents occurring on or about October 24, 2000 on Interstate 80 near mile marker 103.6. The first accident involved a tractor and trailer owned by Defendant R&F Miller, Inc., and driven by Defendant Eddie C. Roberts impacting the rear of a tractor and trailer owned and operated by Defendant Jamie Harvey Parker. See Plaintiffs Complaint which is attached hereto as Exhibit "A". The second accident occurred at the same location after emergency response vehicles,

including the Sandy Township Volunteer Fire trucks, responded to the scene and were in the process of cleaning up debris. *Id.* The curb lane of Interstate 80 was blocked by the presence of a Sandy Township fire truck. *Id.* The tractor and trailer owned by Defendant, Gerald E. Ort Trucking, and operated by Defendant Samuel Knight impacted with the Sandy Township Fire truck. *Id.* At the time of impact between the Ort Tractor and Trailer and the Sandy Township Fire truck, Plaintiff, and Claimants, Jeffrey Kennedy and Randy Wells were inside the fire truck.

3. Plaintiff commenced this action against the Defendant by filing a Complaint on or about April 3, 2001, asserting negligence claims against Petitioners, relating to the occurrence of the above described motor vehicle accidents. See Exhibit "A".

4. Plaintiff has alleged serious and permanent injuries as a result of the motor vehicle accidents at issue, including but not limited to paralysis extending from L1-L2 throughout his lower extremities. *Id.*

5. Claimant, Randy Wells, based upon information and belief is similarly claiming serious and permanent injuries as a result of the motor vehicle accidents at issue, including but not limited to thoracic spine compression fractures. Although Claimant Wells has not yet commenced an action, he has retained counsel and is actively pursuing identical claims to those asserted by Plaintiff in this action.

6. Claimant, Jeffrey Kennedy, based upon information and belief is claiming personal injuries as a result of the motor vehicle accident at issue. Although Claimant Kennedy has not yet commenced an action, he has retained counsel and is actively pursuing identical claims to those asserted by Plaintiff in this action.

7. Claimant, Sandy Township and/or its property insurer, sustained property damage to the above described fire truck and various items of fire fighting equipment located in and on the fire truck and are expected to make claims for property damaged as a result of the motor vehicle accidents at issue, predicated upon identical theories of negligence. Claimant Sandy Township has not yet commenced an action regarding these claims.

8. Claimant, Advantage Comp, is the workers compensation carrier for Plaintiff, Claimant Wells and Claimant Kennedy and potentially possesses a subrogation claim/lien for accident related medical expenses and indemnity payments it has made. Although it has not yet commenced an action, the Claimant workers compensation carrier has retained counsel regarding this matter and is actively pursuing these claims under identical theories of negligence.

9. Firefighter Claimants James Mauthe, Steve Dunlap, Angelo DeFazio, Charles Fernell, Melissa Dunlap, Brian Lowe, Ken Kiehlmeier, and Mike Budosh were present at the scene of the second accident when it occurred. Based upon information and belief, these Firefighter Claimants may possess claims for emotional distress. To date, none of these Firefighter Claimants has commenced an action regarding these claims nor have any of them actively pursued such claims.

10. Defendant Gerald E. Ort Trucking, Inc., (incorrectly also referred to as Ort Trucking, Inc. in Plaintiff's Complaint) is insolvent and no longer actively conduct business. It continues to have substantial unpaid debts owed to G.E. Capital, a secured creditor.

11. Defendant Samuel Knight possesses no assets from which any potential judgments obtained from the underlying motor vehicle accidents could be satisfied.

12. The only available asset for payment of the above described claims against Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc., and Samuel Knight is a policy of liability insurance coverage having aggregate coverage limits of \$1,000,000. See attached Exhibit "B". Thus, all claims being asserted or to be asserted against Defendants Gerald E. Ort Trucking Inc., Ort Trucking Inc., and/or Samuel Knight arising from the underlying motor vehicle accidents are necessarily being asserted to recover the \$1,000,000 liability policy proceeds.

13. Based upon information and belief, the aggregate value of the above referenced claims being asserted or to be asserted against Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Knight are well in excess of the available \$1,000,000 of applicable liability insurance policy proceeds.

14. Thus, if Plaintiff's and Claimants' claims proceed separately, they will expose the Defendants Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Knight to conflicting claims for the same property (\$1,000,000 liability policy coverage limits).

15. In order to resolve the conflicting claims for Defendants Gerald E. Ort Trucking Inc.'s, Ort Trucking Inc.'s, and Samuel Knight's \$1,000,000 policy limits, these Defendants are agreeable to paying said policy limits into Court and having the Plaintiff and the Claimants resolve any disputes for such proceeds which may exist.

16. Defendants Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Knight have not subjected themselves to independent liability to either the Plaintiff or the Claimants in respect to the conflicting claims at issue.

17. This Petition is filed in good faith to resolve conflicting claims for Defendants Gerald E. Ort Trucking Inc's, Ort Trucking Inc's and Samuel Knight's \$1,000,000 policy limits and is not filed in collusion with the Plaintiff or the Claimants.

18. Defendants Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Knight claim no interest in the money in controversy and are able to pay the \$1,000,000 policy limits into Court or to such person as the Court may direct.

19. Other than the above referenced liability insurance coverage, Defendants Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Knight have no assets available to satisfy the aforementioned claims arising from or related to the underlying motor vehicle accidents.

WHEREFORE, Defendants, Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Thomas Knight respectfully request that this Honorable Court enter an Order : a) pursuant to Pennsylvania Rule of Civil Procedure 2304 interpleading the Plaintiff and the Claimants; b) under Pennsylvania Rule of Civil Procedure 2307(a) directing Gerald E. Ort Trucking, Inc., Ort Trucking Inc., and Samuel Thomas Knight to pay into the Court or to such person as the Court may direct, their \$1,000,000 liability limits; and c) under Pa. R.C.P. 2307(b) discharging Defendants Gerald E. Ort Trucking Inc., Ort Trucking Inc., and Samuel Thomas Knight and their liability insurance carrier from any further involvement or participation as parties to this action.

Respectfully Submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By Michael F. Nerone

John T. Pion, Esquire

Michael F. Nerone, Esquire

John W. Burns, Esquire

Two PPG Place, Suite 400

Pittsburgh, PA 15222

(412) 281-7272

Attorneys for Defendants, Gerald E.

Ort Trucking, Inc., Ort Trucking, Inc. and

Samuel Thomas Knight

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CO

COMPLAINT

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:

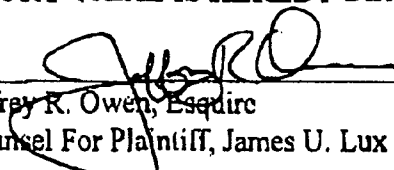
Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

(412) 281-9696

A JURY TRIAL IS HEREBY DEMANDED:


Jeffrey R. Owen, Esquire
Counsel For Plaintiff, James U. Lux

Subscribed and sworn to before me and filed in this case.

APR 03 2001

Attest.


Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.:

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 claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Office of Court Administrator
1 North Second Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff	)	Case No.:
)	
vs.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC.,)	
SIMON TRANSPORTATION)	
SERVICES, INC.,)	
R. AND F. MILLER, INC.,)	
SAMUEL THOMAS KNIGHT,)	
EDDIE C. ROBERTS,)	
JAMIE HARVEY PARKER, and)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION.)	
)	
Defendants)	

COMPLAINT

AND NOW, comes the Plaintiff, James U. Lux, by and through his Counsel, Cooper Owen & Renner, P.C. and Jeffrey R. Owen, Esquire, and files this Complaint, of which the following is a statement.

1. Plaintiff James U. Lux is an adult individual residing at 90 North Park Place, Apt. B3, Du Bois, Clearfield County, Pennsylvania 15801.
2. Defendant Gerald E. Ort Trucking, Inc. is a corporation incorporated pursuant to the laws of the State of Wisconsin with a principal address located at 775 Industrial Park Road, New London, Wisconsin, 54961, engaged in the business of long distance and local trucking.

3. Defendant Ort Trucking, Inc. is a corporation incorporated pursuant to the laws of the State of Wisconsin with a principal address at P.O. Box 267, New London, Wisconsin, 54961, and at 775 Industrial Park Road, New London, Wisconsin 54961, engaged in the business of long distance and local trucking.

4. Defendant Simon Transportation Services, Inc. is a corporation incorporated pursuant to the laws of the State of Nevada, with a principal address located at 6100 Neil Road, Reno, Nevada, 89511, and is the successor in interest to Gerald E. Ort Trucking, Inc.

5. Defendant Samuel Thomas Knight is an adult individual residing at 2915 Shirley Road, Youngstown, Ohio 44502 and at all times relevant hereto was the operator of a 2000 Volvo truck, owned by Defendant Gerald E. Ort Trucking, Inc.

6. Defendant R. and F. Miller, Inc. is a corporation incorporated pursuant to the laws of the State of Indiana, with a principal place of business located at 58255 Crumstown Highway, South Bend, Indiana, 46619-9541.

7. Defendant Eddie C. Roberts is an adult individual residing at 23700/64 Marquette Blvd., South Bend, Indiana 46628, and at all times relevant hereto was the operator of a 2000 Freightliner truck owned by Defendant R. and F. Miller, Inc.

8. Defendant Jamie Harvey Parker is an adult individual residing at 500 South Ohio Street, Humansville, Missouri 65613, and at all time relevant hereto was the owner and operator of a 1988 International truck.

9. Defendant Commonwealth of Pennsylvania, Department of Transportation (hereinafter referred to as "PennDot") is a Commonwealth Agency with a place of business as it pertains to roads in Clearfield County, Pennsylvania located at 1924-30 Daisy Street, Clearfield County PA 16830.

10. The events hereinafter complained of occurred on or about Tuesday, October 24, 2000 between approximately 1:00 A.M. and 3:30 A.M. on Interstate Highway Route 80 at a place approximately .6 miles North and/or West of mile marker 103 in Union Township, Pennsylvania.

11. At said location, at or about 1:00 A.M., Defendant Eddie C. Roberts was operating a 2000 Freightliner truck in a Westerly direction on the above-identified Highway Route 80.

12. Defendant Eddie C. Roberts operated his vehicle in a negligent manner, violently striking the 1988 truck owned and operated by Defendant Jamie Harvey Parker.

13. The impact of this initial collision was sufficient to severely damage both the truck operated by Defendant Eddie C. Roberts and the truck operated by Defendant Jamie Harvey Parker; to create a large two foot by two foot hole in the highway; to cause vehicle parts to be strewn about on the highway; and to cause oil and/or other vehicle fluids to completely cover the right lane of the highway and other proximate areas.

14. Defendant Jamie Harvey Parker, who was driving the truck without a driver's license or a license to operate said 18-wheeled vehicle, fled the scene of the initial collision, further spreading fluids and vehicle parts along the highway.

15. Thereafter, Plaintiff James U. Lux, who was a police officer of the City of Dubois and a Volunteer Fireman, was called to the scene to assist in the emergency services being provided there and to remain there while repairs and clean-up to the highway was effectuated by Agents of Defendant Pennsylvania Department of Transportation ("PennDot").

16. Plaintiff James U. Lux was an occupant of a 1987 International Fireman's Squad Rescue Truck which was parked on the right hand lane of Route 80, with its emergency warning lights activated, and its tower lights erected to illuminate the scene of the repair work and highway clean up being conducted by Defendant PennDot.

17. Thereafter, at or about 3:30 A.M., Defendant Samuel Thomas Knight, without braking and at a high rate of speed, drove the 2000 Volvo truck he was operating through an area of safety cones and brightly burning emergency flares placed on the highway, over and on to the closed right hand lane, and directly and violently collided with the International Squad Rescue Truck, propelling the Squad Rescue Truck approximately 150 feet, and causing it to roll completely over, until it came to rest on its left side, facing to the West, on a grassy area to the right of the right hand berm of the highway.

18. As a result of said collision, Plaintiff James U. Lux suffered serious and extensive injuries, including but not limited to the following:

- a. Severe and permanent damage to his back, spine, and nervous system, including a comminuted fracture in the Lumbar region of his spine, rendering him without sensation and permanently paralyzed from L1-L2 downward throughout his lower extremities with a diagnosis of complete flacid paraplegia;
- b. Multiple trauma to his body, including but not limited to lacerations, contusions, bruising, numbness in his chest, bruising and trauma to the spinal chord, and the introduction of bone fragments into the spinal tissue;
- c. Damage and instability requiring an operation to fuse his vertebrae and spinal area spanning T11 through L3, by means of the surgical implantation of steel plates and rods adjacent to his spinal column;
- d. Loss of consciousness;
- e. Mental, psychological and emotional damage resulting from the same.

Count I
Negligence
Plaintiff James U. Lux vs.
Defendant Samuel Thomas Knight,
Defendant Gerald E. Ort Trucking, Inc., and
Defendant Ort Trucking, Inc.

19. Paragraphs 1 through 18 and 23 through 44 are hereby incorporated by reference as if fully restated herein.

20. At the time and place of the second collision described above, Samuel Thomas Knight was an agent and/or employee of Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., and was at all times relevant hereto acting within the scope and course of his duties and/or employment responsibilities.

21. Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc. are vicariously liable for the actions of their agent and/or employee, Samuel T. Knight, who was negligent in the following particulars:

- a. In operating his vehicle while susceptible to, and in actuality falling asleep at the wheel;
- b. In failing to observe and heed warning apparatus, including but not limited to brightly burning warning flares, warning cones, and flashing lights, but instead driving over and through the same without reduction in speed;
- c. In failing to observe and heed a Squad Rescue Truck stopped on the highway on the other side of the above referenced warning apparatus, with its emergency and boom illumination lights turned on;
- d. In operating his vehicle at an excessive rate of speed considering the circumstances existent at the time of the second collision;

- e. In failing to keep and maintain his vehicle under safe and adequate control;
- f. In losing control of his vehicle;
- g. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the second collision;
- h. In operating his vehicle when he was not fit and competent to do so;
- i. In driving in a careless and reckless fashion;
- j. In failing to stop, slow, or take evasive action before colliding with the above mentioned Squad Rescue Truck at a high rate of speed.

22. The negligence of Defendants Samuel T. Knight, Gerald E. Ort Trucking, Inc. , and Ort Trucking, Inc. were substantial factors in causing the second collision described above, and thus were substantial factors in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Samuel T. Knight, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., jointly and severally for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count II
Negligence
Plaintiff James U. Lux vs.
Defendant Eddie C. Roberts, , and
Defendant R and F Miller, Inc.

23. Paragraphs 1 through 22 and 27 through 44 are hereby incorporated by reference as if fully restated herein.

24. At the time and place of the first collision described above, Eddie C. Roberts was an agent and/or employee of R. and F. Miller, Inc., and was at all times relevant hereto acting within the scope and course of his duties and/or employment responsibilities.

25. Defendant R. and F. Miller, Inc. is vicariously liable for the actions of its agent and/or employee, Eddie C. Roberts, who was negligent in the following particulars:

- a. In operating his vehicle while susceptible to, and in actuality falling asleep at the wheel;
- b. In failing to observe and heed another truck traveling on the highway in front of him, and colliding with it;
- c. In operating his vehicle at an excessive rate of speed considering the circumstances existent at the time of the first collision;
- d. In failing to keep and maintain his vehicle under safe and adequate control;
- e. In losing control of his vehicle;
- f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
- g. In operating his vehicle when he was not fit and competent to do so;
- h. In driving in a careless and reckless fashion;

- i. In failing to stop, slow, or take evasive action before colliding with the above mentioned truck operated by Jamie Harvey Parker at a high rate of speed.

26. The negligence of Defendants Eddie C. Roberts, and R. and F. Miller, Inc. were substantial factors in causing the first and second collisions described herein, and thus were substantial factors in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Eddie C. Roberts and R. and F. Miller, Inc., jointly and severally for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count III
Negligence
Plaintiff James U. Lux vs.
Defendant Jamie Harvey Parker

27. Paragraphs 1 through 26 and 30 through 44 are hereby incorporated by reference as if fully restated herein.

28. At the time of the first collision described herein, Jamie Harvey Parker was negligent in the following particulars:

- a. In operating his 1998 International Truck and attached cargo trailer without a driver's license;
- b. In operating his vehicle at a dangerously slow speed;
- c. In failing to display and utilize the proper safety warning apparatus upon his vehicle;
- d. In fleeing the scene of the first collision, without identifying himself, and

in doing so spreading the field of collision debris across a greater area than that caused by the initial collision;

- c. In fleeing the scene of the first collision, and causing law enforcement officials at the scene of the first collision to be required to leave the scene of the first collision in order to apprehend and arrest him, thus diverting them from activities in securing and safeguarding the scene of the first collision;
- f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
- g. In operating his vehicle when he was not fit and competent to do so
- h. In driving in a careless and reckless fashion;

29. The negligence of Defendant Jamie Harvey Parker was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant Jamie Harvey Parker for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count IV
Negligence
Plaintiff James U. Lux vs.
Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc.

30. Paragraphs 1 through 29 and 33 through 44 are hereby incorporated by reference as if fully restated herein.

31. Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc. were negligent in the following particulars:

- a. Failing to adequately train their driver/operators, including Defendant Samuel Thomas Knight;
- b. Failing to adequately supervise their driver/operators, including Defendant Samuel Thomas Knight;
- c. Failing to adequately perform background investigations and otherwise negligently hiring unqualified or unfit individuals, including Defendant Samuel Thomas Knight;
- d. Requiring and/or permitting their drivers/operators to drive without proper rest, and/or in violation of applicable hours of service limitations;
- e. Failing to adequately supervise and monitor the activities of their driver/operators, including Defendant Samuel Thomas Knight;
- f. Failing to take corrective measures for improper and unsafe activities of their driver/operators, including Defendant Samuel Thomas Knight;
- g. Permitting their drivers/operators, including Defendant Samuel Thomas Knight, to continue driving despite repetitive safety violations, and in violation of motor carrier safety regulations;

- h. Negligently entrusting the operation of their trucks to drivers/operators who were incompetent and/or reckless;

32. The negligence of Defendants Gerald E. Ort Trucking and Ort Trucking, Inc. was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Gerald E. Ort Trucking and Ort Trucking, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count V
Negligence
Plaintiff James U. Lux vs.
Defendant R. and F. Miller, Inc.

33. Paragraphs 1 through 32 and 36 through 44 are hereby incorporated by reference as if fully restated herein.

34. Defendant R. and F. Miller, Inc. was negligent in the following particulars:

- a. Failing to adequately train their driver/operators, including Defendant Eddie C. Roberts;
- b. Failing to adequately supervise their driver/operators, including Defendant Eddie C. Roberts;
- c. Failing to adequately perform background investigations and otherwise negligently hiring unqualified or unfit individuals, including Defendant Eddie C. Roberts;
- d. Requiring and/or permitting their drivers/operators to drive without proper rest, and/or in violation of applicable hours of service limitations;

- e. Failing to adequately supervise and monitor the activities of their driver/operators, including Defendant Eddie C. Roberts;
- f. Negligently entrusting the operation of their trucks to drivers/operators who were incompetent and/or reckless;

35. The negligence of Defendant R. and F. Miller, Inc. was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against R. and F. Miller, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count VI
Negligence
Plaintiff James U. Lux vs.
Defendant Commonwealth of Pennsylvania

36. Paragraphs 1 through 35 and 40 through 44 are hereby incorporated by reference as if fully restated herein.

37. Defendant PennDot is charged with the responsibility of keeping the roadways which it owns and or controls in a reasonable safe condition for the traveling public.

38. Defendant PennDot negligently caused, allowed or permitted a dangerous condition of Interstate 80, a highway which it owned or had custody of, in the following particulars:

- a. In failing to provide a reasonably safe roadway;
- b. In negligently conducting repairs of conditions in the roadway caused by the first collision;

- c. In violating the PennDot regulations and requirements for placement and maintenance of a traffic plan for the protection of traveling public in a construction zone;
- d. In failing to place advance warning signs in the proper and required positions on and adjacent to Interstate 80 to warn the traveling public of the construction zone ahead;
- e. In failing to place a left arrow board truck and a crash truck at the appropriate locations to warn the traveling public of the construction zone, instead necessitating the presence of the Squad Safety vehicle which was then collided into at the time of the second collision;
- f. In failing to provide adequate equipment, repair supplies and materials, and safety vehicles sufficient to secure and safeguard the scene of the repairs being undertaken;
- g. In unreasonably delaying in the conduct of its repair activities;

39. The negligence of PennDot was a substantial factor in causing the second collision described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant PennDot for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count VII
Negligence
Plaintiff James U. Lux vs.
Defendant Simon Transportation Services, Inc.

40. Paragraphs through 1 through 39 are hereby incorporated by reference as if fully restated herein.

41. Defendant Simon Transportation Services, Inc ("Simon Transportation") is the successor in interest of Defendant Gerald E. Ort Trucking, Inc., having contracted to acquire and having acquired all of the business of Gerald E. Ort Trucking, Inc., and having taken over the operation of its predecessor's trucking operations.

42. Such activities of Simon Transportation constitutes a *de facto* merger with, and the continuation of the business enterprise conducted by, Defendant Gerald E. Ort Trucking, Inc.

43. The transaction between Simon Transportation was conducted without adequate consideration and/or for the purpose of avoiding the obligations of Gerald E. Ort Trucking, Inc.

44. As a result, Defendant Simon Transportation is liable for the actions of Defendant Gerald E. Ort Trucking, Inc. and liable to the Plaintiff herein.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant Simon Transportation Services, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

A JURY TRIAL IS DEMANDED.

Cooper Owen & Renner, P.C.

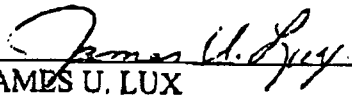
By: 

Jeffrey R. Owen, Esquire

VERIFICATION

I, JAMES U. LUX, hereby state that I am the Plaintiff, and I hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my information, knowledge and belief.

This statement is made pursuant to the penalties of 18 Pa. Cons. Stat. Ann. §4904, relating to unsworn falsification to authorities.


JAMES U. LUX

Dated: APRIL 3, 2001

EXHIBIT “B”

COMMERCIAL AUTO POLICY
TRUCKERS DECLARATIONS**POLICY NO. 1-TTP0002825-1****NAMED INSURED AND MAILING ADDRESS**GERALD E. ORT TRUCKING, INC.
775 INDUSTRIAL PARK ROAD
NEW LONDON, WI 54961**AGENCY AND MAILING ADDRESS**AON TRANSPORTATION
1111 PLAZA DRIVE, SUITE 600
SCHAUMBURG, IL 60173

POLICY PERIOD: FROM 11-14-89 TO 11-14-00 AT 12:01 A.M. STANDARD TIME AT MAILING ADDRESS SHOWN ABOVE.

BUSINESS DESCRIPTION: TRUCKING
THE NAMED INSURED IS: CORPORATION

ALL KNOWN EXPOSURES AT THE BEGINNING OF THE POLICY PERIOD HAVE BEEN IDENTIFIED BELOW.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

PREMIUM SHOWN IS PAYABLE AT INCEPTION**\$126,991****ENDORSEMENTS ATTACHED TO THIS POLICY:**CA 00 14 12 90; CA 00 12 07 97; IL 00 17 11 98; IL 00 21 04 98; CA 99 48 12 93; CA 01 17 10 97; IL 02 83 11 96; CA 21 03 02 96;
CA 21 45 10 97; CA 21 71 01 88; CA 23 01 12 93; CA 23 05 12 93 ICIC 2000; MCS-90

December 9, 1999 CLB

COUNTERSIGNED AT: _____ DATE: _____ BY: _____

CA 00 14 12 90

AUTHORIZED REPRESENTATIVE

Agent

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages apply only to those "autos" shown as covered "autos." "Autos" are shown as covered "autos" for a particular coverage by entry of one or more of the symbols from the COVERED AUTO Section of the Truckers Coverage Form next to the name of the coverage.

COVERAGES	COVERED AUTOS (Entry of one or more of the symbols from the COVERED AUTO Section of the Truckers Coverage Form shows which autos are covered autos)	LIMIT THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
LIABILITY	41	\$1,000,000 (\$ P.D. DED.)	\$424,200
PERSONAL INJURY PROTECTION (or equivalent No Fault Coverage)		SEPARATELY STATED IN EACH PIP ENDORSEMENT MINUS \$FULL Ded	\$
ADDED PERSONAL INJURY PROTECTION (or equivalent Added No Fault Coverage)		SEPARATELY STATED IN EACH ADDED PIP ENDORSEMENT	
PROPERTY PROTECTION INSURANCE (Michigan only)		SEPARATELY STATED IN THE P.P.I. ENDORSEMENT MINUS \$ DED. FOR EACH ACCIDENT	
MEDICAL PAYMENTS		\$	
UNINSURED MOTORISTS	45	\$50,000 EACH ACCIDENT	\$INCL.
UNDERINSURED MOTORISTS (When Not included in Uninsured Motorists Coverage)	45	\$50,000 EACH ACCIDENT	SINCL.
TRAILER INTERCHANGE COMPREHENSIVE COVERAGE		ACTUAL CASH VALUE, COST OF REPAIR OR \$50,000 WHICHEVER IS LESS, MINUS \$1,000 DED. FOR EACH COVERED AUTO	
TRAILER INTERCHANGE SPECIFIED CAUSES OF LOSS COVERAGE		ACTUAL CASH VALUE, COST OF REPAIR OR \$ WHICHEVER IS LESS, MINUS \$ Ded. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM	
TRAILER INTERCHANGE COLLISION COVERAGE		ACTUAL CASH VALUE, COST OF REPAIR OR \$50,000 WHICHEVER IS LESS, MINUS \$1,000 DED. FOR EACH COVERED AUTO	
PHYSICAL DAMAGE COMPREHENSIVE COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$2,500 DED. PER OCCURENCE. BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING	
PHYSICAL DAMAGE SPECIFIED CAUSES OF LOSS COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$ Ded. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM	
PHYSICAL DAMAGE COLLISION COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$2,500 DED. PER OCCURENCE.	
PHYSICAL DAMAGE TOWING AND LABOR (Not Available in California)		\$ for each disablement of a private passenger auto	
PREMIUM FOR ENDORSEMENT			
ESTIMATED TOTAL PREMIUM			

\$424,200

ITEM THREE
SCHEDULE OF COVERED AUTOS

See attached schedule

ITEM FOUR
SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS.

LIABILITY COVERAGE - RATING BASIS, COST OF	ESTIMATED COST OF HIRE	RATE PER EACH \$100 COST OF HIRE	TOTAL ESTIMATED PREMIUM
HIRE - AUTOS USED IN YOUR TRUCKING OPERATIONS	IF ANY		\$INCL.

Cost of hire means the total cost you incur for the hire of "autos" you don't own (not including "private passenger type autos" you borrow or rent from members of your household, your partner, employees or agents or members of their households).

LIABILITY COVERAGE - RATING BASIS, COST OF HIRE - AUTOS NOT USED IN YOUR TRUCKING OPERATIONS

STATE	ESTIMATED COST OF HIRE FOR EACH STATE	RATE PER EACH \$100 COST OF HIRE	FACTOR (IF LIAB. COV. IS PRIMARY)	PREMIUM
TOTAL PREMIUM				

Cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners, employees or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

PHYSICAL DAMAGE COVERAGE

COVERAGES	LIMIT OF INSURANCE THE MOST WE WILL PAY DEDUCTIBLE	ESTIMATED ANNUAL COST OF HIRE	RATE PER EACH \$100 ANNUAL COST OF HIRE	PREMIUM
COMPREHENSIVE	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$ Ded. FOR EACH COVERED AUTO. BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING			
SPECIFIED CAUSES OF LOSS	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$25 Ded. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM			
COLLISION	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$ Ded. FOR EACH COVERED AUTO			
TOTAL PREMIUM				\$

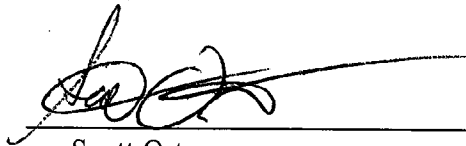
ITEM FIVE
SCHEDULE FOR NON-OWNERSHIP LIABILITY

Rating Basis	Number	Premium
Number of Employees	IF ANY	\$INCL.
Number of Partners		\$
		\$INCL.

VERIFICATION

I, Scott Ort, have read the foregoing Petition for Interpleader. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Scott Ort

Dated: 10-3-01

VERIFICATION

I, Samuel Knight, have read the foregoing Petition for Interpleader. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.


Samuel Thomas Knight

Dated: 10-8-2001

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

JAMES U. LUX,

Plaintiff

Case No. 01-466-CD

vs.

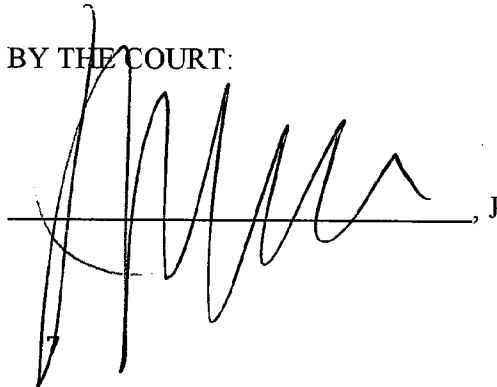
GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R AND F MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants

PRELIMINARY ORDER OF COURT


AND NOW, to-wit, this 5th day of November, 2001, upon consideration of
the within Petition for Interpleader, it is hereby ORDERED, ADJUDGED and DECREED that a
Rule to Show Cause is hereby issued to show cause why the Petition for Interpleader should be
granted. Rule returnable the 7th day of December, 2001, at 9:00 A.m., Courtroom
No. 1, before the Honorable Judge Kelly.

BY THE COURT:

 J.

FILED
013:53
NOV 05 2001

William A. Shaw
Prothonotary

3 cc Atty Nerone


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

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R AND F MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants

Case No. 01-466-CD

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2001, the Petition of Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight is granted and Randy Wells, Jeffrey Kennedy, Sandy Township, Advantage Comp., James Mauthe, Steve Dunlap, Angelo DeFazio, Charles Fernell, Melissa Dunlap, Brian Lowe, Ken Kiehlmeier and Mike Budosh are added to the record as party plaintiffs and enjoined from commencing or further prosecuting any action in any court against Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., or Samuel Thomas Knight to enforce in whole or in part any claim against the Petitioners set forth in said Petition, except as a party to the above-entitled action.

NOW, THEREFORE, we command you, the Sheriff of the County of Clearfield to direct the Claimants, Randy Wells, Jeffrey Kennedy, Sandy Township, Advantage Comp., James Mauthe, Steve Dunlap, Angelo DeFazio, Charles Fernell, Melissa Dunlap, Brian Lowe, Ken Kiehlmeier and Mike Budosh to file in the above-entitled action in the office of the Prothonotary a Complaint within twenty (20) days after being served with copies of the Petition for Interpleader and this Order and all pleadings heretofore filed in the above-entitled action if said service was made within your county, or within thirty (30) days of said service if said service was made within any other county of this Commonwealth.

BY THE COURT:

_____, J.

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing
Petition for Interpleader have been served this 30th day of October, 2001, by
U.S. first class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
COHEN & GRIGSBY
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: Michael F. Nerone
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JAMES U. LUX,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

CIVIL DIVISION

Case No.: 01-466-CO

ORDER

ORDER

AND NOW, this 29th day of October, 2001, upon consideration of the
Motion to Reconsider of the Plaintiff, James U. Lux, in the above matter, a Rule is hereby issued
upon the parties to appear and Show Cause why the Motion should not be granted. Rule
Returnable the 7th day of December, 2001 9⁰⁰ A.M. in Courtroom Number 1,
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

FILED

OCT 30 2001

Erin A. Shaw
Notary

JOHN R. REILLY, JR.
President Judge

FILED

OCT 30 2001

Glenn Owen
William A. Shaw
Prothonotary

CPX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CO

PLAINTIFF'S MOTION TO RECONSIDER

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:
Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713
(412) 281-9696

FILED

OCT 26 2001

William A. Shaw
Prothonotary

#20

MOTION TO RECONSIDER

AND NOW, comes the Plaintiff, James U. Lux, by and through counsel Jeffrey R. Owen, Esquire and COOPER OWEN & RENNER, P.C. and files the following Motion To Reconsider of which the following is a statement:

1. As this Honorable Court is aware, this case involves injuries suffered by the Plaintiff while acting as an emergency response fireman at the location of a multiple accident scene on interstate highway 80, in the early morning hours of October 21, 2000.
2. At the scene of the initial accident, it is alleged that a truck operated by Defendant Eddie C. Roberts struck the rear of a truck operated by Defendant Jamie Harvey Parker.
3. At the time of the initial collision, it is alleged that Defendant Parker was driving at a dangerously slow rate of speed, while failing to display and utilize proper safety warning apparatus on his vehicle (Complaint Para. 28).
4. It is also alleged that Defendant Parker was driving without a valid operator's license (Complaint Para. 28).
5. It is also alleged that Defendant Parker then fled the scene of the initial accident without identifying himself, in doing so spreading the field of collision debris across a greater area than that caused by the initial collision (Complaint Para. 28).

6. In fleeing the scene of the first collision, it is alleged that Defendant Parker caused law enforcement officials at the scene of the first collision to be required to leave the scene of the first collision in order to apprehend and arrest him, thus diverting them from activities in securing and safeguarding the scene of the first collision (Complaint Para. 28).
7. While at the site of an accident created when the vehicle operated by Defendant Roberts struck the rear of a vehicle operated by Defendant Parker, Plaintiff was severely injured in a second collision as Defendant Knight operated a truck which collided with the emergency vehicle occupied by the Plaintiff.
8. Defendant Parker filed Preliminary Objections to the Plaintiff's Complaint on the basis that the "alleged negligence of Defendant Jamie Harvey Parker was not a substantial factor in causing the Plaintiff's harm."
9. This Honorable Court granted the aforesaid Preliminary Objections in its Opinion and Order dated October 1, 2001. (Attached hereto as Exhibit "A").
10. As the basis for its Opinion, this Honorable Court states as follows:

... this Court finds that the allegations of the Plaintiff against Defendant Parker are insufficient to maintain an action of negligence in regard to the first accident. Plaintiff maintains that Defendant Parker was driving his vehicle at a slow rate of speed. Plaintiff further asserts that at the time of the first collision, Defendant Parker was struck from behind by Defendant Eddie C. Roberts, who was asleep. Clearly, if Defendant Parker's vehicle was rear-ended by a "sleeping" Defendant Roberts, then the first collision was solely a result of negligence on the part of Defendant Roberts.

11. The Court's Opinion does not address the fact that driving too slowly is prohibited by law in Pennsylvania pursuant to 75 Pa. C. S. A. § 3364 (a) which states:

(a) Impeding movement of traffic prohibited.--Except when reduced speed is necessary for safe operation or in compliance with law, no person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic.
12. Thus, the mere fact of driving too slowly, is indeed negligent conduct in contravention to Pennsylvania law. The effect of this conduct must be reserved for the jury to determine.
13. However, the Plaintiff's Complaint does not allege that Defendant Parker was simply driving too slowly. To the contrary, it alleges that he was driving "at a dangerously slow speed" (Complaint, Para. 28 b), while "failing to display and utilize proper safety warning apparatus on his vehicle" (Complaint, Para. 28 c). These factors are not addressed in the Court's Opinion.
14. Such conduct constitutes negligence in that the operation at a dangerously slow rate of speed poses the foreseeable risk of being struck from behind, and the failure to use required safety signals and flashers would fail to warn an approaching driver from the rear, who even if asleep at the precise moment of impact, could have been forewarned and/or alerted by those safety flashers to proceed with caution as he approached, or even awakened prior to the impact by the lights themselves.
15. In addition, the Opinion of the Court does not address the allegations against Defendant Parker as to his activities following the collision, which constitute additional and

independent grounds for liability based upon his intentional or negligent conduct.

16. First, in fleeing the scene of the accident, it is alleged that Defendant Parker spread the debris field across a greater area, necessitating a greater clean up effort (Complaint para. 28). This, in turn caused the foreseeable consequence of requiring the emergency response personnel to be at the accident site for a greater period of time than would have been otherwise necessary, and to be required to secure an area greater than would have been necessary had Defendant Parker remained at the scene, thus placing the Plaintiff in the zone of danger created by the activities of Defendant Parker at the time of the second collision.
17. Diverting the services of safety personnel (in this case the police, who were required to search for, apprehend and arrest Defendant Parker) has been recognized as a potential substantial factor to be examined by the trier of fact. Taylor v. Jackson, 164 Pa Commonwealth 482, 743 A. 2d 771 (1994).
18. In Taylor, the court was faced with allegations that a second collision at a multiple accident scene diverted the attention of certain police officers, causing a reduction of the police officers available to respond to other emergencies or aspects of the collision scene. Taylor, 164 Pa. Cmwlth at 494, 643 A. 2d at 776.
19. Despite the driver defendant's arguments to the contrary, the Taylor court determined that the trial court had erred in granting summary judgment, stating:

Thus, according to Taylor and the Lidows, the Watley accident contributed to a reduction in the number of officers able to respond to other emergencies and/or aspects of the accident: this eventually contributed to the third accident. Although attenuated, we believe that this argument under the particular facts of the instant matter creates a jury question. Thus, we reject the Watley's argument.

Taylor, 164 Pa. Cmwlth at 494, 643 A. 2d at 776.

20. In the instant proceedings, the salient facts are indistinguishable from those of the Taylor case. The same issues, that of syphoning away necessary safety personnel, is presented in both cases, and, as in Taylor, the matter must be preserved for the jury to decide.
21. In the instant proceedings, even assuming *arguendo* that the initial collision is found not to be caused in whole or in part by the negligence of Defendant Parker, his negligent and/or intentional actions in fleeing the accident scene following the collision clearly contributed to and were a substantial factor in bringing about the injuries sustained by the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court reconsider its Order granting Defendant Parker's Preliminary Objections, and enter a subsequent Order denying the same.

Respectfully Submitted,

COOPER OWEN & RENNER, P.C.

BY: 
COUNSEL FOR PLAINTIFF, JAMES U. LUX

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION

OPINION AND ORDER

In the early morning hours of October 24, 2000, two (2) collisions occurred on Interstate 80 between DuBois and Clearfield, Pennsylvania. Both collisions were caused in whole or in part by the fact that a driver of a tractor-trailer truck was asleep at the wheel.

In the first accident, a tractor-trailer operated by Defendant Jamie Harvey Parker (hereinafter "Defendant Parker") was rear-ended by a tractor-trailer driven by Defendant Eddie C. Roberts (hereinafter "Defendant Roberts"). The second accident occurred when a truck driven by Defendant Samuel Thomas Knight collided with a rescue squad truck positioned on the highway with its warning lights flashing and an illumination boom brightly lighting the scene of the clean up of the first accident. During the second collision, three volunteer firemen who were passengers in the rescue squad truck were severely injured.



including the Plaintiff, James U. Lux, who was permanently paralyzed from the waist down. According to the Complaint, the first accident happened at approximately at 1:00 A.M. and the second accident occurred at approximately at 3:30 A.M. Currently, Defendant Parker seeks to dismiss the claim of Plaintiff against him by Preliminary Objections in the nature of a Demurrer.

This Court must now determine whether the alleged negligence of Defendant Parker was a substantial factor in bringing about the severe injuries suffered by the Plaintiff or if the issue should be reserved for the jury.

It is well-established that:

“In reviewing Preliminary Objections, the Court must accept as true all material facts set forth in the plaintiff’s complaint, and all reasonable inferences deducible from those facts. All doubts as to whether a claim can go forward must be resolved in the favor of the pleader.”

Field v. Philadelphia Electric Company, 388 Pa.Super. 400, 565 A.2d 1170 (1986).

Moreover, “Summary Judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue remains”. Salerno v. LaBarr, 159 Pa. Commonwealth Ct. 99, 632 A.2d 1002 (1993). In other words:

“The threshold a Plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the Plaintiff can prove no set of facts that would entitle the Plaintiff to relief.”

Velleca v. Jones, 2000 WL 1470214 at p. 1 (E.D. Pa.), *citing* Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957).

In order to be consistent with it’s Opinion and Order of August 21, 2001, this Court finds that the allegations of Plaintiff against Defendant Parker are insufficient to maintain an action of negligence in regard to the first accident. Plaintiff maintains that Defendant Parker

was driving his vehicle at a slow rate of speed. Plaintiff further asserts that at the time of the first collision, Defendant Parker was struck from behind by Defendant Eddie C. Roberts, who was asleep. Clearly, if Defendant Parker's vehicle was rear-ended by a "sleeping" Defendant Roberts, then the first collision was solely a result of negligence on the part of Defendant Roberts.

This Court, as per the Opinion and Order of August 21, 2001, determined that the pleadings of Plaintiff were sufficient to deny Preliminary Objections in regard to his allegations of negligence pertaining to Defendant Roberts. However, in regard to Defendant Parker, it is clear to this Court that Plaintiff's claim as to negligence on the part of Defendant Parker is insufficient and, therefore, Defendant Parker's Preliminary Objections should and shall be granted.

WHEREFORE, this Court enters the following:

ORDER

NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED.

BY THE COURT:

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

/s/ JOHN K. REILLY, JR.

OCT 01 2001

Attest:

William L. Shaw
Prothonotary

President Judge

CERTIFICATE OF SERVICE

I, Jeffrey R. Owen, Esquire, hereby certify that true and correct copies of the Foregoing Motion to Reconsider have been served this 24th day of October, 2001 by United States First Class Mail, postage prepaid, to counsel of record listed below.

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15222

Nancy Heilman, Esquire
Cohen & Grigsby
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Michael F. Nerone, Esquire
DickieMcCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Edward A. Yurcon, Esquire
Anstandig, McDyer, Burdette & Yurcon, P.C.
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

COOPER OWEN & RENNER, P.C.

By: 

Jeffrey R. Owen, Esquire
Counsel for Plaintiff, James U. Lux

FILED

OCT 26 2001

William A. Shaw
Prothonotary

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION

FILED
OCT 01 2001

William A. Shaw
Prothonotary

OPINION AND ORDER

In the early morning hours of October 24, 2000, two (2) collisions occurred on Interstate 80 between DuBois and Clearfield, Pennsylvania. Both collisions were caused in whole or in part by the fact that a driver of a tractor-trailer truck was asleep at the wheel.

In the first accident, a tractor-trailer operated by Defendant Jamie Harvey Parker (hereinafter "Defendant Parker") was rear-ended by a tractor-trailer driven by Defendant Eddie C. Roberts (hereinafter "Defendant Roberts"). The second accident occurred when a truck driven by Defendant Samuel Thomas Knight collided with a rescue squad truck positioned on the highway with its warning lights flashing and an illumination boom brightly lighting the scene of the clean up of the first accident. During the second collision, three volunteer firemen who were passengers in the rescue squad truck were severely injured,

including the Plaintiff, James U. Lux, who was permanently paralyzed from the waist down. According to the Complaint, the first accident happened at approximately at 1:00 A.M. and the second accident occurred at approximately at 3:30 A.M. Currently, Defendant Parker seeks to dismiss the claim of Plaintiff against him by Preliminary Objections in the nature of a Demurrer.

This Court must now determine whether the alleged negligence of Defendant Parker was a substantial factor in bringing about the severe injuries suffered by the Plaintiff or if the issue should be reserved for the jury.

It is well-established that:

“In reviewing Preliminary Objections, the Court must accept as true all material facts set forth in the plaintiff’s complaint, and all reasonable inferences deducible from those facts. All doubts as to whether a claim can go forward must be resolved in the favor of the pleader.”

Field v. Philadelphia Electric Company, 388 Pa.Super. 400, 565 A.2d 1170 (1986).

Moreover, “Summary Judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue remains”. Salerno v. LaBarr, 159 Pa. Commonwealth Ct. 99, 632 A.2d 1002 (1993). In other words:

“The threshold a Plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the Plaintiff can prove no set of facts that would entitle the Plaintiff to relief.”

Velleca v. Jones, 2000 WL 1470214 at p. 1 (E.D. Pa.), citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957).

In order to be consistent with it’s Opinion and Order of August 21, 2001, this Court finds that the allegations of Plaintiff against Defendant Parker are insufficient to maintain an action of negligence in regard to the first accident. Plaintiff maintains that Defendant Parker

was driving his vehicle at a slow rate of speed. Plaintiff further asserts that at the time of the first collision, Defendant Parker was struck from behind by Defendant Eddie C. Roberts, who was asleep. Clearly, if Defendant Parker's vehicle was rear-ended by a "sleeping" Defendant Roberts, then the first collision was solely a result of negligence on the part of Defendant Roberts.

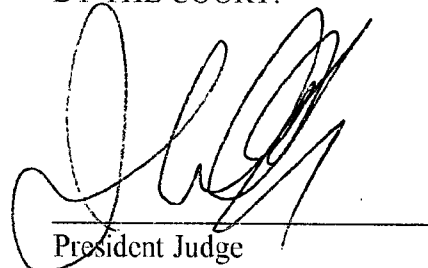
This Court, as per the Opinion and Order of August 21, 2001, determined that the pleadings of Plaintiff were sufficient to deny Preliminary Objections in regard to his allegations of negligence pertaining to Defendant Roberts. However, in regard to Defendant Parker, it is clear to this Court that Plaintiff's claim as to negligence on the part of Defendant Parker is insufficient and, therefore, Defendant Parker's Preliminary Objections should and shall be granted.

WHEREFORE, this Court enters the following:

ORDER

NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED.

BY THE COURT:



President Judge

FILED

0/3.48.201
OCT 01 2001

William A. Shaw
Prothonotary

WAS

1 cc ~~for~~ ~~Att~~ Owen
1 cc Att. Werne
1 cc Att. Heilman
1 cc Att. Kucor
1 cc Att. Seifert
1 cc Att. John Benty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

AFFIDAVIT OF SERVICE

Filed on behalf of R.&F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

SEP 28 2001

mll/rlx

William A. Shaw

Prothonotary

#18

Q

Edward A. Yurcon, Esquire, counsel for Defendants R&F Miller, Inc. and Eddie C. Roberts, being duly sworn, deposes and says that on the 26th day of September, 2001, he sent by First Class Mail Postage Prepaid, copies of the Order of Court of September 20, 2001, issuing a Rule upon the parties to appear and show cause why the Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission filed on behalf of Defendants Miller and Roberts, should not be granted, returnable the 15th of October, 2001, at 9:30 a.m. in Courtroom 1 of the Clearfield County Courthouse, Clearfield PA, and the underlying Motion to the Counsel for the following parties:

Jeffrey R. Owens, Esquire, Counsel for Plaintiff for James U.
Lux;

John T. Pion, Esquire, Counsel for Defendants' Gerald E. Ort
Trucking Inc. and Samuel Thomas Knight;

Nancy L. Heilman, Esquire, Counsel for Defendant Simon
Transportation Services, Inc.;

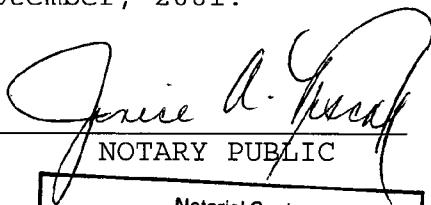
John R. Benty, Esquire, Counsel for Commonwealth of Pennsylvania Department of Transportation; and

Robert A. Seiferth, Esquire, Counsel for Defendant Jamie E. Harvey Parker.

BY: 

Edward A. Yurcon, Esquire
Attorney for Defendants' R&F Miller
Inc., and Eddie C. Roberts

Sworn to and subscribed
before me this 26th day of
September, 2001.


NOTARY PUBLIC

Notarial Seal
Janice A. Vrscak, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Apr. 7, 2005
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Affidavit of Service has been served upon the following counsel by mailing a copy, postage pre-paid, this 26th day of September, 2001, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

John T. Pion, Esquire
Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Nancy Heilman, Esquire
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11 Stanwix Street
15th Floor
Pittsburgh, Pa 15222

Robert E. Seiferth, Esquire
33 W. Third Street
Suite 200
Williamsport, PA 17701

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

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

JAMES U. LUX

vs.

No. 01-466-CD

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES,
INC., R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT, EDDIE
C. ROBERTS, JAMIE HARVEY
PARKER, and PENNSYLVANIA
DEPARTMENT OF
TRANSPORTATION

ORDER

NOW, this 20th day of September, 2001, upon consideration of Defendants, R. and F. Miller, Inc. and Eddie C. Roberts' Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission in the above matter, a Rule is hereby issued upon the parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 15th day of October, 2001, at 9:30 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED

SEP-20 2001

01318/5cc atty Yuncon
William A. Shaw
Prothonotary

[Handwritten signature]

BY THE COURT:

[Handwritten signature]
JOHN K. REILLY, JR.
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

Vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

**MOTION TO RECONSIDER/MOTION TO
CERTIFY INTERLOCUTORY APPEAL
BY PERMISSION**

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

SEP 14 2001

William A. Shaw
Prothonotary

#16

**MOTION TO RECONSIDER/MOTION TO CERTIFY
INTERLOCUTORY APPEAL BY PERMISSION**

AND NOW, comes the Defendants, Eddie C. Roberts and R. and F. Miller, Inc., by and through their attorneys, ANSTANDIG, MCDYER, BURDETTE & YURCON, P.C., and files the following Motion to Reconsider/Motion to Certify for Interlocutory Appeal by Permission pursuant to Pa. R.A.P. § 702(b), of which the following is a statement:

1. As this Honorable Court is aware, this case involves a motor vehicle accident which resulted in severe injuries to the plaintiff when a truck operated by Defendant Thomas Knight, struck the plaintiff's parked vehicle on the side of the road.

2. The Plaintiff was a policeman who was at the accident site because of an earlier accident involving two vehicles including one owned and operated by these Defendants.

3. Defendant Knight was asleep at the wheel at the time of the aforesaid second accident. (See plaintiff's Complaint, attached as Exhibit "A").

4. These defendants filed Preliminary Objections to the plaintiff's Complaint on the basis that we were not the proximate cause of the second accident, arguing, among other things, that Pennsylvania law clearly states that falling asleep at the wheel of an automobile, is as a matter of law, unforeseeable. Chacko v. PennDOT, 611 A.2d 1346 (Pa. Commwth. 1992).

5. This Honorable Court dismissed the aforesaid Preliminary Objections in its Opinion and Order dated August 22, 2001. (See Exhibit "B").

6. The Court's opinion does not discuss the Chacko case, but does state it is for a jury to make the determination of whether two sleeping drivers was a foreseeable event. Opinion and Order No. 01-466-C.D., Page 6.

7. However, the Chacko case clearly states:

" (His) loss of consciousness was indeed extraordinary and not reasonably foreseeable. It operated independently of, and cannot be said to be the normal result of, any situation created by the cities purported acts and omissions."

Chacko, 611 A.2d at 1350.

8. It is axiomatic that one who is asleep at the wheel is unconscious.

9. The plaintiff is intentionally blurring the line between coincidence and legal foreseeability. The Commonwealth Court of Pennsylvania ruled expressly that being unconscious at the wheel is unforeseeable as a matter of law. Id. at 1350. It is mere coincidence that both accidents in this case were caused by sleeping drivers. Pennsylvania law is clear that each accident is separate and extraordinary as a matter of law.

10. In stating that this question is for a jury, this Court is abrogating the decision in Chacko that being unconscious is an extraordinary cause and is legally unforeseeable.

11. Regardless of the length of time between accidents and whether or not the Plaintiff was a foreseeable rescuer, when Thomas Knight fell asleep at the wheel and struck the Plaintiff,

this was unforeseeable as a matter of law to Mr. Roberts and R&F Miller, Inc. Id at 1350.

12. All cases cited by the Plaintiff do not address the issue of unconsciousness of a driver.

13. Defendants are simply not responsible for a sleeping driver not employed by or connected to the Defendants. The Pennsylvania Commonwealth Court agrees with this position.

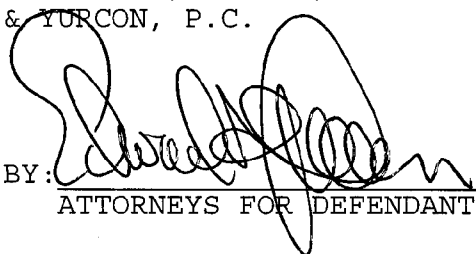
14. Under the Doctrine of *Stare Decisis*, a judgment with prejudice for the Defendants is required in this case under Chacko.

WHEREFORE, we respectfully request this Honorable Court to reconsider its order in light of the Chacko decision.

In the alternative, we ask that this Court certify an interlocutory appeal by permission pursuant to Pa. R.A.P. § 702(b).

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY: 
ATTORNEYS FOR DEFENDANTS.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

Vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

ORDER OF COURT

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

ORDER OF COURT

TO WIT, this __th day of_____, 2001, upon considering Defendants' Motion to Reconsider, it is hereby ORDERED, ADJUDGED and DECREED, that said motion is granted. The plaintiff's complaint against the defendants is dismissed with prejudice or Defendant's request for an Order permitting the filing of an Interlocutory appeal is granted.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
JAMES U. LUX,

Plaintiff,

Vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

ORDER OF COURT

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

ORDER OF COURT

TO WIT, this __ day of_____, 2001, upon consideration of the defendant's motion, it is hereby ORDERED, ADJUDGED and DECREED, that said motion is denied. However, it is this Court's opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter. Therefore this Court will allow an appeal by permission pursuant to Pa. R.A.P. § 702(b).

BY THE COURT:

_____J.

NOTICE

TO: Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

John T. Pion, Esquire
Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Nancy Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street
15th Floor
Pittsburgh, Pa 15222

Take notice that the within Motion and proposed Order of
Court will be presented on the 12 h day of September, 2001 at

_____ before the Honorable _____
ANSTANDIG, McDYER, BURDETTE & YURCON, P.C.

BY 

ATTORNEY FOR DEFENDANTS.

NOTICE OF SERVICE

A true and correct copy of the above Notice and within
Motion and proposed Order of Court were mailed, postage prepaid,
to adverse counsel on this 12th day of SEPTEMBER, 2001.

ANSTANDIG, McDYER, BURDETTE & YURCON, P.C.

BY 

ATTORNEY FOR DEFENDANTS.

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION

FILED

AUG 22 2001

William A. Shaw
Prothonotary

OPINION AND ORDER

In the early morning hours of October 24, 2000, two (2) collisions occurred on Interstate 80 between DuBois and Clearfield, Pennsylvania. Both collisions were caused in whole or in part by the fact that a driver of a tractor-trailer truck was asleep at the wheel.

The first accident occurred when a vehicle driven by Defendant Eddie C. Roberts (hereinafter "Defendant Roberts") drove at a high rate of speed into another truck traveling in front of him on the highway. The second occurred when a truck driven by Defendant Samuel Thomas Knight collided with a rescue squad truck positioned on the highway with its warning lights flashing and an illumination boom brightly lighting the scene of the clean up of the first accident. During the second collision, three volunteer firemen who were passengers in the rescue squad truck were severely injured, including the Plaintiff, James U. Lux, who was

permanently paralyzed from the waist down. Currently, Defendants Roberts and his employer trucking company, R & F Miller, Inc. (hereinafter "Defendant Miller"), seek to dismiss the claims of Plaintiff against them by Preliminary Objections in the nature of a Demurrer.

This Court must now determine whether the negligent conduct of Defendants Roberts and Miller, in falling asleep at the wheel and causing the initial collision was a substantial factor in bringing about the severe injuries suffered by the Plaintiff or is reserved to the jury and not an appropriate issue for Preliminary Objections in the Nature of a Demurrer or in essence, Summary Judgment.

As conceded by Defendants in their brief:

"In reviewing Preliminary Objections, the Court must accept as true all material facts set forth in the plaintiff's complaint, and all reasonable inferences deducible from those facts. All doubts as to whether a claim can go forward must be resolved in the favor of the pleader."

Field v. Philadelphia Electric Company, 388 Pa.Super. 400, 565 A.2d 1170 (1986).

Moreover, it is well established that "Summary Judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue remains". Salerno v. LaBarr, 159 Pa. Commonwealth Ct. 99, 632 A.2d 1002 (1993). In other words:

"The threshold a Plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the Plaintiff can prove no set of facts that would entitle the Plaintiff to relief."

Velleca v. Jones, 2000 WL 1470214 at p. 1 (E.D. Pa.), *citing* Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957).

In addition, Pennsylvania law clearly establishes that in circumstances such as those presented in the case at bar, summary judgment will not be granted. Contrary to the theory

asserted in the Defendants' brief, it is clear that under Pennsylvania law, summary judgment will not be granted to dismiss a claim against a negligent actor causing an initial collision, brought by a plaintiff injured in a subsequent collision occurring at the scene of the initial accident.

In Taylor v. Jackson, 164 Pa. Commonwealth Ct. 482, 643 A.2d 771 (1994), the Commonwealth Court, in an opinion rendered in the year following Bell v. Arace, 422 Pa.Super.365, 619 A.2d 365 (1993) determined that summary judgment was inappropriate in such two (2) collision scenarios, reversing the decision of the lower court.

In Taylor, a tractor-trailer jack-knifed at 6:15 P.M. while traveling on Interstate 80 as it attempted to avoid a vehicle that had stopped in the road. Traffic immediately began backing up behind the jack-knifed vehicle, which blocked both lanes of the highway. Taylor, 164 Pa. Commonwealth Ct. at 488, 643 A.2d at 774.

At 8:15 P.M., two (2) hours after the initial accident, a delivery truck collided with other vehicles stopped approximately one half mile from the second accident scene. It was this accident, which caused the serious injuries to plaintiff Taylor, who was a passenger in the vehicle struck by the delivery truck.

Although the Taylor trial court had granted summary judgment as to the claims against the defendants causing the initial two collisions, on appeal, the Commonwealth Court expressly rejected the identical arguments raised by the defendants herein, and determined that summary judgment was not appropriate.

In its decision, the Taylor court examines the concept of proximate cause, under the analysis of Section 431 of the Restatement (Second) of Torts and reviews the issue raised by the Defendants herein, namely, whether the actions of the first collision drivers were a

“substantial factor in producing the injury.” The court further cites Section 433 of the Restatement (Second) of Torts, as establishing the method of determining whether the negligent conduct of the initial tortfeasor is a substantial factor in bringing about harm to another. Section 433 establishes the following considerations to be used in determining whether an actor’s conduct is a substantial factor in bringing about harm to another. These factors are:

- “a. The number of other factors which contribute in producing the harm and the extent of the effect, which they have in producing it;
- b. Whether the actor’s conduct has created a force or series of forces, which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; and
- c. Lapse of time.”

Section 431 of the Restatement (Second) of Torts.

Applying the Section 433 standard to the facts before it, the Taylor court reaches a conclusion that is in direct contravention to the position currently argued by the Defendants in their brief, holding instead that the actions causing the first collision were indeed a substantial factor in causing the third collision.

In finding summary judgment to be inappropriate, the Taylor court specifically held that the passage of two hours between the first and the last accident did not provide a valid basis for summary judgment as the trial court had determined . Instead, the Court cites comment (f) of the Restatement, which states that “where it is evident that the influence of the actor’s negligence is still a substantial factor, mere lapse of time, no matter how long it is, is not sufficient to prevent it from being the legal cause of the other harm. Taylor, 164 Pa,

Commonwealth Ct. at 492, 643 A.2d at 776, *citing*, the Restatement (Second) of Torts, Section 431.

As to whether a jury could reasonably determine that the negligent actions of Defendant Roberts in falling asleep at the wheel and causing the first collision is a foreseeable cause and substantial factor in the harm suffered by the Plaintiff, one need only to refer to the decision rendered by the court in Herman v. Welland Chemical, Inc., 580 F.Supp. 823 (M.D. Pa. 1984) by the United States District Court for the Middle District of Pennsylvania. In Herman, applying Pennsylvania law in a fact situation similar to the present, a volunteer fireman was struck while directing traffic at an accident scene also located in Pennsylvania on Interstate 80. In finding that the presence of a firefighter at the scene was a foreseeable consequence to the first collision, the Herman court stated:

“To the extent that [defendant] argues that these plaintiffs may not recover on the ground that they were not, as a matter of law, within the foreseeable zone of harm, the court rejects this contention by looking to Justice Cardozo’s comments in another case:

‘Danger invites rescue. The cry of distress in the summons to relief. The law does not ignore these reactions in the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer.’ Wagner v. International R. Co., 232 N.Y, 176, 180, 133 N.E. 437 (1921).

Cardozo, then, believed that rescuers always should be Regarded as foreseeable plaintiffs. Prosser, Handbook of The Law of Torts, Section 43 at 258-59 (4th Ed. 1971).

Herman, 580 F.Supp. at 826.

Moreover, Pennsylvania law clearly establishes that a jury is to determine the question of whether a sleeping driver causing an initial accident scene is responsible for the injuries sustained by one summoned to aid in response to the accident, even in cases where the foreseeability of the second incident "is in doubt". Valleca v. Jones, 2000 WL 1470214 (E.D. Pa.), other citations unavailable.

In Valleca, the court reserved for the jury the determination of whether a sleeping driver who caused an initial collision was responsible for injuries sustained by a tow truck operator when a vehicle involved in the accident suddenly buckled and collapsed, striking his head. The Velleca court cites the Taylor decision as the rational basis for its decision, applying the substantial factor test of the Restatement (Second) of Torts Section 433. Velleca, 200 WL 1470214 at 1-2.

It is also clear that the second collision in the instant case was not caused by an extraordinary event, as the Defendant argue, but is rather a foreseeable event.

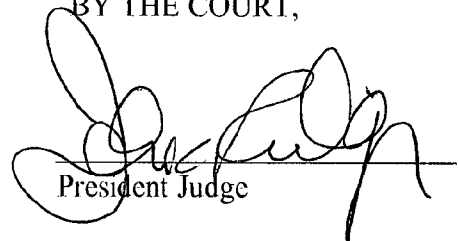
It is clear that both collisions were caused in whole or in part by sleeping drivers it clear and the foreseeability of such events is a determination for the jury to make in these proceedings. Defendants' arguments certainly fall far short of the requirement that any and all doubts as to whether a claim can go forward must be resolved in favor of the pleader and that summary judgment should only be granted in a clear case with the moving party bearing the burden of demonstrating that no material issue remains."

THEREFORE, this Court enters the following:

ORDER

NOW, this 21st day of August, 2001, it is the ORDER of this Court that all Defendants Preliminary Objections are hereby DISMISSED.

BY THE COURT,


President Judge

FILED

AUG 22 2001

03:34 PM

William A. Shaw

Prothonotary

(13)

cc atty Seigrist

cc atty Henson

cc atty Hedman

cc atty Beatty

cc atty Berone

cc atty Owen

cc atty Muckell

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

JAMES U. LUX

-vs-

No. 01 - ⁴~~2~~66 - CD

GERALD E. ORT TRUCKING, INC., ORT :
TRUCKING, INC., SIMON TRANS- :
PORTATION SERVICES, INC., R. AND :
F. MILLER, INC., SAMUEL THOMAS :
KNIGHT, EDDIE C. ROBERTS, JAMIE :
HARVEY PARKER, and PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION :

ORDER

NOW, this 14th day of August, 2001, upon consideration of Preliminary Objections filed on behalf of Defendant, Commonwealth of Pennsylvania, Department of Transportation, and argument and briefs thereon, it is the ORDER of this Court that said Objections be and are hereby sustained to the extent that Plaintiff shall be limited in his allegations of proof in paragraphs 38(a, b and g) to those theories of negligence set forth in the other subparagraphs thereunder, with the right reserved in the Plaintiff to amend his Complaint within the appropriate Statute of Limitations should he wish to advance further theories of negligence against Department of Transportation.

By the Court,



President Judge

FILED

AUG 15 2001

William A. Shaw
Prothonotary

#14

FILED
01:08 PM
AUG 15 2001
William A. Shaw
Prothonotary
cc
Atty. Gen.
cc M. Nease
cc N. Heilmann
cc E. Yusaev
cc R. Safestok

JAMES U. LUX

Plaintiff

v.

GERALD E. ORT TRUCKING, INC.;
ORT TRUCKING, INC.;
SIMON TRANSPORTATION SERVICES,
INC.;
R. AND F. MILLER, INC.;
SAMUEL THOMAS KNIGHT;
EDDIE C. ROBERTS;
JAMIE HARVEY PARKER; and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

Defendants

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

:
: CIVIL ACTION – LAW
: NO. 01-466-CD

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:
: JURY TRIAL DEMANDED

**PRELIMINARY OBJECTIONS OF DEFENDANT
JAMIE HARVEY PARKER**

AND NOW, comes Defendant, Jamie Harvey Parker, by and through his attorneys Marshall, Dennehey, Warner, Coleman & Goggin and Robert A. Seiferth, Esquire and demurs to Plaintiff's Complaint as follows:

1. This lawsuit arises out of two motor vehicles accidents which occurred on Interstate 80 in Clearfield County on October 24, 2000.
2. According to Plaintiff's Complaint, this first accident occurred at approximately 1:00 a.m. when a truck operated by Defendant Eddie C. Roberts rear ended a truck operated by Defendant Jamie Harvey Parker.
3. The second accident occurred at approximately 3:30 a.m. when a vehicle occupied by Plaintiff James U. Lux was rear ended by a truck operated by Defendant Samuel Thomas Knight.

FILED

AUG 10 2001

William A. Shaw
Prothonotary

13

4. At the time of the second accident, Plaintiff Lux was providing emergency services in his capacity as a police officer and/or volunteer fireman.

5. As set forth at Court III of Plaintiff's Complaint, the claim against Defendant Jamie Harvey Parker relates to his involvement in the first accident and his leaving of the scene of the first accident.

6. The alleged negligence of Defendant Jamie Harvey Parker was not a substantial factor in causing Plaintiff's harm. *Bell v. Irace*, 422 Pa.Super. 298, 618 A.2d 365 (1993).

7. The Complaint filed by Plaintiff against Defendant Jamie Harvey Parker fails to state a cause of action.

WHEREFORE, Defendant Jamie Harvey Parker requests that Plaintiff's Complaint against him be dismissed.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY Robert A. Seiferth
Robert A. Seiferth
Attorney for Defendant Jamie Harvey Parker
I.D. #20481
33 W. Third Street, Suite 200
Williamsport, PA 17701
(570)326-9094

Date: 8/9/01

CERTIFICATE OF SERVICE

I, Robert A. Seiferth, Esquire, hereby certify that I have served a true and correct copy of the foregoing **Preliminary Objections of Defendant Jamie Harvey Parker** upon all parties:

VIA UNITED STATES REGULAR MAIL:

Jeffrey R. Owen, Esquire
Cooper, Owen & Renner
1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713
Attorney for Plaintiff

Nancy L. Heilman, Esquire
Cohen & Grigsby
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1312
Attorney for Simon Transportation Services

Michael F. Nerone, Esquire
Dickie, McCamey & Chilcote
2 PPG Place, Suite 400
Pittsburgh, PA 15222
*Attorney for Gerald E. Ort Trucking, Ort Trucking
and Samuel Thomas Knight*

Edward A. Yurcon, Esquire
Anstandig, McDyer, Burdette & Yurcon
707 Grant Street, Suite 1300
Pittsburgh, PA 15219-1911
*Attorney for R an F Miller, Inc. and Eddie C.
Roberts*

John P. Bently, Esquire
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Attorney for PennDOT

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY Robert A. Seiferth
Robert A. Seiferth
Attorney for Defendant Jamie Harvey Parker
I.D. #20481
33 W. Third Street, Suite 200
Williamsport, PA 17701
(570)326-9094

Date: 8/9/01

FILED
AUG 11 2001
William A. Shaw
Prothonotary
Rec'd
Rule

JAMES U. LUX

Plaintiff

v.

GERALD E. ORT TRUCKING, INC.;
ORT TRUCKING, INC.;
SIMON TRANSPORTATION
SERVICES, INC.;
R. AND F. MILLER, INC.;
SAMUEL THOMAS KNIGHT;
EDDIE C. ROBERTS;
JAMIE HARVEY PARKER; and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

Defendants

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

:
: CIVIL ACTION - LAW
: NO. 01-466-CD

:
:
:
:
:
:
:
:
: JURY TRIAL DEMANDED

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for the Defendant, **Jamie Harvey Parker**, in the above-captioned matter.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

DATE: 7/30/01

BY: Robert A. Seiferth
Robert A. Seiferth
Attorney for Defendant Parker
I.D. NO. 20481
33 West Third Street, Suite 200
Williamsport, PA 17701
Telephone (570)326-9094

cc: Jeffrey R. Owen, Esquire
Michael F. Nerone, Esquire
Nancy Heilman, Esquire
Edward A. Yurcon, Esquire
John P. Bently, Esquire

FILED

JUL 31 2001
m/12:20/hrs
William A. Shaw
Prothonotary

1 cent to Att

#12
E
Tee

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL ACTION

Plaintiff,

No. 01-466-CD

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,

PRELIMINARY OBJECTIONS

Defendants.

Filed on behalf of Defendant:

Pennsylvania Department
of Transportation

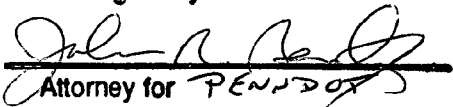
Counsel of Record for This
Party:

John R. Benty
Sr. Deputy Attorney General
Pa. I.D. #44606

Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-3539

You are hereby notified to plead to the
within pleading within twenty (20) days
hereof or a default judgement may be
entered against you.


Attorney for PENNDOT

FILED

MAY 21 2001

William A. Shaw
Prothonotary

#11

PRELIMINARY OBJECTIONS

AND NOW, comes the defendant, Pennsylvania Department of Transportation, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Preliminary Objections, averring in support thereof, as follows:

1. The instant case arises out of a multi-vehicle accident which occurred on October 24, 2000 at approximately 1:00 a.m. and 3:30 a.m. on SR 80 in Union Township, Clearfield County Pennsylvania.

2. As a result of a previous motor vehicle accident, plaintiff, James U. Lux, a volunteer fireman and a city of DuBois Police Officer, was an occupant of a fireman squad rescue truck which was parked in the right hand lane of SR 80 with its emergency lights and tower lights activated.

3. Defendant, Samuel Thomas Knight, fell asleep at the wheel, failed to see the orange cones, flashing lights and flares and struck the squad rescue truck in which plaintiff was an occupant.

4. Plaintiff filed a Complaint in the Court of Common Pleas of Clearfield County naming the Commonwealth of Pennsylvania, Department of Transportation as a defendant.

Motion for More Specific Complaint

5. Paragraph 38, subparagraphs (a), (b) and (g) of the plaintiff's Complaint aver that the defendant, PennDOT, is liable to the plaintiff because of various negligent acts and/or omissions, including, but not limited to, the following:

- a. In failing to provide a reasonably safe roadway;
- b. In negligently conducting repairs of conditions in the roadway caused by the first collision.
- g. In unreasonably delaying in the conduct of its repair activities.

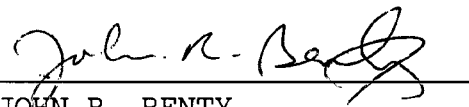
6. Paragraph 38 (a), (b) and (g) of the plaintiff's Complaint are objected to in that the defendant, PennDOT, is unable to respond to these subparagraphs because they do not state in a concise and summary form the material facts upon which the cause of action is based, nor do said subparagraphs inform the defendant of the issues it must meet in answering said allegations. Connor v. Allegheny General Hosp., 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, the defendant, PennDOT, respectfully requests this Honorable Court to strike Paragraph 38 (a), (b) and (g) for failure to state a cause of action and/or, enter an Order requiring plaintiff to more specifically plead the allegations of

Paragraph 38 (a), (b) and (g) of his Complaint.

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: 
JOHN R. BENTY
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
Preliminary Objections was served upon the following counsel of
record, via first-class mail, postage pre-paid on May 17, 2001:

Jeffrey R. Owen, Esq.
COOPER OWEN & RENNER, P.C.
1600 Benedum-Trees Bldg.
223 Fourth Ave.
Pittsburgh, PA 15222-1713
(Counsel for Plaintiff)

Michael F. Nerone, Esq.
Suite 400, Two PPG Place
Pittsburgh, PA 15222
(Counsel for Ort Trucking
and Samuel Knight)

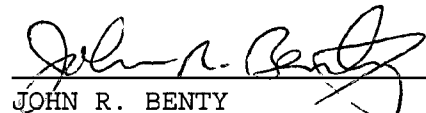
Nancy L. Heilman, Esq.
15th Fl., 11 Stanwix St.
Pittsburgh, PA 15222-1319
(Counsel for Simon Transportation)

Edward A. Yurcon, Esq.
1300 Gulf Tower
Pittsburgh, PA 15219
(Counsel for R. and F. Miller, Inc.
and E. Roberts)

Jamie Harvey Parker
500 South Ohio St.
Humansville, Missouri 65613

D. MICHAEL FISHER
Attorney General

BY:


JOHN R. BENTY
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL ACTION

Plaintiff,

No. 01-466-CD

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,

Defendants.

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____,

2001, it is hereby ORDERED, ADJUDGED and DECREED that Paragraph 38 (a), (b) and (g) of the plaintiff's Complaint are stricken for failure to state a cause of action and/or, require plaintiff to more specifically plead the allegations of Paragraph 38 (a), (b) and (g) of his Complaint.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

01-466-CO

v.

**ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO PA. R. CIV. P.
2252(D)**

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC. SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION.

Filed on behalf of Defendants, Gerald E. Ort
Trucking, Inc., Ort Trucking, Inc., and Samuel
T. Knight

Defendants.

Counsel of record for this party:

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

MAY 16 2001

William A. Shaw
Prothonotary

#10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

01-466-CO

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC. SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION.

Defendants.

**DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND
SAMUEL T. KNIGHT'S ANSWER TO COMPLAINT, NEW MATTER AND NEW
MATTER PURSUANT TO PA. R. CIV. P. 2252(D)**

AND NOW, comes the Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight (hereafter these Defendants) by and through their attorneys, Dickie McCamey & Chilcote, P.C. and Michael F. Nerone, Esquire and files the within Answer, New Matter and New Matter pursuant to Pa. R. Civ. P.2252(d) as follows:

1. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1 of the Complaint, and so responds pursuant to Pa. R. Civ. P.1029(c) and demands strict proof thereof at the time of trial.
2. The averments of Paragraph 2 of the Complaint are admitted.
3. The averments of Paragraph 3 of the Complaint are admitted.
4. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 4 of the Complaint, and so responds pursuant to Pa. R. Civ. P.1029(c) and demands strict proof thereof at the time of trial.

5. The averments of Paragraph 5 of the Complaint are admitted.

6. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at the time of trial.

7. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 7 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at the time of trial.

8. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 8 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at the time of trial.

9. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 9 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at the time of trial.

10. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 10 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at the time of trial.

11. The averments of Paragraph 11 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 11 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

12. The averments of Paragraph 12 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required,

then, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 12 of the Complaint, and so responds pursuant to Pa .R. Civ. P. 1029(c) and demands strict proof thereof at trial.

13. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 13 of the Complaint, and so responds pursuant to Pa .R. Civ. P. 1029(c) and demands strict proof thereof at trial.

14. The averments of Paragraph 14 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 14 of the Complaint, and so responds pursuant to Pa .R. Civ. P. 1029(c) and demands strict proof thereof at trial.

15. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

16. After reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16 of the Complaint, and so responds pursuant to Pa .R. Civ. P. 1029(c) and demands strict proof thereof at trial.

17. The averments of Paragraph 17 of the Complaint, attempt to set forth conclusions of law to which no response is required. To the extent a response may be necessary, these averments are denied in their entirety. To the contrary, this Defendant was not negligent in any manner whatsoever and acted in a reasonable, careful, prudent and lawful manner.

18. The averments of Paragraph 18 of the Complaint, including all sub-parts relative thereto, attempt to set forth conclusions of law to which no response is required. To the extent a

response may be necessary, these averments are denied in their entirety. To the contrary, this Defendant was not negligent in any manner whatsoever and acted in a reasonable, careful, prudent and lawful manner. By way of further response, after reasonable investigation, this Defendant is without information sufficient to form a belief as to the truth or falsity of the averments dealing with Plaintiff's injuries relative to this action. Consequently, said averments are specifically denied and strict proof thereof is demanded at the time of trial.

COUNT I

Negligence

Plaintiff James U. Lux v. Defendant Samuel Thomas Knight, Defendant Gerald E. Ort Trucking, Inc. and Defendant Ort Trucking, Inc.

19. In response to Paragraph 19 of the Complaint, which incorporates by reference Paragraphs 1 through and 18 and 23 through 44 of the Complaint, this Defendant incorporates by reference herein the same as if set forth at length again, its responses to each of Paragraphs 1 through 18 and 23 through 44 of the Complaint.

20. The averments set forth in Paragraph 20 of Plaintiff's Complaint attempt to set forth conclusions of law to which no response is required. To the extent a response is deemed necessary, these averments are denied pursuant to Pa. R. Civ. P. 1029(e) and strict proof thereof is demanded at the time of trial.

21. The averments set forth in Paragraph 21 of Plaintiff's Complaint including all sub-parts thereto attempt to set forth conclusions of law to which no response is required. To the extent that a response may be necessary, these averments are denied pursuant to Pa. R. Civ. P. 1029(e) and strict proof thereof is demanded at the time of trial. To the contrary, this Defendant was not

negligent in any manner whatsoever and exercised due care and caution and acted in a reasonable, careful, prudent and lawful manner.

22. The averments set forth in Paragraph 22 of Plaintiff's Complaint attempt to set forth conclusions of law to which no response is required. To the extent a response may be necessary, these averments are denied in their entirety. To the contrary, at all times pertinent hereto this Defendant, its agents, servants and/or employees exercised due care and caution and acted in a reasonable, careful, prudent and lawful manner.

WHEREFORE, these Defendants demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

COUNT II
NEGLIGENCE

**Plaintiff James U. Lux v. Defendant,
Eddie C. Roberts and Defendant R. and F. Miller, Inc.**

23. In response to Paragraph 23 of the Complaint, which incorporates by reference Paragraphs 1 through 22 and 27 through 44 of the Complaint, this Defendant incorporates by reference herein the same as if set forth at length again, its responses to each of Paragraphs 1 through 22 and 27 through 44 of the Complaint.

24. The averments of the Paragraph 24 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation this Defendant is without knowledge or information sufficient enough to form a belief as to the truth of the averments of Paragraph 24 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

25. The averments of Paragraph 25 including all sub-parts relative thereto are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 25 including all relative sub-parts thereto of the Complaint, and so responds pursuant to Pa .R. Civ. P. 1029(c) demands strict proof thereof at trial.

26. The averments of the Paragraph 26 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation this Defendant is without knowledge or information sufficient enough to form a belief as to the truth of the averments of Paragraph 26 of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

WHEREFORE, these Defendants demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

COUNT III

Negligence

Plaintiff James U. Lux v. Defendant, Jamie Harvey Parker

27. In response to Paragraph 27 of the Complaint which incorporates by reference Paragraphs 1 through 26 and 30 through 44 of the Complaint, this Defendant hereby incorporates by reference, herein the same as if set forth herein at length again, its responses to each of Paragraphs 1 through 26 and 30 through 44 of the Complaint.

28. The averments of Paragraph 28 including all relevant sub-parts thereto are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation this Defendant is without knowledge or

information sufficient enough to form a belief as to the truth of the averments of Paragraph 28 and the sub-parts relating thereto of the Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

29. The averments of Paragraph 29 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless, to the extent a response may be required, then, after reasonable investigation this Defendant is without knowledge or information sufficient enough to form a belief as to the truth of the averments of Paragraph 29 and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

WHEREFORE, these Defendants demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

COUNT IV

Negligence

Plaintiff James U. Lux v.

Defendants, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc.

30. In response to Paragraph 30 of the Complaint which incorporates by reference Paragraphs 1 through 29 and 33 through 44 of the Complaint, this Defendant hereby incorporates by reference, herein the same as if set forth herein at length again, its responses to each of Paragraphs 1 through 29 and 33 through 44 of the Complaint.

31. The averments set forth in Paragraph 31 of the Complaint including all sub-parts thereto, attempt to set forth conclusions of law to which no response is required. To the extent a response be necessary, these averments are denied in their entirety, and strict proof thereof is demanded at the time of trial.

32. The averments set forth in Paragraph 32 of Plaintiff's Complaint attempt to set forth conclusions of law to which no response is required. To the extent a response may be necessary, these averments are denied in their entirety and strict proof thereof is demanded at the time of trial.

WHEREFORE, these Defendants, demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

COUNT V
Negligence

Plaintiff James U. Lux v. Defendant, R. and F. Miller, Inc.

33. In response to Paragraph 33 of the Complaint, which incorporates by reference Paragraphs 1 through 32 and 36 through 44 of the Complaint, this Defendant hereby incorporates by reference herein the same as if set forth at length again, its response to each of Paragraphs 1 through 32 and 36 through 44 of the Complaint.

34. The averments of Paragraph 34 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless to the extent that a response be required, then after reasonable investigation this Defendant is without knowledge sufficient to form a belief as to the truth of the averments of Paragraph 34 of Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

35. The averments of Paragraph 35 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless to the extent that a response be required, then after reasonable investigation this Defendant is without knowledge sufficient to form a belief as to the truth of the averments of Paragraph 35 of Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

WHEREFORE, these Defendants, demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

COUNT VI
Negligence
Defendant Commonwealth of Pennsylvania

36. In response to Paragraph 36 of the Complaint, which incorporates by reference Paragraphs 1 through 35 and 40 through 44 of the Complaint, this Defendant hereby incorporates by reference herein the same as if set forth at length again, its responses to each of Paragraphs 1 through 35 and 40 through 44 of the Complaint.

37. The averments of Paragraph 37 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless to the extent that a response may be required, then after reasonable investigation this Defendant is without knowledge sufficient to form a belief as to the truth of the averments of Paragraph 37 of Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

38. The averments of Paragraph 38 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless to the extent that a response be required, then after reasonable investigation this Defendant is without knowledge sufficient to form a belief as to the truth of the averments of Paragraph 38 of Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

39. The averments of Paragraph 39 of the Complaint are not directed against this Defendant, so that no response is required. Nonetheless to the extent that a response be required, then after reasonable investigation this Defendant is without knowledge sufficient to form a belief as to the truth of the averments of Paragraph 39 of Complaint, and so responds pursuant to Pa. R. Civ. P. 1029(c) and demands strict proof thereof at trial.

WHEREFORE, these Defendants demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

COUNT VII
Negligence
Plaintiff James U. Lux v.
Defendant Simon Transportation Services, Inc.

40. In response to Paragraph 40 of the Complaint, which incorporates by reference Paragraphs 1 through 39 of the Complaint, this Defendant hereby incorporates by reference herein the same as if set forth at length again, its responses to each of Paragraphs 1 through 39 of the Complaint.

41. The averments of paragraph 41 of the Complaint are not directed against these Defendants. Nonetheless, to the extent that a response may be required, then these averments are denied as stated and strict proof thereof is demanded at the time of trial.

42. The averments of paragraph 42 of the Complaint are not directed against these Defendants. Nonetheless, to the extent that a response may be required, then these averments are denied as stated and strict proof thereof is demanded at the time of trial.

43. The averments of paragraph 43 of the Complaint are not directed against these Defendants. Nonetheless, to the extent that a response may be required, then these averments are denied as stated and strict proof thereof is demanded at the time of trial.

44. The averments of paragraph 44 of the Complaint are not directed against these Defendants. Nonetheless, to the extent that a response may be required, then these averments are denied as stated and strict proof thereof is demanded at the time of trial.

WHEREFORE, these Defendants demand that Plaintiff's Complaint be dismissed with prejudice, and that these Defendants be awarded attorneys fees and costs of suit.

NEW MATTER

45. Defendants, Gerald E. Ort Trucking, Inc. and Samuel T. Knight incorporate by reference paragraphs 1 through 45 of this Answer as if the same were set forth fully herein at length.

46. Plaintiff's Complaint fails to state a claim upon which relief can be granted against Defendants, Gerald E. Ort Trucking, Inc. and Samuel T. Knight.

47. Plaintiff's claims are barred by the applicable statute(s) of limitations.

48. To the extent that any injuries and /or damages are proven by the Plaintiff at the time of trial, those injuries and/or damages are due to Plaintiff's own negligence, carelessness, and /or recklessness.

49. The comparative negligence of the Plaintiff exceeds any negligence, which may be proven at the time of trial on behalf of these Defendants and, hence, Plaintiff's claims are barred by Plaintiff's own negligence.

50. Plaintiff's injuries and/or damages, as such may be proven at the time of trial, are the result of a superseding, intervening act for which these Defendants are not responsible.

51. Accordingly, should Plaintiff's prove damages, said damages being denied, then said damages must be reduced to the degree in which Plaintiff has failed to so mitigate.

52. Defendants believe and therefore aver that Plaintiff's medical conditions pre-existed this accident and Defendants cannot be liable for Plaintiff's pre-existing conditions.

NEW MATTER PURSUANT TO PA. R. CIV. P. 2252(D)

AND NOW, comes Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking Inc., and Samuel T. Knight and asserts these crossclaims pursuant to Pa. R. Civ. P. 2252(d) against Defendant Simon Transportation Services, Inc., Defendant R & F Miller, Inc., Defendant, Eddie C. Roberts, Defendant, Jamie Harvey Parker, Defendant Pennsylvania Department of Transportation, as follows:

53. While these Defendants deny liability for any cause of action alleged by Plaintiffs in their Complaint, if the allegations of any cause of action can be established, which these Defendants deny, then these Defendants aver that any and all injuries, damages and loss allegedly sustained by Plaintiff were directly and proximately caused by the other above-named Defendants, generally and in the particulars alleged in Plaintiff's Complaint; and, the other above named Defendants are directly and solely liable to Plaintiffs if anyone is liable.

54. While these Defendants deny liability for any cause of action alleged by Plaintiffs in their Complaint, if these Defendants are found liable to Plaintiffs under any cause of action, which liability is denied, then it is averred that the other above named Defendants are primarily or actively liable to Plaintiffs and that these Defendants are, if at all, only secondarily passively or inactive liable, since the other above-named Defendants are liable over to this Defendants for full and complete indemnity for all sums that may be awarded to Plaintiffs.

55. Alternatively, while these Defendants deny liability for any cause of action alleged by Plaintiffs in their Complaint, in the event that it should be determined that these Defendants are liable to Plaintiffs on any cause of action, which liability is expressly denied, then it averred that the other above-named Defendants are jointly and severely liable to Plaintiffs with these Defendants and these Defendants are entitled to contribution from the other above-named Defendants for any sum that may be awarded to Plaintiffs.

WHEREFORE, Defendant ,Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight aver that each of the other above-named Defendants are solely and directly liable to the Plaintiff or that each of the other above-named Defendants are liable over to these Defendants such that if these Defendants are found liable to Plaintiffs, which liability these Defendants expressly deny, then these Defendants demand a judgment in their favor for full and complete indemnity against each above-named Defendant; or in the event that these Defendant are liable to Plaintiff, which liability these Defendants deny, then each of the other above-named Defendants are jointly and severely liable to Plaintiffs with these Defendants, such that these Defendants demand a judgment for contribution against each above-named Defendant.

Respectfully submitted,

DICKIE MCCAMEY & CHILCOTE, P.C.

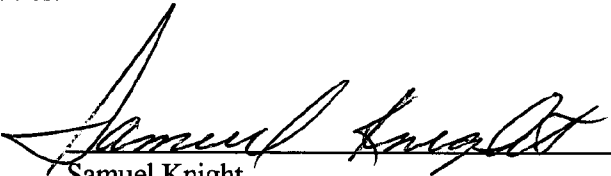
By: Michael F. Nerone
Michael F. Nerone, Esquire *15 Fnu*

Attorney for Defendants,
Gerald E. Ort Trucking, Inc., and Samuel T. Knight

VERIFICATION

I, Samuel Knight have read the foregoing Answer and New Matter and New Matter
Pursuant to Rule 2252(d). The statements therein are correct to the best of my personal
knowledge or information and belief.

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



Samuel Knight

DATED: 4-3-01

15 14 12 11 10 9 8 7 6 5 4 3 2 1

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing
ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO PA. R. CIV. P. 2252(D)
have been served this 14th day of May, 2001, by U.S. first-class mail, postage prepaid, to counsel of
record listed below:

Jeffrey R. Owen, Esquire
Cooper Owen & Renner, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Simon Transportation Services, Inc.
6100 Neil Road
Reno, Nevada 89511

R. and F. Miller, Inc.
58255 Crumstown Highway
South Bend, Indiana 46619-9541

Eddie C. Roberts
23700/64 Marquette Blvd.
South Bend, Indiana 46628

Jamie Harvey Parker
500 South Ohio Street
Humansville, Missouri 65613

DICKIE, McCAMEY & CHILCOTE, P.C.

By Michael F. Nerone
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

FILED

MAY 16 2001

17:49:00

William A. Shaw

Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

**PRELIMINARY OBJECTIONS IN THE
NATURE OF A DEMURRER**

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

MAY 14 2001

William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS

AND NOW, come the Defendants, R. and F. Miller, Inc. and Eddie C. Roberts, by and through their attorneys, ANSTANDIG, McDYER, BURDETTE & YURCON, P.C., and files these Preliminary Objections and Brief in Support thereof, in the Nature of a Demurrer, and in support of which the Defendants aver the following:

1. The Plaintiff James U. Lux, filed a Complaint in Civil Action against the various entities listed as Defendants for personal injuries which occurred on October 24, 2000.

2. Said Complaint was filed on April 23, 2001.

3. Plaintiff states he was a police officer for the City of Dubois, and a volunteer fireman who was called to the scene of an accident involving vehicles operated by Defendants, Jamie Harvey Parker and Eddie C. Roberts.

4. Defendant R. and F. Miller, Inc. owned the truck Roberts was operating.

5. Plaintiff further avers in his Complaint he was sitting in his parked truck with his warning lights on and illuminating the scene of the cleanup when suddenly and without warning, he was struck by another vehicle owned by Defendant Ort Trucking, Inc. and operated by Defendant Knight.

6. Plaintiff alleges his car traveled over 150 feet from the force of collision and rolled over onto the ground (see Complaint, paragraph 6, attached as Exhibit "A").

7. Plaintiff avers he was struck despite the clear evidence of burning flares and safety cones on the highway warning of the

accident cleanup. Plaintiff, in his averments of negligence against Defendants Ort Trucking and Knight, alleges Knight fell asleep at the wheel, did not observe the cones or flares placed on the ground, or Plaintiff's parked car, as well as asserting other theories of negligence. (Complaint, paragraph 22).

8. Plaintiff does not and cannot state how Roberts and R. and F. Miller, Inc. caused the collision between the Plaintiff and Knight.

9. The law is extremely clear in this type of case. The case of Bell v. Arace, 619 A.2d 365 (Pa. Super. 1993) states:

"A point is reached where a legal chain of causation corrodes and the law then refuses to further trace the series of enfolding events connected from an act to an injury. That juncture has been reached here. Neither defendant here could reasonably be expected to foresee that the fortuitous acts which serve to bring them together would be the source of an injury...." Bell, 619 A.2d at 367.

10. In Bell, the Plaintiff, a medical technician, tried to sue an auto accident tortfeasor when the victim of the accident injured the Plaintiff while she was trying to give him aid. Plaintiff sued on the theory she would not have been there but for the prior auto accident. The Court ruled in favor of the Defendant, stating the injury was too remote from the original cause. Id. at 367.

11. Even if, for the purposes of this motion only, the Defendants admit everything in Plaintiff's Complaint as true, their conduct was a separate accident which preceded the events which lead to Plaintiff's injuries, and in no way caused the Defendant Samuel Knight to strike the Plaintiff with his vehicle.

12. Plaintiff admits in his own Complaint the Roberts and Parker accident occurred two and a half hours before the accident involving the Plaintiff and Knight. See Complaint, paragraphs 11 and 17.

13. Plaintiff admits these accidents were two separate collisions. See Complaint paragraph 13 ("initial") and paragraph 20 ("second collision").

14. Plaintiff's Complaint does not mention whether Roberts and Parker were still at the scene when the second accident occurred.

15. The conduct of Defendants Roberts and R. & F. Miller, Inc. was not the proximate cause of the second accident by any reasonable interpretation of the facts.

16. The facts of this case are not in dispute. Defendants merely want a legal determination of proximate cause. The length of time between accidents, the superseding act of negligence by Knight of falling asleep at the wheel and the fact the first accident had nothing to do with Knight's conduct establishes that the conduct of Defendants Roberts and R. and F. Miller, Inc. was not the cause of the second accident and Plaintiff's injuries as a matter of law.

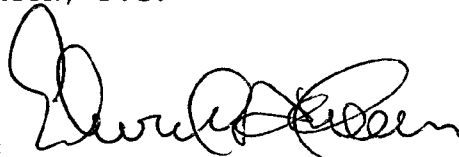
17. This issue can be decided by Preliminary Objections. Bell v. Arace, 422 Pa. Super. 298, 619 A.2d 365 (1993).

18. Based on prevailing Pennsylvania law, Plaintiff has not stated a claim for which relief can be granted.

WHEREFORE, Defendants, Eddie C. Roberts and R. and F. Miller, Inc., respectfully request this Honorable Court grant these Preliminary Objections in the form of a demurrer. Since Defendants feel this Complaint cannot be amended to give rise to facts which would make the Defendants liable, Defendants further request this dismissal be with prejudice.

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R. AND F. MILLER, INC. AND
EDDIE C. ROBERTS

EXHIBIT "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466 CO

COMPLAINT

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:

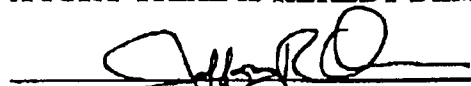
Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

A JURY TRIAL IS HEREBY DEMANDED:

(412) 281-9696


Jeffrey R. Owen, Esquire
Counsel For Plaintiff, James U. Lux

I hereby certify this to be
and attach copy of the
statement filed in this case.

APR 03 2001

Attest.


Prothonotary

Rec'd. 4/30/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.:

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 claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Office of Court Administrator
1 North Second Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.:

COMPLAINT

AND NOW, comes the Plaintiff, James U. Lux, by and through his Counsel, Cooper Owen & Renner, P.C. and Jeffrey R. Owen, Esquire, and files this Complaint, of which the following is a statement.

1. Plaintiff James U. Lux is an adult individual residing at 90 North Park Place, Apt. B3, Du Bois, Clearfield County, Pennsylvania 15801.
2. Defendant Gerald E. Ort Trucking, Inc. is a corporation incorporated pursuant to the laws of the State of Wisconsin with a principal address located at 775 Industrial Park Road, New London, Wisconsin, 54961, engaged in the business of long distance and local trucking.

3. Defendant Ort Trucking, Inc. is a corporation incorporated pursuant to the laws of the State of Wisconsin with a principal address at P.O. Box 267, New London, Wisconsin, 54961, and at 775 Industrial Park Road, New London, Wisconsin 54961, engaged in the business of long distance and local trucking.

4. Defendant Simon Transportation Services, Inc. is a corporation incorporated pursuant to the laws of the State of Nevada, with a principal address located at 6100 Neil Road, Reno, Nevada, 89511, and is the successor in interest to Gerald E. Ort Trucking, Inc.

5. Defendant Samuel Thomas Knight is an adult individual residing at 2915 Shirley Road, Youngstown, Ohio 44502 and at all times relevant hereto was the operator of a 2000 Volvo truck, owned by Defendant Gerald E. Ort Trucking, Inc.

6. Defendant R. and F. Miller, Inc. is a corporation incorporated pursuant to the laws of the State of Indiana, with a principal place of business located at 58255 Crumstown Highway, South Bend, Indiana, 46619-9541.

7. Defendant Eddie C. Roberts is an adult individual residing at 23700/64 Marquette Blvd., South Bend, Indiana 46628, and at all times relevant hereto was the operator of a 2000 Freightliner truck owned by Defendant R. and F. Miller, Inc.

8. Defendant Jamie Harvey Parker is an adult individual residing at 500 South Ohio Street, Humansville, Missouri 65613, and at all time relevant hereto was the owner and operator of a 1988 International truck.

9. Defendant Commonwealth of Pennsylvania, Department of Transportation (hereinafter referred to as "PennDot") is a Commonwealth Agency with a place of business as it pertains to roads in Clearfield County, Pennsylvania located at 1924-30 Daisy Street, Clearfield County PA 16830.

10. The events hereinafter complained of occurred on or about Tuesday, October 24, 2000 between approximately 1:00 A.M. and 3:30 A.M. on Interstate Highway Route 80 at a place approximately .6 miles North and/or West of mile marker 103 in Union Township, Pennsylvania.

11. At said location, at or about 1:00 A.M., Defendant Eddie C. Roberts was operating a 2000 Freightliner truck in a Westerly direction on the above-identified Highway Route 80.

12. Defendant Eddie C. Roberts operated his vehicle in a negligent manner, violently striking the 1988 truck owned and operated by Defendant Jamie Harvey Parker.

13. The impact of this initial collision was sufficient to severely damage both the truck operated by Defendant Eddie C. Roberts and the truck operated by Defendant Jamie Harvey Parker; to create a large two foot by two foot hole in the highway; to cause vehicle parts to be strewn about on the highway; and to cause oil and/or other vehicle fluids to completely cover the right lane of the highway and other proximate areas.

14. Defendant Jamie Harvey Parker, who was driving the truck without a driver's license or a license to operate said 18-wheeled vehicle, fled the scene of the initial collision, further spreading fluids and vehicle parts along the highway.

15. Thereafter, Plaintiff James U. Lux, who was a police officer of the City of Dubois and a Volunteer Fireman, was called to the scene to assist in the emergency services being provided there and to remain there while repairs and clean-up to the highway was effectuated by Agents of Defendant Pennsylvania Department of Transportation ("PennDot").

16. Plaintiff James U. Lux was an occupant of a 1987 International Fireman's Squad Rescue Truck which was parked on the right hand lane of Route 80, with its emergency warning lights activated, and its tower lights erected to illuminate the scene of the repair work and highway clean up being conducted by Defendant PennDot.

17. Thereafter, at or about 3:30 A.M., Defendant Samuel Thomas Knight, without braking and at a high rate of speed, drove the 2000 Volvo truck he was operating through an area of safety cones and brightly burning emergency flares placed on the highway, over and on to the closed right hand lane, and directly and violently collided with the International Squad Rescue Truck, propelling the Squad Rescue Truck approximately 150 feet, and causing it to roll completely over, until it came to rest on its left side, facing to the West, on a grassy area to the right of the right hand berm of the highway.

18. As a result of said collision, Plaintiff James U. Lux suffered serious and extensive injuries, including but not limited to the following:

- a. Severe and permanent damage to his back, spine, and nervous system, including a comminuted fracture in the Lumbar region of his spine, rendering him without sensation and permanently paralyzed from L1-L2 downward throughout his lower extremities with a diagnosis of complete flacid paraplegia;
- b. Multiple trauma to his body, including but not limited to lacerations, contusions, bruising, numbness in his chest, bruising and trauma to the spinal chord, and the introduction of bone fragments into the spinal tissue;
- c. Damage and instability requiring an operation to fuse his vertebrae and spinal area spanning T11 through L3, by means of the surgical implantation of steel plates and rods adjacent to his spinal column;
- d. Loss of consciousness;
- e. Mental, psychological and emotional damage resulting from the same.

Count I
Negligence
Plaintiff James U. Lux vs.
Defendant Samuel Thomas Knight,
Defendant Gerald E. Ort Trucking, Inc., and
Defendant Ort Trucking, Inc.

19. Paragraphs 1 through 18 and 23 through 44 are hereby incorporated by reference as if fully restated herein.

20. At the time and place of the second collision described above, Samuel Thomas Knight was an agent and/or employee of Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., and was at all times relevant hereto acting within the scope and course of his duties and/or employment responsibilities.

21. Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc. are vicariously liable for the actions of their agent and/or employee, Samuel T. Knight, who was negligent in the following particulars:

- a. In operating his vehicle while susceptible to, and in actuality falling asleep at the wheel;
- b. In failing to observe and heed warning apparatus, including but not limited to brightly burning warning flares, warning cones, and flashing lights, but instead driving over and through the same without reduction in speed;
- c. In failing to observe and heed a Squad Rescue Truck stopped on the highway on the other side of the above referenced warning apparatus, with its emergency and boom illumination lights turned on;
- d. In operating his vehicle at an excessive rate of speed considering the circumstances existent at the time of the second collision;

- e. In failing to keep and maintain his vehicle under safe and adequate control;
- f. In losing control of his vehicle;
- g. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the second collision;
- h. In operating his vehicle when he was not fit and competent to do so;
- i. In driving in a careless and reckless fashion;
- j. In failing to stop, slow, or take evasive action before colliding with the above mentioned Squad Rescue Truck at a high rate of speed.

22. The negligence of Defendants Samuel T. Knight, Gerald E. Ort Trucking, Inc. , and Ort Trucking, Inc. were substantial factors in causing the second collision described above, and thus were substantial factors in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Samuel T. Knight, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., jointly and severally for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count II
Negligence
Plaintiff James U. Lux vs.
Defendant Eddie C. Roberts, , and
Defendant R and F Miller, Inc.

23. Paragraphs 1 through 22 and 27 through 44 are hereby incorporated by reference as if fully restated herein.

24. At the time and place of the first collision described above, Eddie C. Roberts was an agent and/or employee of R. and F. Miller, Inc., and was at all times relevant hereto acting within the scope and course of his duties and/or employment responsibilities.

25. Defendant R. and F. Miller, Inc. is vicariously liable for the actions of its agent and/or employee, Eddie C. Roberts, who was negligent in the following particulars:

- a. In operating his vehicle while susceptible to, and in actuality falling asleep at the wheel;
- b. In failing to observe and heed another truck traveling on the highway in front of him, and colliding with it;
- c. In operating his vehicle at an excessive rate of speed considering the circumstances existent at the time of the first collision;
- d. In failing to keep and maintain his vehicle under safe and adequate control;
- e. In losing control of his vehicle;
- f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
- g. In operating his vehicle when he was not fit and competent to do so;
- h. In driving in a careless and reckless fashion;

- i. In failing to stop, slow, or take evasive action before colliding with the above mentioned truck operated by Jamie Harvey Parker at a high rate of speed.

26. The negligence of Defendants Eddie C. Roberts, and R. and F. Miller, Inc. were substantial factors in causing the first and second collisions described herein, and thus were substantial factors in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Eddie C. Roberts and R. and F. Miller, Inc., jointly and severally for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count III
Negligence
Plaintiff James U. Lux vs.
Defendant Jamie Harvey Parker

27. Paragraphs 1 through 26 and 30 through 44 are hereby incorporated by reference as if fully restated herein.

28. At the time of the first collision described herein, Jamie Harvey Parker was negligent in the following particulars:

- a. In operating his 1998 International Truck and attached cargo trailer without a driver's license;
- b. In operating his vehicle at a dangerously slow speed;
- c. In failing to display and utilize the proper safety warning apparatus upon his vehicle;
- d. In fleeing the scene of the first collision, without identifying himself, and

in doing so spreading the field of collision debris across a greater area than that caused by the initial collision;

- e. In fleeing the scene of the first collision, and causing law enforcement officials at the scene of the first collision to be required to leave the scene of the first collision in order to apprehend and arrest him, thus diverting them from activities in securing and safeguarding the scene of the first collision;
- f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
- g. In operating his vehicle when he was not fit and competent to do so
- h. In driving in a careless and reckless fashion;

29. The negligence of Defendant Jamie Harvey Parker was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant Jamie Harvey Parker for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count IV
Negligence
Plaintiff James U. Lux vs.
Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc.

30. Paragraphs I through 29 and 33 through 44 are hereby incorporated by reference as if fully restated herein.

31. Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc. were negligent in the following particulars:

- a. Failing to adequately train their driver/operators, including Defendant Samuel Thomas Knight;
- b. Failing to adequately supervise their driver/operators, including Defendant Samuel Thomas Knight;
- c. Failing to adequately perform background investigations and otherwise negligently hiring unqualified or unfit individuals, including Defendant Samuel Thomas Knight;
- d. Requiring and/or permitting their drivers/operators to drive without proper rest, and/or in violation of applicable hours of service limitations;
- e. Failing to adequately supervise and monitor the activities of their driver/operators, including Defendant Samuel Thomas Knight;
- f. Failing to take corrective measures for improper and unsafe activities of their driver/operators, including Defendant Samuel Thomas Knight;
- g. Permitting their drivers/operators, including Defendant Samuel Thomas Knight, to continue driving despite repetitive safety violations, and in violation of motor carrier safety regulations;

- h. Negligently entrusting the operation of their trucks to drivers/operators who were incompetent and/or reckless;

32. The negligence of Defendants Gerald E. Ort Trucking and Ort Trucking, Inc. was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Gerald E. Ort Trucking and Ort Trucking, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count V
Negligence
Plaintiff James U. Lux vs.
Defendant R. and F. Miller, Inc.

33. Paragraphs 1 through 32 and 36 through 44 are hereby incorporated by reference as if fully restated herein.

34. Defendant R. and F. Miller, Inc. was negligent in the following particulars:

- a. Failing to adequately train their driver/operators, including Defendant Eddie C. Roberts;
- b. Failing to adequately supervise their driver/operators, including Defendant Eddie C. Roberts;
- c. Failing to adequately perform background investigations and otherwise negligently hiring unqualified or unfit individuals, including Defendant Eddie C. Roberts;
- d. Requiring and/or permitting their drivers/operators to drive without proper rest, and/or in violation of applicable hours of service limitations;

- e. Failing to adequately supervise and monitor the activities of their driver/operators, including Defendant Eddie C. Roberts;
- f. Negligently entrusting the operation of their trucks to drivers/operators who were incompetent and/or reckless;

35. The negligence of Defendant R. and F. Miller, Inc. was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against R. and F. Miller, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count VI
Negligence
Plaintiff James U. Lux vs.
Defendant Commonwealth of Pennsylvania

36. Paragraphs 1 through 35 and 40 through 44 are hereby incorporated by reference as if fully restated herein.

37. Defendant PennDot is charged with the responsibility of keeping the roadways which it owns and or controls in a reasonable safe condition for the traveling public.

38. Defendant PennDot negligently caused, allowed or permitted a dangerous condition of Interstate 80, a highway which it owned or had custody of, in the following particulars:

- a. In failing to provide a reasonably safe roadway;
- b. In negligently conducting repairs of conditions in the roadway caused by the first collision;

- c. In violating the PennDot regulations and requirements for placement and maintenance of a traffic plan for the protection of traveling public in a construction zone;
- d. In failing to place advance warning signs in the proper and required positions on and adjacent to Interstate 80 to warn the traveling public of the construction zone ahead;
- e. In failing to place a left arrow board truck and a crash truck at the appropriate locations to warn the traveling public of the construction zone, instead necessitating the presence of the Squad Safety vehicle which was then collided into at the time of the second collision;
- f. In failing to provide adequate equipment, repair supplies and materials, and safety vehicles sufficient to secure and safeguard the scene of the repairs being undertaken;
- g. In unreasonably delaying in the conduct of its repair activities;

39. The negligence of PennDot was a substantial factor in causing the second collision described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant PennDot for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count VII
Negligence
Plaintiff James U. Lux vs.
Defendant Simon Transportation Services, Inc.

40. Paragraphs through 1 through 39 are hereby incorporated by reference as if fully restated herein.

41. Defendant Simon Transportation Services, Inc ("Simon Transportation") is the successor in interest of Defendant Gerald E. Ort Trucking, Inc., having contracted to acquire and having acquired all of the business of Gerald E. Ort Trucking, Inc., and having taken over the operation of its predecessor's trucking operations.

42. Such activities of Simon Transportation constitutes a *de facto* merger with, and the continuation of the business enterprise conducted by, Defendant Gerald E. Ort Trucking, Inc.

43. The transaction between Simon Transportation was conducted without adequate consideration and/or for the purpose of avoiding the obligations of Gerald E. Ort Trucking, Inc.

44. As a result, Defendant Simon Transportation is liable for the actions of Defendant Gerald E. Ort Trucking, Inc. and liable to the Plaintiff herein.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant Simon Transportation Services, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

A JURY TRIAL IS DEMANDED.

Cooper Owen & Renner, P.C.

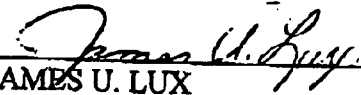
By: 

Jeffrey R. Owen, Esquire

VERIFICATION

I, JAMES U. LUX, hereby state that I am the Plaintiff, and I hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my information, knowledge and belief.

This statement is made pursuant to the penalties of 18 Pa. Cons. Stat. Ann. §4904, relating to unsworn falsification to authorities.


JAMES U. LUX

Dated: APRIL 3, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER has been served upon the following counsel by mailing a copy, postage pre-paid, this 11th day of MAY, 2001, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

John T. Pion, Esquire
Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Simon Transportation Services,
Inc.
6100 Neil Road
Reno, Nevada 89511

Jamie Harvey Parker
500 South Ohio Street
Humansville, Missouri 65613

Commonwealth of PA
Department of Transportation
1924-30 Daisy Street
Clearfield County, PA 16830

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

ORDER OF COURT

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2001, upon consideration of the Defendants' Preliminary Objections in the Nature of a Demurrer, it is hereby Ordered, Adjudged and Decreed that this motion is Granted. Plaintiff's Complaint as to these Defendants is dismissed with prejudice.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

v.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

NOTICE TO PLEAD

To: Plaintiff

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

By: Nancy L. Heilman
Attorney for Defendant,
Simon Transportation Services, Inc.

CIVIL DIVISION

Case No. 01-466-CO

ANSWER AND NEW MATTER

Filed on behalf of Defendant
Simon Trucking

Counsel of Record for this Party:

Nancy L. Heilman
Pa. I.D. No. 51121

COHEN & GRIGSBY, P.C.
Firm I.D. No.621
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319
(412) 297-4900

FILED

MAY 14 2001

William A. Shaw
Prothonotary

ANSWER AND NEW MATTER

Defendant Simon Transportation Services, Inc. ("Simon"), through its counsel Cohen & Grigsby, P.C., files this Answer and New Matter to the Complaint of Plaintiff James U. Lux and avers as follows.

ANSWER

1. On information and belief, paragraph 1 of the Complaint is admitted.
2. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and, therefore, those allegations are denied.
3. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and, therefore, those allegations are denied.
4. Paragraph 4 of the Complaint is admitted in part and denied in part. It is admitted that Defendant Simon is a Nevada corporation located at the alleged address. It is specifically denied that Defendant Simon is the successor-in-interest to Gerald E. Ort Trucking, Inc.
5. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and, therefore, those allegations are denied.
6. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint and, therefore, those allegations are denied.

7. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint and, therefore, those allegations are denied.

8. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint and, therefore, those allegations are denied.

9. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint and, therefore, those allegations are denied.

10. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint and, therefore, those allegations are denied.

11. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and, therefore, those allegations are denied.

12. Paragraph 12 of the Complaint states a legal conclusion to which no response is required; however, to the extent that a response may be deemed to be necessary, that allegation is denied. To the extent that the allegations of paragraph 12 may be deemed to be factual, after reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint and, therefore, those allegations are denied.

13. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and, therefore, those allegations are denied.

14. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint and, therefore, those allegations are denied.

15. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and, therefore, those allegations are denied.

16. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and, therefore, those allegations are denied.

17. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and, therefore, those allegations are denied.

18. After reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18, and subparagraphs a, b, c, d, and e of paragraph 18, of the Complaint and, therefore, those allegations are denied.

Count I

19. Defendant Simon's Answer to paragraphs 1 through 18 and 23 through 44 of the Complaint are incorporated here by reference as if fully set forth.

20. Paragraph 20 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

21. Paragraph 21, and subparagraphs a, b, c, d, e, f, g, h, i, and j of paragraph 21, of the Complaint state legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

22. Paragraph 22 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Count II

23. Defendant Simon's Answer to paragraphs 1 through 22 and 27 through 44 of the Complaint are incorporated here by reference as if fully set forth.

24. Paragraph 24 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

25. Paragraph 25, and subparagraphs a, b, c, d, e, f, g, h, and i of paragraph 25, of the Complaint state legal conclusions to which no response is

required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

26. Paragraph 26 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Count III

27. Defendant Simon's Answer to paragraphs 1 through 26 and 30 through 44 of the Complaint are incorporated here by reference as if fully set forth.

28. Paragraph 28, and subparagraphs a, b, c, d, e, f, g, and h of paragraph 28, of the Complaint state legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

29. Paragraph 29 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed

and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Count IV

30. Defendant Simon's Answer to paragraphs 1 through 29 and 33 through 44 of the Complaint are incorporated here by reference as if fully set forth.

31. Paragraph 31, and subparagraphs a, b, c, d, e, f, g, and h of paragraph 31, of the Complaint state legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

32. Paragraph 32 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Count V

33. Defendant Simon's Answer to paragraphs 1 through 32 and 36 through 44 of the Complaint are incorporated here by reference as if fully set forth.

34. Paragraph 34, and subparagraphs a, b, c, d, e, and f of paragraph 34, of the Complaint state legal conclusions to which no response is required; however, to

the extent that a response may be deemed to be necessary, those allegations are denied.

35. Paragraph 35 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Count VI

36. Defendant Simon's Answer to paragraphs 1 through 35 and 40 through 44 of the Complaint are incorporated here by reference as if fully set forth.

37. Paragraph 37 of the Complaint appears to state a legal conclusion to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied. To the extent that paragraph 37 purports to state factual allegations, after reasonable investigation, Defendant Simon is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and, therefore, those allegations are denied.

38. Paragraph 38, and subparagraphs a, b, c, d, e, f and g of paragraph 38, of the Complaint state legal conclusions to which no response is required; however,

to the extent that a response may be deemed to be necessary, those allegations are denied.

39. Paragraph 39 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Count VII

Negligence

(Against Simon Transportation Services, Inc.)

40. Defendant Simon's Answer to paragraphs 1 through 39 of the Complaint are incorporated here by reference as if fully set forth.

41. Paragraph 41 of the Complaint is denied.

42. Paragraph 42 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied. To the extent that paragraph 42 states factual allegations, those allegations are denied.

43. Paragraph 43 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied. To the extent that paragraph 43 states factual allegations, those allegations are denied.

44. Paragraph 44 of the Complaint states legal conclusions to which no response is required; however, to the extent that a response may be deemed to be necessary, those allegations are denied.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed and judgment be entered in favor of Defendant Simon Transportation Services, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

NEW MATTER

45. Defendant Simon Transportation Services, Inc., a Nevada corporation, is a holding company for Dick Simon Trucking, Inc., a Utah corporation.

46. Defendant Simon is not a successor-in-interest to Defendant Gerald E. Ort Trucking, Inc., and did not enter into a contract to acquire all of the business of Defendant Gerald E. Ort Trucking, Inc. ("Ort Trucking").

47. Defendant Simon is not liable for any of the actions of Defendant Ort Trucking, including the alleged liability to Plaintiff.

48. On February 23, 2001, Dick Simon Trucking, Inc., a Utah corporation ("Simon Trucking"), entered into a sale Agreement ("Agreement") with Ort Trucking to acquire only a limited portion of the assets of Ort Trucking. (A copy of the Agreement is attached as Defendant's Exhibit A to Defendant Simon's New Matter.)

49. Through the Agreement, Simon Trucking acquired certain equipment and leases and the exclusive opportunity to hire former Ort Trucking drivers and

independent contractor drivers as new employees of Simon Trucking. (Agreement, ¶¶ 1, 2)

50. Simon Trucking specifically did not assume any liabilities or obligations of Ort Trucking or its Shareholder of any kind or nature whatsoever, except for those specific obligations for initial payments to Ort Trucking and payments to GE Capital for the transfer of certain equipment and the assignment of leases and assumption of future lease payments, as set forth in the Agreement. (Agreement, ¶ 5.3; Exhibit B to the Agreement)

51. The Agreement provided that Simon Trucking did not assume any liability or obligation of or relating to Ort Trucking or its Shareholder "arising out of any action, suit, claim, or proceeding based upon[] any event occurring prior to the Closing." (Agreement, 5.3(v))

52. Simon Trucking did not purchase the stock of Ort Trucking and is not the successor-in-interest to Ort Trucking.

53. As of March 9, 2001, General Electric Capital Corporation ("GE Capital"), Ort Trucking, Scott Ort, Thomas Ort, and Simon Trucking entered into a Consent, Transfer and Assignment Agreement ("Assignment Agreement"). (A copy of the Assignment Agreement is attached as Exhibit B to Defendant Simon's New Matter.)

54. According to the Assignment Agreement, Ort Trucking was indebted to GE Capital, which indebtedness was secured by senior liens, mortgages and security interests granted by Ort Trucking to GE Capital. As of the date on which the parties entered into the Assignment Agreement, Ort Trucking was in default of

its obligations under certain Finance Agreements. (Assignment Agreement, ¶¶ A, E)

55. GE Capital held a security interest in all of the assets subject to sale in the transaction contemplated by the Agreement. (Assignment Agreement, ¶ G)

56. In the Assignment Agreement, GE Capital consented to the transactions contemplated by the Agreement, including the sale to Simon Trucking of a limited number of Ort Trucking's assets. (Assignment Agreement, ¶ 5)

57. The Assignment Agreement provides that, after certain initial payments to Ort Trucking, Simon Trucking shall pay all amounts due under the Agreement directly to GE Capital. (Assignment Agreement, ¶ 2)

58. The Agreement and the Assignment Agreement did not effect a merger, *de facto* or otherwise, of Simon Trucking and Ort Trucking.

59. As a result, there is no basis for liability to attach to Simon Trucking for any of the alleged actions of Ort Trucking relating to Plaintiff's alleged injuries.

60. Plaintiff, therefore, fails to state a claim against either Simon Transportation Services, Inc., or Dick Simon Trucking, Inc., for which relief can be granted to Plaintiff in this Court.

WHEREFORE, Defendant Simon Transportation Services, Inc., respectfully requests that all claims for damages in favor of Plaintiff James U. Lux be dismissed

and judgment be entered in favor of Defendant Simon Transportation Services, Inc., and Dick Simon Trucking, Inc., with an award of attorneys fees, expenses, and court costs, and other relief that the Court deems to be just.

Respectfully Submitted,

COHEN & GRIGSBY, P.C.

By: *Nancy L. Heilman*
Nancy L. Heilman
Pa. I.D. No. 51121

11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319
(412) 297-4900

Counsel for Defendant,
Simon Transportation Services, Inc.

VERIFICATION

I, Mark E. Wilkey, have read the foregoing Answer and New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

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

I am authorized to make this statement and verification on behalf of Dick Simon Trucking, Inc., because of my position as General Counsel.



Mark E. Wilkey

Date: May 9, 2001



A

AGREEMENT

THIS AGREEMENT is made as of February 23, 2001, by and among Dick Simon Trucking, Inc., a Utah corporation ("Simon"); Gerald E. Ort Trucking, Inc., a Wisconsin corporation (the "Company"); and Scott Ort, the Company's sole shareholder ("Shareholder").

RECITALS

The Company is a trucking company and the owner of certain assets. The Company has determined not to continue in the trucking business. The Company proposes to sell and Simon proposes to acquire only a limited portion of the Company's assets. The parties desire to reduce their agreement to writing and make certain other agreements as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, representations, and warranties herein contained, and upon the terms and conditions hereinafter set forth, the parties hereto agree as follows:

TERMS

1. Purchase and Condition of Assets; Lease of Property.

1.1 Purchase of Specific Assets. At the Closing, the Company shall sell to Simon and Simon shall purchase the assets listed on Exhibit A (collectively, along with the tractors and trailers included in the Leased Equipment if transferred to Simon pursuant to Section 5.2, the "Transferred Assets") free and clear of all liens, claims, encumbrances, security interests, and impairments of title of any kind or nature ("Liens"), other than the Liens of G.E. Capital on the tractors included in the Assigned Equipment Leases and tractors and trailers included in the Leased Equipment (the "G.E. Capital Liens").

1.2 Purchase Price; How Payable. Simon shall deliver the amounts set forth below (the "Purchase Price"), by certified funds or wire transfer of immediately available funds, as follows:

- (i) \$2,815,000 shall be paid directly to G.E. Capital Corporation, on a deferred basis pursuant to the consent letter attached as Exhibit B, as follows:
 - (a) \$160,000 on or before each of March 3, 2001, April 3, 2001, and May 3, 2001; and
 - (b) \$2,335,000, plus interest as set forth on Exhibit B, on or before June 28, 2001, in the event title to the Leased Equipment free of Liens is delivered to Simon;
- (ii) the balance of up to \$584,000 (the "Cash Purchase Price") shall be delivered to the Company at the Closing; and
- (iii) the Driver Payment shall be paid pursuant to Section 2.

1.3 Inspection. For the period commencing with Closing and continuing for four weeks thereafter, (i) Simon shall inspect all tractors and trailers included in the Leased Equipment and Assigned Equipment Leases and document such inspections through a written inspection report in the form of Exhibit C with respect to tractors and Exhibit D with respect to trailers, and (ii) Simon shall inspect the Transferred Assets to verify they are in good repair and condition, ordinary wear and tear excepted.

1.4 Condition of Equipment. The Company and Shareholder, jointly and severally, represent and warrant the following as to the condition and title of the Transferred Assets and tractors subject to the Assigned Equipment Leases: (i) each of the Transferred Assets is in good repair and condition and, if a tractor or trailer, acceptable for use as intended in the interstate transportation of truckloads of freight; (ii) each tractor and trailer has been maintained in accordance with the manufacturer's specifications and warranties; (iii) each tractor and trailer meets all DOT requirements, has less than \$500 of damage, does not require engine or drive train repair, has no seat tears or broken or cracked glass, has all major systems functioning properly, and has all required safety equipment; (iv) each Transferred Asset other than tractors and trailers is in good repair and condition, not obsolete, and adequate for use in the ordinary course of business; (v) each of the tractors and trailers has at least 50% tread depth on all tires and at least 50% wear remaining on all brakes; and (vi) each of the Transferred Assets is owned by the Company free and clear of all Liens, provided, that the Leased Equipment shall remain subject to the G.E. Capital Liens until the payments referenced in Section 1.2(i) are made.

1.5 Adjustment to Purchase Price. The Purchase Price shall be reduced by, and the Company and Shareholder shall jointly and severally indemnify Simon with respect to, the amount, if any, equal to (a) the value of any Transferred Assets that are missing, destroyed, or damaged beyond ordinary repair (any such assets being excluded from the transaction and retained by the Company) plus (b) the amount required to bring the Transferred Assets into the condition required under Section 1.4 hereof. As an alternative to adjusting the Purchase Price under clause (b) of the preceding sentence, the parties may agree to exclude an asset from the transaction. In such event, Company shall retain the asset and the Purchase Price shall be reduced accordingly.

1.6 Risk of Loss. Subject to Section 9.1, the Company shall bear the risk of loss and repair to the Transferred Assets prior to Closing, including the cost of repair for material damage or restoration to operating condition where such damage to or cessation of operation of any of the Transferred Assets occurs prior to Closing. Subject to Section 9.1, Simon shall bear risk of loss to the Transferred Assets after Closing.

1.7 Real Estate Leases. Simon shall lease the properties owned by the Company in Carthage, Missouri, and New London, Wisconsin for a term of one year following Closing, at an aggregate monthly rental for both properties in the amount of \$15,000. Such leases shall be gross leases, with the Company to pay all taxes, repairs, and maintenance, and Simon paying only utilities, insurance, and telephone charges (in addition to rent). Under the leases, Simon shall also have the use of all office furniture, fixtures, and equipment that are present on the premises on the date hereof. At Closing, the parties shall enter into the leases attached as Exhibits E and F (the "Real Estate Leases"), pursuant to the foregoing terms. The Real Estate Leases shall provide Simon with a right of first refusal on any sale of the subject property during the term, or prior to the expiration, of the Real Estate Leases.

1.8 Allocation. The parties shall jointly allocate the Purchase Price (as defined in Section 1.2) and all other costs that are capable of being capitalized among the Transferred Assets on IRS Form 8594.

2. Drivers. The Company grants Simon the exclusive opportunity to hire all Company employee drivers and independent contractor drivers (collectively, "Drivers") as of the Closing. The Company shall provide Simon a list of the Drivers as of Closing. The Company and Shareholder shall use its commercially reasonable efforts to cooperate and assist Simon in its attempts to hire and contract with the Drivers it desires. Each Driver that meets Simon's eligibility standards shall be offered employment or a contract with Simon. Simon shall pay the Company \$1,000 on the tenth day following the six month anniversary of the Closing ("Driver Payment") for each eligible Driver that accepts employment or contracts with Simon ("Closing Date Driver") and has continuous service to Simon for six months after Closing. While the parties acknowledge and agree that Simon shall have the sole right and obligation to manage the employment or independent contractor relationship with such parties following Closing, Simon covenants and agrees that it shall not manage such relationship in a manner designed to limit the compensation arrangement set forth above; provided that Simon shall not be prevented from managing employee and independent contractor speed and compensation arrangements on a basis consistent with Simon's practices. The Company shall pay, within fourteen (14) days following Closing, all Closing Date Drivers all compensation accrued through Closing Date, including all accrued vacation, sick leave, and remaining escrow amounts, if any.

3. Representations of the Company and Shareholder. The Company and Shareholder, jointly and severally, represent and warrant the following:

3.1 Corporate Approvals. The Company is a duly formed, validly existing Wisconsin corporation, with full power and authority to enter into this Agreement by and through the officer executing his name hereto, and any corporate approvals required will have been obtained at or prior to the Closing, including, but not limited to, requisite approvals of the Shareholder and the Board of Directors of the Company.

3.2 Authorizations. Except for those actions to be taken post-Closing pursuant to Section 8.4, at and as of the Closing all corporate, governmental, and other actions (other than those to be taken by Simon) will have been duly taken to approve and authorize the execution and delivery of this Agreement, the transfer of the Transferred Assets at the Closing, the assignment of the Assigned Equipment Leases, the lease of the Leased Equipment, the performance and consummation by the Company and Shareholder of the transactions contemplated herein, and the execution and delivery of all documents required hereunder and incidental hereto. As of the Closing the Company and Shareholder will have obtained all consents of third parties required to transfer the Transferred Assets, assign the Assigned Equipment Leases, lease the Leased Equipment, and taken the other actions required of the Company and Shareholder under this Agreement. The execution, delivery, and performance of this Agreement by the Company and Shareholder will not result in violation of, or a default under, any agreement, charter document, or other obligation to which either is a party or by which either may be bound. This Agreement constitutes the valid and binding obligation of the Company and Shareholder and is enforceable in accordance with its terms.

3.3 Financial Statements. The Company has delivered to Simon copies of its balance sheet and the related statements of earnings and retained earnings and of changes in financial position at and for the periods ended 1999 (reviewed, but unaudited) and 2000 (reviewed, but unaudited). Such financial statements present fairly, in all material respects, the financial

condition and results of the operations of the Company at and for the respective periods to which they relate.

3.4 Operating Information. The Company has provided to Simon certain operating information, customer lists, rates charged customers, miles per tractor, empty miles, and other information underlying the financial statements provided to Simon. All of such information is accurate in all material respects and fairly depicts the operations represented by such information.

3.5 No Changes. Since December 31, 1999, the Company has not experienced any material, adverse event, including but not limited to a notification of termination of or reduction in customer traffic or revenues or efforts to organize employees in a collective bargaining unit.

3.6 Litigation. There is no material action, suit, proceeding, demand, claim, assessment, judgment, litigation, lien, claim, or governmental investigation against the Company or Shareholder, or otherwise outstanding, pending, or, to their knowledge, threatened which (i) questions or might question the validity or legality of the transactions contemplated hereby, (ii) seeks or might seek to enjoin any transaction contemplated hereby, (iii) seeks or might seek damages on account of the consummation of any transaction contemplated hereby, (iv) seeks or might seek to impair or place a lien on the Transferred Assets, the equipment the subject of the Assigned Equipment Leases, or Leased Equipment, or (v) seeks damages from the Company (other than claims for which the Company is fully insured). Neither the Company nor Shareholder is the subject of any claim involving any employment or tax matter, nor is the Company or Shareholder aware of any factual basis of such a claim.

3.7 No Default. The Company is not in material default under any contract, agreement, license, franchise, lease, permit, or other document which might affect Simon's rights thereunder if assigned to Simon, the Transferred Assets, the equipment the subject of the Assigned Equipment Leases, or Leased Equipment, or any performance hereunder.

3.8 No Restriction. Neither the Company nor Shareholder is a party to, or subject to or bound by, any judgment, injunction, or decree of any court or governmental authority that restricts or prohibits the performance by the Company and Shareholder of the terms and conditions of this Agreement.

3.9 Taxes. There are no tax liens attached to the Transferred Assets, Leased Equipment, or the equipment the subject of the Assigned Equipment Leases. The Company has complied in all material respects with all applicable laws, rules, and regulations relating to the payment and withholding of taxes and has, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all amounts required to be so withheld and paid over under all applicable laws.

3.10 Compliance With Laws. The Company has owned, leased, and used all of its properties and has conducted its business, in compliance in all material respects with all applicable laws. The Company has not been charged with, and is not under investigation by, any governmental authority with respect to, any material violation of law. No material judgment is unsatisfied against the Company, and neither the Company or Shareholder is subject to any material stipulation, order, consent, or decree arising from an action before any governmental authority.

3.11 Compliance Reviews. The Company currently has a "satisfactory" safety and fitness rating from the Federal Highway Administration ("FHWA") as a result of its most recent

compliance review. The Company did not receive an unsatisfactory or conditional rating for any of the factors that are considered by FHWA in determining a carrier's safety fitness rating. The Company is in compliance in all material respects with all Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. The Company prior to Closing will have provided Simon with access to all of its driver files and all information relating to its compliance review and related action by the FHWA.

3.12 Drivers; Employees.

3.12.1 The Company is not a party to any collective bargaining agreement relating to its employees, nor does any such agreement determine the terms and conditions of employment of any such employee. In the past five years there has not been any organized labor unrest or union organizing activity involving the Company.

3.12.2 The Company is not a party to an employment contract with any employee, and there are no agreements, plans, or policies that would give rise to any severance, termination, change-in-control, accrued vacation, or other similar payment to employees or independent contractors of the Company as a result of the consummation of this Agreement.

3.12.3 Schedule 3.12.3 identifies each of the Company's employee benefit plans, including all retirement, profit sharing, defined contribution, and defined benefit plans, as well as any severance, vacation pay, health and welfare, employment, or other agreements (oral or written) relating to employees of the Company (collectively, "Plans"). No Plan is a multi-employer or a defined benefit plan, and neither the Company nor any predecessor or Affiliate (which for all purposes in this Agreement means any person or entity controlling, controlled by, or under common control with another person or entity) of the Company or a predecessor has ever been a party to or sponsored a multi-employer or defined benefit plan. The Company is not a member of a group of businesses under common control or businesses constituting a single employer (a "Group"), except a Group in which no member has been a party to a defined benefit plan, nor, does the Company have any current or projected liability with respect to post-employment or post-retirement pension benefits for former or retired employees of the Company, affiliated entities, or a member of a Group.

3.13.4 The Company maintains files on all employee drivers and independent contractors, and each employee driver, independent contractor, and file meets all DOT requirements.

3.14 Environment, Health, and Safety. With regard to premises the subject of the Real Estate Leases, the Company has complied with all laws concerning pollution or protection of the environment, all laws concerning public health and safety, and all laws concerning employee health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes (including petroleum and any fraction or derivative thereof) into ambient air, surface water, ground water, or lands, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or hauling of such substances (collectively, "Environmental Laws"), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against it alleging any failure so to comply, nor is the Company or Shareholder aware of any factual basis therefor. The

Company has obtained and been in compliance with all of the terms and conditions of all material permits, licenses, franchises, and other approvals required under all Environmental Laws.

4. Representations of Simon. Simon represents, warrants, and guarantees the following:

4.1 Corporate Approvals. Simon is a duly formed, validly existing Utah corporation, with full power and authority to enter into this Agreement by and through the officer executing his name hereto, and any corporate approvals required will have been obtained at or prior to Closing.

4.2 Authorization. All corporate action to the extent necessary has been duly taken to approve and authorize Simon's execution and delivery of this Agreement, the purchase of the Transferred Assets, properties, and rights of the Company as provided for herein, the performance of the transaction contemplated herein, and the execution of the documents required hereunder and incidental hereto. The execution, delivery, and performance of this Agreement by Simon will not result in violation of, or a default under, any agreement, charter document, or other obligation to which it is a party or by which it may be bound. This Agreement constitutes the valid and binding obligation of Simon and is enforceable in accordance with its terms.

5. Assumption of Leases and Liabilities; Lease of Equipment.

5.1 Assigned Equipment Leases. At the Closing, Simon shall assume the leases for five (5) Year 2000 Freightliner tractors, #1311 through #1315, and for five (5) Year 2000 Volvo tractors, #1316 through #1320, with G.E. Capital Corporation ("G.E. Capital") pursuant to the Equipment Assignment and Assumption Agreement attached as Exhibit G, or such other agreement acceptable to G.E. Capital and Simon (the "Assigned Equipment Leases").

5.2 Lease of Trailers and Tractors. Upon presentation to Simon of a consent letter in the form of Exhibit B, Simon shall lease from the Company the tractors and refrigerated trailers financed by the Company through G.E. Capital and listed on Exhibit A (the "Leased Equipment"). The lease for the Leased Equipment shall extend until the earlier of (i) the payment of \$2,815,000, in the aggregate, to G.E. Capital pursuant to Section 1.2(i) ("Payoff"), or (ii) if the Company cannot produce title to the Leased Equipment free and clear of all Liens not later than June 28, 2001, Simon may terminate the Lease on such date, retain the Payoff, and seek indemnification from the Company and shareholder for payments to G.E. Capital that exceed the fair rental value of the Leased Equipment for the term of the lease. Simon shall provide customary insurance, and pay all operating expenses, with respect to the Leased Equipment and name the Company as an additional insured for the duration of such Lease.

5.3 Liabilities Not Assumed. Simon is not assuming, and shall not be deemed to have assumed, any liabilities or obligations of the Company or Shareholder of any kind or nature whatsoever. Without limiting the generality of the foregoing, it is hereby agreed that Simon is not assuming, and shall not be deemed to have assumed, any liability and shall not have any obligation for or with respect to any liability or obligation of or relating to the Company or Shareholder (i) for any prepayment penalty, late fee, interest, or other amount arising before or as of the date of Closing on the Transferred Assets; (ii) any payment, penalty, late fee, interest, or other amount arising before or as of the date of Closing on the Assigned Equipment Leases, Real Estate Leases, or Leased Equipment; (iii) for wages, bonuses, accrued vacation or sick leave, or other payments due for any reason to the Company's employees for periods during which they were employees of the Company; (iv) for any sales, use, excise, income, franchise, or other taxes, or any legal, accounting, brokerage, finder's fees, or other expenses of whatsoever kind or nature

incurred by; or (v) arising out of any action, suit, claim, or proceeding based upon, any event occurring prior to the Closing. Other than the limited assumption of the Assigned Equipment Leases, the Company and Shareholder shall indemnify, defend, and hold harmless Simon against all such liabilities of the Company and Shareholder as provided in Section 10.2. All employees of the Company who may be employed by Simon on or after the Closing shall be new employees of Simon and any prior employment by the Company of such employees shall not affect entitlement to, or the amount of, salary or other cash compensation, current or deferred, which Simon may make available to its employees, except as otherwise required by law, as determined by Simon.

6. Noncompetition Agreement.

6.1 Noncompetition. The parties have negotiated the noncompetition provisions of this Agreement as an integral part of the transaction and agree that \$100,000 of the Purchase Price shall be allocated to this Noncompetition Agreement. The Company and Shareholder acknowledge that Simon is willing to pay the Purchase Price, assume the Assigned Equipment Leases, and enter into the Real Estate Leases, each at a substantial benefit to the Company and the Shareholder, and proceed with the transaction because of the Company's customer relationships, and other prospects, and that such prospects would be severely and irreparably harmed by competition from the Company or Shareholder. The Company and Shareholder further acknowledge that Simon would not have entered into this Agreement without the noncompetition provisions contained herein. The Company and Shareholder willingly agree to the noncompetition provisions hereof and agree that the noncompetition provisions are reasonable and are necessary to induce Simon to enter into this Agreement.

6.2 Scope. In consideration of the Closing of this Agreement, the Company, Shareholder, and his spouse hereby agree that they shall not, for a period commencing on the Closing and ending five (5) years after the last day of Shareholder's employment with Simon or an affiliate of Simon, directly or indirectly: (i) engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with, lend their name or any similar name to, lend their credit to or render services or advice to any Competitive Business; (ii) whether for their own account or for the account of any other person, after the Closing solicit Competitive Business from any person that is or was a customer of either the Company or Simon; (iii) whether for their own account or the account of any other person, after the Closing solicit, employ, or otherwise engage as an employee, independent contractor, or otherwise, any person who is or was an employee or independent contractor of the Company or Simon or in any manner induce or attempt to induce any employee or independent contractor of the Company or Simon to terminate his or her employment or engagement with Simon, or at any time interfere with Simon's relationship with any person, including any person who was an employee, contractor, supplier, or customer of the Company or Simon; or (iv) after Closing, disparage Simon or any of its stockholders, directors, officers, employees, or agents. For the purposes of this Section 6, Competitive Business shall include both dry van and refrigerated (including temperature-controlled) operations in the United States, as well as those brokerage, intermodal, logistics, and freight consolidation activities involving refrigerated (including temperature-controlled) and dry van truckload or less-than-truckload transportation in the United States.

6.3 Nature. The obligations of the Company and Shareholder under this Section 6 are referred to herein as the "Noncompetition Obligations." The obligations of the Company and Shareholder shall be joint and several as to any violation of the Noncompetition Obligations by another.

6.4 Enforceability in Jurisdictions. The parties intend to and hereby confer jurisdiction to enforce the Noncompetition Obligations upon the courts of any jurisdiction within the United States. If the courts of any one or more jurisdictions hold the Noncompetition Obligations unenforceable by reason of the breadth of their scope or otherwise, it is the intention of the parties that such determination not bar or in any way affect Simon's right to the relief provided for in this Section 6 in the courts of any other jurisdiction within the United States, as to breaches of the Noncompetition Obligations in such other respective jurisdictions, the Noncompetition Obligations as they relate to each jurisdiction being, for this purpose, severable into diverse and independent obligations.

6.5 Severability. The covenants set forth in this Section 6 shall be deemed and construed as a separate agreement independent of any other provisions of this Agreement or any other agreement between Simon, the Company, and Shareholder. The existence of any claim or cause of action by the Company or Shareholder, or whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Simon of the covenants of this Section 6.

6.6 Damages. The parties acknowledge that the injury that would be suffered by Simon as a result of a breach of the provisions of this Section 6 would be irreparable and that even the award of monetary damages for such breach would be an inadequate remedy. Consequently, Simon shall have the right, in addition to any other rights it may have, to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement, and Simon shall not be obligated to post bond or other security in seeking such relief.

7. Employment of Shareholder. Simon shall hire Shareholder as a full-time at-will employee for a weekly salary of \$2,000 gross.

8. The Closing.

8.1 Time. The transactions contemplated by this Agreement shall be consummated at a Closing to be held at the offices of the Company at 3:30 p.m. on February 23, 2001, or such other time or place as the parties may agree (the "Closing").

8.2 Deliveries. At the Closing, the Company shall deliver or caused to be delivered to Simon the following:

8.2.1 Possession and the right of operation of all of the Transferred Assets and tractors included in the Assigned Equipment Leases.

8.2.2 A duly executed Bill of Sale for the Transferred Assets (other than the Leased Equipment) in substantially the form attached as Exhibit H and duly executed Real Estate Leases.

8.2.3 The fully executed Assignment and Assumption Agreement relating to the Assigned Equipment Leases.

8.2.4 A G.E. Capital consent letter in the form of Exhibit B.

8.3 At the Closing, Simon shall deliver to the Company the Cash Purchase Price.

9. Conduct of Post-Closing.

9.1 Completion of Loads. The Company shall be responsible for billing, collection, and for other costs, expenses, liabilities, and claims in connection with all shipments dispatched prior to the Closing (and until such shipment has been delivered and the driver is available for dispatch in the case of shipments being completed after the Closing), and all revenue from such shipments shall be for the Company's account. Any amounts relating to such pre-Closing shipments collected by Simon shall be turned over to the Company immediately as received. Simon shall be responsible for dispatching, and shall receive all revenue from, all loads dispatched after the Closing.

9.2 Disclosure. The Company and Shareholder consent to the disclosure of material terms of this transaction as are required by Federal or State securities laws.

9.3 Name Change. Within thirty (30) days after Closing, the Company shall change its corporate name to a name that does not include the words "Ori," "trucking," "transport," "transportation," "motor," "freight," "cargo," "express," or any similar word denoting the trucking business.

9.4 Use of Trailers. After the Closing for a period of up to two months, Simon shall be entitled to use, at no additional cost, up to 100 of the 48' refrigerated trailers being retained by the Company. ~~Simon shall provide customary insurance on any trailers being retained by the Company.~~ Simon shall provide customary insurance, and pay all operating costs, on any trailers it uses and return such trailers to New London, Wisconsin, or Carthage, Missouri at its option. 50

10. Survival of Representations, Warranties, and Covenants; Indemnification.

10.1 Survival of Representations, Warranties, and Covenants. All representations, warranties, and agreements made by the Company, Shareholder, and Simon, respectively, in this Agreement or pursuant hereto, shall survive the Closing.

10.2 Indemnification by the Company and Shareholder. The Company and Shareholder, jointly and severally, shall indemnify, defend, and hold harmless Simon, its officers, directors, employees, agents, and affiliates from and against any and all claims, causes of action, suits, judgments, taxes, losses, damages, deficiencies, obligations, costs, and expenses (including, without limitation, interest, penalties, and reasonable fees and costs of attorneys and other experts) arising out of or otherwise in respect of (i) any misrepresentation, inaccuracy in, or breach of any representation, warranty, covenant, or agreement of the Company or Shareholder contained in this Agreement or any document executed in connection herewith; and (ii) any liability of the Company or Shareholder whatsoever, including any third-party claims arising from the act or omission of the Company or Shareholder, either prior to or after the Closing.

10.3 Indemnification by Simon. Simon shall indemnify, defend, and hold harmless the Company and Shareholder, their heirs, successors, and assigns, from and against any and all claims, causes of action, suits, judgments, taxes, losses, damages, deficiencies, obligations, costs, and expenses (including, without limitation, interest, penalties, and reasonable fees, and costs of attorneys and other experts) arising out of or otherwise in respect of: (i) any misrepresentation, inaccuracy in, or breach of any representation, warranty, covenant, or agreement of Simon contained in this Agreement or any contract executed in connection herewith; and (ii) any third-party claims relating to the operation of the Transferred Assets or equipment underlying the

Assigned Equipment Leases by Simon, the factual basis of which transaction or claim arose subsequent to the Closing.

10.4 Set-Off. In addition to all other remedies available to Simon under this Agreement or by law, Simon shall be entitled to withhold and set-off any payments under the Real Estate Leases, hereunder, or otherwise due Shareholder or the Company against amounts for which it is entitled to indemnification. If such amounts are later determined to be less than the amount withheld and set-off, Simon shall promptly pay the Company the difference between the amount originally withheld and set-off and the actual amount.

11. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or by recognized overnight courier service on the party to whom notice is to be given, or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To Simon: Jon Isaacson
Simon Transportation Services Inc.
5175 West 2100 South
West Valley City, UT 84120-1252
Telephone: 801-924-7000
Fax: 801-924-7327

With copy to: Heidi Hornung-Scherr
Scudder Law Firm, P.C., L.L.O.
411 S. 13th Street, Suite 200
Lincoln, NE 68508
Telephone: 402-435-3223
Fax: 402-435-4239

To Company: Scott Ort, President
Gerald E. Ort Trucking, Inc.
775 Industrial Park Road
New London, WI 54961-2600
Telephone 800-827-6999
Fax 920-982-4645

With copy to: *None CS*

To Shareholder: Scott Ort, c/o
Gerald E. Ort Trucking, Inc.
775 Industrial Park Road
New London, WI 54961-2600
Telephone 800-827-6999
Fax 920-982-4645

With copy to: *None CS*

12. Miscellaneous Provisions.

12.1 Entire Agreement. This Agreement, the attached Exhibits and Schedule, and the Closing deliveries identified herein contain the entire agreement between the parties hereto with respect to the transactions contemplated herein.

12.2 Expenses. Except as otherwise herein expressly provided, each party shall bear its own expenses (including without limitation fees of their respective attorneys and consultants and experts) incurred by such party in connection with this Agreement or the consummation of the transactions contemplated herein.

12.3 Further Assurances. Following the Closing, upon reasonable request by Simon, the Shareholder, or the Company, the party to which a request was made shall execute, or cause to be executed, and shall deliver to the requesting party such other and further documents of assignment, transfer, and conveyance as may be necessary or advisable, in the reasonable opinion of Simon's counsel or the Company's counsel, to effectively assign, transfer, and convey to Simon all of the Transferred Assets being sold, leases being assumed, leases being entered into, or other benefits to be derived hereunder.

12.4 Amendments. This Agreement shall not be changed or terminated orally and no waiver of compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by a written instrument duly executed by the party to be charged therewith.

12.5 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, legal representatives, and permitted assigns. This Agreement may not be assigned by any party without the prior written consent of the other party; provided that Simon may assign its rights to another member of its corporate group without consent.

12.6 Governing Law. Subject to Section 6.4, in which case the enforcing court shall apply the laws of its home state, this Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

12.7 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be automatically added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

12.8 Headings. Paragraph headings herein are for convenience only and shall not affect the interpretation of any provision.

12.9 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one instrument.

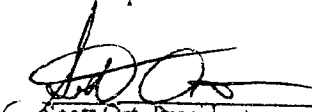
Signature Page to the Asset Purchase Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and
Scott Ort

IN WITNESS WHEREOF, the parties have executed this Agreement of the day, month, and year first written above.

COMPANY:

GERALD E. ORT TRUCKING, INC.,
a Wisconsin corporation


By:


Scott Ort, President

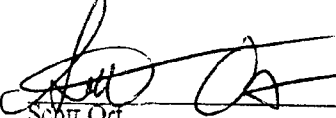
SIMON:

DICK SIMON TRUCKING, INC.,
a Utah corporation

By:


Alban Lang, Secretary/Treasurer

SHAREHOLDER


Scott Ort

SPOUSE OF SHAREHOLDER, as to
noncompetition obligations of Section 6

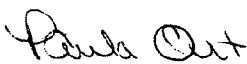

Printed Name: Paula Ort

EXHIBIT INDEX

Exhibit	Description
A	Transferred Assets
B	Consent Letter
C	Inspection Report (Tractors)
D	Inspection Report (Trailers)
E	Real Estate Lease (Carthage, Missouri)
F	Real Estate Lease (New London, Wisconsin)
G	Equipment Assignment and Assumption
H	Agreement Bill of Sale

Schedule 3.12.3 Employee Benefit Plans

Exhibit A to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

<u>Transferred Assets</u>		Purchase Price	
1.	a. 5 Year 2000 Freightliners #1306 to 1310.....	\$300,000	(1)
	b. 14 Year 2000 Volvos #1321 to 1333 & 1337.....	\$840,000	(1)
2.	a. 10 Year 1997 Utility reefer trailers # <u>53400</u> to # <u>53401, 53403 to 53410</u>	\$200,000	(1)
	b. 15 Year 1998 Utility reefer trailers # <u>53411</u> to # <u>53424 # 53402</u>	\$375,000	(1)
	c. 25 Year 1999 Utility reefer trailers # <u>53425</u> to # <u>53449</u>	\$750,000	(1)
	d. 10 Year 2000 Utility reefer trailers # <u>53450</u> to # <u>53459</u>	\$550,000	(1)
3.	Up to 70 two-piece IMCT Qualcomm units, and all necessary wiring, harnesses, and other accessories at \$1,200/unit with SensorTrac feature at Simon's sole discretion.....	up to \$84,000	(1)
4.	a. Goodwill, including Company name, customer files, tariffs, driver and other employee files, owner-operator files, logs, operating authority, maintenance records, warranties, telephone and fax numbers, P.O. boxes, other business records requested by Simon (copies or originals), and a minimum of 133 Company drivers and 47 owner-operators		
	b. Computer software and hardware		
	c. Fuel in tractor and reefer tanks and inventory of bulk fuel		
	Subtotal of 4.a, 4.b, and 4.c.....	\$400,000	(1)
5.	Noncompete payment.....	\$100,000	(1)
6.	Driver payment pursuant to Section 2.....	Payable Post-Closing	(1)
	Total.....	\$3,399,000	(2)

(1) Subject to verification in accordance with Section 1.5.

(2) Subject to adjustment in accordance with Section 1.5.

Sheet1

SCHEDULE A OWNED TRUCKS

TRUCK NUMBER

1306	FREIGHTLINER	1FUYDSEB3YPB75662
1307	FREIGHTLINER	1FUYDSEB5YPB75663
1308	FREIGHTLINER	1FUYDSEB7YPB75664
1309	FREIGHTLINER	1FUYDSEB9YPB75665
1310	FREIGHTLINER	1FUYDSEB0YPB75666
1321	VOLVO	4V4ND4RH5YN233692
1322	VOLVO	4V4ND4RH7YN233693
1323	VOLVO	4V4ND4RH9YN233694
1324	VOLVO	4V4ND4RH0YN233695
1325	VOLVO	4V4ND4RH2YN233696
1326	VOLVO	4V4ND4RH4YN233697
1327	VOLVO	4V4ND4RH6YN233698
1328	VOLVO	4V4ND4RH8YN233699
1329	VOLVO	4V4ND4RH7YN233712
1330	VOLVO	4V4ND4RH9YN233713
1331	VOLVO	4V4ND4RH0YN233714
1332	VOLVO	4V4ND4RH2YN233715
1333	VOLVO	4V4ND4RH4YN233716
1337	VOLVO	4V4ND4RH6YN233720

*Freightliner
First Source*

Feb-23-01 12:17P ort trucking

P.02

3400	01	371642	1997 UTILITY	1UYVS2534VM294501	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 ALB MN
3401	01	371642	1997 UTILITY	1UYVS2534VM294502	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 CHIC IL
3402	01	371643	1998 UTILITY	1UYVS2532VM294503	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 DP WI
3403	01	371644	1997 UTILITY	1UYVS2534VM294504	ORT	RF	2	16000	50000	136	053	.00	1/01/1997 CONK NY
3404	01	371645	1997 UTILITY	1UYVS2536VM294505	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 BEPL MN
3405	01	371646	1997 UTILITY	1UYVS2538VM294506	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 NLR AR
3406	01	371647	1997 UTILITY	1UYVS2534VM294507	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 WANK WI
3407	01	371648	1997 UTILITY	1UYVS2531VM294508	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 CHIC IL
3408	01	371649	1997 UTILITY	1UYVS2533VM294509	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 NEEN WI
3409	01	371650	1997 UTILITY	1UYVS2534VM264510	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 DENN WI
3410	01	371651	1997 UTILITY	1UYVS2531VM294511	ORT	RF	2	16000	80000	136	053	.00	1/01/1997 NL WI
3411	01	417399	1998 UTILITY	1UYVS2530WM316001	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 WR WI
3412	01	378074	1998 UTILITY	1UTVS2532WM316002	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 LOGA UT
3413	01	378075	1998 UTILITY	1UYVS2534WM316003	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 DP WI
3414	01	378038	1998 UTILITY	1UYVS2536WM316004	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 SD CA
3415	01	378039	1998 UTILITY	1UYVS2538WM316005	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 DETR MI
3416	01	378040	1998 UTILITY	1UYVS2534WM316006	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 OF WI
3417	01	378041	1998 UTILITY	1UYVS2531WM316007	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 ELKH IL
3418	01	378042	1998 UTILITY	1UYVS2533WM316008	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 HOUS TX
3419	01	379201	1998 UTILITY	1UYVS2535WM316009	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 DENN WI
3420	01	379202	1998 UTILITY	1UYVS2531WM316010	ORT	RF	2	16000	80000	136	053	.00	1/01/1998 DENN WI

Schedule A

Schedule A

DAT 1-23-01 SEAKS
TIM 1135GERALD E ORT TRUCKING
TRAILER MASTERMST06
PAGE 17

TRAILER ID	FLT OWNER	LICENSE NUMBER	YEAR	TRAILER MAKE	TRAILER SERIAL NUMBER	DIV NBR	TLR TYPE	AXLE NMBR	UNLADN WEIGHT	GROSS WEIGHT	TLR HIGH	TLR LEN	TLR COST	SERVICE DATE	CITY	ST
53421	01	379203	1998	UTILITY	1UYV52533WM316011	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	NL	WI
53422	01	379204	1998	UTILITY	1UYV52533WM316012	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	WAUK	WI
53423	01	379205	1998	UTILITY	1UYV52537WM316013	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	FRAN	WI
53424	01	379206	1998	UTILITY	1UYV52537WM316014	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	APPL	WI
53425	01	376891	1999	UTILITY	1UYV52536XU348001	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	WR	WI
53426	01	376892	1999	UTILITY	1UYV52536XU348002	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	KYLE	TX
53427	01	376893	1999	UTILITY	1UYV52533XU848003	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	HURO	OH
53428	01	376894	1999	UTILITY	1UYV52531XU248004	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	CLA	KY
53429	01	376895	1999	UTILITY	1UYV52532XU348005	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	DENH	WI
53430	01	376896	1999	UTILITY	1UYV52535XU248006	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	FA	WI
53431	01	376897	1999	UTILITY	1UYV52537XU348007	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	PLAN	IL
53432	01	376898	1999	UTILITY	1UYV52539XU348008	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	ATKI	AR
53433	01	376899	1999	UTILITY	1UYV52530XU848009	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	WR	WI
53434	01	376900	1999	UTILITY	1UYV52537XU348010	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	HURO	OH
53435	01	376876	1999	UTILITY	1UYV52535XU848011	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	HURO	OH
53436	01	376877	1999	UTILITY	1UYV52539XU348012	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	DP	WI
53437	01	376878	1999	UTILITY	1UYV52532XU848013	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	CART	MO
53438	01	376879	1999	UTILITY	1UYV52534XU348014	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	OF	WI
53439	01	376880	1999	UTILITY	1UYV52536XU348015	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	BRIS	PA
53440	01	376881	1999	UTILITY	1UYV52532XU348016	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	DENH	WI
53441	01	376882	1999	UTILITY	1UYV52531XU348017	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	ED	WI
53442	01	376883	1999	UTILITY	1UYV52533XU348018	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	WAUK	WI
53443	01	376884	1999	UTILITY	1UYV52535XU348019	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	NL	WI
53444	01	376885	1999	UTILITY	1UYV52537XU348020	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	APPL	WI
53445	01	376886	1999	UTILITY	1UYV52539XU348021	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	SP	NY

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Schedule A

FE: 02-23-01 BEAKS
FE: 5GERALD E ORT TRUCKING
TRAILER MASTERMST06
PAGE 13

TRAILER ID	FLT	OWNER	LICENCE NUMBER	YEAR	TRAILER MAKE	TRAILER SERIAL NUMBER	DIV	TRLR AXLE	UNLADN	GROSS	TRLR	TRLR	TRLR	SERVICE DATE	CITY	ST
							NR	TYPE	NMSR	WEIGHT	WEIGHT	HIGH	LEN			
3446	01		372227	1999	UTILITY	1UYVS2530XU848107	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	ROCK MI
3447	01		372228	1999	UTILITY	1UYVS2532XU848108	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	IF MI
3448	01		372229	1999	UTILITY	1UYVS2534XU848109	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	CB MI
3449	01		372590	1999	UTILITY	1UYVS2530XU848110	ORT	RF	2	16000	80000	136	053	.00	12/01/1998	GC MI
3450	01		405481	2000	UTILITY	1UYVS2532YM922001	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	CLEA FL
3451	01		405482	2000	UTILITY	1UYVS2534YM922002	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	PENS FL
3452	01		405483	2000	UTILITY	1UYVS2536YM922003	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	NL MI
3453	01		405484	2000	UTILITY	1UYVS2538YM922004	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	CART MO
3454	01		405485	2000	UTILITY	1UYVS253XYM922005	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	INDE MO
3455	01		405486	2000	UTILITY	1UYVS2531YM922006	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	ONTA OR
3456	01		405487	2000	UTILITY	1UYVS2533YM922007	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	BLAC NJ
3457	01		405488	2000	UTILITY	1UYVS2535YM922008	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	CALV NY
3458	01		405489	2000	UTILITY	1UYVS2537YM922009	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	PLAN IL
3459	01		405490	2000	UTILITY	1UYVS2539YM922010	ORT	RF	2	16000	80000	136	053	.00	9/20/1999	DENN MI

14

Sheet1

SCHEDULE B LEASED TRUCKS

TRUCK NUMBER

1311	FREIGHTLINER	1FUPCSEB4YPB75667	
1312	FREIGHTLINER	1FUPCSEB6YPB75668	DUE ON
1313	FREIGHTLINER	1FUPCSEB8YPB75669	14TH
1314	FREIGHTLINER	1FUPCSEB4YPB75670	
1315	FREIGHTLINER	1FUPCSEB6YPB75671	
1316	VOLVO	4V4ND4RH1YN233687	
1317	VOLVO	4V4ND4RH3YN233688	DUE ON
1318	VOLVO	4V4ND4RH5YN233689	7TH
1319	VOLVO	4V4ND4RH1YN233690	
1320	VOLVO	4V4ND4RH3YN233691	

Exhibit B to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

Consent Letter

February 22, 2001

Mr. Thomas Mesalk
G.E. Capital Corporation
20935 Swenson Drive
Suite 350
Waukesha, WI 53186

Dear Mr. Mesalk:

This letter reflects the understanding of G.E. Capital Corporation ("G.E. Capital"), Gerald E. Ort Trucking, Inc., ("Ort Trucking"), Scott Ort, individually ("Ort"), and Dick Simon Trucking, Inc. ("Simon") regarding the tractors and trailers listed on attached Schedule A (the "Owned Equipment") and the tractors listed on attached Schedule B (the "Leased Equipment").

1. Ort Trucking and Ort represent that Ort Trucking (a) has good and marketable title to the Owned Equipment, free and clear of all liens other than the liens of G.E. Capital as set forth on Schedule A; and (b) leases the Leased Equipment from G.E. Capital and that no other person has an interest in the Leased Equipment.
2. G.E. Capital represents that it has a security interest in the Owned Equipment, perfected by lien notations on the titles; that it is the lessor and Ort Trucking is the lessee of the Leased Equipment under two valid and subsisting leases dated August 6, 1999 (lease no. 4075986-008 with \$7,716.24 payment) and August 5, 1999 (lease no. 4075986-007 with \$7,767.93 payment) (together, the "Lease"); that all obligations to G.E. Capital relating to the Owned Equipment and Leased Equipment have been paid in full through the dates of the next scheduled payments; that there are no late fees, penalties, past-due payments, or other amounts of any kind or character whatsoever due or to become due relating to the Owned Equipment or Leased Equipment prior to the next scheduled payments; and that upon receipt of the payments set forth in paragraph 4 of this letter, G.E. Capital will execute and deliver lien releases and such other documentation as may be reasonable required to release its security interest in the Owned Equipment.

3. Simon, Ort Trucking, and Ort acknowledge that their obligations set forth herein are subject to the Asset Purchase Agreement signed by them (the "Purchase Agreement").
4. Promptly upon receipt of the payments listed below, G.E. Capital will execute and deliver such lien releases, title applications, and other documentation as may be reasonable required to release all of its interest in the Owned Equipment:
 - a. The purchase price shall be \$2,815,000.
 - b. The payments shall be made to G.E. Capital by Simon on behalf of Ort Trucking as follows:
 - (i) \$160,000 on or before each of March 3, 2001, April 3, 2001, and May 3, 2001; and
 - (ii) \$2,335,000 on or before June 28, 2001, plus interest accruing between closing of the Purchase Agreement and the date such payment is made on the unpaid portion of \$2,815,000, at the non-default interest rate on Ort Trucking's line of credit with G.E. Capital ("Final Payoff").
 - c. Simon shall not be obligated to make the Final Payoff unless it has received adequate assurance of delivery of the titles and lien releases.
5. From the date hereof until Final Payoff, Simon shall have the right to lease the Owned Equipment from Ort Trucking as provided in the Purchase Agreement, and G.E. Capital hereby consents to such lease arrangement.
6. Pursuant to a mutually agreed assignment documents, Ort Trucking will assign the Lease and Simon will assume the future lease payments due under the Lease, and G.E. Capital will consent to such assignment.

Please reflect your understanding by signing the acknowledgment below.

Very truly yours,

Dick Simon Trucking, Inc.

By _____
Jon Isaacson, President

Agreed and Acknowledged:

G.E. Capital Corporation

By: _____
Name: _____
Title: _____

Gerald E. Ort Trucking, Inc.

By: _____
Name: _____
Title: _____

Scott Ort, Individually

Sheet1

SCHEDULE B LEASED TRUCKS

TRUCK NUMBER

1311	FREIGHTLINER	1FUPCSEB4YPB75667	
1312	FREIGHTLINER	1FUPCSEB6YPB75668	DUE ON
1313	FREIGHTLINER	1FUPCSEB8YPB75669	14TH
1314	FREIGHTLINER	1FUPCSEB4YPB75670	
1315	FREIGHTLINER	1FUPCSEB6YPB75671	
1316	VOLVO	4V4ND4RH1YN233687	
1317	VOLVO	4V4ND4RH3YN233688	DUE ON
1318	VOLVO	4V4ND4RH5YN233689	7TH
1319	VOLVO	4V4ND4RH1YN233690	
1320	VOLVO	4V4ND4RH3YN233691	

Exhibit C to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

INSPECTION CHECKLIST Tractors of Gerald E. Ort Trucking, Inc.

Date: _____

Name of Simon representative conducting inspection: _____

Name of Ort representative conducting inspection: _____

Tractor VIN No. _____

Mileage: _____ miles

CONDITION OF EQUIPMENT

A. Engine, Transmission, Rear Axle

1. Does tractor have any mechanical defects? Yes _____ No _____

If answer is yes, please describe: _____

2. Has tractor passed the following tests: horsepower, crank case pressure, manifold pressure and fuel delivery specifications: Yes _____ No _____

If answer is no, please describe: _____

3. Does battery hold charge and start engine? Yes _____ No _____

4. Any fluid or exhaust leaks? Yes _____ No _____

If answer is yes, please describe: _____

B. Chassis, Frame, Suspension and Fifth Wheel

1. Are frame, springs, suspension components, and axle housings free of cracks or breaks, in good condition and maintained per OEM recommended service standards? Yes _____ No _____

If answer is no, please describe: _____

2. Is fifth wheel in good operating condition? Yes _____ No _____

If answer is no, please describe: _____

C. Cab and Interior

1. Any exterior damage of bumpers, fairings, side extenders, or any cab sheet metal? Yes _____ No _____
If answer is yes, please describe: _____

2. Is cab sheet metal free of rust and corrosion? Yes _____ No _____
If answer is yes, please describe: _____

3. Any holes, rock chips or fractures in windshield, sleeper skylight, or cab side glass? Yes _____ No _____
If answer is yes, describe location and size: _____

4. Is interior upholstery in good condition, free of rips, tears, and holes? Yes _____ No _____
If answer is no, please describe: _____

5. Are cab heater, air conditioner, all gauges, lights, controls, and radios as originally installed and in good operating condition? Yes _____ No _____
If answer is no, please describe: _____

6. Is paint original or equivalent? Yes _____ No _____
If answer is no, please describe: _____

D. Tires

1. Do tires have 10/32 or better remaining tread depth and are tires free of cuts, cracks, or excessive alignment and mechanical wear? Yes _____ No _____
If answer is no, please describe: _____

2. Is front matched original tread (no recaps)? Yes _____ No _____

3. Is rear matched original or recaps (first generation recaps only)? Yes _____ No _____

4. Will all tires pass D.O.T. inspection? Yes _____ No _____

E. Brakes

1. Do brake pads at each wheel have a minimum 1/2 inch of remaining lining depth (including the backing plate)? Yes _____ No _____
If answer is no, please describe: _____

2. Are brake drums in good condition with no excessive wear? Yes _____ No _____
If answer is no, please describe condition: _____

F. D.O.T. Inspection. Is truck capable of passing a D.O.T. inspection? Yes _____ No _____
If answer is no, please explain: _____

Exhibit D to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

INSPECTION CHECKLIST
Trailers of Gerald E. Ort Trucking, Inc.

Date: _____

Name of Simon representative conducting inspection: _____

Name of Ort representative conducting inspection: _____

Trailer VIN No.: _____

Refrigerated Unit Serial Number (if any): _____

CONDITION OF EQUIPMENT

1. Are all parts and accessories originally furnished with trailer installed and intact?

Yes _____ No _____

If answer is no, please describe: _____

2. Will cost of sheet metal or fiberglass repairs exceed \$200? Yes _____ No _____

If answer is yes, please describe and estimate amount of damage? _____

3. Is there damage to glass in excess of a single crack of 2" or less? Yes _____ No _____

If answer is yes, please describe: _____

4. Are brake drums cracked: Yes _____ No _____

If answer is yes, please describe: _____

5. Do brake linings have less than 50% remaining wear? Yes _____ No _____

If answer is yes, please describe: _____

6. Are tires of a matched generic type with 50% or more remaining tread; Yes _____ No _____

If answer is no, please describe: _____

7. Are front tires original (not recap)? Yes _____ No _____

If answer is no, please describe: _____

8. Has equipment been maintained according to manufacturer's specifications?

Yes _____ No _____

If answer is no, please describe: _____

Refrigerated Equipment

1. Does unit produce its rated heating and cooling capacity? Yes ☐ No ☐
If answer is no, please describe: _____
2. Does unit have any excessive oil usage, leakage, or smoke? Yes ☐ No ☐
If answer is yes, please describe: _____
3. Does unit cycle according to setting (heating or cooling)? Yes ☐ No ☐
If answer is no, please describe: _____
4. Does unit have any physical damage? Yes ☐ No ☐
If answer is yes, please describe: _____
5. Are refrigeration unit hours greater than 1,600 hours/unit/year (pro-rate for portion of year from in-service date)? Yes ☐ No ☐
If answer is yes, please describe: _____

Exhibit E to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

**REAL ESTATE LEASE
(Carthage, Missouri)**

THIS REAL ESTATE LEASE AGREEMENT (this "Lease") is made and entered into as of the 23rd day of February, 2001, by and between Gerald E. Ort Trucking, Inc., a Wisconsin corporation ("Landlord"), and Dick Simon Trucking, Inc., a Utah corporation ("Tenant").

RECITALS

HISTORIC ROUTE 66
CARTHAGE, MO 64836
WHEREAS, Landlord is the owner of the real estate and buildings commonly known as, and located at, Appendix 1 (the "Real Property"); and AL S.O. Carthage, Missouri, and legally described on the attached

WHEREAS, pursuant to that certain Agreement dated February 23, 2001, among Landlord, Tenant, and Landlord's sole shareholder for the sale and purchase of selected assets of Landlord's trucking business ("Agreement"), Landlord desires to lease a portion of the Real Property to Tenant, and Tenant desires to lease a portion of the Real Property from Landlord, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of and incorporating the foregoing Recitals and of the mutual promises set forth below, the parties agree as follows:

TERMS

1. Agreement to Lease. Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord the Leased Premises on the terms and conditions set forth herein.
2. The Leased Premises. The portion of the Real Property that shall be subject to this Lease (the "Leased Premises") is the Surface of the Real Property. Landlord shall retain exclusive ownership and control of the subsurface of the Real Property. For purposes of this Lease, "Surface" shall include that part of the structures or improvements (including parking and driving areas) above the plane of the soil, the term Surface shall not include, and Landlord shall retain ownership of, any soils, groundwater, pollution, or other contamination, or any other solid, gas or liquid in the subsurface; provided, such pollution or other contamination was not caused by Tenant, its employees, agents, representatives, customers, invitees, or guests. The Tenant shall have an irrevocable license to use the following: (i) the adjacent subsurface of the Real Property for maintenance and repairs of the Leased Premises; (ii) the foundation or other support below the structures or improvements of the Leased Premises; (iii) the underground storage tank(s); and (iv) all office furniture, fixtures and equipment located on the Leased Premises.
3. Term.
 - a. The base term of this Lease (the "Base Term") shall run from the date hereof (the "Effective Date"), through February 28, 2002.

- b. Tenant shall have three successive options to renew this Lease beyond the Base Term, each for a period of one (1) year (each a "Renewal Term"). Except as otherwise provided herein, a Renewal Term shall be on the same terms and conditions as the Base Term, except for Base Rent, and shall be exercisable by written notice to Landlord at least 30 days prior to the expiration of the then-existing term.
4. Use. During the Base Term and any subsequent Renewal Term, Tenant shall use the Leased Premises in a manner consistent with the operation of a trucking terminal.
5. Possession. Landlord shall deliver possession of the Leased Premises on the Effective Date. At the time of delivery, the Leased Premises shall be in a condition suitable for the purposes for which it is to be used under the terms of this Lease.
6. Rent.
- a. The rent during the Base Term of this Lease shall be fixed at \$2,000 per month (the "Base Rent"). The initial installment of the Base Rent shall be due and payable on the Effective Date with subsequent installments due and payable, without demand by Landlord, on or before the first day of each month beginning April 1, 2001. If the Effective Date is earlier than March 1, 2001, then the Base Rent for the partial month until March 1, 2001 shall be abated.
- b. In the event Tenant exercises any option to renew, the monthly rent during a Renewal Term shall be determined by negotiation between the parties, but in no event shall exceed ten percent over the prior years rental.
- c. As additional rent ("Additional Rent"), Tenant shall pay direct to the provider all costs and expenses of utilities (that is, gas, water, electric, and so forth).
7. Care of the Leased Premises. Tenant agrees at its own expense (i) to keep the Leased Premises in a clean and sanitary condition; (ii) to not commit any nuisance or waste on the Leased Premises; and (iii) protect the environment of the Leased Premises. All other repair and maintenance of the Leased Premises shall be the obligation of the Landlord.
8. Alterations. Any remodeling or modification done by Tenant on or to the Leased Premises ("Alterations") shall be done in a good workmanlike manner without impairing the structural soundness of the Leased Premises. Tenant shall make no structural alterations or improvements without first obtaining the written approval of the Landlord of the plans and specifications covering said alterations or improvements. Landlord and Tenant shall each bear one-half the cost of all approved Alterations.
9. Warranties of Title and Quiet Possession. Landlord hereby warrants that it and no other person, firm or corporation has the right to lease the Leased Premises. So long as Tenant shall perform each and every covenant to be performed by Tenant hereunder, Tenant shall have peaceful and quiet use and possession of the Leased Premises during the entire Base Term and all applicable Renewal Terms without hindrance on the part of Landlord, and Landlord shall defend Tenant in such peaceful and quiet possession under this Lease.
10. Landlord's Access. Landlord, its employees, and its agents shall have the right to enter the Leased Premises at all reasonable times for the purpose of viewing, examining, and showing the same and for any other purpose necessary to perform and to assure performance of this Lease.

11. Insurance. Tenant agrees to insure the Leased Premises for at least \$250,000 and to obtain general public liability insurance in an amount no less than \$1,000,000. Such insurance shall name Landlord as an additional insured. Tenant agrees to provide Landlord with a copy of any such insurance policy upon demand.

12. Taxes. Landlord shall pay all real estate taxes and assessments for the Real Property during the term of this Lease.

13. Nonpayment of Rent; Defaults. Upon the occurrence of any of the following: (i) a rent payment from Tenant to Landlord shall be and remain unpaid in whole or part for more than ten (10) days after it is due and payable, or (ii) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein, and such violation or default shall continue for a period of ten (10) days after written notice from Landlord of such violation or default; Landlord, in Landlord's sole discretion, may terminate this Lease and reenter the Leased Premises with or without process of law using such force as may be necessary to remove all persons and chattels therefrom. Landlord shall not be liable for damage caused by reason of such termination and reentry.

14. Covenants to Indemnify and Hold Harmless. Tenant shall be responsible for all environmental liability relating to the Leased Premises caused by Tenant, its agents, employees, representatives, customers, or invitees. Landlord shall be responsible for all environmental liability based upon facts occurring prior to the Effective Date and for environmental liability arising after the Effective Date and caused by Landlord, its agents, employees, representatives, customers, or invitees. The parties shall indemnify each other against all expenses, liabilities, and claims of every kind, including reasonable counsel fees, arising out of a failure to perform the terms and conditions of this Lease, any injury or damage happening on or about the Leased Premises resulting from the negligence, tortious acts or omission of the other, or any failure to comply with any law or any governmental authority.

15. No Partnership, Joint Venture or Fiduciary Relationship Created Hereby. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between Landlord and Tenant, it being understood that the sole relationship created hereby is one of Landlord and Tenant.

16. Amendment, modification or waiver. No amendment, modification or waiver of any condition, provision or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

17. Holding Over. Continued possession, beyond the expiratory date of the term of this lease, by the Tenant, coupled with the receipt of the specified rental by the Landlord (and absent a written agreement by both parties for an extension of this Lease, or for a new lease) shall constitute a month to month extension of this Lease.

18. Assignment and Subletting. No assignment of this Lease or subletting of the Leased Premises or any part thereof, is permitted without the Landlord's written permission.

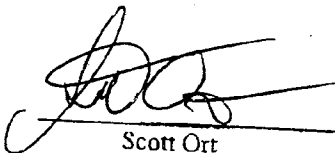
IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first above written.

LANDLORD

GERALD E. ORT TRUCKING, INC.,
a Wisconsin corporation

By: 

Scott Ort, President


Scott Ort

TENANT

DICK SIMON TRUCKING, INC.,
a Utah corporation

By: 

Alban Lang, Secretary/Treasurer

Exhibit F to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

REAL ESTATE LEASE
(New London, Wisconsin)

THIS REAL ESTATE LEASE AGREEMENT (this "Lease") is made and entered into as of the 23rd day of February, 2001, by and between Gerald E. Ort Trucking, Inc., a Wisconsin corporation ("Landlord"), and Dick Simon Trucking, Inc., a Utah corporation ("Tenant").

RECITALS

WHEREAS, Landlord is the owner of the real estate and buildings commonly known as, and located at 775 Industrial Park Road, New London, Wisconsin, ~~and legally described on the attached Appendix 1 (the "Real Property")~~; and ZIP 54961

AL G.D.
WHEREAS, pursuant to that certain Agreement dated February 23, 2001, among Landlord, Tenant, and Landlord's sole shareholder for the sale and purchase of selected assets of Landlord's trucking business ("Agreement"), Landlord desires to lease a portion of the Real Property to Tenant, and Tenant desires to lease a portion of the Real Property from Landlord, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of and incorporating the foregoing Recitals and of the mutual promises set forth below, the parties agree as follows:

TERMS

1. Agreement to Lease. Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord the Leased Premises on the terms and conditions set forth herein.

2. The Leased Premises. The portion of the Real Property that shall be subject to this Lease (the "Leased Premises") is the Surface of the Real Property. Landlord shall retain exclusive ownership and control of the subsurface of the Real Property. For purposes of this Lease, "Surface" shall include that part of the structures or improvements (including parking and driving areas) above the plane of the soil, the term Surface shall not include, and Landlord shall retain ownership of, any soils, groundwater, pollution, or other contamination, or any other solid, gas or liquid in the subsurface; provided, such pollution or other contamination was not caused by Tenant, its employees, agents, representatives, customers, invitees, or guests. The Tenant shall have an irrevocable license to use the following: (i) the adjacent subsurface of the Real Property for maintenance and repairs of the Leased Premises; (ii) the foundation or other support below the structures or improvements of the Leased Premises; (iii) the underground storage tank(s); and (iv) all office furniture, fixtures and equipment located on the Leased Premises.

3. Term.

a. The base term of this Lease (the "Base Term") shall run from the date hereof (the "Effective Date"), through February 28, 2002.

b. Tenant shall have three successive options to renew this Lease beyond the Base Term, each for a period of one (1) year (each a "Renewal Term"). Except as otherwise provided herein, a Renewal Term shall be on the same terms and conditions as the Base Term, except for Base Rent, and shall be exercisable by written notice to Landlord at least 30 days prior to the expiration of the then-existing term.

4. Use. During the Base Term and any subsequent Renewal Term, Tenant shall use the Leased Premises in a manner consistent with the operation of a trucking terminal.

5. Possession. Landlord shall deliver possession of the Leased Premises on the Effective Date. At the time of delivery, the Leased Premises shall be in a condition suitable for the purposes for which it is to be used under the terms of this Lease.

6. Rent.

a. The rent during the Base Term of this Lease shall be fixed at \$13,000 per month (the "Base Rent"). The initial installment of the Base Rent shall be due and payable on the Effective Date with subsequent installments due and payable, without demand by Landlord, on or before the first day of each month beginning April 1, 2001. If the Effective Date is earlier than March 1, 2001, then the Base Rent for the partial month until March 1, 2001 shall be abated.

b. In the event Tenant exercises any option to renew, the monthly rent during a Renewal Term shall be determined by negotiation between the parties, but in no event shall exceed ten percent over the prior years rental.

c. As additional rent ("Additional Rent"), Tenant shall pay direct to the provider all costs and expenses of utilities (that is, gas, water, electric, and so forth).

7. Care of the Leased Premises. Tenant agrees at its own expense (i) to keep the Leased Premises in a clean and sanitary condition; (ii) to not commit any nuisance or waste on the Leased Premises; and (iii) protect the environment of the Leased Premises. All other repair and maintenance of the Leased Premises shall be the obligation of the Landlord.

8. Alterations. Any remodeling or modification done by Tenant on or to the Leased Premises ("Alterations") shall be done in a good workmanlike manner without impairing the structural soundness of the Leased Premises. Tenant shall make no structural alternations or improvements without first obtaining the written approval of the Landlord of the plans and specifications covering said alterations or improvements. Landlord and Tenant shall each bear one-half the cost of all approved Alterations.

9. Warranties of Title and Quiet Possession. Landlord hereby warrants that it and no other person, firm or corporation has the right to lease the Leased Premises. So long as Tenant shall perform each and every covenant to be performed by Tenant hereunder, Tenant shall have peaceful and quiet use and possession of the Leased Premises during the entire Base Term and all applicable Renewal Terms without hindrance on the part of Landlord, and Landlord shall defend Tenant in such peaceful and quiet possession under this Lease.

10. Landlord's Access. Landlord, its employees, and its agents shall have the right to enter the Leased Premises at all reasonable times for the purpose of viewing, examining, and showing the same and for any other purpose necessary to perform and to assure performance of this Lease.

11. Insurance. Tenant agrees to insure the Leased Premises for at least \$250,000 and to obtain general public liability insurance in an amount no less than \$1,000,000. Such insurance shall name Landlord as an additional insured. Tenant agrees to provide Landlord with a copy of any such insurance policy upon demand.
12. Taxes. Landlord shall pay all real estate taxes and assessments for the Real Property during the term of this Lease.
13. Nonpayment of Rent; Defaults. Upon the occurrence of any of the following: (i) a rent payment from Tenant to Landlord shall be and remain unpaid in whole or part for more than ten (10) days after it is due and payable, or (ii) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein, and such violation or default shall continue for a period of ten (10) days after written notice from Landlord of such violation or default; Landlord, in Landlord's sole discretion, may terminate this Lease and reenter the Leased Premises with or without process of law using such force as may be necessary to remove all persons and chattels therefrom. Landlord shall not be liable for damage caused by reason of such termination and reentry.
14. Covenants to Indemnify and Hold Harmless. Tenant shall be responsible for all environmental liability relating to the Leased Premises caused by Tenant, its agents, employees, representatives, customers, or invitees. Landlord shall be responsible for all environmental liability based upon facts occurring prior to the Effective Date and for environmental liability arising after the Effective Date and caused by Landlord, its agents, employees, representatives, customers, or invitees. The parties shall indemnify each other against all expenses, liabilities, and claims of every kind, including reasonable counsel fees, arising out a failure to perform the terms and conditions of this Lease, any injury or damage happening on or about the Leased Premises resulting from the negligence, tortious acts or omission of the other, or any failure to comply with any law or any governmental authority.
15. No Partnership, Joint Venture or Fiduciary Relationship Created Hereby. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between Landlord and Tenant, it being understood that the sole relationship created hereby is one of Landlord and Tenant.
16. Amendment, modification or waiver. No amendment, modification or waiver of any condition, provision or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.
17. Holding Over. Continued possession, beyond the expiratory date of the term of this lease, by the Tenant, coupled with the receipt of the specified rental by the Landlord (and absent a written agreement by both parties for an extension of this Lease, or for a new lease) shall constitute a month to month extension of this Lease.
18. Assignment and Subletting. No assignment of this Lease or subletting of the Leased Premises or any part thereof, is permitted without the Landlord's written permission.


IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first above written.

LANDLORD

GERALD E. ORT TRUCKING, INC.,
a Wisconsin corporation

By: 

Scott Ort, President


Scott Ort

TENANT

DICK SIMON TRUCKING, INC.,
a Utah corporation

By: 

Alban Lang, Secretary/Treasurer

Exhibit F to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

EQUIPMENT ASSIGNMENT AND ASSUMPTION AGREEMENT

This Equipment Assignment and Assumption Agreement (this "Agreement") is made as of February 23, 2001, among Dick Simon Trucking, Inc., a Utah corporation ("Assignee"), Gerald E. Ort Trucking, Inc., a Wisconsin corporation ("Assignor"), and G.E. Capital Corporation (the "Lessor").

WHEREAS, Assignor is the lessee under certain equipment lease agreements, attached hereto as Exhibit A (the "Equipment Leases");

WHEREAS, Assignor desires to assign the Equipment Leases to Assignee and Assignee desires to assume, pay, perform, and discharge certain of the obligations of Assignor under the Equipment Leases;

WHEREAS, the Lessor and Assignee desire to modify certain terms and conditions of the Equipment Leases in exchange for Assignee's assumption of the Equipment Leases hereunder;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. **Assignment.** Assignor hereby sells, transfers, assigns, and conveys all of its right, title, and interest in and to the Equipment Leases to Assignee and its assigns forever. Assignor represents that it has full right to execute and perform this Agreement and that it is not in breach of or in default under any of the terms relating to the Equipment Leases.

2. **Assumption.** Assignee hereby (a) assumes and agrees to pay, perform, and discharge when due all of Assignor's liabilities, obligations, duties, and responsibilities both accruing and arising under the Equipment Leases after the date of this Agreement and (b) agrees to indemnify and hold Assignor harmless from and against any and all claims, causes of action, suits, judgments, taxes, losses, damages, deficiencies, obligations, costs, and expenses (including, without limitation, interest, penalties, and reasonable fees, and costs of attorneys and other experts) resulting from any breach or nonperformance of the Equipment Leases both accruing and arising after the date of this Agreement.

3. **Consent to Assignment.** Lessor hereby consents to the assignment of the Equipment Leases to Assignee and waives any claim for penalties, late fees, interest, or other amounts accruing or arising under the Equipment Leases prior to the date of this Agreement. Notwithstanding anything in the Equipment Leases to the contrary, Lessor hereby releases Assignor from all further liability under the Equipment Leases and agrees to look solely to Assignee for, and only with respect to, performance of all obligations both accruing and arising under the Equipment Leases after the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first written.

ASSIGNOR:

GERALD E. ORT TRUCKING, INC.,
a Wisconsin corporation

By: 

Scott Ort, President

ASSIGNEE:

DICK SIMON TRUCKING, INC.,
a Utah corporation

By: 

Alban Lang, Secretary/Treasurer

LESSOR:

G.E. CAPITAL CORPORATION

By: _____

Exhibit H to Agreement
Among Dick Simon Trucking, Inc.,
Gerald E. Ort Trucking, Inc., and Scott Ort

BILL OF SALE

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Gerald E. Ort Trucking, Inc., a Wisconsin corporation (the "Company") and Scott Ort do hereby grant, bargain, sell, and deliver to Dick Simon Trucking, Inc., a Utah corporation ("Simon"), all of the Company's right, title, and interest in and to all of the Transferred Assets, as such term is defined in the Agreement among Simon, the Company, and Scott Ort dated February 23, 2001 (the "Agreement"), to have and to hold the same unto Simon, its successors and assigns, forever.

The Company warrants and represents (i) that it is the lawful owner of the Transferred Assets, free and clear of all Liens of any nature whatsoever, (ii) that it has been duly authorized and has good right to sell the Transferred Assets, and (iii) that it will warrant and defend the same against the claims and demands of all persons, firms, and corporations whatsoever.

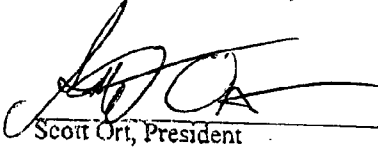
The Company and Scott Ort, its President and sole shareholder, covenant and agree to take such further actions as may be necessary to convey good title to the Transferred Assets to Simon, free and clear of all Liens, including but not limited to delivering motor vehicle titles, duly endorsed for transfer, in accordance with the Agreement.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed in the Agreement.

DATED: February 23, 2001

GERALD E. ORT TRUCKING, INC.

By:


Scott Ort, President


Scott Ort



B

CONSENT, TRANSFER AND ASSIGNMENT AGREEMENT

THIS CONSENT, TRANSFER AND ASSIGNMENT AGREEMENT (this "Agreement") is made and entered into as of March 9, 2001 by and among General Electric Capital Corporation, a New York corporation ("GE Capital"), Gerald E. Ort Trucking, Inc., a Wisconsin corporation ("Company"), Scott Ort and Thomas Ort, individuals ("Guarantors") and Dick Simon Trucking, Inc., a Utah corporation ("Purchaser").

WHEREAS:

A. The Company is indebted to GE Capital and such indebtedness is secured by senior liens, mortgages and security interests granted by the Company to GE Capital on substantially all of its assets, including without limitation accounts, contract rights, rolling stock, equipment, furniture, fixtures, machinery, real property and general goodwill. Exhibit A annexed hereto details the various promissory notes, credit agreements, security agreements and mortgages between GE Capital, as lender, and the Company, as borrower, and such documents and instruments, as the same may be amended or modified, are hereinafter referred to as the "Finance Agreements." Exhibit B annexed hereto details the amounts of principal and interest due as of the date hereof with respect to GE Capital's revolving and term loans to the Company (the "Current Obligations"). Interest continues to accrue on the Current Obligations, and the principal balance of GE Capital's revolving loans may increase to the extent of new advances requested by the Company and funded by GE Capital, in its sole and absolute discretion, or in respect of interest and other charges made by GE Capital to the Company's loan account as provided by, and permitted under, the Finance Agreements.

B. GE Capital has leased certain equipment to the Company under those certain leases more particularly described as Lease No. 4075986-008 dated August 6, 1999 and Lease No. 4075986-007 dated August 5, 1999 (collectively the "Leases").

C. The Guarantors have delivered to GE Capital Guaranties (the "Guaranties") unconditionally guaranteeing all of the Company's obligations to GE Capital.

D. By Agreement (the "Sale Agreement") dated February 23, 2001, the Company sold certain of its assets (other than the Company's existing accounts receivable) to the Purchaser and consented to the Purchaser's hire of all of the Company's drivers meeting Purchaser's standards. The closing of the transaction provided for in the Sale Agreement, the leasing of certain equipment and real property to Purchaser as provided therein and other actions of the Company constitute defaults under the Finance Agreements in numerous respects.

E. The Company is in default of its obligations pursuant to the Finance Agreements (the "Obligations") and GE Capital has not waived and does not hereby waive such defaults; said defaults include inter alia those defaults described in Paragraph D above.

F. The Obligations include, without limitation, a reserve for contingent liabilities of the Company to its employees arising out of the Sale Agreement and their termination as employees of the Company.

G. The Sale Agreement conditions the closing of the transactions therein described on the Company's delivery of a GE Capital Consent Letter containing GE Capital's consent to the transactions contemplated by the Sale Agreement, including the Company's lease of equipment to Purchaser and sale to Purchaser for a deferred purchase price of certain assets of the Company. GE Capital holds a security interest in all of the assets subject to sale in the transaction contemplated by the Sales Agreement and GE Capital's consent is required to Purchaser's assumption of the Leases.

H. Scott Ort is a member of WGC Trucking LLC, ("LLC") a recently organized Wisconsin limited liability company organized by Scott Ort and others to operate a trucking business. The Company and the LLC are the makers of a promissory note as described in Exhibit A evidencing a term loan made to the LLC and the Company (the "LLC Loan") by GE Capital. The LLC Loan has a present balance as detailed in Exhibit B. LLC also leased certain equipment from GE Capital under the terms of a lease that did not require lease payments until April 1, 2001. LLC has ceased its business and Scott Ort has caused (or will immediately cause) LLC to return all equipment under lease. The Company will make a payment to GE Capital that will represent compensation to GE Capital for the use of the equipment from the formation of LLC. In addition, the LLC and the Company are obligated to GE Capital, as secured creditor of Gulf Northern Transport, Inc. and Lloyd Whittaker, not individually but as Chapter 7 trustee for the estate in bankruptcy of Gulf Northern Transport, Inc. for: (i) certain rents due on a truck terminal property in Wisconsin Rapids, WI for the months of December 2000 and January 2001, and (ii) certain additional sums relating to the transfer of personal property of Gulf Northern Transport, Inc., aggregating \$75,000. The obligations set forth in this paragraph constitute Obligations under the Finance Agreements. The Company acknowledges that the LLC Loan and the other amounts described above are Obligations under the Finance Agreements.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Company Acknowledgement; Security Interests; Accounts Receivable. The Company and Purchaser acknowledge the Obligations and the security interests of GE Capital in all of the Company's assets. Company and Purchaser further acknowledge that: (i) accounts arising from loads dispatched prior to 3:30 p.m. CST on February 23, 2001 (the "Closing") are accounts of the Company the proceeds of which shall be paid to GE Capital and applied to any of the Obligations under the procedures for such application to the Obligations provided in the Finance Agreements; and (ii) Exhibit C annexed hereto is a correct detail aging of the Company's accounts and includes no account in which Purchaser claims any interest. GE Capital and the Company recognize the Purchaser's right to collect and retain all accounts arising out of loads dispatched at or after Closing and shall promptly turn over any collections of such accounts to Purchaser if received. If an account debtor of the Company pays an account of the Company to the Purchaser in a single instrument together with accounts of the Purchaser, the Purchaser will promptly negotiate the item and remit any amount due the Company to GE

Capital within ten (10) business days of collection of good funds in respect of such item. If an account debtor of the Company pays an account to the Company, in a single instrument together with accounts of Purchaser, the Company shall deliver such item endorsed but prior to negotiation, to GE Capital. GE Capital will promptly negotiate the item and shall pay any amount due Purchaser from such instrument within ten (10) business days of collection of good funds in respect of the item. If either Purchaser or GE Capital fail to observe the provisions of the preceding two sentences and negotiate an item containing a payment of an account that is due to the other, such party acknowledges that it is holding such amount in trust for the other party and agrees to immediately pay such amount to the other. If an account debtor delivers a payment and does not identify the invoice to which the subject payment should be applied, such payment shall be held until: (a) the payment is identified by the customer; (b) Purchaser and GE Capital agree how the payment shall be applied; or (c) in the event the customer does not identify the payment and the parties are unable to reach an agreement, an order entered by a Court with appropriate jurisdiction directing how such payment shall be applied. The Purchaser's obligation to pay any amount due the Company under the terms of this Agreement is an account of the Company subject to GE Capital's security interest. The Company further acknowledges that GE Capital intends to apply the proceeds of accounts after recovery of the expenses incurred in response to the various transactions described in the recitals hereto and in carrying out the terms of the Agreement, first to the Company's revolving loan and thereafter to the other Obligations. With respect to accounts relating to loads dispatched prior to Closing, neither the Purchaser nor the Company shall settle or compromise any account of the Company, nor issue credits to any account debtor, without GE Capital's prior written consent. GE Capital and the Company acknowledge that the Purchaser has no obligation to collect the Company's accounts; only to turn over any amounts collected relating to loads dispatched prior to Closing; provided, however, that Purchaser agrees that: (i) GE Capital and the Company shall have access to the Company's former offices in New London, Wisconsin continuously during business hours from the date hereof until GE Capital is paid in full for purposes of collecting and auditing accounts and other collateral of GE Capital; (ii) the Company and/or GE Capital may cause employees engaged in collecting accounts and monitoring collateral to conduct their work from such premises for such period; and (iii) the Company agrees with GE Capital that the Company shall, at its sole expense, employ a qualified person or persons to collect accounts of the Company until GE Capital is paid in full; provided further, however, that the activities of the Company and GE Capital and their personnel and representatives shall be conducted in a lawful and professional manner and shall not unreasonably interfere with the Purchaser's business operations or customer relationships. Purchaser shall cooperate with GE Capital in the collection of accounts by providing access to Purchaser's employees with knowledge of the accounts and Company's books, records and ledgers relating to the accounts, provided that such access shall not unreasonably interfere with Purchaser's operations. The Company shall turn over to GE Capital any account of the Company remaining uncollected on June 1, 2001 for collection by GE Capital in its discretion, unless GE Capital shall have been paid in full with respect to all Obligations before such date.

2. Company's Delivery of Purchase Price. The Company and the Purchaser acknowledge, represent and warrant that the Company has to date received proceeds of the transactions contemplated by the Sale Agreement in the amount of \$500,000 (being all amounts received to date by the Company and/or the Guarantors). Contemporaneously with the execution of this Agreement, the Company will deliver to GE Capital the sum of \$200,000, being the

\$500,000 less certain payroll and tax obligations paid by the Company after the Closing. The Company directs, and Purchaser agrees, to pay all other amounts due under the Sale Agreement directly to GE Capital, excluding the \$84,000 due to Company under the Sale Agreement for the Qualcomm Equipment (as defined therein).

3. Deferred Purchase Price; Sale. Section 1.2 of the Sale Agreement provides for payments of \$2,815,000 on a deferred basis plus certain interest amounts to the Company in consideration of the Company's sale to Purchaser of certain rolling stock. The Company, the Purchaser and GE Capital agree with respect to such rolling stock identified within Exhibit D annexed hereto (the "Purchased Equipment") that:

- (i) The Purchaser hereby reaffirms its purchase of the Purchased Equipment from the Company in accordance with the terms of the Sale Agreement;
- (ii) The purchase price for the Purchased Equipment shall be \$2,815,000, less any adjustments under Section 1.5 of the Sale Agreement which adjustments shall not exceed \$150,000 (provided that any unit of the Purchased Equipment deemed unacceptable by Purchaser shall be immediately returned to the Company), and the Company directs that the entire purchase price shall be paid to GE Capital in partial satisfaction of the Company's Obligations;
- (iii) As a consequence of the Company's acknowledged defaults, the sale and transfer of the Purchased Equipment shall additionally be deemed a sale by the lenders holding security interests therein as secured parties pursuant to Article 9 of the Uniform Commercial Code, and the Company and the Guarantors, after default, hereby waive all notice of sale, public or private, of the disposition of the Purchased Equipment and further acknowledge and agree that such disposition shall not be in full satisfaction of the Obligations, but only in partial satisfaction of the Obligations up to the amount actually received by the secured parties;
- (iv) GE Capital agrees to provide the Purchaser with 100% purchase money financing of the Purchased Equipment on the terms and conditions set forth in Exhibit D which the Purchaser shall execute and deliver simultaneously with the execution and delivery of this Agreement together with the initial payment due thereunder;
- (v) Upon full payment of all amounts due from the Purchaser to GE Capital pursuant to Exhibit D, GE Capital shall deliver to Purchaser, title, evidenced by valid certificates of title, to the Purchased Equipment, free and clear of liens and security interests, and GE Capital shall warrant the Purchaser's title; and

- (vi) Except for the warranties of title referenced above, GE Capital shall not make any representation or warranty concerning the condition of the Purchased Equipment, all warranties of merchantability, fitness, and other warranties express and implied being excluded.

4. Real Estate Leases. The Company hereby irrevocably directs and the Purchaser hereby acknowledges an irrevocable direction to pay to GE Capital, all amounts that are payable and due under the Real Estate Leases (as that term is defined in the Sale Agreement) executed at the time of the closing of the transactions provided for in the Sale Agreement. GE Capital shall apply the payments first to the Company's Obligations owing to GE Capital under the revolving credit loan and second to the other Obligations owing to GE Capital utilizing the procedures provided for in the Finance Agreements. GE Capital agrees not to foreclose on or disturb use of the assets used as part of the Real Estate Leases, as defined in the Sale Agreement, during the lease term, provided that the Real Estate Leases are not in default.

5. Consent of GE Capital; Agreement to Purchase; Release.

- (a) GE Capital consents to the transactions set forth in the Sale Agreement.
- (b) GE Capital consents to Purchaser's assumption of the Assigned Equipment Leases, as defined and pursuant to the terms set forth in the Sale Agreement. GE Capital acknowledges that the Company has paid all amounts due under the Assigned Equipment Leases, except as provided in Exhibit E annexed hereto, and that the remaining term and amounts due under the Assigned Equipment Leases are as set forth in Exhibit E. No other person has an interest in the equipment underlying the Assigned Equipment Leases except GE Capital and the Company.
- (c) Simultaneously with execution hereof, the Purchaser shall execute a Transfer and Assumption Agreement relating to Assigned Equipment Leases in the form annexed hereto as Exhibit E.
- (d) GE Capital will deliver such lien releases and other documentation as may be reasonably required by Purchaser to evidence release of GE Capital's interest as follows:
- i. Within one (1) business day after execution of this Agreement such documentation with respect to all Transferred Assets (as defined in the Sale Agreement), other than the Purchased Equipment and tractors included in the Assigned Equipment Leases; and
 - ii. Upon delivery of the final payment required under Exhibit D, such documentation with respect to the Purchased Equipment.
- (e) The Company acknowledges that:

- (a) A first priority lien and security interest in all accounts, leases, chattel paper, contract rights, instruments, life insurance policies, documents, general intangibles, inventory, goods, equipment, vehicles and fixtures now owned by the Company, or hereafter acquired or created by the Company and not heretofore pledged to GE Capital, and all proceeds and products of all of the foregoing;
- (b) A first priority lien and security interest in the Sale Agreement and all of the agreements and covenants entered into pursuant thereto including but not limited to the leases of equipment and real property to Purchaser and the payments provided in Section 2 of the Sale Agreement for the hiring of Eligible Drivers (as that term is defined in the Sale Agreement).

10. Interest. All of the Obligations shall bear interest at the rates provided in the Finance Agreements until the earlier of: (i) June 28, 2001 or (ii) default of the Company under the terms of this Agreement or any of the Finance Agreements. Thereafter the Obligations shall bear interest at the default rate provided in the Finance Agreements to the extent such Obligations are not already bearing interest at the default rate.

11. Collateral Administration. Commencing on the date hereof, GE Capital, with the Company's consent, may detail a representative to monitor collateral and administer this Agreement on the Company's premises and former premises, and the Company shall pay the reasonable fees and expenses of GE Capital's representatives, as well as GE Capital's legal fees and expenses incurred in connection with this Agreement and the Closing hereunder.

12. Non-Waiver; Tolling of Statute of Limitations. Nothing in this Agreement is intended or shall be construed to be an abandonment, discharge, release, modification, cancellation or extinguishment of any right, claim or cause of action which GE Capital may have against the Company or the Guarantors, their counsel, accountants and advisors. The Company and the Guarantors on behalf of themselves and their respective counsel, accountants and advisors, agree and acknowledge that any statutes of limitation presently running as to any actions undertaken by any or all of them with respect to GE Capital and the Obligations will be tolled until December 31, 2001.

13. Release. In consideration of GE Capital's agreements herein, the Company and the Guarantors and their respective officers, directors, agents, heirs, successors and assigns ("Releasors") hereby remise, release and discharge GE Capital, its officers, directors, employees and agents and all predecessors or successors and assigns of such parties, their respective officers, directors, employees and agents ("Releasees"), of and from, all manner of actions, cause and causes of action, suit, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, arising out of or in connection with the negotiation, execution and delivery of the Finance Agreements, and further including the negotiation, execution and delivery of this Agreement, which Releasors now have against Releasees or ever had or which Releasors hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, whether done or omitted to be done on or at or any time prior to the date hereof. Releasors hereto further state that they have read and understand that this

Agreement contains a limited release and that they intend to be legally bound by the same. Releasors further hereby waive any right to demand a trial by jury in any action arising out of the Finance Agreements or this Agreement. Notwithstanding the foregoing, nothing in this Section shall affect the rights and obligations of the Company and the Guarantors and GE Capital in connection with this Agreement.

14. Relief from Automatic Stay. The Company and the Guarantors agree that if any or all of them shall become a debtor in a Chapter 11 proceeding under Bankruptcy Code, GE Capital shall, without the necessity of any additional notice to the debtor or to other creditors, any hearing or any further order of the court, have immediate relief from the stay under Bankruptcy Code Section 362 to commence and complete a foreclosure of the Collateral, conduct and complete a sale thereof, and either purchase itself or sell to a third party the Collateral under the provisions of the Finance Agreements and according to applicable non-bankruptcy laws, and to take any other action permitted under the Finance Agreements and applicable non-bankruptcy law. Borrowers specifically agree that, for valuable consideration as stated herein, subject to Court approval, GE Capital shall be deemed to be entitled to the relief from the automatic stay under Section 362 of GE Capital Bankruptcy Code. As an alternative, if GE Capital requests such relief, Borrower shall not object to or oppose GE Capital from having immediate relief, subject to court approval, from the automatic stay under Section 362 of the Bankruptcy Code.

15. Security Interests and Liens. Except as otherwise expressly provided herein, the Company and the Guarantors hereby confirm and agree that all security interests, liens, mortgages or other collateral rights now held by GE Capital pursuant to the Finance Agreements or otherwise shall remain in full force and effect without reduction, subordination or other qualification as to priority or otherwise.

16. Miscellaneous.

A. The parties agree and confirm that none of the Finance Agreements have lapsed prior to the execution hereof. From and after the date hereof all references to the Finance Agreements in any related document or instrument shall mean the Finance Agreements as respectively amended hereby. Except as amended hereby the Finance Agreements remain unchanged and in full force and effect. In the event of a conflict or inconsistency between the Finance Agreements and this Agreement, the terms and provisions of this Agreement shall control.

B. This Agreement shall be binding upon and inure to the benefit of the Company, the Purchaser, the Guarantors and GE Capital and their respective successors and assigns, except that neither the Company nor the Purchaser may transfer or assign any of its right or interest hereunder without the prior written consent of GE Capital.

C. This Agreement may be executed by the parties in any number of separate counterparts, each of which shall be deemed an original but which together shall be deemed to constitute one and the same instrument.

D. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the internal laws of the State of Wisconsin, and shall be deemed to have been executed in the State of Wisconsin.

E. Captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

F. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa.

G. All notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed to have been given or made when delivered if by hand delivery or three (3) days from deposit in the U.S. mail, postage prepaid.

H. All Exhibits and Schedules referred to in and attached to this Agreement are hereby deemed to be incorporated into this Agreement by referenced as though set forth in full. Unless the context expressly requires otherwise, references to this Agreement shall also include all such Exhibits and Schedules.

Delivered at _____ as of the day and year first above written.

GE Capital:

General Electric Capital Corporation

By: [Signature]
Its: Asst. Manager

COMPANY:

Gerald E. Ort Trucking, Inc.

By: [Signature]
Its: Pres

D. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with the internal laws of the State of Wisconsin, and shall be deemed to have been executed in the State of Wisconsin.

E. Captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

F. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa.

G. All notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed to have been given or made when delivered if by hand delivery or three (3) days from deposit in the U.S. mail, postage prepaid.

H. All Exhibits and Schedules referred to in and attached to this Agreement are hereby deemed to be incorporated into this Agreement by referenced as though set forth in full. Unless the context expressly requires otherwise, references to this Agreement shall also include all such Exhibits and Schedules.

Delivered at _____ as of the day and year first above written.

GE Capital:

General Electric Capital Corporation

By: _____

Its: _____

COMPANY:

Gerald E. Ort Trucking, Inc.

By:  _____

Its: Pres _____

PURCHASER:

Dick Simon Trucking, Inc.

By: Its: 

Each of the undersigned Guarantors as of this day of March, 2001, hereby consents to the execution and delivery of the foregoing agreement and acknowledges and agrees that such Guarantor's Guaranty shall remain in full force and effect in accordance with its terms after giving effect to the execution and delivery of the foregoing Agreement.

GUARANTORS:

Scott Ort

Thomas Ort

PURCHASER:


Dick Simon Trucking, Inc.

By: _____

Its: _____

Each of the undersigned Guarantors as of this ____ day of March, 2001, hereby consents to the execution and delivery of the foregoing agreement and acknowledges and agrees that such Guarantor's Guaranty shall remain in full force and effect in accordance with its terms after giving effect to the execution and delivery of the foregoing Agreement.

GUARANTORS:



Scott Ort



Thomas Ort

TRANSFER AND ASSUMPTION AGREEMENT**DATE OF EXECUTION OF TRANSFER AND ASSUMPTION AGREEMENT:** March 9, 2001**TRANSFEROR:**

Gerald E. Ort Trucking, Inc.
775 Industrial Park Rd.
New London, WI 54961

TRANSFeree:

Dick Simon Trucking, Inc.
5175 West 2100 South
West Valley City, UT 84120

GE Capital: (GECC CORPORATE ENTITY)

General Electric Capital Corporation
44 Old Ridgebury Road,
Danbury, CT 06810

PRESENT LOCATION OF PROPERTY:

775 Industrial Park Rd.
New London, WI 54961

PROPERTY WILL BE KEPT AT:

775 Industrial Park Rd.
New London, WI 54961

PROPERTY:

5 Freightliners Model #FLD132064T Tractors - s/n 1FUPCSEB4YPB75667, 1FUPCSEB6YPB75668, 1FUPCSEB8YPB75669,
1FUPCSEB4YPB75670, 1FUPCSEB6YPB75671

TYPE OF CONTRACT:

Schedule No.001 to Master Lease Agreement by and between General Electric Capital Corporation and Gerald E. Ort Trucking, Inc.

CONTRACT DATED: 08/06/99**GE Capital ACCOUNT #:** 4075986-007

This Agreement by and between Transferor and the Transferee of the interest in the Contract (as hereafter defined) of the Transferor,

WITNESSETH THAT:

WHEREAS, Transferor and GE Capital, or GE Capital's predecessor-in-interest, entered into the Contract described above (hereinafter referred to as the "Contract", which defined term shall include any and all annexes, supplements and amendments thereto) with respect to certain chattels, goods, personalty, equipment and/or fixtures specified in said Contract (hereinafter referred to as the "Property");

WHEREAS, GE Capital is legal owner and holder of the Contract;

WHEREAS, Transferor wishes to sell and Transferee wishes to buy all and whatever interest Transferor has in and to the Contract and the Property, and Transferee acknowledges that it has received a true and correct copy of the Contract;

WHEREAS, there are Forty Three (43) unpaid rentals due under the Contract in the amount of \$7,767.93 per month, the next payment being due on March 14, 2001, with skips in the months of February 2002, 2003, & 2004, and succeeding payments being due on the same date of each month thereafter, and any other amounts due thereunder (whether or not contingent, liquidated or matured);

being due on the same date of each month thereafter, and any other amounts due thereunder (whether or not contingent, liquidated or insured).

WHEREAS, upon default in the payment of any amount due under, or in the performance of any provision of, the Contract, the Stipulated Loss Value set forth in the Contract may, at the option of GE Capital (and in addition to any other remedies available to GE Capital thereunder), become immediately due and payable; and

WHEREAS, the Contract provides that Transferee may not assign, sublease or dispose of the Property or any interest therein or in the Contract without the prior written consent of GE Capital.

NOW THEREFORE, the parties hereto agree as follows:

1. In consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, Transferor hereby and by these presents does grant and convey unto Transferee, his or its heirs, executors, administrators, successors and assigns, all of Transferor's right, title and interest in and to the Contract and Property, to have and to hold the same unto Transferee, his or its heirs, executors, administrators, successors and assigns forever, subject, however, to the Contract and all the terms, conditions and provisions thereof, and upon the condition that the appended Form of Consent to such sale is executed and delivered by GE Capital. In addition, Transferee agrees to assume all obligations of Transferor to GE Capital under the Contract as the same may be set forth in the Contract.

2. To induce GE Capital to execute and deliver the appended Form of Consent to such sale and in consideration of its so doing, Transferee hereby promises to perform all of the duties and obligations of Transferor under the Contract and pay the installments remaining unpaid as shown stated to GE Capital, its successors and assigns. Transferee hereby unconditionally assumes, becomes a party to and agrees to perform and pay the Contract as though Transferee were to all intents and purposes the lessee named in the Contract. Transferee agrees not to assert against GE Capital any defense, setoff, recoupment, claim or counterclaim which he or it might have against Transferor arising from the aforesaid sale. Transferor and Transferee hereby waive and discharge any defense or claim each or both may have against GE Capital arising from or in relation to the Contract, this Agreement, or the Property. Upon complete execution of this Agreement and the appended Form of Consent, Transferor and any of its Guarantors are hereby released from all of their respective obligations under the Contract and any Guaranties related thereto.

3. Transferee will not sell, real, transfer, encumber or dispose of any or all of the property without the written consent of GE Capital, its successors or assigns.

4. Transferee acknowledges that it has received and reviewed a true and complete copy of the Contract prior to the execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day above written.

TRANSFEROR:

Gerald R. Ori Trucking, Inc.

By _____

Title: _____

TRANSFeree:

Dick Simon Trucking, Inc.

By 

Title: CFO

being due on the same date of each month thereafter, and any other amounts due thereunder (whether or not contingent, liquidated or matured);

WHEREAS, upon default in the payment of any amount due under, or in the performance of any provision of, the Contract, the Stipulated Loss Value set forth in the Contract may, at the option of GE Capital (and in addition to any other remedies available to GE Capital thereunder), become immediately due and payable; and

WHEREAS, the Contract provides that Transferor may not assign, sublease or dispose of the Property or any interest therein or in the Contract without the prior written consent of GE Capital.

NOW THEREFORE, the parties hereto agree as follows:

1. In consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, Transferor hereby and by these presents does grant and convey unto Transferee, his or its heirs, executors, administrators, successors and assigns, all of Transferor's right, title and interest in and to the Contract and Property, to have and to hold the same unto Transferee, his or its heirs, executors, administrators, successors and assigns forever, subject, however, to the Contract and all the terms, conditions and provisions thereof, and upon the condition that the appended Form of Consent to such sale is executed and delivered by GE Capital. In addition, Transferee agrees to assume all obligations of Transferor to GE Capital under the Contract as the same may be set forth in the Contract.

2. To induce GE Capital to execute and deliver the appended Form of Consent to such sale and in consideration of its so doing, Transferee hereby promises to perform all of the duties and obligations of Transferor under the Contract and pay the installments remaining unpaid as above stated to GE Capital, its successors and assigns. Transferee hereby unconditionally assumes, becomes a party to and agrees to perform and pay the Contract as though Transferee were to all intents and purposes the lessee named in the Contract. Transferee agrees not to assert against GE Capital any defense, setoff, recoupment, claim or counterclaim which he or it might have against Transferor arising from the aforesaid sale. Transferor and Transferee hereby waive and discharge any defense or claim each or both may have against GE Capital arising from or in relation to the Contract, this Agreement, or the Property. Upon complete execution of this Agreement and the appended Form of Consent, Transferor and any of its Guarantors are hereby released from all of their respective obligations under the Contract and any Guaranties related thereto.

3. Transferee will not sell, rent, transfer, encumber or dispose of any or all of the property without the written consent of GE Capital, its successors or assigns.

4. Transferee acknowledges that it has received and reviewed a true and complete copy of the Contract prior to the execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day above written.

TRANSFEROR:

Gerald E. Ort Trucking, Inc.

By  _____

Title:  _____

TRANSFEE:

Dick Simon Trucking, Inc.

By _____

Title: _____

FORM OF CONSENT

The undersigned, GE Capital mentioned in the attached Agreement, hereby accepts and consents to the foregoing Transfer and Assumption Agreement this 9th day of March, 2001.

General Electric Capital Corporation

By: David Marcus

Title: Asst. Vice President

TRANSFER AND ASSUMPTION AGREEMENTDATE OF EXECUTION OF TRANSFER AND ASSUMPTION AGREEMENT: March 9, 2001**TRANSFEROR:**

Gerald E. Ort Trucking, Inc.
775 Industrial Park Rd.
New London, WI 54961

TRANSFeree:

Dick Simon Trucking, Inc.
5175 West 2100 South
West Valley City, UT 84120

GE Capital: (GECC CORPORATE ENTITY)

General Electric Capital Corporation
44 Old Ridgebury Road,
Danbury, CT 06810

PRESENT LOCATION OF PROPERTY:

775 Industrial Park Rd.
New London, WI 54961

PROPERTY WILL BE KEPT AT:

775 Industrial Park Rd.
New London, WI 54961

PROPERTY:

5 Volvo Model #VN164T660 Tractors - s/n 4V4ND4RH1YN233687, 4V4ND4RH3YN233688, 4V4ND4RH5YN233689, 4V4ND4RH1YN233690, 4V4ND4RH3YN233691

TYPE OF CONTRACT:

Schedule No.002 to Master Lease Agreement by and between General Electric Capital Corporation and Gerald E. Ort Trucking, Inc.

CONTRACT DATED: 08/06/99

GE Capital ACCOUNT #: 4075986-008

This Agreement by and between Transferor and the Transferee of the interest in the Contract (as hereafter defined) of the Transferor,

WITNESSETH THAT:

WHEREAS, Transferor and GE Capital, or GE Capital's predecessor-in-interest, entered into the Contract described above (hereinafter referred to as the "Contract", which defined term shall include any and all annexes, supplements and amendments thereto) with respect to certain chattels, goods, personalty, equipment and/or fixtures specified in said Contract (hereinafter referred to as the "Property");

WHEREAS, GE Capital is legal owner and holder of the Contract;

WHEREAS, Transferor wishes to sell and Transferee wishes to buy all and whatever interest Transferor has in and to the Contract and the Property, and Transferee acknowledges that it has received a true and correct copy of the Contract;

WHEREAS, there are Forty Two (42) unpaid rentals due under the Contract in the amount of \$7,716.24 per month, the next payment being due on April 7, 2001, with skips in the months of February 2002, 2003, & 2004, and succeeding payments

WHEREAS, upon default in the payment of any amount due under, or in the performance of any provision of, the Contract, the Stipulated Last Value set forth in the Contract may, at the option of GE Capital (and in addition to any other remedies available to GE Capital thereunder), become immediately due and payable; and

WHEREAS, the Contract provides that Transferor may not assign, sublease or dispose of the Property or any interest therein or in the Contract without the prior written consent of GE Capital.

NOW THEREFORE, the parties hereto agree as follows:

1. In consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, Transferor hereby and by these presents does grant and convey unto Transferee, his or its heirs, executors, administrators, successors and assigns, all of Transferor's right, title and interest in and to the Contract and Property, to have and to hold the same unto Transferee, his or its heirs, executors, administrators, successors and assigns forever. Subject, however, to the Contract and all the terms, conditions and provisions thereof, and upon the condition that the appended Form of Consent to such sale is executed and delivered by GE Capital. In addition, Transferee agrees to assume all obligations of Transferor to GE Capital under the Contract as the same may be set forth in the Contract.

2. To induce GE Capital to execute and deliver the appended Form of Consent to such sale and in consideration of its so doing, Transferee hereby promises to perform all of the duties and obligations of Transferor under the Contract and pay the installments remaining unpaid as above stated to GE Capital, its successors and assigns. Transferee hereby unconditionally assumes, becomes a party to and agrees to perform and pay the Contract as though Transferee were in all intents and purposes the lessee named in the Contract. Transferee agrees not to assert against GE Capital any defense, claim, counterclaim, claim or counterclaim which he or it might have against Transferor arising from the aforesaid sale. Transferor and Transferee hereby waive and discharge any defenses or claim each or both may have against GE Capital arising from or in relation to the Contract, this Agreement, or the Property. Upon complete execution of this Agreement and the appended Form of Consent, Transferor and any of its representatives are hereby released from all of their respective obligations under the Contract and any documents related thereto.

3. Transferee will not sell, rent, transfer, encumber or dispose of any or all of the property without the written consent of GE Capital, its successors or assigns.

4. Transferee acknowledges that it has received and reviewed a true and complete copy of the Contract prior to the execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day above written.

TRANSFEROR:

Gerald E. Ort Trucking, Inc.

By _____

Title _____

TRANSFEEER:

Dick Simon Trucking, Inc.

By [Signature]

Title CFO

WHEREAS, upon default in the payment of any amount due under, or in the performance of any provision of, the Contract, the Stipulated Loss Value set forth in the Contract may, at the option of GE Capital (and in addition to any other remedies available to GE Capital thereunder), become immediately due and payable; and

WHEREAS, the Contract provides that Transferor may not assign, sublease or dispose of the Property or any interest therein or in the Contract without the prior written consent of GE Capital.

NOW THEREFORE, the parties hereto agree as follows:

1. In consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, Transferor hereby and by these presents does grant and convey unto Transferee, his or its heirs, executors, administrators, successors and assigns, all of Transferor's right, title and interest in and to the Contract and Property, to have and to hold the same unto Transferee, his or its heirs, executors, administrators, successors and assigns forever, subject, however, to the Contract and all the terms, conditions and provisions thereof, and upon the condition that the appended Form of Consent to such sale is executed and delivered by GE Capital. In addition, Transferee agrees to assume all obligations of Transferor to GE Capital under the Contract as the same may be set forth in the Contract.

2. To induce GE Capital to execute and deliver the appended Form of Consent to such sale and in consideration of its so doing, Transferee hereby promises to perform all of the duties and obligations of Transferor under the Contract and pay the installments remaining unpaid as above stated to GE Capital, its successors and assigns. Transferee hereby unconditionally assumes, becomes a party to and agrees to perform and pay the Contract as though Transferee were to all intents and purposes the lessee named in the Contract. Transferee agrees not to assert against GE Capital any defense, setoff, recoupment, claim or counterclaim which he or it might have against Transferor arising from the aforesaid sale. Transferor and Transferee hereby waive and discharge any defense or claim each or both may have against GE Capital arising from or in relation to the Contract, this Agreement, or the Property. Upon complete execution of this Agreement and the appended Form of Consent, Transferor and any of its Guarantors are hereby released from all of their respective obligations under the Contract and any Guaranties related thereto.

3. Transferee will not sell, rent, transfer, encumber or dispose of any or all of the property without the written consent of GE Capital, its successors or assigns.

4. Transferee acknowledges that it has received and reviewed a true and complete copy of the Contract prior to the execution and delivery of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day above written.

TRANSFEROR:

Gerald E. Ort Trucking, Inc.

By

Title:

Paul

TRANSFEE:

Dick Simon Trucking, Inc.

By

Title:

FORM OF CONSENT

The undersigned, GE Capital mentioned in the attached Agreement, hereby accepts and consents to the foregoing Transfer and Assumption Agreement this 9th day of March, 2001

General Electric Capital Corporation

By: Daryl Mascun

Title: S. Risk Manager

MAY. 11. 2001 1:26PM

SCUDDER LAW FIRM

NO. 839 P. 13

**CONTRACT
AND SECURITY AGREEMENT**General Electric Capital
Corporation

Buyer: Dick Simon Trucking, Inc.

Buyer State of Incorporation (if applicable)

"We" and "us" mean the Seller above, its
successors and assigns"You" and "your" mean each Buyer above, jointly
and individually.

Date: March 9, 2001

SALE: You agree to purchase from us, on a time basis, subject to the terms and conditions of this Retail Installment Contract and Security Agreement (Contract), the tractor, trailer, motor vehicle or other Equipment, as the case may be (collectively, Equipment) described below. The Equipment is sold in its present condition, together with the usual accessories and attachments.

Description of Equipment Purchased	Year Make Model	Serial No./VIN No. Lic. No. (if applicable) New Used	Other (incl. Attachments):
--	-----------------------	--	----------------------------

If Equipment is a Motor Vehicle, the address where it will be titled and registered (if different from above):

Property Location (if different from above)

"SEE ATTACHED EXHIBIT A"

Description of
Trade-In

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Equipment, all accessions, attachments, accessories, and equipment owned by you and placed in or on the Equipment, together called Property, and proceeds of the Property.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$2,815,000.00 plus interest and any finance or late charges accruing as a result of a default hereunder. Such interest and finance charges, if any, shall accrue on a daily basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown below. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

Payment Schedule: Your payment schedule will be:

Number of Payments	Amount of Each Payment	When Payments Are Due
Four (4)	1) Three payments of \$160,000 plus interest; and	1) The three payments are due on the date hereof, April 3, 2001 and May 3, 2001; and
	2) One payment of \$2,335,000*, plus interest	2) The payment of \$2,335,000 plus interest shall be due on June 28, 2001.*

Late Charge: If a payment is not paid within ten days of its due date, you agree to pay interest on such amount at a rate per annum equal to the Wall Street Journal prime rate of interest plus three percent but not exceeding the lawful maximum, if any.

Prepayment: You may prepay all or any part of this Contract at any time without penalty.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

Interest: You shall pay interest on outstanding principal equal to the Commercial Paper Rate published in the Wall Street Journal on March 1, 2001, plus five percent (5%). Such interest rate shall be adjusted monthly based on the Commercial Paper Rate published in the Wall Street Journal on the first day of each calendar month hereafter until all obligations under this Contract have been satisfied in full.

*Adjusted in accordance with Section 3(f) of the Consent, Transfer and Assignment Agreement dated the date hereof and Section 1.5 of the Sale Agreement referenced therein.

CREDIT INSURANCE: Credit life, credit disability (accident and health) are not required to obtain credit and we will not provide them. If you desire such insurance then you must obtain it from an independent third-party carrier.

PROPERTY INSURANCE: You must insure the Property securing this Contract pursuant to the terms and conditions hereof. Insurance coverage must include Casualty and Property Damage in an amount equal to the full replacement cost of the Equipment with coverage deductibles and insurance company the same as provided by you for your fleet generally.

POWER OF ATTORNEY: YOU HEREBY IRREVOCABLY CONSTITUTE AND APPOINT US OR OUR ASSIGNEE, AS YOUR AGENT AND ATTORNEY IN FACT TO EXECUTE AND FILE ON YOUR BEHALF ANY FINANCING STATEMENTS, TITLING DOCUMENTS (OR THEIR EQUIVALENT), INCLUDING AMENDMENTS THERETO, WHICH WE OR OUR ASSIGNEE (AS THE CASE MAY BE) DEEM ADVISABLE IN OUR (OR THEIR) SOLE DISCRETION TO SECURE OUR OR THEIR INTERESTS (AS THE CASE MAY BE) IN THE PROPERTY AND YOU FURTHER AUTHORIZE US OR OUR ASSIGNEE (AS THE CASE MAY BE) TO FILE SAME WITH OR WITHOUT YOUR SIGNATURE APPEARING THEREON.

MISCELLANEOUS: This Contract is for the benefit of and binds you and we and our heirs, personal representatives, successors and assigns. This is of the essence of this Contract. This Contract contains our entire understanding with you, and no changes will be effective unless in writing and signed by both of us. If you consist of two or more parties, this Contract is binding upon each of you jointly and severally. If any part of this Contract is not enforceable, the other parts will remain enforceable.

Warning: There is no insurance afforded hereunder, including without limitation, coverage for liability for injury to persons or damage to property of others.

Notice to Buyer. Do not sign this Contract in blank. You are entitled to 1 true copy of the Contract you sign without charge. Under the law you have the right to pay off in advance the full amount due and under certain conditions may obtain a partial refund of the finance charge. Keep this Contract to protect your legal rights.

BY SIGNING BELOW BUYER AGREES TO ALL OF THE ADDITIONAL TERMS ON THE PAGES FOLLOWING THIS SIGNATURE PAGE. BUYER ADDITIONALLY ACKNOWLEDGES DELIVERY OF A COPY OF THIS RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT.

Buyer: Dick Simon Trucking, Inc.

By:

Signature

Its:

Seller: By:

CREDIT INSURANCE: Credit life, credit disability (accident and health) are not required to obtain credit and we will not provide them. If you desire such insurance then you must obtain it from an independent third-party carrier.

PROPERTY INSURANCE: You must insure the Property securing this Contract pursuant to the terms and conditions hereof. Insurance coverage must include Casualty and Property Damage in an amount equal to the full replacement cost of the Equipment with coverage deductibles and insurance company the same as provided by you for your fleet generally.

POWER OF ATTORNEY: YOU HEREBY IRREVOCABLY CONSTITUTE AND APPOINT US OR OUR ASSIGNEE, AS YOUR AGENT AND ATTORNEY IN FACT TO EXECUTE AND FILE ON YOUR BEHALF ANY FINANCING STATEMENTS, TITLING DOCUMENTS (OR THEIR EQUIVALENT), INCLUDING AMENDMENTS THERETO, WHICH WE OR OUR ASSIGNEE (AS THE CASE MAY BE) DEEM ADVISABLE IN OUR (OR THEIR) SOLE DISCRETION TO SECURE OUR (OR THEIR) INTERESTS (AS THE CASE MAY BE) IN THE PROPERTY AND YOU FURTHER AUTHORIZE US OR OUR ASSIGNEE (AS THE CASE MAY BE) TO FILE SAME WITH OR WITHOUT YOUR SIGNATURE APPEARING THEREON.

MISCELLANEOUS: This Contract is for the benefit of and binds you and us and our heirs, personal representatives, successors and assigns. Time is of the essence of this Contract. This Contract contains our entire understanding with you, and no changes will be effective unless in writing and signed by both of us. If you consist of two or more parties, this Contract is binding upon each of you jointly and severally. If any part of this Contract is not enforceable, the other parts will remain enforceable.

Warning: There is no insurance afforded hereunder, including without limitation, coverage for liability for injury to persons or damage to property of others.

Notice to Buyer: Do not sign this Contract in blank. You are entitled to a true copy of the Contract you sign without charge. Under the law you have the right to pay off in advance the full amount due and under certain conditions may obtain a partial refund of the finance charge. Keep this Contract to protect your legal rights.

BY SIGNING BELOW BUYER AGREES TO ALL OF THE ADDITIONAL TERMS ON THE PAGES FOLLOWING THIS SIGNATURE PAGE. BUYER ADDITIONALLY ACKNOWLEDGES DELIVERY OF A COPY OF THIS RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT.

Buyer: *[Signature]* Trucking, Inc.

By: _____ Date: _____

Seller: *[Signature]* *[Signature]*

GENERAL ELECTRIC CAPITAL CORPORATION

291975-03 Wisconsin Form

MAR 23 2001 15:54

RECEIVED TIME MAY. 11. 2:22PM

PAGE 21

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given opportunity to purchase the Property for either the Cash Price or the Total Sale Price and you agreed to purchase the Property over time for the Total Sale Price. The actual amount you will pay may be more or less depending on your payment record and the interest rate. We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, we will, instead, apply it first to reduce the principal balance, and when the principal has been paid in full, refund it to you. If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. Subject to our obligation to deliver good and marketable title to you, free and clear of all liens, under the Consent, Transfer and Assignment Agreement dated the date hereof, you will defend our interests in the Property against claims made by anyone else and will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
- B. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- C. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at the address listed on page 1 of this Contract.
- D. You will not attempt to sell the Property (unless it is properly identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
- E. You will pay all taxes and assessments on the Property as they become due. You will notify us of any loss or damage to the Property and if you move the Property to another state for more than 30 days you will tell us in writing. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

Representations and Warranties: You hereby represent, warrant and covenant that as of the date hereof, and so long as any amount is owed hereunder: (a) (if applicable) You are, and will remain, duly organized, existing and in good standing under the laws of the State set forth on the first page of this Contract, have your chief executive offices at the location set forth on such page, and are, and will remain, duly qualified and licensed in every jurisdiction wherever necessary to carry on your business and operations; (b) You have adequate power and capacity to enter into, and to perform your obligations, under this Contract; (c) this Contract has been duly authorized, executed and delivered by you and constitutes a legal, valid and binding agreement enforceable under all applicable laws in accordance with its terms, except to the extent that the enforcement of remedies may be limited under applicable bankruptcy and insolvency laws; (d) no approval, consent or withholding of objections is required from any governmental authority or instrumentality with respect to the entry into, or performance by, you of this Contract, except such as may have already been obtained; (e) the entry into, and performance by, you of this Contract will not (i) violate any of your organizational documents or any judgment, order, law or regulation applicable to you, or (ii) result in any breach of, constitute a default under, or result in the creation of any lien, claim or encumbrance on any of your property (except for liens in favor of us) pursuant to, any indenture mortgage, deed of trust, bank loan, credit agreement, or other agreement or instrument to which you are a party; (f) there are no suits or proceedings pending or threatened in court or before any commission, board or other administrative agency against or affecting you which could, in the aggregate, have a material adverse effect on you, your business or operations, or your ability to perform your obligations hereunder; (g) all financial statements delivered to us in connection with this Contract have been prepared in accordance with generally accepted accounting principles, and since the date of the most recent financial statement, there has been no material adverse change; (h) the Property will be used only in your trade or business

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- A. We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- B. We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. This amount will be due immediately. This amount will earn finance charges from the date paid at the default rate specified on page 1 until paid in full.
- C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
- D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward your obligations.

Except when prohibited by law, we may sue you for additional amounts if the proceeds of sale do not pay all of the amounts you owe us. By choosing any one or more of these remedies, we do not waive our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

INSURANCE: You agree that the Property shall at all times be held at your risk, and you shall keep it insured against loss or damage by fire and extended coverage perils, theft, burglary, and for any or all Property, for risk of loss by collision, and where requested by us, against other risks as required thereby, for the full replacement value thereof, with companies, in amounts and under policies as stated on page 2. You shall, if we so require, deliver to us policies or certificates of insurance evidencing such coverage. Each policy shall name us as loss payee thereunder, shall provide for coverage to us regardless of any breach by you of any warranty or representation made therein, shall not be subject to co-insurance, and shall provide for thirty (30) days written notice to us of the cancellation or material modification thereof. You hereby appoint us as your attorney in fact to make proof of loss, claim for insurance and adjustments with insurers, and to execute or endorse all documents, checks or drafts in connection with payments made as a result of any such insurance policies. Proceeds of insurance shall be applied, at your option, to repair or replace the Property or to reduce any of the indebtedness secured hereby.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- A. You must pay this Contract even if someone else has also signed it.
- B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- C. We may release any security and you will still be obligated to pay this Contract.
- D. If we give up any of our rights, it will not affect your duty to pay this Contract.
- E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

NO WARRANTY: You have selected, inspected and taken delivery of the Property in satisfactory condition. Since we are not the manufacturer, we are not responsible for any problems with the Property, or for any legal damages or lawsuits caused by defects in the Property. **ALL WARRANTIES ARE EXCLUDED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.** We are assigning any warranties from the manufacturer to you. If you have any problems with the Property, you should contact the manufacturer. If there are any problems with the Property, or you are dissatisfied with the way the manufacturer handles any warranty claim, you must still repay us the Time Balance.

LEGAL JURISDICTION: THIS CONTRACT AND THE RIGHTS AND

and will not be used by you for personal, family, household or agricultural purpose.

You are, and will remain, the sole and lawful owner, and in possession of, the Property, and have the sole right and lawful authority to grant the security interest described in this Contract; and (i) the Property is, and will remain, free and clear of all liens, claims and encumbrances of every kind, nature and description (except for liens in favor of us and liens in favor of a third party which are secondary and subordinate to any liens in favor of us and which have been consented to, in writing, by us).

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- A. You fail to perform any obligation that you have undertaken in this Contract.
- B. You fail to make a payment on this Contract in full when due.
- C. any warranty, representation or statement made by you in this Contract or otherwise in connection herewith shall be false or misleading in any material respect.
- D. any of the Property being subjected to, or being threatened with, attachment, execution, levy, seizure or confiscation in any legal proceeding or otherwise.
- E. any default by you under any other agreement between you and us.
- F. any dissolution, termination of existence, merger, consolidation, change in controlling ownership, insolvency, or business failure of you or any guarantor or other obligor under this Contract (collectively "Guarantor"), or if you or any Guarantor is a natural person, any death or incompetency of you or such Guarantor.
- G. the appointment of a receiver for all or of any part of the property of you or any Guarantor, or any assignment for the benefit of creditors by you or any Guarantor.
- H. the filing of a petition by you or any Guarantor under any bankruptcy, insolvency or similar law, or the filing of any such petition against you or any Guarantor if the same is not dismissed within thirty (30) days of such filing.

If you default, you agree to pay our costs for collecting amounts owing, including, without limitation, court costs, attorney's fees, and fees for repossession, repair, storage and sale of the Property securing this Contract.

OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF WISCONSIN (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE PROPERTY.

YOU HEREBY UNCONDITIONALLY WAIVE YOUR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS CONTRACT, ANY DEALINGS BETWEEN YOU AND US RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN YOU AND US. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.) THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. IN THE EVENT OF LITIGATION, THIS CONTRACT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

ASSIGNMENT: This Contract may be assigned, in whole or in part, by us without notice to you, and you agree not to assert against any such assignee, or assignee's assigns, any defense, set-off, recoupment claim or counterclaim which you have or may at any time have against us for any reason whatsoever. You may assert any claim you have against us in a separate legal action against us. You agree that if you receive written notice of an assignment from us, you will pay all amounts payable under this Contract to such assignee or as instructed by us. You also agree to confirm in writing receipt of the notice of assignment as may be reasonably requested by assignee.

EXHIBIT A*Equipment for Retail Installment Contract
and Security Agreement*

Equipment Type:	Make:	Year:	Vehicle Identification Number:
1. Tractor	Freightliner	2000	1FUVDSEB3YPB75662
2. Tractor	Freightliner	2000	1FUVDSEB5YPB75663
3. Tractor	Freightliner	2000	1FUVDSEB7YPB75664
4. Tractor	Freightliner	2000	1FUVDSEB9YPB75665
5. Tractor	Freightliner	2000	1FUVDSEB0YPB75666
6. Tractor	Volvo	2000	4V4ND4RH5YN233692
7. Tractor	Volvo	2000	4V4ND4RH7YN233693
8. Tractor	Volvo	2000	4V4ND4RH9YN233694
9. Tractor	Volvo	2000	4V4ND4RH0YN233695
10. Tractor	Volvo	2000	4V4HD4RH2YN233696
11. Tractor	Volvo	2000	4V4ND4RH4YN233697
12. Tractor	Volvo	2000	4V4ND4RH6YN233698
13. Tractor	Volvo	2000	4V4ND4RH8YN233699
14. Tractor	Volvo	2000	4V4ND4RH7YN233712
15. Tractor	Volvo	2000	4V4ND4RH9YN233713
16. Tractor	Volvo	2000	4V4ND4RH0YN233714
17. Tractor	Volvo	2000	4V4ND4RH2YN233715
18. Tractor	Volvo	2000	4V4ND4RH4YN233716
19. Tractor	Volvo	2000	4V4ND4RH6YN233720
20. Trailer	Utility	1997	1UYVS2539VM294501
21. Trailer	Utility	1997	1UYVS2530VM294502
22. Trailer	Utility	1998	1UYVS2532VM294503
23. Trailer	Utility	1997	1UYVS253RVM594504
24. Trailer	Utility	1997	1UYVS2536VM294505
25. Trailer	Utility	1997	1UYVS2538VM294506
26. Trailer	Utility	1997	1UYVS253XVM294507
27. Trailer	Utility	1997	1UYVS2531VM294508
28. Trailer	Utility	1997	1UYVS2533VM294509
29. Trailer	Utility	1997	1UYVS253XVM264510
30. Trailer	Utility	1997	1UYVS2531VM294511
31. Trailer	Utility	1998	1UYVS2530WM316001
32. Trailer	Utility	1998	1UTVS2532WM316002
33. Trailer	Utility	1998	1UYVS2534WM316003
34. Trailer	Utility	1998	1UYVS2536WM316004
35. Trailer	Utility	1998	1UYVS2538WM316005
36. Trailer	Utility	1998	1UYVS253XWM316006
37. Trailer	Utility	1998	1UYVS2531WM316007
38. Trailer	Utility	1998	1UYVS2533WM316008
39. Trailer	Utility	1998	1UYVS2535WM316009
40. Trailer	Utility	1998	1UYVS2531WM316010

41. Trailer	Utility	1998	1UYVS2533WM316011
42. Trailer	Utility	1998	1UYVS2533WM316012
43. Trailer	Utility	1998	1UYVS2537WM316013
44. Trailer	Utility	1998	1UYVS2539WM316014
45. Trailer --	Utility	1999	1UYVS2536XU848001
46. Trailer --	Utility	1999	1UYVS2538XU848002
47. Trailer --	Utility	1999	1UYVS253XXU848003
48. Trailer --	Utility	1999	1UYVS2531XU848004
49. Trailer --	Utility	1999	1UYVS2533XU848005
50. Trailer --	Utility	1999	1UYVS2535XU848006
51. Trailer --	Utility	1999	1UYVS2537XU848007
52. Trailer --	Utility	1999	1UYVS2539XU848008
53. Trailer --	Utility	1999	1UYVS2530XU848009
54. Trailer --	Utility	1999	1UYVS2537XU848010
55. Trailer	Utility	1999	1UYVS2539XU848011
56. Trailer	Utility	1999	1UYVS2530XU848012
57. Trailer	Utility	1999	1UYVS2532XU848013
58. Trailer	Utility	1999	1UYVS2534XU848014
59. Trailer	Utility	1999	1UYVS2536XU848015
60. Trailer	Utility	1999	1UYVS253XXU848101
61. Trailer	Utility	1999	1UYVS2531XU848102
62. Trailer	Utility	1999	1UYVS2533XU848103
63. Trailer	Utility	1999	1UYVS2535XU848104
64. Trailer	Utility	1999	1UYVS2537XU848105
65. Trailer	Utility	1999	1UYVS2539XU848406
66. Trailer	Utility	1999	1UYVS2530XU848107
67. Trailer	Utility	1999	1UYVS2532XU848108
68. Trailer	Utility	1999	1UYVS2534XU848109
69. Trailer	Utility	1999	1UYVS2530XU848110
70. Trailer	Utility	2000	1UYVS2532YM922001
71. Trailer	Utility	2000	1UYVS2534YM922002
72. Trailer	Utility	2000	1UYVS2536YM922003
73. Trailer	Utility	2000	1UYVS2538YM922004
74. Trailer	Utility	2000	1UYVS253XYM922005
75. Trailer	Utility	2000	1UYVS2531YM922006
76. Trailer	Utility	2000	1UYVS2533YM922007
77. Trailer	Utility	2000	1UYVS2535YM922008
78. Trailer	Utility	2000	1UYVS2537YM922009
79. Trailer	Utility	2000	1UYVS2533YM922010

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Answer and New Matter was served by messenger on May 11, 2001, upon the following counsel of record:

Jeffrey R. Owen, Esq.
Cooper Owen & Renner, P.C.
1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Michael F. Nerone, Esq.
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Henry L. Seelman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

v.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

Case No. 01-466-CO

ENTRY OF APPEARANCE

Filed on behalf of Defendant
Simon Transportation Services, Inc.

Counsel of Record for this Party:

Nancy L. Heilman
Pa. I.D. No. 51121

COHEN & GRIGSBY, P.C.
Firm I.D. No.621
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319
(412) 297-4900

FILED

MAY 14 2001
11:53 AM
William A. Shaw
Prothonotary

#8

ENTRY OF APPEARANCE

Please enter the appearance of Nancy L. Heilman, Esq., and Cohen & Grigsby, P.C., as counsel for the Defendant, Simon Transportation Services, Inc., in the above-referenced action.

Respectfully Submitted,

COHEN & GRIGSBY, P.C.

By: Nancy L. Heilman
Nancy L. Heilman
Pa. I.D. No. 51121

11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319
(412) 297-4900

Counsel for Defendant,
Simon Transportation Services, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Entry of Appearance was served by first-class mail, postage prepaid, on May 10th, 2001, upon the following counsel of record:

Jeffrey R. Owen, Esq.
Cooper Owen & Renner, P.C.
1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Michael F. Nerone, Esq.
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Doreen Z. Heilman

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
Defendants

OPINION AND ORDER

In the early morning hours of October 24, 2000, two (2) collisions occurred on Interstate 80 between DuBois and Clearfield, Pennsylvania. Both collisions were caused in whole or in part by the fact that a driver of a tractor-trailer truck was asleep at the wheel.

In the first accident, a tractor-trailer operated by Defendant Jamie Harvey Parker (hereinafter "Defendant Parker") was rear-ended by a tractor-trailer driven by Defendant Eddie C. Roberts (hereinafter "Defendant Roberts"). The second accident occurred when a truck driven by Defendant Samuel Thomas Knight collided with a rescue squad truck positioned on the highway with its warning lights flashing and an illumination boom brightly lighting the scene of the clean up of the first accident. During the second collision, three volunteer firemen who were passengers in the rescue squad truck were severely injured, including the Plaintiff, James U. Lux, who was permanently paralyzed from the waist down.

Defendant Parker filed Preliminary Objections to Plaintiff's Complaint, which this Court granted by its Opinion and Order dated October 1, 2001, in which the Court found that

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JAN 04 2002

William A. Shaw
Prothonotary

#210

Plaintiff's allegations against Defendant Parker with respect to the first accident were insufficient to maintain an action of negligence against Defendant Parker. Plaintiff filed a motion requesting that this Court reconsider its said Order. Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight subsequently joined in Plaintiff's Motion to Reconsider. Upon a review of the motions and briefs filed by the parties hereto, the Court finds that its Order granting Defendant Parker's Preliminary Objections in the Nature of a Demurrer was appropriate.

Plaintiff argues in support of its motion to reconsider that the Court did not address the fact that driving too slowly is prohibited by law pursuant to 75 Pa.C.S.A. 3364(a)¹. Plaintiff states that such negligent operation of a vehicle (a) at a "dangerously slow speed," while (b) "failing to display and utilize proper safety warning apparatus on his vehicle," created "the foreseeable risk of being struck from behind." Accordingly, Plaintiff alleges that the determination of the effect of this negligent conduct should be left to the jury.

Pennsylvania law provides that the breach of a statutory duty does not in and of itself establish a cause of action in negligence, absent proof of causation and injury. Vernon v. Stash, 532 A.2d 441, 446 (Pa. Super. 1987). To establish causation, the plaintiff must prove that the breach was "both the proximate and actual cause of the injury." Reilly v. Tiergarten Inc., 633 A.2d 208, 210 (Pa. Super. 1993), citing McDonald v. Marriott Corp., 564 A.2d 1296, 1298 (Pa. Super. 1989). Proximate cause is a question of law to be determined by the Court before the issue of actual cause may be put to the jury. Id.

Pennsylvania courts look to Section 431 of the Restatement (Second) of Torts which sets forth the standard for proximate cause as follows: "The actor's negligent conduct is a legal

¹ Impeding movement of traffic prohibited.—Except when reduced speed is necessary for safe operation or in compliance with law, no person shall drive a motor vehicle at such a slow speed as to impeded the normal and reasonable movement of traffic. 75 Pa. C.S.A. 3364(a)(Purdon 2001).

cause of harm to another if (a) his conduct is a substantial factor in bringing about the harm . . .” Taylor v. Jackson, 643 A.2d 771, 775 (Pa. Commonw. 1994), *quoting* RESTATEMENT (SECOND) TORTS §431(1965). Section 433 of the Restatement sets forth the following considerations to be taken into account in determining whether an actor’s conduct is a substantial factor in bringing about harm to another:

- a. The number of other factors which contribute in producing the harm and the extent of the effect, which they have in producing it;
- b. Whether the actor’s conduct has created a force or series of forces, which are in continuous and active operation up to the time of the harm, or has created
- c. a situation harmless unless acted upon by other forces for which the actor is not responsible; and
- d. Lapse of time.

The Court finds that while Defendant Parker’s operation of the vehicle may have breached a statutory duty, it was not a “substantial factor” in causing harm to the Plaintiff. In and of itself, Defendant Parker’s operation of his vehicle at a slow speed and without flashers was harmless, but for the negligence of Defendant Roberts in colliding with Defendant Parker’s vehicle. Accordingly, this Court affirms its determination that Defendant Parker’s alleged negligence was not a substantial factor in causing Plaintiff’s injuries and finds that Plaintiff’s allegations of negligence are not sufficient to maintain a cause of action against Defendant Parker with respect to the first accident.

Next, Plaintiff argues that the Court did not deal with the allegations against Defendant Parker relating to his fleeing the scene of the accident following the collision, which “constitute additional and independent grounds for liability based upon his intentional or negligent conduct.” Plaintiff asserts that in fleeing the scene, that Defendant Parker “spread the debris

field across a greater area" which caused "the foreseeable consequence of requiring emergency response personnel to be at the accident site for a greater period of time . . . and to be required to secure an area greater than would have been necessary had Defendant Parker remained at the scene, thus placing the Plaintiff in the zone of danger created by the activities of Defendant Parker at the time of the second collision." Citing the case Taylor v. Jackson, 743 A.2d 771 (Pa. Commonw. 1994), Plaintiff states that diverting the services of safety personnel has been recognized as a potential substantial factor to be examined by the trier of fact. In Taylor, the plaintiffs alleged that a second collision at a multiple accident scene resulted in the diversion of police officers to that scene, preventing such officers from responding to other aspects of the accident, and thus causing the third accident. The defendant driver in the second collision had rear-ended another car causing such collision. The Commonwealth Court overruled the trial court's finding that the second driver's conduct was not a substantial factor in causing the third accident, and reversed its entry of summary judgment. The Commonwealth Court found that "[2]lthough attenuated, we believe that this argument under the particular facts of the instant matter creates a jury question." Id. at 776.

Unlike the court in Taylor, this Court finds that the particular facts of this case do not create a jury question. In contrast to Taylor, Defendant Parker did not cause the initial collision. Rather it was the negligent conduct of Defendant Roberts, in falling asleep at the wheel, which caused the collision that diverted the emergency personnel in this case. Again, this Court finds that Defendant Parker's alleged breach of a statutory duty was not a substantial factor in bringing emergency personnel to the scene and exposing them to harm. Accordingly, the Court affirms its determination that Plaintiff's claim as to negligence on the part of Defendant Parker is legally insufficient, and that Defendant Parker's Preliminary Objections

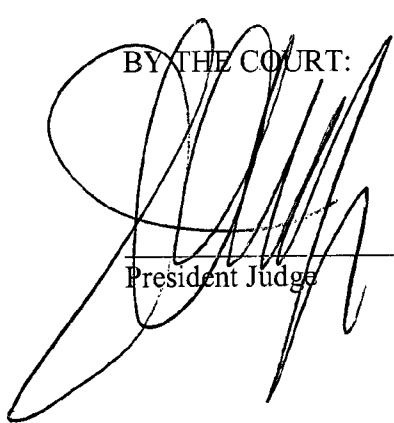
should be granted. Accordingly, the Motion to Reconsider as filed by Plaintiff, and as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby dismissed.

WHEREFORE, this Court enters the following:

ORDER

NOW, this 4th day of January 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED.

BY THE COURT:



President Judge

FILED

JAN 04 2002

03:09 p.m.
William A. Shaw
Prothonotary

3 cc to atty: Nerone

1 cc to atty: Heilman

2 cc to atty: Yacon

1 cc to atty: Seifert

1 cc to atty: Benty

1 cc to Don Mikesell

[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL ACTION

Plaintiff,

No. 01-466-CD

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,

PRAECIPE FOR APPEARANCE

Defendants.

Filed on behalf of Defendant:

Pennsylvania Department
of Transportation

Counsel of Record for This
Party:

John R. Benty
Sr. Deputy Attorney General
Pa. I.D. #44606

Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-3539

FILED

MAY 11 2001

William A. Shaw
Prothonotary

46

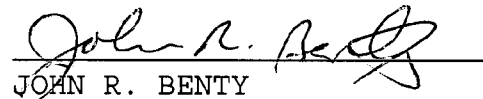
PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above-referenced case on behalf of the defendant, Pennsylvania Department of Transportation. The defendant, Pennsylvania Department of Transportation, hereby demands a trial by a jury of twelve.

D. MICHAEL FISHER
Attorney General

BY:


JOHN R. BENTY
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
Praecipe for Appearance was served upon the following counsel of
record, via first-class mail, postage pre-paid on May 8, 2001:

Jeffrey R. Owen, Esq.
COOPER OWEN & RENNER, P.C.
1600 Benedum-Trees Bldg.
223 Fourth Ave.
Pittsburgh, PA 15222-1713
(Counsel for Plaintiff)

Michael F. Nerone, Esq.
Suite 400, Two PPG Place
Pittsburgh, PA 15222
(Counsel for Ort Trucking
and Samuel Knight)

Simon Transportation Services, Inc.
6100 Neil Road
Reno, Nevada 89511

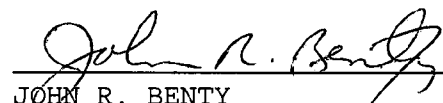
R. and F. Miller, Inc.
58255 Crumstown Highway
South Bend, Indiana 46619-9541

Eddie C. Roberts
23700/64 Marquette Blvd.
South Bend, Indiana 46628

Jamie Harvey Parker
500 South Ohio St.
Humansville, Missouri 65613

D. MICHAEL FISHER
Attorney General

BY:


JOHN R. BENTY
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CD

**AFFIDAVIT OF SERVICE
BY MAIL**

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:

Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

(412) 281-9696

FILED

MAY 6 7 2001

m/1/3/1 noc

William A. Shaw

Pro. Notary

ES

25

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

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff	)	Case No.: 01-466-CD
)	
)	
vs.)	
)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC.,)	
SIMON TRANSPORTATION)	
SERVICES, INC.,)	
R. AND F. MILLER, INC.,)	
SAMUEL THOMAS KNIGHT,)	
EDDIE C. ROBERTS,)	
JAMIE HARVEY PARKER, and)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION.)	
)	
Defendants)	

AFFIDAVIT OF SERVICE BY MAIL

COMMONWEALTH OF PENNSYLVANIA)	
	)	SS.
COUNTY OF ALLEGHENY)	

Before me, the undersigned notary public, this day personally appeared Jeffrey R. Owen, Esquire, who, being duly sworn according to law, deposes and says that he mailed a copy of the Complaint in Civil Action in this matter by certified mail, restricted delivery, return receipt requested, to the following Defendants:

Gerald E. Ort Trucking, Inc.
775 Industrial Park Road
New London, Wisconsin 54961

Date of Receipted Delivery:
April 11, 2001

Ort Trucking, Inc.
775 Industrial Park Road
New London, Wisconsin 54961

Date of Receipted Delivery:
April 11, 2001

R. and F. Miller, Inc.
58255 Crumstown Highway
South Bend, Indiana 46619-9541

Date of Receipted Delivery:
April 13, 2001

Samuel Thomas Knight
2915 Shirley Road
Youngstown, Ohio 44502

Date of Receipted Delivery:
April 11, 2001

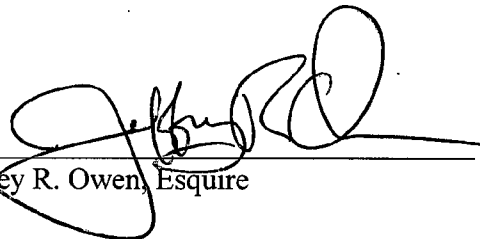
Eddie C. Roberts
23700/64 Marquette Blvd.
South Bend, Indiana 46628

Date of Receipted Delivery:
April 11, 2001


Jamie Harvey Parker
500 South Ohio Street
Humansville, Missouri 65613

Date of Receipted Delivery:
April 12, 2001

and that the United States Postal Service return receipts signed on the Dates of Receipted Delivery indicated herein are evidence of delivery to these Defendants of the Complaint filed in the instant action, and the same are attached hereto as Exhibit "A".


Jeffrey R. Owen, Esquire

Sworn to and Subscribed
before me this 1st
day of May, 2001


Notary Public

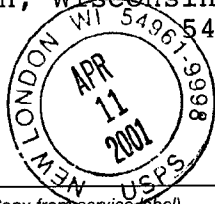
Notarial Seal
Jane A. Andrews, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Sept. 1, 2003
Member, Pennsylvania Association of Notaries

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:

Gerald E. Ort Trucking, Inc.
~~775 Industrial Park Road~~
 New London, Wisconsin 54961



2. Article Number (Copy from service label)

7000 1670 0004 7869 9439

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Denise Krause 4-11-01

C. Signature

X Denise Krause ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☒ Yes

If YES, enter delivery address below: ☐ No

PO BOX 267

3. Service Type

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

4. Restricted Delivery? (Extra Fee) ☐ Yes

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:

Ort Trucking, Inc.
~~775 Industrial Park Road~~
 New London, Wisconsin 54961



2. Article Number (Copy from service label)

7000 1670 0004 7869 9507

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Denise Krause 4-11-01

C. Signature

X Denise Krause ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☒ Yes

If YES, enter delivery address below: ☐ No

PO BOX 267

3. Service Type

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

4. Restricted Delivery? (Extra Fee) ☐ Yes

Exhibit "A"

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:

R. and F. Miller, INC.
58255 Crumstown Highway
South BEND, Indiana
46619-9541

2. Article Number (Copy from service label)

7000 1670 0004 7869 9484

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

☐ Agent
☐ Addressee

 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☒ No

Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

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:

Samuel Thomas Knight
2915 Shirley Road
Youngstown, Ohio 44502

2. Article Number (Copy from service label)

700 1670 0004 7869 9477

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

☒ Agent
☐ Addressee

 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☒ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☒ Yes

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:

Eddie C. Roberts
23700/64 Marquette Blvd.
South Bend, Indiana 46628

2. Article Number (Copy from service label)

7000 1670 0004 7869 9460

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

Robert Thompson

9-11

C. Signature

Robert Thompson

☐ Agent☒ Addressee

D. Is delivery address different from item 1?

☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☒ Yes**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:

Jamie Harvey Parker
500 South Ohio Street
Humansville, Missouri
65613

2. Article Number (Copy from service label)

7000 1670 0004 7869 9453

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

JAMIE PARKER

4-12-01

C. Signature

Jamie Parker

☐ Agent☒ Addressee

D. Is delivery address different from item 1?

☒ YesIf YES, enter delivery address below: ☒ No

P.O. Box 211

3. Service Type

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

4. Restricted Delivery? (Extra Fee)

☒ Yes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

PRAECIPE FOR APPEARANCE

Filed on behalf of R & F
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Richard T. Haft, Esquire
Pa. I.D. #83735

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

MAY 07 2001

William A. Shaw
Prothonotary

#4

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Kindly enter the appearance of EDWARD A. YURCON, ESQUIRE and ANSTANDIG, McDYER, BURDETTE & YURCON, P.C. on behalf of the Defendants, R & F MILLER, INC. and EDDIE C. ROBERTS in the above captioned lawsuit.

JURY TRIAL DEMANDED.

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within
PRAECIPE FOR APPEARANCE has been served upon the following counsel
by mailing a copy, postage pre-paid, this 3rd day of MAY, 2001,
to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

John T. Pion, Esquire
Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Simon Transportation Services,
Inc.
6100 Neil Road
Reno, Nevada 89511

Jamie Harvey Parker
500 South Ohio Street
Humansville, Missouri 65613

Commonwealth of PA
Department of Transportation
1924-30 Daisy Street
Clearfield County, PA 16830

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-CD

Issue No.

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT TRUCKING,
INC. AND SAMUEL THOMAS KNIGHT

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

APR 19 2001

William A. Shaw
Prothonotary

3

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter the appearances of John T. Pion, Esquire and Michael F. Nerone, Esquire on behalf of the Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight, in the above-captioned case.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 
Michael F. Nerone, Esquire

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing PRAECIPE FOR APPEARANCE have been served this 16th day of April, 2001, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

Jeffrey R. Owen, Esquire
Cooper Owen & Renner, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222


Simon Transportation Services, Inc.
6100 Neil Road
Reno, Nevada 89511

R. and F. Miller, Inc.
58255 Crumstown Highway
South Bend, Indiana 46619-9541

Eddie C. Roberts
23700/64 Marquette Blvd.
South Bend, Indiana 46628

Jamie Harvey Parker
500 South Ohio Street
Humansville, Missouri 65613

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

FILED

APR 19 2001
MILLER & CO
William A. Shaw
Prothonotary

[Signature]

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10855

LUX, JAMES U.

01-466-CD

VS.

GERALD E. ORT TRUCKING INC. AI

COMPLAINT

SHERIFF RETURNS

NOW APRIL 4, 2001 AT 9:15 AM DST SERVED THE WITHIN COMPLAINT ON
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, DEFENDANT AT
EMPLOYMENT, 1924-30 DAISY STREET, CLEARFIELD, CLEARFIELD COUNTY,
PENNSYLVANIA BY HANDING TO DENNY PRESTASH, RISK MANAGEMENT, A
TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN
TO HIM THE CONTENTS THEREOF.
SERVED BY: COUDRIET

Return Costs

Cost	Description
19.00	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

6th Day Of April 2001

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

So Answers,

Chester A. Hawkins
by Mary Ann Harris
Chester A. Hawkins
Sheriff

FILED

012:24
APR 06 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CO

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 claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Office of Court Administrator
1 North Second Street
Clearfield, PA 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CD

COMPLAINT

FILED

APR 03 2001

William A. Shaw
Prothonotary

Filed on behalf of JAMES U. LUX,
Plaintiff

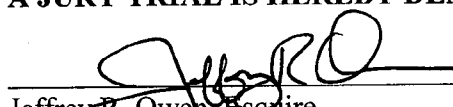
Counsel of Record for this Party:

Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

A JURY TRIAL IS HEREBY DEMANDED: (412) 281-9696


Jeffrey R. Owen, Esquire
Counsel For Plaintiff, James U. Lux

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff	)	Case No.:
)	
)	
vs.)	
)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC.,)	
SIMON TRANSPORTATION)	
SERVICES, INC.,)	
R. AND F. MILLER, INC.,)	
SAMUEL THOMAS KNIGHT,)	
EDDIE C. ROBERTS,)	
JAMIE HARVEY PARKER, and)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION.)	
)	
Defendants)	

COMPLAINT

AND NOW, comes the Plaintiff, James U. Lux, by and through his Counsel, Cooper Owen & Renner, P.C. and Jeffrey R. Owen, Esquire, and files this Complaint, of which the following is a statement.

1. Plaintiff James U. Lux is an adult individual residing at 90 North Park Place, Apt. B3, Du Bois, Clearfield County, Pennsylvania 15801.
2. Defendant Gerald E. Ort Trucking, Inc. is a corporation incorporated pursuant to the laws of the State of Wisconsin with a principal address located at 775 Industrial Park Road, New London, Wisconsin, 54961, engaged in the business of long distance and local trucking.

3. Defendant Ort Trucking, Inc. is a corporation incorporated pursuant to the laws of the State of Wisconsin with a principal address at P.O. Box 267, New London, Wisconsin, 54961, and at 775 Industrial Park Road, New London, Wisconsin 54961, engaged in the business of long distance and local trucking.

4. Defendant Simon Transportation Services, Inc. is a corporation incorporated pursuant to the laws of the State of Nevada, with a principal address located at 6100 Neil Road, Reno, Nevada, 89511, and is the successor in interest to Gerald E. Ort Trucking, Inc.

5. Defendant Samuel Thomas Knight is an adult individual residing at 2915 Shirley Road, Youngstown, Ohio 44502 and at all times relevant hereto was the operator of a 2000 Volvo truck, owned by Defendant Gerald E. Ort Trucking, Inc.

6. Defendant R. and F. Miller, Inc. is a corporation incorporated pursuant to the laws of the State of Indiana, with a principal place of business located at 58255 Crumstown Highway, South Bend, Indiana, 46619-9541.

7. Defendant Eddie C. Roberts is an adult individual residing at 23700/64 Marquette Blvd., South Bend, Indiana 46628, and at all times relevant hereto was the operator of a 2000 Freightliner truck owned by Defendant R. and F. Miller, Inc.

8. Defendant Jamie Harvey Parker is an adult individual residing at 500 South Ohio Street, Humansville, Missouri 65613, and at all time relevant hereto was the owner and operator of a 1988 International truck.

9. Defendant Commonwealth of Pennsylvania, Department of Transportation (hereinafter referred to as "PennDot") is a Commonwealth Agency with a place of business as it pertains to roads in Clearfield County, Pennsylvania located at 1924-30 Daisy Street, Clearfield County PA 16830.

10. The events hereinafter complained of occurred on or about Tuesday, October 24, 2000 between approximately 1:00 A.M. and 3:30 A.M. on Interstate Highway Route 80 at a place approximately .6 miles North and/or West of mile marker 103 in Union Township, Pennsylvania.

11. At said location, at or about 1:00 A.M., Defendant Eddie C. Roberts was operating a 2000 Freightliner truck in a Westerly direction on the above-identified Highway Route 80.

12. Defendant Eddie C. Roberts operated his vehicle in a negligent manner, violently striking the 1988 truck owned and operated by Defendant Jamie Harvey Parker.

13. The impact of this initial collision was sufficient to severely damage both the truck operated by Defendant Eddie C. Roberts and the truck operated by Defendant Jamie Harvey Parker; to create a large two foot by two foot hole in the highway; to cause vehicle parts to be strewn about on the highway; and to cause oil and/or other vehicle fluids to completely cover the right lane of the highway and other proximate areas.

14. Defendant Jamie Harvey Parker, who was driving the truck without a driver's license or a license to operate said 18-wheeled vehicle, fled the scene of the initial collision, further spreading fluids and vehicle parts along the highway.

15. Thereafter, Plaintiff James U. Lux, who was a police officer of the City of Dubois and a Volunteer Fireman, was called to the scene to assist in the emergency services being provided there and to remain there while repairs and clean-up to the highway was effectuated by Agents of Defendant Pennsylvania Department of Transportation ("PennDot").

16. Plaintiff James U. Lux was an occupant of a 1987 International Fireman's Squad Rescue Truck which was parked on the right hand lane of Route 80, with its emergency warning lights activated, and its tower lights erected to illuminate the scene of the repair work and highway clean up being conducted by Defendant PennDot.

17. Thereafter, at or about 3:30 A.M., Defendant Samuel Thomas Knight, without braking and at a high rate of speed, drove the 2000 Volvo truck he was operating through an area of safety cones and brightly burning emergency flares placed on the highway, over and on to the closed right hand lane, and directly and violently collided with the International Squad Rescue Truck, propelling the Squad Rescue Truck approximately 150 feet, and causing it to roll completely over, until it came to rest on its left side, facing to the West, on a grassy area to the right of the right hand berm of the highway.

18. As a result of said collision, Plaintiff James U. Lux suffered serious and extensive injuries, including but not limited to the following:

- a. Severe and permanent damage to his back, spine, and nervous system, including a comminuted fracture in the Lumbar region of his spine, rendering him without sensation and permanently paralyzed from L1-L2 downward throughout his lower extremities with a diagnosis of complete flacid paraplegia;
- b. Multiple trauma to his body, including but not limited to lacerations, contusions, bruising, numbness in his chest, bruising and trauma to the spinal chord, and the introduction of bone fragments into the spinal tissue;
- c. Damage and instability requiring an operation to fuse his vertebrae and spinal area spanning T11 through L3, by means of the surgical implantation of steel plates and rods adjacent to his spinal column;
- d. Loss of consciousness;
- e. Mental, psychological and emotional damage resulting from the same.

Count I
Negligence
Plaintiff James U. Lux vs.
Defendant Samuel Thomas Knight,
Defendant Gerald E. Ort Trucking, Inc., and
Defendant Ort Trucking, Inc.

19. Paragraphs 1 through 18 and 23 through 44 are hereby incorporated by reference as if fully restated herein.

20. At the time and place of the second collision described above, Samuel Thomas Knight was an agent and/or employee of Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., and was at all times relevant hereto acting within the scope and course of his duties and/or employment responsibilities.

21. Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc. are vicariously liable for the actions of their agent and/or employee, Samuel T. Knight, who was negligent in the following particulars:

- a. In operating his vehicle while susceptible to, and in actuality falling asleep at the wheel;
- b. In failing to observe and heed warning apparatus, including but not limited to brightly burning warning flares, warning cones, and flashing lights, but instead driving over and through the same without reduction in speed;
- c. In failing to observe and heed a Squad Rescue Truck stopped on the highway on the other side of the above referenced warning apparatus, with its emergency and boom illumination lights turned on;
- d. In operating his vehicle at an excessive rate of speed considering the circumstances existent at the time of the second collision;

- e. In failing to keep and maintain his vehicle under safe and adequate control;
- f. In losing control of his vehicle;
- g. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the second collision;
- h. In operating his vehicle when he was not fit and competent to do so;
- i. In driving in a careless and reckless fashion;
- j. In failing to stop, slow, or take evasive action before colliding with the above mentioned Squad Rescue Truck at a high rate of speed.

22. The negligence of Defendants Samuel T. Knight, Gerald E. Ort Trucking, Inc. , and Ort Trucking, Inc. were substantial factors in causing the second collision described above, and thus were substantial factors in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Samuel T. Knight, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., jointly and severally for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count II
Negligence
Plaintiff James U. Lux vs.
Defendant Eddie C. Roberts, , and
Defendant R and F Miller, Inc.

23. Paragraphs 1 through 22 and 27 through 44 are hereby incorporated by reference as if fully restated herein.

24. At the time and place of the first collision described above, Eddie C. Roberts was an agent and/or employee of R. and F. Miller, Inc., and was at all times relevant hereto acting within the scope and course of his duties and/or employment responsibilities.

25. Defendant R. and F. Miller, Inc. is vicariously liable for the actions of its agent and/or employee, Eddie C. Roberts, who was negligent in the following particulars:

- a. In operating his vehicle while susceptible to, and in actuality falling asleep at the wheel;
- b. In failing to observe and heed another truck traveling on the highway in front of him, and colliding with it;
- c. In operating his vehicle at an excessive rate of speed considering the circumstances existent at the time of the first collision;
- d. In failing to keep and maintain his vehicle under safe and adequate control;
- e. In losing control of his vehicle;
- f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
- g. In operating his vehicle when he was not fit and competent to do so;
- h. In driving in a careless and reckless fashion;

- i. In failing to stop, slow, or take evasive action before colliding with the above mentioned truck operated by Jamie Harvey Parker at a high rate of speed.

26. The negligence of Defendants Eddie C. Roberts, and R. and F. Miller, Inc. were substantial factors in causing the first and second collisions described herein, and thus were substantial factors in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Eddie C. Roberts and R. and F. Miller, Inc., jointly and severally for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count III
Negligence
Plaintiff James U. Lux vs.
Defendant Jamie Harvey Parker

27. Paragraphs 1 through 26 and 30 through 44 are hereby incorporated by reference as if fully restated herein.

28. At the time of the first collision described herein, Jamie Harvey Parker was negligent in the following particulars:

- a. In operating his 1998 International Truck and attached cargo trailer without a driver's license;
- b. In operating his vehicle at a dangerously slow speed;
- c. In failing to display and utilize the proper safety warning apparatus upon his vehicle;
- d. In fleeing the scene of the first collision, without identifying himself, and

in doing so spreading the field of collision debris across a greater area than that caused by the initial collision;

- e. In fleeing the scene of the first collision, and causing law enforcement officials at the scene of the first collision to be required to leave the scene of the first collision in order to apprehend and arrest him, thus diverting them from activities in securing and safeguarding the scene of the first collision;
- f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
- g. In operating his vehicle when he was not fit and competent to do so
- h. In driving in a careless and reckless fashion;

29. The negligence of Defendant Jamie Harvey Parker was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant Jamie Harvey Parker for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count IV
Negligence
Plaintiff James U. Lux vs.
Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc.

30. Paragraphs 1 through 29 and 33 through 44 are hereby incorporated by reference as if fully restated herein.

31. Defendants Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc. were negligent in the following particulars:

- a. Failing to adequately train their driver/operators, including Defendant Samuel Thomas Knight;
- b. Failing to adequately supervise their driver/operators, including Defendant Samuel Thomas Knight;
- c. Failing to adequately perform background investigations and otherwise negligently hiring unqualified or unfit individuals, including Defendant Samuel Thomas Knight;
- d. Requiring and/or permitting their drivers/operators to drive without proper rest, and/or in violation of applicable hours of service limitations;
- e. Failing to adequately supervise and monitor the activities of their driver/operators, including Defendant Samuel Thomas Knight;
- f. Failing to take corrective measures for improper and unsafe activities of their driver/operators, including Defendant Samuel Thomas Knight;
- g. Permitting their drivers/operators, including Defendant Samuel Thomas Knight, to continue driving despite repetitive safety violations, and in violation of motor carrier safety regulations;

- h. Negligently entrusting the operation of their trucks to drivers/operators who were incompetent and/or reckless;

32. The negligence of Defendants Gerald E. Ort Trucking and Ort Trucking, Inc. was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendants Gerald E. Ort Trucking and Ort Trucking, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count V
Negligence
Plaintiff James U. Lux vs.
Defendant R. and F. Miller, Inc.

33. Paragraphs 1 through 32 and 36 through 44 are hereby incorporated by reference as if fully restated herein.

34. Defendant R. and F. Miller, Inc. was negligent in the following particulars:

- a. Failing to adequately train their driver/operators, including Defendant Eddie C. Roberts;
- b. Failing to adequately supervise their driver/operators, including Defendant Eddie C. Roberts;
- c. Failing to adequately perform background investigations and otherwise negligently hiring unqualified or unfit individuals, including Defendant Eddie C. Roberts;
- d. Requiring and/or permitting their drivers/operators to drive without proper rest, and/or in violation of applicable hours of service limitations;

- e. Failing to adequately supervise and monitor the activities of their driver/operators, including Defendant Eddie C. Roberts;
- f. Negligently entrusting the operation of their trucks to drivers/operators who were incompetent and/or reckless;

35. The negligence of Defendant R. and F. Miller, Inc. was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against R. and F. Miller, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count VI
Negligence
Plaintiff James U. Lux vs.
Defendant Commonwealth of Pennsylvania

36. Paragraphs 1 through 35 and 40 through 44 are hereby incorporated by reference as if fully restated herein.

37. Defendant PennDot is charged with the responsibility of keeping the roadways which it owns and or controls in a reasonable safe condition for the traveling public.

38. Defendant PennDot negligently caused, allowed or permitted a dangerous condition of Interstate 80, a highway which it owned or had custody of, in the following particulars:

- a. In failing to provide a reasonably safe roadway;

- b. In negligently conducting repairs of conditions in the roadway caused by the first collision;
- c. In violating the PennDot regulations and requirements for placement and maintenance of a traffic plan for the protection of traveling public in a construction zone;
- d. In failing to place advance warning signs in the proper and required positions on and adjacent to Interstate 80 to warn the traveling public of the construction zone ahead;
- e. In failing to place a left arrow board truck and a crash truck at the appropriate locations to warn the traveling public of the construction zone, instead necessitating the presence of the Squad Safety vehicle which was then collided into at the time of the second collision;
- f. In failing to provide adequate equipment, repair supplies and materials, and safety vehicles sufficient to secure and safeguard the scene of the repairs being undertaken;
- g. In unreasonably delaying in the conduct of its repair activities;

39. The negligence of PennDot was a substantial factor in causing the second collision described above, and thus was a substantial factor in causing the serious injuries suffered by the Plaintiff, James U. Lux.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant PennDot for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

Count VII
Negligence
Plaintiff James U. Lux vs.
Defendant Simon Transportation Services, Inc.

40. Paragraphs through 1 through 39 are hereby incorporated by reference as if fully restated herein.

41. Defendant Simon Transportation Services, Inc ("Simon Transportation") is the successor in interest of Defendant Gerald E. Ort Trucking, Inc., having contracted to acquire and having acquired all of the business of Gerald E. Ort Trucking, Inc., and having taken over the operation of its predecessor's trucking operations.

42. Such activities of Simon Transportation constitutes a *de facto* merger with, and the continuation of the business enterprise conducted by, Defendant Gerald E. Ort Trucking, Inc.

43. The transaction between Simon Transportation was conducted without adequate consideration and/or for the purpose of avoiding the obligations of Gerald E. Ort Trucking, Inc.

44. As a result, Defendant Simon Transportation is liable for the actions of Defendant Gerald E. Ort Trucking, Inc. and liable to the Plaintiff herein.

WHEREFORE, Plaintiff, James U. Lux demands judgment against Defendant Simon Transportation Services, Inc. for an amount in excess of the statutory arbitration limits for the injuries and damages he has suffered.

A JURY TRIAL IS DEMANDED.

Cooper Owen & Renner, P.C.

By: 

Jeffrey R. Owen, Esquire

VERIFICATION

I, **JAMES U. LUX**, hereby state that I am the Plaintiff, and I hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my information, knowledge and belief.

This statement is made pursuant to the penalties of 18 Pa. Cons. Stat. Ann. §4904, relating to unsworn falsification to authorities.




JAMES U. LUX

Dated: APRIL 3, 2001

FILED

APR 03 2001


William A. Shaw
Prothonotary

PD 580.00

3ccattg

2:48 P.M.

Appeal Docket Sheet

Docket Number: 250 WDA 2005

Page 1 of 5

February 9, 2005

Superior Court of Pennsylvania



James E. Lux, Appellant

v.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services Inc., R and F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and Pennsylvania Department of Transportation

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: February 8, 2005

Awaiting Original Record

Journal Number:

Case Category: Civil

Case Type:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

Record - 2 parts

SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: February 23, 2005

Next Event Type: Original Record Received

Next Event Due Date: March 21, 2005



FILED

6K FEB 11 2005

W. A. Shaw
William A. Shaw

Prothonotary/Clerk of Courts

#64

Appeal Docket Sheet**Docket Number: 250 WDA 2005****Page 2 of 5****February 9, 2005**

Superior Court of Pennsylvania

**COUNSEL INFORMATION****Appellant** Lux, James U.**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellant Attorney Information:****Attorney:** Owen, Jeffrey R.**Bar No.:** 45896**Law Firm:** Cooper Owen & Renner, P.C.**Address:** 223 Fourth Avenue Ste 1600

Pittsburgh, PA 15222-1713

Phone No.: (412)281-9696**Fax No.:** (412)281-9680**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Department of Transportation**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellee Attorney Information:****Attorney:** Benty, John Roman**Bar No.:** 44606**Law Firm:** PA Office of Attorney General**Address:** Torts Lit Manor Complex

564 Forbes Ave 6th Floor

Pittsburgh, PA 15219

Phone No.: (412)565-3539**Fax No.:** (412)565-3019**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Knight, Samuel Thomas**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellee Attorney Information:****Attorney:** Nerone, Michael F.**Bar No.:** 62446**Law Firm:** Dickie, McCamey & Chilcote, P.C.**Address:** Two PPG Place Ste 400

Pittsburgh, PA 15222

Phone No.: (412)392-5384**Fax No.:** (412)392-5342**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Simon Transportation**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellee Attorney Information:**

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 250 WDA 2005

Page 3 of 5

February 9, 2005



Attorney: Heilman, Nancy Lauffer
Bar No.: 51121 Law Firm: Cohen & Grigsby, P.C.
Address: 11 Stanwix St 15th Fl
Pittsburgh, PA 15222-1319
Phone No.: (412)297-4900 Fax No.:
Receive Mail: Yes
E-Mail Address: |0
Receive E-Mail: No

Appellee R&F Miller Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellee Attorney Information:

Attorney: Yurcon, Edward Anthony
Bar No.: 30830 Law Firm:
Address: Anstandig, McDyer, Burdette & Yurcon
1300 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
Phone No.: (412)765-3700 Fax No.:
Receive Mail: Yes
E-Mail Address: edyurcon@ambylaw.com
Receive E-Mail: No

Appellee Roberts, Eddie C
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellee Attorney Information:

Attorney: Yurcon, Edward Anthony
Bar No.: 30830 Law Firm:
Address: Anstandig, McDyer, Burdette & Yurcon
1300 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
Phone No.: (412)765-3700 Fax No.:
Receive Mail: No
E-Mail Address: edyurcon@ambylaw.com
Receive E-Mail: No

Appellee Parker, Jamie Harvey
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellee Attorney Information:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 250 WDA 2005**Page 4 of 5****February 9, 2005**

Attorney: Seiferth, Robert Alan
 Bar No.: 20481 Law Firm:
 Address: Corestates Plaza
 33 W. Third St, Ste 200
 Williamsport, PA 17701
 Phone No.: (570)326-9091 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Gerald E Ort Trucking
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellee Attorney Information:

Attorney: Nerone, Michael F.
 Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.
 Address: Two PPG Place Ste 400
 Pittsburgh, PA 15222
 Phone No.: (412)392-5384 Fax No.: (412)392-5342
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Ort Trucking Inc
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellee Attorney Information:

Attorney: Nerone, Michael F.
 Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.
 Address: Two PPG Place Ste 400
 Pittsburgh, PA 15222
 Phone No.: (412)392-5384 Fax No.: (412)392-5342
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/8/05	Notice of Appeal	60.00	60.00	2005SPRWD000167

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: January 14, 2005

Judicial District: 46

Date Documents Received: February 8, 2005

Date Notice of Appeal Filed: February 2, 2005

2/9/2005

2:48 P.M.

Appeal Docket Sheet

Docket Number: 250 WDA 2005

Page 5 of 5

February 9, 2005

Superior Court of Pennsylvania



Order Type: Judgment Entered

OTN:

Judge: Cherry, Paul E.
Judge

Lower Court Docket No.: 01-466-CO

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
February 8, 2005	Notice of Appeal Filed	Appellant	Lux, James U.
February 9, 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:

01-466-CD

James U. Lux

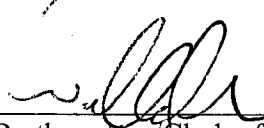
Vs.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and Pennsylvania Department of Transportation

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

The documents comprising the record have been numbered from **No. 1 to No. 64**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is March 14, 2005.


Prothonotary/Clerk of Courts

(seal)

Date: 03/10/2005

Time: 09:03 AM

Page 1 of 4

Cherryfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2001-00466-CD

Current Judge: Paul E. Cherry

Civil Other

Date		Judge
04/03/2001	Filing: Civil Complaint Paid by: Jeffrey R. Owen, Esquire Receipt number: 1823002 Dated: 04/03/2001 Amount: \$80.00 (Check) Three Certified Copies to Attorney	No Judge
04/06/2001	Sheriff Return NOW April 4, 2001, served the within Complaint on PA. Dept. of Transportation, Defendant at Employment, was handed a true attested copy of the original complaint and made known the true and attested copy of original complaint. So Answers, Sheriff Hawkins, s/ Marilyn Hamm.	No Judge
04/19/2001	Praeipce for Appearance, on behalf of Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, by John T. Pion, Esq. and Michael F. Nerone, Esq. s/Michael F. Nerone, Esq. Certificate of Service no cc	No Judge
05/07/2001	Praeipce For Appearance, on behalf of R & F Miller, Inc. and Eddie C. Roberts. filed by s/Edward A. Yurcon, Esq. Cert of Svc no cc	No Judge
	Affidavit of Service, Complaint in Civil Action, upon Defendants of Record. s/Jeffrey R. Owen, Esquire no cc	No Judge
05/11/2001	Praeipce For Appearance, on behalf of Pennsylvania Department of Transportation. filed by s/John R. Benty, Esq. no cc Cert of Svc	No Judge
05/14/2001	Preliminary Objections in the Nature of a Demurrer. filed by s/Edward A. Yurcon, Esq. no cc	No Judge
	Entry of Appearance, on behalf of Simon Transportation Services, Inc. s/Nancy L. Heilman, Esq. Cert of Svc no cc	No Judge
	Answer and New Matter, Filed on behalf of Simon Trucking. s/Nancy L. Heilman, Esq. Verification, s/Mark E. Wilkey Cert of Svc no cc	No Judge
05/16/2001	Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Knight's Answer to Complaint, New Matter and New Matter Pursuant to Pa. R.Civ. P. 2252(D) filed by s/Michael F. Nerone, Esq. Verification, s/Samuel Knight Cert of Svc no cc	No Judge
05/21/2001	Preliminary Objections. filed by s/John R. Benty, Esq. Cert of Svc 1 cc atty Benty	No Judge
07/26/2001	Miscellaneous Payment: Copy Fee Paid by: Marshall, Dennehey, Warner, Coleman & Goggin Receipt number: 1828913 Dated: 07/26/2001 Amount: \$.25 (Cash)	John K. Reilly Jr.
07/31/2001	Entry of Appearance, on behalf of Defendant, Jamie Harvey Parker. s/Robert A. Seiferth, Esq. 1 cc to atty	John K. Reilly Jr.
08/10/2001	Preliminary Objections of Defendant Jamie Harvey Parker. Filed by s/Robert A. Seiferth, Esq. Cert of Svc 1 cc w/o Rule	John K. Reilly Jr.
08/15/2001	ORDER, NOW, this 14th day of August, 2001, re: P.O.'s are sustained to the extent that Plaintiff shall be limited in his allegations of proof in paragraphs 38(a,b and g), etc. by the Court, s/JKR,JR.,P.J. 1 cc atty Benty, J. Owen, M. Nesare, N. Heilman, E. Yuscon and R. Seifesth	John K. Reilly Jr.
08/22/2001	Opinion and Order, filed. Cert. to Atty's Seiferth, Yurcon, Heilman, Bentley, Nerone, Owen and copy to Mikesell NOW, this 21st day of August, 2001, it is the ORDER of this Court that all Defendants Preliminary Objections are hereby DISMISSED.	John K. Reilly Jr.
09/14/2001	Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
09/21/2001	ORDER, NOW, this 20th day of Sept. 2001, re:Rule is issued upon the parties, Returnable 15th day of Oct. 2001, at 9:30 a.m. by the Court, s/JKR,JR., P.J. 5 cc Atty Yurcon	John K. Reilly Jr.
09/28/2001	Affidavit of Service, Order of Court of Sept. 20, 2001. upon Parties of Record. by s/Edward A. Yurcon, Esq. Cert of Svc no cc	John K. Reilly Jr.

Date: 03/10/2005

Time: 09:03 AM

Page 2 of 4

Cherryfield County Court of Common Pleas

ROA Report

Case: 2001-00466-CD

Current Judge: Paul E. Cherry

User: BHUDSON

Civil Other

Date		Judge
10/01/2001	OPINION AND ORDER, NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED. by the Court, s/JKR,JR., P.J. 1 cc Atty Owen, Nerone, Heilman, Yurcon, Seiferth, and John Benty	John K. Reilly Jr.
10/26/2001	Plaintiff's Motion to Reconsider, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
10/30/2001	ORDER, AND NOW, this 29th day of Oct. 2001, a Rule is issued upon the parties, returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Owen	John K. Reilly Jr.
11/02/2001	Petition For Interpleader. Filed by s/John T. Pion, Esq. Cert. of Svc. no cc	John K. Reilly Jr.
11/05/2001	Preliminary Order of Court, And Now, to-wit, this 5th day of Nov. 2001, Rule to Show Cause is hereby issued to show cause why the Petition for Interpleader should not be granted. Rule Returnable Dec. 7, 2001, at 9:00 a.m. before the Honorable Judge Riley. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
11/09/2001	Motion to Join in Plaintiff's Motion to Reconsider, filed by s/Michael F. Nerone, Esq. No CC	John K. Reilly Jr.
11/13/2001	ORDER, NOW, this 13th day of Nov. 2001, re: Rule issued upon parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
12/04/2001	Answer to Petition for Interpleader. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
01/04/2002	OPINION AND ORDER, NOW, this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED. by the Court, s/JKR,JR.,P.J. 3 cc to Atty Nerone, Heilman, Yucon, Seiferth, Beaty and D. Mikesell	John K. Reilly Jr.
01/14/2002	OPINION AND ORDER, NOW, this 9th day of Jan. 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Owen, Atty Nerone, Atty Pion, Nancy L. Heilman, Edward Yuscon, R. Seiferth, J. Bentry and D. Mikesell.	John K. Reilly Jr.
01/24/2002	Notification of Bankruptcy, on behalf of EDDIE C. ROBERTS. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
02/01/2002	Motion to Certify Interlocutory Order for Appeal. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
	Filing: Appeal to High Court Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$45.00 (Check)	John K. Reilly Jr.
	Filing: Miscellaneous Civil Filing Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$.50 (Check)	John K. Reilly Jr.
	Notice of Appeal, filed on behalf of Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. Filed by s/Michael F. Nerone, Esq. Certificate of Service Proof of Service 1 cc Sup. Crt. w/\$55.00 check	John K. Reilly Jr.
02/07/2002	Appeal Docket Sheet. Docket Number: 222 WDA 2002	John K. Reilly Jr.
02/28/2002	Order, NOW, this 28th day of February, 2002, upon consideration of Motion to Certify Interlocutory Order for Appeal, it is the ORDER of this Court that said Motion be and is hereby DENIED. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Attorney Owen	John K. Reilly Jr.

Date: 03/10/2005

Time: 09:03 AM

Page 3 of 4

Cherryfield County Court of Common Pleas

ROA Report

Case: 2001-00466-CD

Current Judge: Paul E. Cherry

User: BHUDSON

Civil Other

Date		Judge
03/13/2002	Suggestion of Bankruptcy of Simon Transportation Services, Inc. Filed by s/Nancy L. Heilman, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/18/2002	ORDER, NOW, this 18th day of March 2002. re: Motion to Reconsider is DENIED, and Motion to Certify Interlocutory Appeal by Permission is DENIED. by the Court, s/JKR, JR., P.J. 1 cc to Atty Owen, Benty, Heilman, 2 cc to Atty Yurcon, and 3 cc Atty Herone	John K. Reilly Jr.
03/25/2002	Motion To Amend Interlocutory Order. Filed by s/Edward A. Yurcon, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/27/2002	ORDER, NOW, this 27th day of March, 2002, re: Motion to Amend Interlocutory Order is DENIED. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.
04/03/2002	Certified Mail Receipt, filed. #7099 3400 0016 7880 5720	John K. Reilly Jr.
04/08/2002	Domestic Return Receipt. Filed #7099 3400 0016 7880 5720 no cc	John K. Reilly Jr.
06/10/2002	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr.
	Answer, New Matter and New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr.
06/17/2002	Reply to New Matter Pursuant to Rule 2252(d) Filed by s/Michael F. Nerone, Esq. Cert. of Svc. Verification s/Michael F. Nerone no cc	John K. Reilly Jr.
06/19/2002	Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa. r. Civ.P. 2252(d) of Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. No Cert. Copies.	John K. Reilly Jr.
06/21/2002	RULE TO SHOW CAUSE, AND NOW, this 21st day of June, 2002, issued upon Defendants, GERALD E. ORT, TRUCKING, INC., ORT TRUCKING, INC. and SAMUEL THOMAS KNIGHT, returnable the 5th day of Sept., 2002, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 2 cc Atty Seiferth	John K. Reilly Jr.
	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon no cc	John K. Reilly Jr.
	Answer, New Matter and New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon No cc	John K. Reilly Jr.
07/01/2002	Reply to New Matter Pursuant to Rule 2252(d). Filed by s/Michael F. Nerone, Esq. Certificate of Service no cc	John K. Reilly Jr.
10/16/2002	ORDER, AND NOW, this 16th day of October, 2002, re: Preliminary Objections are GRANTED. by the Court, s/JKR, JR., P.J. cc to: Benty, Heilman, Owen, Yurcon, Seiferth, and Nerone	John K. Reilly Jr.
12/02/2002	"ORDER, AND NOW, this 15th day of October, 2002, this Court hereby SUA SPONTE DISMISSED the above-captioned appeal, as the matter has been settled, rendering the issue raised in the appeal moot. See In Re Cain, 590. A.2d 291 (Pa. 1991) (providing that an appellate court will not decide moot questions) PER CURIAM"	John K. Reilly Jr.
	Certificate of Contents of Remanded Record and Notice of Remand under Pennsylvania Rules of Appellate Procedure 2571 and 2572. Filed.	John K. Reilly Jr.
12/17/2002	Certificate of Service, Rule to File Complaint upon Plaintiff; GREGORY M. KRUK, ESQ. no cc	John K. Reilly Jr.

Date: 03/10/2005

Time: 09:03 AM

Page 4 of 4

Cherryfield County Court of Common Pleas

ROA Report

ser: BHUDSON

Case: 2001-00466-CD

Current Judge: Paul E. Cherry

Civil Other

Date	Judge	
01/13/2003	Stipulation filed on behalf of Defendants Gerald Ort Trucking, Ort Trucking Inc. and Samuel T. Knight. Defendants R & F. Miller, Inc. and Eddie C. Roberts do hereby waive, release, discharge and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity asserted against Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight and these Defendants hereby wave, release, discharge, and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity which have been asserted against R&F Miller, Inc. and Eddie C. Roberts. No cc.	John K. Reilly Jr.
02/24/2003	Amended Answer and New Matter. filed by s/Edward A. Yurcon, Esquire Verification s/Eddie C. Roberts s/Linda Long Certificate of Service no cc	John K. Reilly Jr.
09/20/2004	Praecipe to Place at Issue, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
12/27/2004	Answer and New Matter filed on behalf of Def. Pa. Dept. of Transportation. Filed by s/ John R. Benty, Sr. Deputy Attorney General. no CC	Paul E. Cherry
01/10/2005	Amended New Matter, filed by s/ Michael F. Nerone, Esquire. No CC	Paul E. Cherry
	Reply to New Matter Pursuant to Rule 2252(d), filed by s/ Michael F. Nerone, Esquire. No CC	Paul E. Cherry
	Verification to Answer and New Matter and New Matter Under Pa.R.C.P. 2252(d). Filed by s/ John R. Benty, Sr. Deputy Attorney General. No CC	Paul E. Cherry
01/14/2005	Praecipe to Discontinue Action against Simon Transportation Services, Inc. (Simon Claims), filed by s/ Michael F. Nerone, Esquire, Edward A. Yurcon, Esquire, and John R. Benty, Esquire.	Paul E. Cherry
	Order, AND NOW, this 14th day of Jan., 2005, it is hereby ORDERED that the Order of Court of Oct. 1, 2001, sustaining Defendant Parker's Preliminary Objection, the certificaion for appeal of which was denies by the Court, is by this Order, rendered final and appealable. Judgment shall be entered in favor of defendant Parker and against Plaintiff. IT IS SO ORDERED: /s/ Paul E. Cherry, Judge	Paul E. Cherry
01/18/2005	Second Amended Answer and New Matter, filed by s/ Edward A. Yurcon, Esquire. No CC	Paul E. Cherry
	Reply To PA. R.C.P. 2252 (d) New Matter of Pennsylvania Department of Transporation, filed by s/ Edward A. Yurcon, Esquire. No CC	Paul E. Cherry
02/02/2005	Filing: Appeal to High Court Paid by: Owen, Jeffrey R. Esq (attorney for Lux, James U.) Receipt number: 1894943 Dated: 02/02/2005 Amount: \$45.00 (Check) 1 Cert. w/check to to Superior Court and 2 caert. to Atty.	Paul E. Cherry
02/03/2005	Order, NOW, this 3rd day of Feb., 2005, this Court having been served with Notice of Appeal in the above captioned matter, this Court notes that it will not be filing any further Order and Opinion but would include, by reference, its Opinion and Order of August 21, 2001, in the Opinion and Order appealed from. BY THE COURT: /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: J. Owen; Nerone; Pion; Yurcon; Seiferth; and Benty	Paul E. Cherry
02/11/2005	Appeal Docket Sheet, Pa. Superior Court Docket Number 250 WDA 2005, filed.	Paul E. Cherry

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

MAR 10 2005

Attest.

William L. B...
Prothonotary/
Clerk of Courts

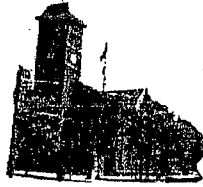


LEARFIELD COUNTY

OFFICE OF THE PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW
PROTHONOTARY/
CLERK OF COURTS

DAVID S. AMMERMAN
SOLICITOR

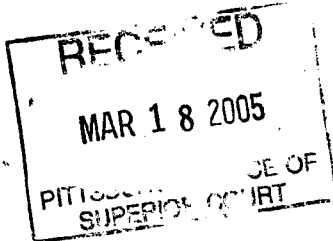


JACKI KENDRICK
DEPUTY PROTHONOTARY

BONNIE HUDSON
ADMINISTRATIVE ASSISTANT

P.O. Box 549, Clearfield, PA 16830

Phone: (814) 765-2641 Ext. 1330 Fax: (814) 765-7659



March 15, 2005

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

Re: James U. Lux

Vs.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and Pennsylvania Department of Transportation
No. 01-466-CD
Superior Court No. 250 WDA 2005

Dear Prothonotary:

Please find enclosed Judge Paul E. Cherry's Order dated March 14, 2005. Please attach to the appeal previously forwarded to your office. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES U. LUX

NO. 01-466-CD

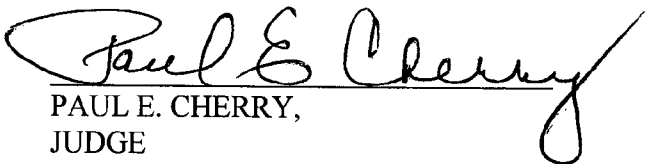
V.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

ORDER

NOW, this 14th day of March, 2005, this Court having been served with Notice of Appeal in the above-captioned matter, the Court notes that it will not be filing a further Opinion in this matter.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
01:00 PM
MAR 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

Att'y:
Owen
Verone
Pion
Yarcon
Seiferth
Bentz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 01-466-CD

JAMES U. LUX

VS.

**GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC.,
SIMON TRANSPORTATION SERVICES, INC., R. AND F.
MILLER, INC., SMAUEL THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, AND PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
		Appeal Mailed to Superior Court April 3, 2002	
37	04/03/02	Certified Mail Receipt	01
38	04/08/02	Domestic Return Receipt	01
39	06/10/02	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d).	06
40	06/10/02	Answer, New Matter and New Matter Pursuant to Rule 2252(d)	12
41	06/17/02	Reply to New Matter Pursuant to Rule 2252(d)	04
42	06/19/02	Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa.R.Civ.P. 2252(d) of Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight	05
43	06/21/02	Rule to Show Cause, Rule issued upon Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight	01
44	06/21/02	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d)	06
45	06/21/02	Answer, New Matter and New Matter Pursuant to Rule 2252(d)	12
46	07/01/02	Reply to New Matter Pursuant to Rule 2252(d)	03
47	10/16/02	Order, Re: Preliminary Objections are Granted	01
48	12/02/02	Order, Re: matter settled, issue raised in appeal moot	01
49	12/02/02	Certificate of Contents of Remanded Record and Notice of Remand	01
50	12/17/02	Certificate of Service, Rule to file Complaint upon Plaintiff	03
51	01/13/03	Stipulation on behalf of Defendants Gerald Ort Trucking, Ort Trucking, Inc., and Samuel T. Knight	03
52	02/24/03	Amended Answer and New Matter	21
53	09/20/04	Praecipe to Place Case at Issue	03
54	12/27/04	Answer and New Matter on behalf of Pa. Dept. of Transportation	13
55	01/10/05	Amended New Matter	10
56	01/10/05	Reply to New Matter Pursuant to Rule 2252(d)	05
57	01/10/05	Verification to Answer and New Matter and New Matter under Pa.R.C.P. 2252(d)	03
58	01/14/05	Praecipe to Discontinue Action against Simon Transportation Services, Inc.	03
59	01/14/05	Order, Re: Order of October 1, 2001 rendered final and appealable. Judgment entered.	02
60	01/18/05	Second Amended Answer and New Matter	21
61	01/18/05	Reply to Pa.R.C.P. 2252(d) New Matter of Pennsylvania Dept. of Transportation	22
62	02/02/05	Appeal to High Court	12
63	02/03/05	Order, Re: no further Opinion and Order	01
64	02/11/05	Appeal Docket Sheet, Superior Court Number 250 WDA 2005	05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 01-466-CD

JAMES U. LUX

VS.

**GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC.,
SIMON TRANSPORTATION SERVICES, INC., R. AND F.
MILLER, INC., SMAUEL THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, AND PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/03/01	Civil Complaint	17
02	04/06/01	Sheriff Return	01
03	04/19/01	Praecipe for Appearance on behalf of Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, but John T. Pion, Esq. and Michael F. Nerone, Esq.	03
04	05/07/01	Praecipe for Appearance, on behalf of R and F Miller, Inc. and Eddie C. Roberts by Edward A. Yurcon, Esq.	03
05	05/07/01	Affidavit of Service, Complaint in Civil Action	06
06	05/11/01	Praecipe for Appearance, on behalf of Pennsylvania Dept. of Transportation by John R. Benty, Esq.	03
07	05/14/01	Preliminary Objections in the Nature of a Demurrer	26
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10	05/16/01	Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Knight's Answer to Complaint, New Matter and New Matter pursuant to Pa.R.Civ.P. 2252(d)	16
11	05/21/01	Preliminary Objections	06
12	07/31/01	Entry of Appearance on behalf of Defendant Jamie Harvey Parker by Robert A. Seiferth	01
13	08/10/01	Preliminary Objections of Defendant Jamie Harvey Parker	04
14	08/15/01	Order, Re: Preliminary Objections	01
15	08/22/01	Opinion and Order	07
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17	09/20/01	Order, Re: Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission	01
18	09/28/01	Affidavit of Service, Order of Court of Sept. 20, 2001	04
19	10/01/01	Opinion and Order, Preliminary Objections	03
20	10/26/01	Plaintiff's Motion to Reconsider	10
21	10/30/01	Order, Re: Rule Returnable	01
22	11/02/01	Petition for Interpleader with Preliminary Order of Court filed 11/05/01	35
23	11/09/01	Motion to Join in Plaintiff's Motion to Reconsider	03
24	11/13/01	Order, Re: Rule Returnable	01
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26	01/04/02	Opinion and Order, Re: Motion to Reconsider	05
27	01/14/02	Opinion and Order, Re: Petition for Interpleader	06
28	01/24/02	Notification of Bankruptcy on behalf of Eddie C. Roberts	35
29	02/01/02	Motion to Certify Interlocutory Order for Appeal	05
30	02/01/02	Appeal to High Court	12
31	02/07/02	Appeal Docket Sheet	05
32	02/28/02	Order, Re: Motion to Certify Interlocutory Order for Appeal, Denied	01
33	03/13/02	Suggestions of Bankruptcy	17
34	03/18/02	Order, Motion to Reconsider is Denied; Motion to Certify Interlocutory Appeal by Permission is Denied	01
35	03/25/02	Motion to Amend Interlocutory Order	13
36	03/27/02	Order, Motion to Amend Interlocutory Order Denied	01

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

James U. Lux
VS.

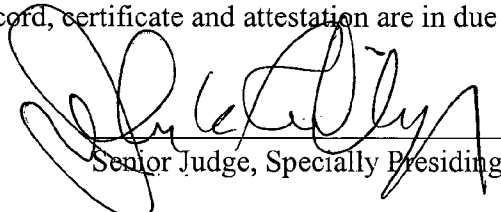
Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and Pennsylvania Department of Transportation
01-466-CD

So full and entire as the same remains of record before the said Court, at No. 01-466-CD

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 10th Day of MARCH, 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 14th
day of MARCH, 2005


Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 222 WDA 2002

Page 1 of 5

February 5, 2002

Superior Court of Pennsylvania



James U. Lux

v

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R&F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker and Pennsylvania Department of Transportation
Appeal of: Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: February 5, 2002

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

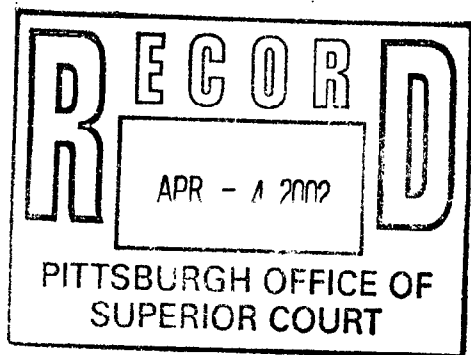
SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: February 19, 2002

Next Event Type: Original Record Received

Next Event Due Date: March 18, 2002



FILED

FEB 07 2002

M/1215/ was
William A. Shaw
Prothonotary

Appeal Docket Sheet**Docket Number: 222 WDA 2002****Page 2 of 5****February 5, 2002****Superior Court of Pennsylvania****COUNSEL INFORMATION**

Appellant Gerald E. Ort Trucking, Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Pion, John Thomas
Bar No.: 43675 **Law Firm:** Dickie, McCamey & Chilcote, P.C.
Address: Dickie McCamey et al
Two PPG Place Ste 400
Pittsburgh, PA 15222
Phone No.: (412)281-7272 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Attorney: Nerone, Michael F.
Bar No.: 62446 **Law Firm:** Dickie, McCamey & Chilcote, P.C.
Address: Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Phone No.: (412)392-5384 **Fax No.:** (412)392-5342
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Knight, Samuel Thomas
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Pion, John Thomas
Bar No.: 43675 **Law Firm:** Dickie, McCamey & Chilcote, P.C.
Address: Dickie McCamey et al
Two PPG Place Ste 400
Pittsburgh, PA 15222
Phone No.: (412)281-7272 **Fax No.:**
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 222 WDA 2002**Page 3 of 5****February 5, 2002**

Attorney: Nerone, Michael F.
Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.
Address: Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Phone No.: (412)392-5384 Fax No.: (412)392-5342
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Commonwealth of Pennsylvania
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Benty, John R.
Bar No.: 44606 Law Firm: NON PARTICIAPTING
Address: Office of the Attorney General
4th Floor, Manor Bldg.
Pittsburgh, PA 15219
Phone No.: (412)565-7680 Fax No.:
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Lux, James U
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Simon Transportation
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Heilman, Nancy Lauffer
Bar No.: 51121 Law Firm: Cohen & Grigsby, P.C.
Address: Cohen & Grigsby PC
11 Stanwix St 15th Fl
Pittsburgh, PA 15222-1319
Phone No.: (412)297-4900 Fax No.:
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee R&F Miller Inc.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 222 WDA 2002**Page 4 of 5****February 5, 2002**

Attorney: Yurcon, Edward Anthony
 Bar No.: 30830 Law Firm: Anstandig McDyer Burdette & Yurcon, P.C.
 Address: Anstandig McDyer et al
 707 Grant St Ste 1300
 Pittsburgh, PA 15219-1911
 Phone No.: (412)765-3700 Fax No.: (412)765-3730
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Roberts, Eddie C
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Yurcon, Edward Anthony
 Bar No.: 30830 Law Firm: Anstandig McDyer Burdette & Yurcon, P.C.
 Address: Anstandig McDyer et al
 707 Grant St Ste 1300
 Pittsburgh, PA 15219-1911
 Phone No.: (412)765-3700 Fax No.: (412)765-3730
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Parker, Jamie Harvey
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Seiferth, Robert Alan
 Bar No.: 20481 Law Firm:
 Address: Corestates Plaza
 33 W. Third St, Ste 200
 Williamsport, PA 17701
 Phone No.: (570)326-9091 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/5/02	Notice of Appeal	55.00	55.00	2002SPRWD000169

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

2/5/02

3023

Appeal Docket Sheet**Docket Number: 222 WDA 2002****Page 5 of 5****February 5, 2002****Superior Court of Pennsylvania**

Date of Order Appealed From: January 9, 2002

Judicial District: 46

Date Documents Received: February 5, 2002

Date Notice of Appeal Filed: February 1, 2002

Order Type: Order Entered

OTN:

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

Lower Court Docket No.: 01-466-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
February 5, 2002	Notice of Appeal Filed	Appellant	Gerald E. Ort Trucking, Inc.
February 5, 2002	Docketing Statement Exited (Civil)		Valecko, Eleanor R.

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:

01-466-CD

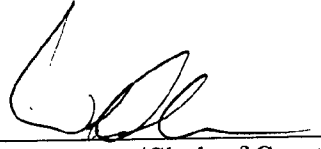
**James U. Lux
VS.**

**Gerald E. Ort Trucking, Inc., Ort Trucking, Inc.,
Simon Transportation Services, Inc., R. and F. Miller, Inc.,
Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker,
and Pennsylvania Department of Transportation**

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

The documents compromising the record have been numbered from **No. 1 to No. 36**, 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
April 3, 2002.



Prothonotary/Clerk of Courts

(seal)

Date: 04/03/2002

Clerk of Field County Court of Common Pleas

User: BHUDSON

Time: 09:47 AM

ROA Report

Page 1 of 3

Case: 2001-00466-CD

Current Judge: John K. Reilly Jr.

Civil Other

Date		Judge
04/03/2001	Filing: Civil Complaint Paid by: Jeffrey R. Owen, Esquire Receipt number: 1823002 Dated: 04/03/2001 Amount: \$80.00 (Check) Three Certified Copies to Attorney	No Judge
04/06/2001	Sheriff Return NOW April 4, 2001, served the within Complaint on PA. Dept. of Transportation, Defendant at Employment, was handed a true attested copy of the original complaint and made known the true and attested copy of original complaint. So Answers, Sheriff Hawkins, s/ Marilyn Hamm.	No Judge
04/19/2001	Praeipce for Appearance, on behalf of Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, by John T. Pion, Esq. and Michael F. Nerone, Esq. s/Michael F. Nerone, Esq. Certificate of Service no cc	No Judge
05/07/2001	Praeipce For Appearance, on behalf of R & F Miller, Inc. and Eddie C. Roberts. filed by s/Edward A. Yurcon, Esq. Cert of Svc no cc	No Judge
05/11/2001	Affidavit of Service, Complaint in Civil Action, upon Defendants of Record. s/Jeffrey R. Owen, Esquire no cc	No Judge
05/11/2001	Praeipce For Appearance, on behalf of Pennsylvania Department of Transportation. filed by s/John R. Benty, Esq. no cc Cert of Svc	No Judge
05/14/2001	Preliminary Objections in the Nature of a Demurrer. filed by s/Edward A. Yurcon, Esq. no cc	No Judge
05/14/2001	Entry of Appearance, on behalf of Simon Transportation Services, Inc. s/Nancy L. Heilman, Esq. Cert of Svc no cc	No Judge
05/14/2001	Answer and New Matter, Filed on behalf of Simon Trucking. s/Nancy L. Heilman, Esq. Verification, s/Mark E. Wilkey Cert of Svc no cc	No Judge
05/16/2001	Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Knight's Answer to Complaint, New Matter and New Matter Pursuant to Pa. R.Civ. P. 2252(D) filed by s/Michael F. Nerone, Esq. Verification, s/Samuel Knight Cert of Svc no cc	No Judge
05/21/2001	Preliminary Objections. filed by s/John R. Benty, Esq. Cert of Svc 1 cc atty Benty	No Judge
07/26/2001	Miscellaneous Payment: Copy Fee Paid by: Marshall, Dennehey, Warner, Coleman & Goggin Receipt number: 1828913 Dated: 07/26/2001 Amount: \$.25 (Cash)	John K. Reilly Jr.
07/31/2001	Entry of Appearance, on behalf of Defendant, Jamie Harvey Parker. s/Robert A. Seiferth, Esq. 1 cc to atty	John K. Reilly Jr.
08/10/2001	Preliminary Objections of Defendant Jamie Harvey Parker. Filed by s/Robert A. Seiferth, Esq. Cert of Svc 1 cc w/o Rule	John K. Reilly Jr.
08/15/2001	ORDER, NOW, this 14th day of August, 2001, re: P.O.'s are sustained to the extent that Plaintiff shall be limited in his allegations of proof in paragraphs 38(a,b and g), etc. by the Court, s/JKR,JR.,P.J. 1 cc atty Benty, J. Owen, M. Nesare, N. Heilman, E. Yuscon and R. Seifesth	John K. Reilly Jr.
08/22/2001	Opinion and Order, filed. Cert. to Atty's Seiferth, Yurcon, Heilman, Bendtley, Nerone, Owen and copy to Mikesell NOW, this 21st day of August, 2001, it is the ORDER of this Court that all Defendants Preliminary Objections are hereby DISMISSED.	John K. Reilly Jr.
09/14/2001	Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
09/21/2001	ORDER, NOW, this 20th day of Sept. 2001, re:Rule is issued upon the parties, Returnable 15th day of Oct. 2001, at 9:30 a.m. by the Court, s/JKR,JR., P.J. 5 cc Atty Yurcon	John K. Reilly Jr.

Date: 04/03/2002

Time: 09:47 AM

Page 2 of 3

Circuit Court of Common Pleas

ROA Report

Case: 2001-00466-CD

Current Judge: John K. Reilly Jr.

User: BHUDSON

Civil Other

Date		Judge
09/28/2001	Affidavit of Service, Order of Court of Sept. 20, 2001. upon Parties of Record. by s/Edward A. Yurcon, Esq. Cert of Svc no cc	John K. Reilly Jr.
10/01/2001	OPINION AND ORDER, NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED. by the Court, s/JKR,JR., P.J. 1 cc Atty Owen, Nerone, Heilman, Yurcon, Seiferth, and John Benty	John K. Reilly Jr.
10/26/2001	Plaintiff's Motion to Reconsider, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
10/30/2001	ORDER, AND NOW, this 29th day of Oct. 2001, a Rule is issued upon the parties, returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Owen	John K. Reilly Jr.
11/02/2001	Petition For Interpleader. Filed by s/John T. Pion, Esq. Cert. of Svc. no cc	John K. Reilly Jr.
11/05/2001	Preliminary Order of Court, And Now, to-wit, this 5th day of Nov. 2001, Rule to Show Cause is hereby issued to show cause why the Petition for Interpleader should not be granted. Rule Returnable Dec. 7, 2001, at 9:00 a.m. before the Honorable Judge Riley. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
11/09/2001	Motion to Join in Plaintiff's Motion to Reconsider, filed by s/Michael F. Nerone, Esq. No CC	John K. Reilly Jr.
11/13/2001	ORDER, NOW, this 13th day of Nov. 2001, re: Rule issued upon parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
12/04/2001	Answer to Petition for Interpleader. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
01/04/2002	OPINION AND ORDER, NOW, this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED. by the Court, s/JKR,JR.,P.J. 3 cc to Atty Nerone, Heilman, Yucon, Seiferth, Beaty and D. Mikesell	John K. Reilly Jr.
01/14/2002	OPINION AND ORDER, NOW, this 9th day of Jan. 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Owen, Atty Nerone, Atty Pion, Nancy L. Heilman, Edward Yuscon, R. Seiferth, J. Bentry and D. Mikesell.	John K. Reilly Jr.
01/24/2002	Notification of Bankruptcy, on behalf of EDDIE C. ROBERTS. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
02/01/2002	Motion to Certify Interlocutory Order for Appeal. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
	Filing: Appeal to High Court Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$45.00 (Check)	John K. Reilly Jr.
	Filing: Miscellaneous Civil Filing Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$.50 (Check)	John K. Reilly Jr.
	Notice of Appeal, filed on behalf of Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. Filed by s/Michael F. Nerone, Esq. Certificate of Service Proof of Service 1 cc Sup. Ct. w/\$55.00 check	John K. Reilly Jr.

Date: 04/03/2002

Time: 09:47 AM

Page 3 of 3

Cherokee County Court of Common Pleas

ROA Report

Case: 2001-00466-CD

Current Judge: John K. Reilly Jr.

User: BHUDSON

Civil Other

Date		Judge
02/07/2002	Appeal Docket Sheet. Docket Number: 222 WDA 2002	John K. Reilly Jr.
02/28/2002	Order, NOW, this 28th day of February, 2002, upon consideration of Motion to Certify Interlocutory Order for Appeal, it is the ORDER of this Court that said Motion be and is hereby DENIED. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Attorney Owen	John K. Reilly Jr.
03/13/2002	Suggestion of Bankruptcy of Simon Transportation Services, Inc. Filed by s/Nancy L. Heilman, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/18/2002	ORDER, NOW, this 18th day of March 2002. re: Motion to Reconsider is DENIED, and Motion to Certify Interlocutory Appeal by Permission is DENIED. by the Court, s/JKR, JR., P.J. 1 cc to Atty Owen, Benty, Heilman, 2 cc to Atty Yurcon, and 3 cc Atty Herone	John K. Reilly Jr.
03/25/2002	Motion To Amend Interlocutory Order. Filed by s/Edward A. Yurcon, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/27/2002	ORDER, NOW, this 27th day of March, 2002, re: Motion to Amend Interlocutory Order is DENIED. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.

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

APR 03 2002

Attest:

William L. Hudson
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 01-466-CD

JAMES U. LUX

VS.

**GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC.,
SIMON TRANSPORTATION SERVICES, INC., R. AND F.
MILLER, INC., SMAUEL THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, AND PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION**

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08	05/14/01	Entry of Appearance on behalf of Simon Transportation Services, Inc. by Nancy L. Heilman, Esq.	03
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12	07/31/01	Entry of Appearance on behalf of Defendant Jamie Harvey Parker by Robert A. Seiferth	01
13	08/10/01	Preliminary Objections of Defendant Jamie Harvey Parker	04
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17	09/20/01	Order, Re: Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission	01
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34	03/18/02	Order, Motion to Reconsider is Denied; Motion to Certify Interlocutory Appeal by Permission is Denied	01
35	03/25/02	Motion to Amend Interlocutory Order	13
36	03/27/02	Order, Motion to Amend Interlocutory Order Denied	01

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

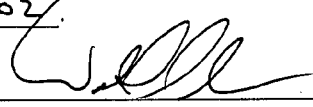
James U. Lux

VS

**Gerald E. Ort Trucking, Inc., Ort Trucking, Inc.,
Simon Transportation Services, Inc., R. and F. Miller, Inc.,
Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker,
and Pennsylvania Department of Transportation
01-466-CD**

So full and entire as the same remains of record before the said Court, at No. **01-466-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 3rd Day of APRIL, 2002.



Prothonotary/Clerk of Courts

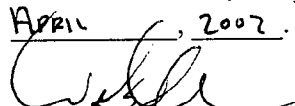
I, **John K. Reilly, Jr.**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of 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 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 3rd day
of APRIL, 2002.



Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 250 WDA 2005

Page 1 of 5

February 9, 2005



James E. Lux, Appellant

v.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services Inc., R and F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and Pennsylvania Department of Transportation

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: February 8, 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: February 23, 2005

Next Event Type: Original Record Received

Next Event Due Date: March 21, 2005

COPY FILED
FEB 11 2005
William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 250 WDA 2005

Page 2 of 5

February 9, 2005

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Lux, James U.

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Owen, Jeffrey R.

Bar No.: 45896 Law Firm: Cooper Owen & Renner, P.C.

Address: 223 Fourth Avenue Ste 1600
Pittsburgh, PA 15222-1713

Phone No.: (412)281-9696 Fax No.: (412)281-9680

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Department of Transportation

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Benty, John Roman

Bar No.: 44606 Law Firm: PA Office of Attorney General

Address: Torts Lit Manor Complex
564 Forbes Ave 6th Floor
Pittsburgh, PA 15219

Phone No.: (412)565-3539 Fax No.: (412)565-3019

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Knight, Samuel Thomas

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Attorney: Nerone, Michael F.

Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.

Address: Two PPG Place Ste 400
Pittsburgh, PA 15222

Phone No.: (412)392-5384 Fax No.: (412)392-5342

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Simon Transportation

Pro Se: Appoint Counsel Status:

IFP Status: No

Appellee Attorney Information:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 250 WDA 2005

Page 3 of 5

February 9, 2005



Attorney: Heilman, Nancy Lauffer
Bar No.: 51121 Law Firm: Cohen & Grigsby, P.C.
Address: 11 Stanwix St 15th Fl
Pittsburgh, PA 15222-1319
Phone No.: (412)297-4900 Fax No.:
Receive Mail: Yes
E-Mail Address: |0
Receive E-Mail: No

Appellee R&F Miller Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellee Attorney Information:

Attorney: Yurcon, Edward Anthony
Bar No.: 30830 Law Firm:
Address: Anstandig, McDyer, Burdette & Yurcon
1300 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
Phone No.: (412)765-3700 Fax No.:
Receive Mail: Yes
E-Mail Address: edyurcon@ambylaw.com
Receive E-Mail: No

Appellee Roberts, Eddie C
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellee Attorney Information:

Attorney: Yurcon, Edward Anthony
Bar No.: 30830 Law Firm:
Address: Anstandig, McDyer, Burdette & Yurcon
1300 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
Phone No.: (412)765-3700 Fax No.:
Receive Mail: No
E-Mail Address: edyurcon@ambylaw.com
Receive E-Mail: No

Appellee Parker, Jamie Harvey
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellee Attorney Information:

Appeal Docket Sheet

Docket Number: 250 WDA 2005

Page 4 of 5

February 9, 2005

Superior Court of Pennsylvania



Attorney: Seiferth, Robert Alan
 Bar No.: 20481 Law Firm:
 Address: Corestates Plaza
 33 W. Third St, Ste 200
 Williamsport, PA 17701
 Phone No.: (570)326-9091 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Gerald E Ort Trucking
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellee Attorney Information:

Attorney: Nerone, Michael F.
 Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.
 Address: Two PPG Place Ste 400
 Pittsburgh, PA 15222
 Phone No.: (412)392-5384 Fax No.: (412)392-5342
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Ort Trucking Inc
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellee Attorney Information:

Attorney: Nerone, Michael F.
 Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.
 Address: Two PPG Place Ste 400
 Pittsburgh, PA 15222
 Phone No.: (412)392-5384 Fax No.: (412)392-5342
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/8/05	Notice of Appeal	60.00	60.00	2005SPRWD000167

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: January 14, 2005

Judicial District: 46

Date Documents Received: February 8, 2005

Date Notice of Appeal Filed: February 2, 2005

2:48 P.M.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 250 WDA 2005

Page 5 of 5

February 9, 2005



Order Type: Judgment Entered

OTN:

Judge: Cherry, Paul E.
Judge

Lower Court Docket No.: 01-466-CO

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
February 8, 2005	Notice of Appeal Filed	Appellant	Lux, James U.
February 9, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

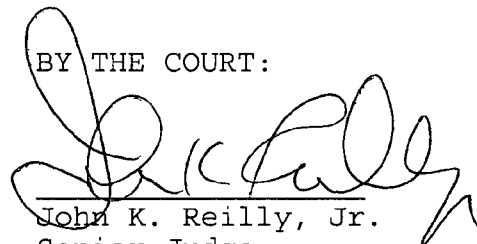
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES U. LUX :
VS. : NO. 01-466-CD
GERALD E. ORT TRUCKING, INC., :
ORT TRUCKING, INC., SIMON :
TRANSPORTATION SERVICES, INC., :
R. AND F. MILLER, INC., SAMUEL :
THOMAS KNIGHT, EDDIE C. ROBERTS, :
JAMIE HARVEY PARKER and :
PENNSYLVANIA DEPARTMENT OF :
TRANSPORTATION :

O R D E R

NOW, this 3rd day of February, 2005, this Court
having been served with Notice of Appeal in the above-captioned
matter, this Court notes that it will not be filing any further
Order and Opinion but would include, by reference, its Opinion
and Order of August 21, 2001, in the Opinion and Order appealed
from.

BY THE COURT:


John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED ^{6K}
d 3:07 PM ¹⁰⁰
FEB 03 2005

William A. Shaw
Prothonotary/Clerk of Courts

Atty: J. Owen
Verone
Pion
Heitman
Yurcon
Seiferth
Bentz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants

CIVIL DIVISION

Case No.: 01-466-CO

NOTICE OF APPEAL

Filed on behalf of JAMES U. LUX,
Plaintiff

Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713
(412) 281-9696

FILED 1005 \$600.00
m/1:51/01 check - # 3455-
FEB 02 2005 to Superior Court
William A. Shaw Atty pd. 45.00
Prothonotary/Clerk of Courts
acc Atty

#162

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants

CIVIL DIVISION

Case No.: 01-466-CO

NOTICE OF APPEAL

Notice is hereby given that James U. Lux, Plaintiff, hereby appeals to the Superior Court of Pennsylvania from the Final Judgment entered in this matter on January 14, 2005, from the Order entered in this matter on October 1, 2001 granting Defendant Jamie Harvey Parker's Preliminary Objections. A copy of the Judgment is attached hereto as Exhibit "A". A copy of the Order of October 1, 2001 is attached hereto as Exhibit "B". The Judgment and Order have been entered on the docket, as shown in the docket entries attached hereto as Exhibit "C". No transcript has been ordered because no trial with a verbatim record took place.

Respectfully Submitted,

COOPER OWEN & RENNER, P.C.

BY:


Jeffrey R. Owen, Esquire

Attorneys for Plaintiff James U. Lux

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

) CIVIL DIVISION
)

vs.

) Case No.: 01-466-CO
)
)

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

ORDER

FILED ^{1cc}
6K 01/15/05 ^{Owen}
JAN 14 2005

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW this 14th day of January 2005, it is hereby ORDERED
ADJUDGED AND DECREED:

WHEREAS, in these proceedings, the Plaintiff's claims against Defendants Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; R. and F. Miller, Inc.; Samuel Thomas Knight; Eddie C. Roberts; and the Commonwealth of Pennsylvania, Department of Transportation, have been amicably settled.

WHEREAS, the parties have discontinued their claims against Defendant Simon Transportation Services, Inc., pursuant to the Praecipe to Discontinue filed by Plaintiff and Defendants Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts; and the Commonwealth of Pennsylvania, Department of Transportation.

EXHIBIT "A"

It is Therefore ORDERED that the Order of Court of October 1, 2001, sustaining Defendant Parker's Preliminary Objections, the certification for appeal of which was denied by the Court, is by this Order, rendered final and appealable. Judgment shall be entered in favor of Defendant Parker and against Plaintiff.

IT IS SO ORDERED:

/s/ Paul E. Cherry

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

JAN 19 2005

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

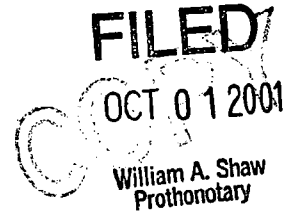
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JAMES U. LUX,
Plaintiff

v.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION

No. 01-466- C.D.



OPINION AND ORDER

In the early morning hours of October 24, 2000, two (2) collisions occurred on Interstate 80 between DuBois and Clearfield, Pennsylvania. Both collisions were caused in whole or in part by the fact that a driver of a tractor-trailer truck was asleep at the wheel.

In the first accident, a tractor-trailer operated by Defendant Jamie Harvey Parker (hereinafter "Defendant Parker") was rear-ended by a tractor-trailer driven by Defendant Eddie C. Roberts (hereinafter "Defendant Roberts"). The second accident occurred when a truck driven by Defendant Samuel Thomas Knight collided with a rescue squad truck positioned on the highway with its warning lights flashing and an illumination boom brightly lighting the scene of the clean up of the first accident. During the second collision, three volunteer firemen who were passengers in the rescue squad truck were severely injured,

EXHIBIT "B"

including the Plaintiff, James U. Lux, who was permanently paralyzed from the waist down. According to the Complaint, the first accident happened at approximately at 1:00 A.M. and the second accident occurred at approximately at 3:30 A.M. Currently, Defendant Parker seeks to dismiss the claim of Plaintiff against him by Preliminary Objections in the nature of a Demurrer.

This Court must now determine whether the alleged negligence of Defendant Parker was a substantial factor in bringing about the severe injuries suffered by the Plaintiff or if the issue should be reserved for the jury.

It is well-established that:

“In reviewing Preliminary Objections, the Court must accept as true all material facts set forth in the plaintiff’s complaint, and all reasonable inferences deducible from those facts. All doubts as to whether a claim can go forward must be resolved in the favor of the pleader.”

Field v. Philadelphia Electric Company, 388 Pa.Super. 400, 565 A.2d 1170 (1986).

Moreover, “Summary Judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue remains”. Salerno v. LaBarr, 159 Pa. Commonwealth Ct. 99, 632 A.2d 1002 (1993). In other words:

“The threshold a Plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the Plaintiff can prove no set of facts that would entitle the Plaintiff to relief.”

Velleca v. Jones, 2000 WL 1470214 at p. 1 (E.D. Pa.), *citing* Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957).

In order to be consistent with it’s Opinion and Order of August 21, 2001, this Court finds that the allegations of Plaintiff against Defendant Parker are insufficient to maintain an action of negligence in regard to the first accident. Plaintiff maintains that Defendant Parker

was driving his vehicle at a slow rate of speed. Plaintiff further asserts that at the time of the first collision, Defendant Parker was struck from behind by Defendant Eddie C. Roberts, who was asleep. Clearly, if Defendant Parker's vehicle was rear-ended by a "sleeping" Defendant Roberts, then the first collision was solely a result of negligence on the part of Defendant Roberts.

This Court, as per the Opinion and Order of August 21, 2001, determined that the pleadings of Plaintiff were sufficient to deny Preliminary Objections in regard to his allegations of negligence pertaining to Defendant Roberts. However, in regard to Defendant Parker, it is clear to this Court that Plaintiff's claim as to negligence on the part of Defendant Parker is insufficient and, therefore, Defendant Parker's Preliminary Objections should and shall be granted.

WHEREFORE, this Court enters the following:

ORDER

NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

President Judge

Civil Other

Date	Judge
04/03/2001	No Judge
04/06/2001	No Judge
04/19/2001	No Judge
05/07/2001	No Judge
05/11/2001	No Judge
05/14/2001	No Judge
05/16/2001	No Judge
05/21/2001	No Judge
07/26/2001	John K. Reilly Jr.
07/31/2001	John K. Reilly Jr.
08/10/2001	John K. Reilly Jr.
08/15/2001	John K. Reilly Jr.
08/22/2001	John K. Reilly Jr.
09/14/2001	John K. Reilly Jr.

EXHIBIT "C"

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

JAN 19 2005

William E. Cherry
Prothonotary/
Clerk of Courts

Civil Other

Date		Judge
09/21/2001	ORDER, NOW, this 20th day of Sept. 2001, re: Rule is issued upon the parties, Returnable 15th day of Oct. 2001, at 9:30 a.m. by the Court, s/JKR,JR., P.J. 5 cc Atty Yurcon	John K. Reilly Jr.
09/28/2001	Affidavit of Service, Order of Court of Sept. 20, 2001. upon Parties of Record. by s/Edward A. Yurcon, Esq. Cert of Svc no cc	John K. Reilly Jr.
10/01/2001	OPINION AND ORDER, NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED. by the Court, s/JKR,JR., P.J. 1 cc Atty Owen, Nerone, Heilman, Yurcon, Seiferth, and John Benty	John K. Reilly Jr.
10/26/2001	Plaintiff's Motion to Reconsider, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
10/30/2001	ORDER, AND NOW, this 29th day of Oct. 2001, a Rule is issued upon the parties, returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Owen	John K. Reilly Jr.
11/02/2001	Petition For Interpleader. Filed by s/John T. Pion, Esq. Cert. of Svc. no cc	John K. Reilly Jr.
11/05/2001	Preliminary Order of Court, And Now, to-wit, this 5th day of Nov. 2001, Rule to Show Cause is hereby issued to show cause why the Petition for Interpleader should not be granted. Rule Returnable Dec. 7, 2001, at 9:00 a.m. before the Honorable Judge Riley. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
11/09/2001	Motion to Join in Plaintiff's Motion to Reconsider, filed by s/Michael F. Nerone, Esq. No CC	John K. Reilly Jr.
11/13/2001	ORDER, NOW, this 13th day of Nov. 2001, re: Rule issued upon parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
12/04/2001	Answer to Petition for Interpleader. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
01/04/2002	OPINION AND ORDER, NOW, this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED. by the Court, s/JKR,JR.,P.J. 3 cc to Atty Nerone, Heilman, Yucon, Seiferth, Beaty and D. Mikesell	John K. Reilly Jr.
01/14/2002	OPINION AND ORDER, NOW, this 9th day of Jan. 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Owen, Atty Nerone, Atty Pion, Nancy L. Heilman, Edward Yuscon, R. Seiferth, J. Bentry and D. Mikesell.	John K. Reilly Jr.
01/24/2002	Notification of Bankruptcy, on behalf of EDDIE C. ROBERTS. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
02/01/2002	Motion to Certify Interlocutory Order for Appeal. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
	Filing: Appeal to High Court Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$45.00 (Check)	John K. Reilly Jr.
	Filing: Miscellaneous Civil Filing Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$.50 (Check)	John K. Reilly Jr.

Civil Other

Date		Judge
02/01/2002	Notice of Appeal, filed on behalf of Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. Filed by s/Michael F. Nerone, Esq. Certificate of Service Proof of Service 1 cc Sup. Crt. w/\$55.00 check	John K. Reilly Jr.
02/07/2002	Appeal Docket Sheet. Docket Number: 222 WDA 2002	John K. Reilly Jr.
02/28/2002	Order, NOW, this 28th day of February, 2002, upon consideration of Motion to Certify Interlocutory Order for Appeal, it is the ORDER of this Court that said Motion be and is hereby DENIED. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Attorney Owen	John K. Reilly Jr.
03/13/2002	Suggestion of Bankruptcy of Simon Transportation Services, Inc. Filed by s/Nancy L. Heilman, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/18/2002	ORDER, NOW, this 18th day of March 2002. re: Motion to Reconsider is DENIED, and Motion to Certify Interlocutory Appeal by Permission is DENIED. by the Court, s/JKR, JR., P.J. 1 cc to Atty Owen, Benty, Heilman, 2 cc to Atty Yurcon, and 3 cc Atty Herone	John K. Reilly Jr.
03/25/2002	Motion To Amend Interlocutory Order. Filed by s/Edward A. Yurcon, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/27/2002	ORDER, NOW, this 27th day of March, 2002, re: Motion to Amend Interlocutory Order is DENIED. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.
04/03/2002	Certified Mail Receipt, filed. #7099 3400 0016 7880 5720	John K. Reilly Jr.
04/08/2002	Domestic Return Receipt. Filed #7099 3400 0016 7880 5720 no cc	John K. Reilly Jr.
06/10/2002	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr.
	Answer, New Matter and New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr.
06/17/2002	Reply to New Matter Pursuant to Rule 2252(d) Filed by s/Michael F. Nerone, Esq. Cert. of Svc. Verification s/Michael F. Nerone no cc	John K. Reilly Jr.
06/19/2002	Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa. r. Civ.P. 2252(d) of Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. No Cert. Copies.	John K. Reilly Jr.
06/21/2002	RULE TO SHOW CAUSE, AND NOW, this 21st day of June, 2002, issued upon Defendants, GERALD E. ORT, TRUCKING, INC., ORT TRUCKING, INC. and SAMUEL THOMAS KNIGHT, returnable the 5th day of Sept., 2002, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 2 cc Atty Seiferth	John K. Reilly Jr.
	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon no cc	John K. Reilly Jr.
	Answer, New Matter and New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon No cc	John K. Reilly Jr.
07/01/2002	Reply to New Matter Pursuant to Rule 2252(d). Filed by s/Michael F. Nerone, Esq. Certificate of Service no cc	John K. Reilly Jr.
10/16/2002	ORDER, AND NOW, this 16th day of October, 2002, re: Preliminary Objections are GRANTED. by the Court, s/JKR, JR., P.J. cc to: Benty, Heilman, Owen, Yurcon, Seiferth, and Nerone	John K. Reilly Jr.

Civil Other

Date		Judge
12/02/2002	"ORDER, AND NOW, this 15th day of October, 2002, this Court hereby SUA SPONTE DISMISSED the above-captioned appeal, as the matter has been settled, rendering the issue raised in the appeal moot. See In Re Cain, 590. A.2d 291 (Pa. 1991) (providing that an appellate court will not decide moot questions) PER CURIAM"	John K. Reilly Jr.
	Certificate Of Contents Of Remanded Record and Notice of Reman under Pennsylvania Rules of Appellate Procedure 2571 and 2572. Filed.	John K. Reilly Jr.
12/17/2002	Certificate of Service, Rule to File Complaint upon Plaintiff, GREGORY M. KRUK, ESQ. no cc	John K. Reilly Jr.
01/13/2003	Stipulation filed on behalf of Defendants Gerald Ort Trucking, Ort Trucking Inc. and Samuel T. Knight. Defendants R & F. Miller, Inc. and Eddie C. Roberts do hereby waive, release, discharge and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity asserted against Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight and these Defendants hereby wave, release, discharge, and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity which have been asserted against R&F Miller, Inc. and Eddie C. Roberts. No cc.	John K. Reilly Jr.
02/24/2003	Amended Answer And New Matter. filed by s/Edward A. Yurcon, Esquire Verification s/Eddie C. Roberts s/Linda Long Certificate of Service no cc	John K. Reilly Jr.
08/21/2003	Miscellaneous Payment: Misc Fee Paid by: Lux, James U. Receipt number: 1865021 Dated: 8/21/2003 Amount: \$5.00 (Check)	John K. Reilly Jr.
09/20/2004	Praeipce to Place at Issue, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
12/27/2004	Answer and New Matter filed on behalf of Def. Pa. Dept. of Transportation. Filed by s/ John R. Benty, Sr. Deputy Attorney General. no CC	Paul E. Cherry
01/10/2005	Amended New Matter, filed by s/ Michael F. Nerone, Esquire. No CC	Paul E. Cherry
	Reply to New Matter Pursuant to Rule 2252(d), filed by s/ Michael F. Nerone, Esquire. No CC	Paul E. Cherry
	Verification to Answer and New Matter and New Matter Under Pa R.C.P. 2252(d). Filed by s/ John R. Benty, Sr. Deputy Attorney General. No CC	Paul E. Cherry
01/14/2005	Praeipce to Discontinue Action against Simon Transportation Services, Inc. (Simon Claims), filed by s/ Michael F. Nerone, Esquire, Edward A. Yurckon, Esquire, and John R. Benty, Esquire.	Paul E. Cherry
	Order, AND NOW, this 14th day of Jan., 2005, it is hereby ORDERED that the Order of Court of Oct. 1, 2001, sustaining Defendant Parker's Preliminary Objection, the certificaion for appeal of which was denies by the Court, is by this Order, rendered final and appealable. Judgment shall be entered in favor of defendant Parker and against Plaintiff. IT IS SO ORDERED: /s/ Paul E. Cherry, Judge	Paul E. Cherry
01/18/2005	Second Amended Answer and New Matter, filed by s/ Edward A. Yurcon, Esquire. No CC	Paul E. Cherry
	Reply To PA. R.C.P. 2252 (d) New Matter of Pennsylvania Department of Transporation, filed by s/ Edward A. Yurcon, Esquire. No CC	Paul E. Cherry

PROOF OF SERVICE

I, Jeffrey R. Owen, Esquire, hereby certify that true and correct copies of the Foregoing Notice of Appeal have been served this 28th day of January, 2005 by United States First Class Mail, postage prepaid, to the judges, officials and counsel of record listed below.

The Honorable Paul E. Cherry
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830

The Honorable John K. Kelly
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830

David Meholick, Court Administrator
Clearfield County Court Administration
230 East Market Street
Clearfield, PA 16830

William A. Shaw
Clearfield County Prothonotary/Clerk of Courts
230 East Market Street
Clearfield, PA 16830

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15222

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
Cohen & Grigsby
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Edward A. Yurcon, Esquire
Anstandig, McDyer, Burdette & Yurcon, P.C.
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219

Michael F. Nerone, Esquire
Dickie McCamey & Chilcote, P.C.
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

COOPER, OWEN & RENNER, P.C.

By: 

Jeffrey R. Owen, Esquire
Attorneys for Plaintiff, James U. Lux

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

Vs.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

**REPLY TO PA. R.C.P. 2252 (d) NEW
MATTER OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

Filed on behalf of R. AND F. MILLER, INC.
and EDDIE C. ROBERTS, Defendants

Counsel of Record for these Parties:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

ANSTANDIG, McDYER &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

64 m/12:31/04
JAN 18 2005

NO
cc

William A. Shaw
Prothonotary/Clerk of Courts

#61

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
vs.)	
)	
GERALD E. ORT TRUCKING, INC., ORT)	
TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC., R.)	
AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C. ROBERTS,)	
JAMIE HARVEY PARKER, and)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

**REPLY TO PA. R.C.P. 2252 (d) NEW MATTER OF PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION**

AND NOW, come the Defendants, R. and F. Miller, (hereinafter referred to as "Miller") and Eddie C. Roberts, (hereinafter referred to as "Roberts") and file the following Reply to Pa. R.C.P. 2252 (d) New Matter of Pennsylvania Department of Transportation and in support thereof aver as follows:

57. The averments contained in Paragraph 57 of Defendant Pennsylvania Department of Transportation's Answer and New Matter constitute conclusions of law to which no response is required. To the extent that a response is required, Defendants Miller and Roberts deny any and all allegations of negligence, carelessness, recklessness and/or liability. Defendants Miller and Roberts deny any and all claims of sole liability and/or claims of indemnity and/or contribution

made against them. By way of further response Defendants Miller and Roberts incorporate by reference the Answer and New Matter which they previously filed in the instant action. Additionally, Defendants Miller and Roberts plead as an affirmative defense the benefit of the Joint Tortfeasor's Release executed by James U. Lux and Erin Lux in favor of Defendants Miller and Roberts, said Release being executed pursuant to provisions of the Uniform Contribution Among Joint Tortfeasors Act 42 Pa. C.S.A. § 8321 and the Pennsylvania Comparative Negligence Act 42 Pa. C.S.A., § 7102, a copy of said Release being attached hereto as Exhibit "A", the same being hereby plead as a bar and/or affirmative defense.

58. The averments contained in Paragraph 58 of Pennsylvania Department of Transportation's Answer and New Matter constitute conclusions of law to which no response is required. To the extent that a response is required, Defendants Miller and Roberts deny any and all allegations of negligence, carelessness, recklessness and/or liability. Defendants Miller and Roberts deny any and all claims of sole liability and/or claims of indemnity and/or contribution made against them. By way of further response Defendants Miller and Roberts incorporate by reference the Answer and New Matter which they previously filed in the instant action. Additionally, Defendants Miller and Roberts plead as an affirmative defense the benefit of the Joint Tortfeasor's Release executed by James U. Lux and Erin Lux in favor of Defendants Miller and Roberts, said Release being executed pursuant to provisions of the Uniform Contribution Among Joint Tortfeasors Act 42 Pa. C.S.A. § 8321 and the Pennsylvania Comparative Negligence Act 42 Pa. C.S.A., § 7102, a copy of said Release being attached hereto as Exhibit "A", the same being hereby plead as a bar and/or affirmative defense.

WHEREFORE, Defendants Miller and Roberts deny any and all claims of sole liability and/or claims of indemnity and/or contribution against them by any party including

Commonwealth of Pennsylvania Department of Transportation and demand judgment in their favor.

ANSTANDIG, McDYER & YURCON, P.C.

BY:

A handwritten signature in black ink, appearing to be "Daniel A. Anstandig", written over a horizontal line.

ATTORNEYS FOR DEFENDANTS,
R. and F. MILLER, INC. and EDDIE C.
ROBERTS

EXHIBIT 'A'

SETTLEMENT AGREEMENT AND JOINT TORTFEASOR RELEASE

This Settlement Agreement and Joint Tortfeasor Release is made by and between JAMES U. LUX, (hereinafter referred to as "Releasor") and R. & F. MILLER, INC. and, EDDIE C. ROBERTS (hereinafter referred to as "Releasees") and their insurer SAFECO INSURANCE COMPANY (hereinafter referred to as "Insurer").

WHEREAS, JAMES U. LUX was involved in a motor vehicle accident which occurred on October 24, 2000, on Interstate Highway Route 80 in Union Township, Clearfield County, Pennsylvania;

WHEREAS, JAMES U. LUX initiated a lawsuit in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 01-466-C.D. alleging that the accident and resulting injuries and damages were the result of the negligence of Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; Simon Transportation Services, Inc.; R. & F. Miller, Inc.; Samuel Thomas Knight; Eddie C. Roberts; Jamie Harvey Parker; and Pennsylvania Department of Transportation;

WHEREAS, defendant Parker has been dismissed from the lawsuit pursuant to Opinion and Order of Court dated August 21, 2001;

WHEREAS, JAMES U. LUX released Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight to the extent of their direct liability pursuant to a Pro Tanto Joint Tortfeasor Release dated August 15, 2002;

WHEREAS, the parties hereto wish to enter into a full and final release and settlement of Releasor's claims against Releasees for injuries and damages sustained by JAMES U. LUX as a result of the October 24, 2000, accident which Releasor alleges

was, in part, the result of the negligent acts and/or omissions of Releasees;

WHEREAS, SAFECO INSURANCE COMPANY is the liability insurer of R. & F. MILLER, INC. and EDDIE C. ROBERTS, and as such, would be obligated to pay any claim made or judgment against R. & F. MILLER, INC. and/or EDDIE C. ROBERTS which is covered by its policy;

WHEREAS, the parties desire to enter into this Settlement Agreement and Joint Tortfeasor Release in order to provide for certain payments in full settlement and discharge of all claims which Releasees has, or might make against Releasees by reason of the accident of October 24, 2000, upon the terms and conditions set forth below;

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1.0 RELEASE AND DISCHARGE

1.1 Releasor, for and in consideration of the payment of One Million Two Hundred Thousand Dollars (\$1,200,000.00) by SAFECO INSURANCE COMPANY, the receipt of which sum is hereby acknowledged, and in further consideration of the promise of future payments to Releasees as herein set forth, does hereby release and forever discharge and, by these presents, does for himself, his heirs, executors, administrators and assigns, release and forever discharge R. & F. MILLER, INC., EDDIE C. ROBERTS and SAFECO INSURANCE COMPANY, and their respective heirs, executors, administrators, agents, employees, successors and assigns from any

and all liability, claims, causes of action, liens, damages, costs and demands, whatsoever, in law or in equity, which against the said parties Releasor ever had, now has, or which his heirs, executors, administrators or assigns hereafter can or may have by reason of the bodily and personal injury sustained by Releasor and the consequences thereof, known or unknown, foreseen or unforeseen, arising or which may arise as a result of, or in any way connected with, the accident referred to above.

1.2 It is understood that no claims or demands are being released which Releasor may have against any other party on account of the aforesaid accident or any injuries arising therefrom; but the damages recoverable against such other parties shall be reduced, extinguished or satisfied in accordance with the terms of this Release if the verdict or judgment is also against any of the entities being released herein. The damages against such other party shall be reduced by that proportion of the total dollar amount awarded as damages in the ratio of the amount of causal negligence of the parties herein released to the amount of the causal negligence attributed to all parties against whom a verdict or judgment is obtained.

1.3 Should Releasor receive a verdict or judgment solely against a party other than the Released parties, then the reduction or damages referred to herein shall not apply. But if a verdict or judgment in favor of Releasor results in a claim, verdict or judgment for contribution and/or indemnity against any of the released parties at any time, then Releasor agrees that he will not enforce his right to collect the verdict or judgment to

the extent that such enforcement creates any further liability against the released parties, it being the express intent and purpose of this Agreement to hold the released parties harmless from and against further liability which may arise by virtue of Releasor's claim against any other party. In such event, Releasor agrees that he will reduce his claim or satisfy the verdict or judgment to the extent necessary to eliminate any further liability of the released parties, either to Releasor or to any party claiming contribution and/or indemnity.

1.4 It is specifically intended that this Agreement is to be a Joint Tortfeasor's Release Agreement pursuant to the terms of the Uniform Contribution Among Tortfeasor Act, 1951, July 19, P.L. 1130, as reenacted by the Act of 1976, July 9, P.L. 586 (42 Pa.C.S., §8321, et seq.) to the extent modified by the Comparative Negligence Statute, 42 Pa.C.S. §7102..

1.5 Releasor hereby warrants that he has not made any previous settlements with, and has not released any party for damages arising out of the aforesaid claim, except as indicated in this Settlement Agreement and Joint Tortfeasor Release, and he further agrees to indemnify, save, defend and hold forever harmless the released parties, SAFECO and their respective heirs, executors, administrators, successors and assigns, of and from any loss, claim, liability, cost or expense growing out of any claim or suit against any of them for contribution and/or indemnity by any other tortfeasor or alleged tortfeasor as a result of the breach of this agreement and warranty or by anyone acting on behalf of Releasor for the purpose of enforcing a further claim

for damages on account of the accident referred to herein.

1.6 This Settlement Agreement and Joint Tortfeasor Release shall also apply to Releasees and their insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.7 This Settlement Agreement and Joint Tortfeasor Release shall be a fully binding and complete agreement among Releasor, Releasees and Insurer and their heirs, assigns and successors.

1.8 It is understood and agreed that the Releasor has entered into a separate agreement with his worker's compensation insurer whereby all subrogation claims of the worker's compensation insurer have been resolved.

1.9 The Releasor hereby discharges and agrees to indemnify and save harmless the Releasees and Insurer from any liens asserted by any health care provider, hospital, insurer, or attorney for medical expenses, hospital expenses, lost earnings, payments, attorney's liens, subrogation claims or liens and any worker's compensation liens as a result of this accident or occurrence.

2. In consideration of the Settlement Agreement and Joint Tortfeasor Release set forth above, the insurers on behalf of Releasees agrees to pay to the Releasor the sums outlined in this Section 2 below:

2.1 Payments due at the time of settlement are as follows:

\$1,200,000.00 paid to JAMES U. LUX and Cooper,
Owen & Renner, his counsel.

2.2(a) Periodic Payments made to James U. Lux according to
the schedule as follows (the "Periodic Payments"):

1. Guaranteed lump sum of \$25,000.00 payable on
December 1, 2003;
2. Guaranteed lump sum of \$25,000.00 payable on
December 1, 2004;
3. Guaranteed lump sum of \$25,000.00 payable on
December 1, 2005;
4. Guaranteed lump sum of \$33,656.50 payable on
December 1, 2006;

2.2(b) The Releasor authorizes and instructs payment to be
made to his attorney as provided herein. The Releasor
acknowledges and agrees that these payment instructions are solely
for the Releasor's convenience and do not provide the Releasor's
attorney with any ownership interest in any portion of the annuity
or the settlement other than the right to receive the payments in
the future as more specifically set forth herein:

14 payments to Cooper, Owen & Renner of \$17,469.13 paid
semi-annually beginning on May 15, 2004 with the last
payment being made on November 15, 2010.

All parties warrant that the sums set forth above constitute
damages on account of physical injuries arising from an
occurrence within the meaning of Section 104(a)(2) and Section
130 of the Internal Revenue Code and no portion of the settlement
proceeds represents exemplary or punitive damages nor pre-
judgment or post-judgment interest, but that such claims are
nonetheless being released by Releasor.

3. Any payments to be made after the death of James Lux
pursuant to the terms of this Release and Settlement Agreement
shall be made to Erin Lux. Payee may submit a change of

beneficiary in writing to Assignee. The designation must be in a form acceptable to Assignee.

4. Within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, (the "Code") General Insurance Company of America may make a "qualified assignment" to American General Annuity Service Corporation ("Assignee") of Releasees' obligation to make their portion of the future payments as described in section 2.2 hereof (the "Periodic Payments"). Releasor hereby consents to such an assignment and agrees (a) that Releasor's rights to the Periodic Payments and against the Assignee shall be those of a Secured Creditor.

Upon making such a "qualified assignment," Releasees and/or Insurer shall be fully released from all obligations to make the Periodic Payments and only Assignees shall be obligated to make the Periodic Payments. Assignees' obligation to make each Periodic Payment shall be discharged upon mailing of a valid check in the amount due to the address so designated by Releasor.

5. Assignee may fund the Periodic Payments by purchasing a "qualified funding asset," within the meaning of Section 130(d) of the Code, in the form of an annuity policy from American General Life Insurance Company, with James Lux designated as "measuring life" or "limiting life" under said contracts. All rights of ownership and control of such annuity policy shall be vested in the Assignee, but Assignee may have American General Life Insurance Company make payments directly to Releasor for Assignee's convenience. Payments made pursuant to said annuity

contract shall operate as a discharge of the payment obligations set forth in section 2.2(a).

6. It is expressly understood and agreed that none of the recipients of the FUTURE PAYMENTS provided herein shall have the right to:

- a) accelerate or defer said future payments to any time or vary in any respects the payments;
- b) receive the present discounted value of future payments;
- c) have any control of the investments of funds from which payments are made;
- d) increase or decrease the future payments;
- e) change or modify the manner, mode or method of meeting any payments or discharging any obligations set forth in this agreement;
- f) sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

7. It is further understood and agreed that there will be no fees or charges made to the recipient by the Releasees or any of their employees or agents (including, without limitation, the issuer or owner of the annuities described herein), for the purchase or administration of the annuities or payments described herein.

8. Releasor agrees that neither he nor his attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to by Releasees or their Insurer in writing, any of the terms of this Release or any of the amounts, numbers or terms and conditions of any sums payable to Releasor herein.

9. It is further expressly warranted by the Releasor that no other person or entity has asserted or is able to assert any lien, claim or entitlement to any portion of the consideration

recited above which has not been satisfied, or will not be satisfied immediately out of the above recited consideration being paid for the Release. The Releasor further expressly agrees to indemnify and hold harmless Releasees and their present and former insurers, directors, officers, agents, employees, successors and assigns from any lien, claim or entitlement to any portion of the consideration recited above being paid for this release which may be asserted at any time by any person or entity.

10. Releasor shall bear all attorneys' fees and costs arising from the actions of his own counsel in connection with the Complaint, the Settlement Agreement and Joint Tortfeasor Release, and the matters and documents referred to herein, the filing of the Complaint and all related matters.

11. In entering into this Settlement Agreement and Joint Tortfeasor Release, the Releasor represents that the Releasor has relied upon the advice of his attorneys, who are the attorneys of his own choice, concerning the legal and income tax consequences of this Settlement Agreement and Joint Tortfeasor Release; that the terms of this Settlement Agreement and Joint Tortfeasor Release have been completely read and explained to the Releasor by his attorneys; and that the terms of the Settlement Agreement and Joint Tortfeasor Release are fully understood and voluntarily accepted by Releasor.

12. Releasor represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in the Settlement

Agreement and Joint Tortfeasor Release, except as otherwise set forth herein; that Releasor has the sole right and exclusive authority to execute this Settlement Agreement and Joint Tortfeasor Release and receive the sums specified in it; and that Releasor, has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Joint Tortfeasor Release.

13. This Settlement Agreement and Joint Tortfeasor Release shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

14. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Joint Tortfeasor Release.

15. This Settlement Agreement and Joint Tortfeasor Release contains the entire agreement between the Releasor, the Releasees and the Insurer with regard to the matters set forth in it and shall be binding upon all and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

16. It is understood between the parties that Releasor has not relied upon any representation, expressed or implied, made by the SAFECO INSURANCE COMPANY or any of its representatives, as to the tax consequence of this Settlement Agreement and Joint Tortfeasor Release and that Releasor shall release SAFECO

INSURANCE COMPANY and its representatives from any and all liability in conjunction with any such tax consequences.

17. This Settlement and Joint Tortfeasor Release shall become effective immediately following execution by each of the parties.

RELEASOR

JAMES U. LUX

By:

James U. Lux

Date:

12/23/02

COMMONWEALTH OF PENNSYLVANIA)

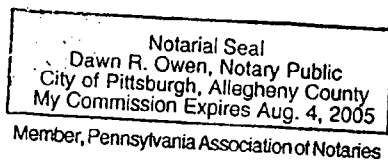
)

SS:

COUNTY OF)

Personally subscribed and acknowledged before me this day of 12-23, 2002, to be the true and correct signature of the above named party.

Dawn R. Owen
NOTARY PUBLIC

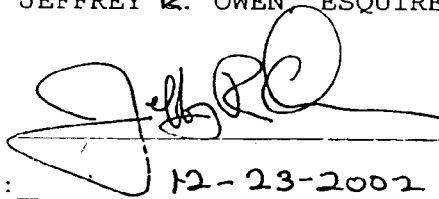


Releasor's Attorney

JEFFREY R. OWEN ESQUIRE

By:

Date:


12-23-2002

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF)

SS:

Personally subscribed and acknowledged before me this 23rd
day of December, 2002, to be the true and correct
signature of the above named party.


NOTARY PUBLIC

Notarial Seal
S. Todd Renner, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Apr. 18, 2005
Member, Pennsylvania Association of Notaries

Insurer

SAFECO INSURANCE COMPANY

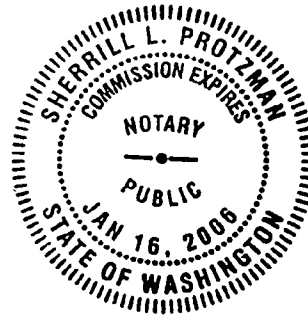
BY: Vell Koper
Title: adjuster
Date: 1/8/03

STATE OF WA)
COUNTY OF King)

SS: _____

Personally subscribed and acknowledged before me this day of January 8, 2003, to be the true and correct signature of the above named party.

Sherill L. Protzman
NOTARY PUBLIC



WITNESSED BY:

Erin E. Lux
ERIN E. LUX

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF)

Personally subscribed and acknowledged before me this
day of 12-23, 2002, to be the true and correct
signature of the above named party.

Dawn R. Owen
NOTARY PUBLIC

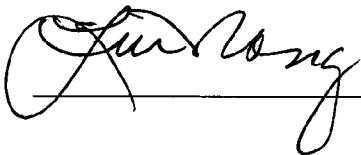
Notarial Seal
Dawn R. Owen, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Aug. 4, 2005
Member, Pennsylvania Association of Notaries

VERIFIED STATEMENT

I, Linda Long, being the SECRETARY
(TITLE) of R. and F. MILLER, INC. am
duly authorized to make this Verified Statement on its behalf, and I hereby verify that the
statements set forth in the foregoing REPLY TO PA. R.C.P. 2252(d) NEW MATTER OF
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION are true
and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.
Section 4904, relating to unsworn falsification to authorities.

Date: 1-10-05



VERIFIED STATEMENT

I, Eddie C. Roberts, hereby verify that the statements set forth in the foregoing REPLY TO PA. R.C.P. 2252(d) NEW MATTER OF COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Eddie C. Roberts

Date: 1-8-05

CERTIFICATE OF SERVICE

A true and correct copy of the within **REPLY TO PA. R.C.P. 2252 (d) NEW MATTER**
OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION was mailed, postage
prepaid, on this 14th day of January, 2005 to the following Counsel of Record:

COUNSEL FOR PLAINTIFF

Jeffrey R. Owen, Esquire
COOPER, OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

COUNSEL FOR ORT TRUCKING and SAMUEL KNIGHT

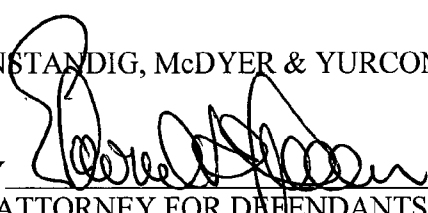
Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

COUNSEL FOR COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

ANSTANDIG, McDYER & YURCON, P.C.

BY


ATTORNEY FOR DEFENDANTS, R. and
F. MILLER, INC. and EDDIE C. ROBERTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

Vs.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

**SECOND AMENDED ANSWER AND
NEW MATTER**

Filed on behalf of R. AND F. MILLER, INC.
and EDDIE C. ROBERTS, Defendants

Counsel of Record for these Parties:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

ANSTANDIG, McDYER &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

12:31 PM
JAN 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

#60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
v.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	
)	

SECOND AMENDED ANSWER AND NEW MATTER

AND NOW, come the defendants, Eddie C. Roberts (hereinafter "Roberts") and R. and F. Miller, Inc. (hereinafter "Miller"), by and through their attorneys, ANSTANDIG, MCDYER, BURDETTE, & YURCON, P.C. and EDWARD A. YURCON, ESQUIRE, and files the following Amended Answer and New Matter to Plaintiff's Complaint, and in support thereof, avers as follows:

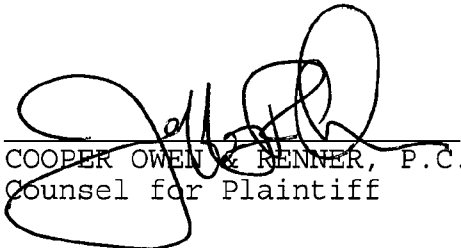
1-53. Defendants incorporate by reference as though stated more fully herein paragraphs 1 through 53 of the Answer and New Matter previously filed on their behalf in the instant action.

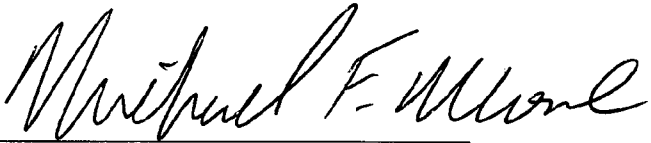
54. Plaintiffs' claims against defendants R. and F. Miller, Inc. and Eddie C. Roberts are barred by virtue of a joint tortfeasor's release executed by plaintiff James U. Lux in favor of defendants R. and F. Miller, Inc. and Eddie C. Roberts, said

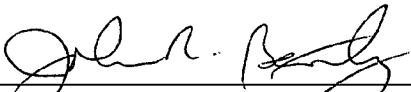
release being executed pursuant to provisions of the Uniform Contribution Among Joint Tortfeasors Act 42 Pa.C.S.A. §8321 and the Pennsylvania Comparative Negligence Act 42 Pa.C.S.A. §7102, a copy of said release being attached hereto as Exhibit "A", the same being hereby pled as a bar and/or affirmative defense.

WHEREFORE, defendants Eddie C. Roberts and R. and F. Miller, Inc. deny liability and demand judgment in their favor and against plaintiff and all other parties.

CONSENTED TO BY:

BY: 
COOPER OWEN RENNER, P.C.
Counsel for Plaintiff

BY: 
DICKIE, McCAMEY & CHILCOTE
Counsel for Ort Trucking
and Samuel Knight

BY: 
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

ANSTANDIG, McDYER, & YURCON, P.C.


BY: 
EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR EDDIE C. ROBERTS
and R. and F. MILLER, INC.

EXHIBIT 'A'

SETTLEMENT AGREEMENT AND JOINT TORTFEASOR RELEASE

This Settlement Agreement and Joint Tortfeasor Release is made by and between JAMES U. LUX, (hereinafter referred to as "Releasor") and R. & F. MILLER, INC. and, EDDIE C. ROBERTS (hereinafter referred to as "Releasees") and their insurer SAFECO INSURANCE COMPANY (hereinafter referred to as "Insurer").

WHEREAS, JAMES U. LUX was involved in a motor vehicle accident which occurred on October 24, 2000, on Interstate Highway Route 80 in Union Township, Clearfield County, Pennsylvania;

WHEREAS, JAMES U. LUX initiated a lawsuit in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 01-466-C.D. alleging that the accident and resulting injuries and damages were the result of the negligence of Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; Simon Transportation Services, Inc.; R. & F. Miller, Inc.; Samuel Thomas Knight; Eddie C. Roberts; Jamie Harvey Parker; and Pennsylvania Department of Transportation;

WHEREAS, defendant Parker has been dismissed from the lawsuit pursuant to Opinion and Order of Court dated August 21, 2001;

WHEREAS, JAMES U. LUX released Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight to the extent of their direct liability pursuant to a Pro Tanto Joint Tortfeasor Release dated August 15, 2002;

WHEREAS, the parties hereto wish to enter into a full and final release and settlement of Releasor's claims against Releasees for injuries and damages sustained by JAMES U. LUX as a result of the October 24, 2000, accident which Releasor alleges

was, in part, the result of the negligent acts and/or omissions of Releasees;

WHEREAS, SAFECO INSURANCE COMPANY is the liability insurer of R. & F. MILLER, INC. and EDDIE C. ROBERTS, and as such, would be obligated to pay any claim made or judgment against R. & F. MILLER, INC. and/or EDDIE C. ROBERTS which is covered by its policy;

WHEREAS, the parties desire to enter into this Settlement Agreement and Joint Tortfeasor Release in order to provide for certain payments in full settlement and discharge of all claims which Releasees has, or might make against Releasees by reason of the accident of October 24, 2000, upon the terms and conditions set forth below;

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1.0 RELEASE AND DISCHARGE

1.1 Releasor, for and in consideration of the payment of One Million Two Hundred Thousand Dollars (\$1,200,000.00) by SAFECO INSURANCE COMPANY, the receipt of which sum is hereby acknowledged, and in further consideration of the promise of future payments to Releasees as herein set forth, does hereby release and forever discharge and, by these presents, does for himself, his heirs, executors, administrators and assigns, release and forever discharge R. & F. MILLER, INC., EDDIE C. ROBERTS and SAFECO INSURANCE COMPANY, and their respective heirs, executors, administrators, agents, employees, successors and assigns from any

and all liability, claims, causes of action, liens, damages, costs and demands, whatsoever, in law or in equity, which against the said parties Releasor ever had, now has, or which his heirs, executors, administrators or assigns hereafter can or may have by reason of the bodily and personal injury sustained by Releasor and the consequences thereof, known or unknown, foreseen or unforeseen, arising or which may arise as a result of, or in any way connected with, the accident referred to above.

1.2 It is understood that no claims or demands are being released which Releasor may have against any other party on account of the aforesaid accident or any injuries arising therefrom; but the damages recoverable against such other parties shall be reduced, extinguished or satisfied in accordance with the terms of this Release if the verdict or judgment is also against any of the entities being released herein. The damages against such other party shall be reduced by that proportion of the total dollar amount awarded as damages in the ratio of the amount of causal negligence of the parties herein released to the amount of the causal negligence attributed to all parties against whom a verdict or judgment is obtained.

1.3 Should Releasor receive a verdict or judgment solely against a party other than the Released parties, then the reduction or damages referred to herein shall not apply. But if a verdict or judgment in favor of Releasor results in a claim, verdict or judgment for contribution and/or indemnity against any of the released parties at any time, then Releasor agrees that he will not enforce his right to collect the verdict or judgment to

the extent that such enforcement creates any further liability against the released parties, it being the express intent and purpose of this Agreement to hold the released parties harmless from and against further liability which may arise by virtue of Releasor's claim against any other party. In such event, Releasor agrees that he will reduce his claim or satisfy the verdict or judgment to the extent necessary to eliminate any further liability of the released parties, either to Releasor or to any party claiming contribution and/or indemnity.

1.4 It is specifically intended that this Agreement is to be a Joint Tortfeasor's Release Agreement pursuant to the terms of the Uniform Contribution Among Tortfeasor Act, 1951, July 19, P.L. 1130, as reenacted by the Act of 1976, July 9, P.L. 586 (42 Pa.C.S., §8321, et seq.) to the extent modified by the Comparative Negligence Statute, 42 Pa.C.S. §7102..

1.5 Releasor hereby warrants that he has not made any previous settlements with, and has not released any party for damages arising out of the aforesaid claim, except as indicated in this Settlement Agreement and Joint Tortfeasor Release, and he further agrees to indemnify, save, defend and hold forever harmless the released parties, SAFECO and their respective heirs, executors, administrators, successors and assigns, of and from any loss, claim, liability, cost or expense growing out of any claim or suit against any of them for contribution and/or indemnity by any other tortfeasor or alleged tortfeasor as a result of the breach of this agreement and warranty or by anyone acting on behalf of Releasor for the purpose of enforcing a further claim

for damages on account of the accident referred to herein.

1.6 This Settlement Agreement and Joint Tortfeasor Release shall also apply to Releasees and their insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.7 This Settlement Agreement and Joint Tortfeasor Release shall be a fully binding and complete agreement among Releasor, Releasees and Insurer and their heirs, assigns and successors.

1.8 It is understood and agreed that the Releasor has entered into a separate agreement with his worker's compensation insurer whereby all subrogation claims of the worker's compensation insurer have been resolved.

1.9 The Releasor hereby discharges and agrees to indemnify and save harmless the Releasees and Insurer from any liens asserted by any health care provider, hospital, insurer, or attorney for medical expenses, hospital expenses, lost earnings, payments, attorney's liens, subrogation claims or liens and any worker's compensation liens as a result of this accident or occurrence.

2. In consideration of the Settlement Agreement and Joint Tortfeasor Release set forth above, the insurers on behalf of Releasees agrees to pay to the Releasor the sums outlined in this Section 2 below:

2.1 Payments due at the time of settlement are as follows:

\$1,200,000.00 paid to JAMES U. LUX and Cooper,
Owen & Renner, his counsel.

2.2(a) Periodic Payments made to James U. Lux according to
the schedule as follows (the "Periodic Payments"):

1. Guaranteed lump sum of \$25,000.00 payable on
December 1, 2003;
2. Guaranteed lump sum of \$25,000.00 payable on
December 1, 2004;
3. Guaranteed lump sum of \$25,000.00 payable on
December 1, 2005;
4. Guaranteed lump sum of \$33,656.50 payable on
December 1, 2006;

2.2(b) The Releasor authorizes and instructs payment to be
made to his attorney as provided herein. The Releasor
acknowledges and agrees that these payment instructions are solely
for the Releasor's convenience and do not provide the Releasor's
attorney with any ownership interest in any portion of the annuity
or the settlement other than the right to receive the payments in
the future as more specifically set forth herein:

14 payments to Cooper, Owen & Renner of \$17,469.13 paid
semi-annually beginning on May 15, 2004 with the last
payment being made on November 15, 2010.

All parties warrant that the sums set forth above constitute
damages on account of physical injuries arising from an
occurrence within the meaning of Section 104(a)(2) and Section
130 of the Internal Revenue Code and no portion of the settlement
proceeds represents exemplary or punitive damages nor pre-
judgment or post-judgment interest, but that such claims are
nonetheless being released by Releasor.

3. Any payments to be made after the death of James Lux
pursuant to the terms of this Release and Settlement Agreement
shall be made to Erin Lux. Payee may submit a change of

beneficiary in writing to Assignee. The designation must be in a form acceptable to Assignee.

4. Within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, (the "Code") General Insurance Company of America may make a "qualified assignment" to American General Annuity Service Corporation ("Assignee") of Releasees' obligation to make their portion of the future payments as described in section 2.2 hereof (the "Periodic Payments"). Releasor hereby consents to such an assignment and agrees (a) that Releasor's rights to the Periodic Payments and against the Assignee shall be those of a Secured Creditor.

Upon making such a "qualified assignment," Releasees and/or Insurer shall be fully released from all obligations to make the Periodic Payments and only Assignees shall be obligated to make the Periodic Payments. Assignees' obligation to make each Periodic Payment shall be discharged upon mailing of a valid check in the amount due to the address so designated by Releasor.

5. Assignee may fund the Periodic Payments by purchasing a "qualified funding asset," within the meaning of Section 130(d) of the Code, in the form of an annuity policy from American General Life Insurance Company, with James Lux designated as "measuring life" or "limiting life" under said contracts. All rights of ownership and control of such annuity policy shall be vested in the Assignee, but Assignee may have American General Life Insurance Company make payments directly to Releasor for Assignee's convenience. Payments made pursuant to said annuity

contract shall operate as a discharge of the payment obligations set forth in section 2.2(a).

6. It is expressly understood and agreed that none of the recipients of the FUTURE PAYMENTS provided herein shall have the right to:

- a) accelerate or defer said future payments to any time or vary in any respects the payments;
- b) receive the present discounted value of future payments;
- c) have any control of the investments of funds from which payments are made;
- d) increase or decrease the future payments;
- e) change or modify the manner, mode or method of meeting any payments or discharging any obligations set forth in this agreement;
- f) sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

7. It is further understood and agreed that there will be no fees or charges made to the recipient by the Releasees or any of their employees or agents (including, without limitation, the issuer or owner of the annuities described herein), for the purchase or administration of the annuities or payments described herein.

8. Releasor agrees that neither he nor his attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to by Releasees or their Insurer in writing, any of the terms of this Release or any of the amounts, numbers or terms and conditions of any sums payable to Releasor herein.

9. It is further expressly warranted by the Releasor that no other person or entity has asserted or is able to assert any lien, claim or entitlement to any portion of the consideration

recited above which has not been satisfied, or will not be satisfied immediately out of the above recited consideration being paid for the Release. The Releasor further expressly agrees to indemnify and hold harmless Releasees and their present and former insurers, directors, officers, agents, employees, successors and assigns from any lien, claim or entitlement to any portion of the consideration recited above being paid for this release which may be asserted at any time by any person or entity.

10. Releasor shall bear all attorneys' fees and costs arising from the actions of his own counsel in connection with the Complaint, the Settlement Agreement and Joint Tortfeasor Release, and the matters and documents referred to herein, the filing of the Complaint and all related matters.

11. In entering into this Settlement Agreement and Joint Tortfeasor Release, the Releasor represents that the Releasor has relied upon the advice of his attorneys, who are the attorneys of his own choice, concerning the legal and income tax consequences of this Settlement Agreement and Joint Tortfeasor Release; that the terms of this Settlement Agreement and Joint Tortfeasor Release have been completely read and explained to the Releasor by his attorneys; and that the terms of the Settlement Agreement and Joint Tortfeasor Release are fully understood and voluntarily accepted by Releasor.

12. Releasor represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in the Settlement

Agreement and Joint Tortfeasor Release, except as otherwise set forth herein; that Releasor has the sole right and exclusive authority to execute this Settlement Agreement and Joint Tortfeasor Release and receive the sums specified in it; and that Releasor, has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Joint Tortfeasor Release.

13. This Settlement Agreement and Joint Tortfeasor Release shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

14. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Joint Tortfeasor Release.

15. This Settlement Agreement and Joint Tortfeasor Release contains the entire agreement between the Releasor, the Releasees and the Insurer with regard to the matters set forth in it and shall be binding upon all and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

16. It is understood between the parties that Releasor has not relied upon any representation, expressed or implied, made by the SAFECO INSURANCE COMPANY or any of its representatives, as to the tax consequence of this Settlement Agreement and Joint Tortfeasor Release and that Releasor shall release SAFECO

INSURANCE COMPANY and its representatives from any and all liability in conjunction with any such tax consequences.

17. This Settlement and Joint Tortfeasor Release shall become effective immediately following execution by each of the parties.

RELEASOR

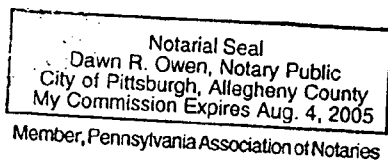
JAMES U. LUX

By: James U. Lux
Date: 12/23/02

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF)

Personally subscribed and acknowledged before me this day of 12-23, 2002, to be the true and correct signature of the above named party.

Dawn R. Owen
NOTARY PUBLIC

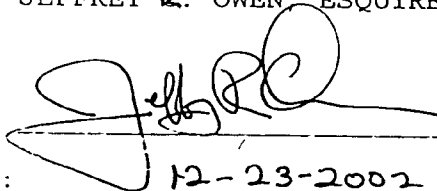


Releasor's Attorney

JEFFREY R. OWEN ESQUIRE

By:

Date:



12-23-2002

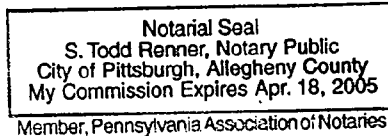
COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF)

SS:

Personally subscribed and acknowledged before me this 23rd day of December, 2002, to be the true and correct signature of the above named party.

S. Todd Renner
NOTARY PUBLIC



Insurer

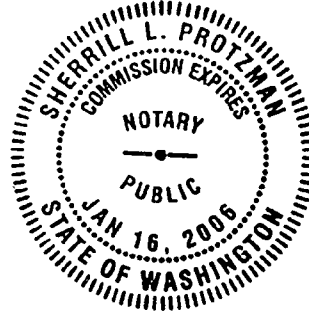
SAFECO INSURANCE COMPANY

BY: Vell Kuper
Title: adjuster
Date: 1/8/03

STATE OF WA)
COUNTY OF King) SS:

Personally subscribed and acknowledged before me this day of January 8, 2003, to be the true and correct signature of the above named party.

Sherrill L. Protzman
NOTARY PUBLIC



WITNESSED BY:

Erin E. Lux
ERIN E. LUX

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF) SS:

Personally subscribed and acknowledged before me this
day of 12-23, 2002, to be the true and correct
signature of the above named party.

Dawn R. Owen
NOTARY PUBLIC

Notarial Seal
Dawn R. Owen, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Aug. 4, 2005
Member, Pennsylvania Association of Notaries

VERIFIED STATEMENT

I, Linda Long, being the SECRETARY of R. and F. MILLER, INC. am
(TITLE)
duly authorized to make this Verified Statement on its behalf, and I hereby verify that the
statements set forth in the foregoing SECOND AMENDED ANSWER AND NEW MATTER are
true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.
Section 4904, relating to unsworn falsification to authorities.

Date: 1-10-05

Linda Long

VERIFIED STATEMENT

I, Eddie C. Roberts, hereby verify that the statements set forth in the foregoing SECOND AMENDED ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Eddie C. Roberts

Date: 1-8-05

CERTIFICATE OF SERVICE

A true and correct copy of the within **SECOND AMENDED ANSWER AND NEW**
MATTER was mailed, postage prepaid, on this 14th day of January, 2005 to the following
Counsel of Record:

COUNSEL FOR PLAINTIFF

Jeffrey R. Owen, Esquire
COOPER, OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

COUNSEL FOR ORT TRUCKING and SAMUEL KNIGHT

Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

COUNSEL FOR COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

ANSTANDIG, McDYER & YURCON, P.C.

BY


ATTORNEY FOR DEFENDANTS, R. and
F. MILLER, INC. and EDDIE C. ROBERTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

CIVIL DIVISION

Case No.: 01-466-CO

ORDER

FILED *rec*
6K 01/15/05 Owen
JAN 14 2005

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW this 14th day of January, 2005, it is hereby ORDERED

ADJUDGED AND DECREED:

WHEREAS, in these proceedings, the Plaintiff's claims against Defendants Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; R. and F. Miller, Inc.; Samuel Thomas Knight; Eddie C. Roberts; and the Commonwealth of Pennsylvania, Department of Transportation, have been amicably settled.

WHEREAS, the parties have discontinued their claims against Defendant Simon Transportation Services, Inc., pursuant to the Praecipe to Discontinue filed by Plaintiff and Defendants Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts; and the Commonwealth of Pennsylvania, Department of Transportation.

#59

It is Therefore ORDERED that the Order of Court of October 1, 2001, sustaining Defendant Parker's Preliminary Objections, the certification for appeal of which was denied by the Court, is by this Order, rendered final and appealable. Judgment shall be entered in favor of Defendant Parker and against Plaintiff.

IT IS SO ORDERED:

Paul E. Cherry.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.: 01-466-CD

FILED *no cc*
JAN 14 2005
William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE TO DISCONTINUE

AND NOW, the undersigned parties to the above-captioned proceedings, Plaintiff, James U. Lux, together with Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., R and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, and the Pennsylvania Department of Transportation, by and through counsel, and file the following Praecipe to Discontinue, averring and support thereof as follows:

1. In the above-captioned action, claims have been brought by Plaintiff, and by various Defendants by way of cross-claims, against Defendants Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. (collectively referred to herein as the "Simon Claims").

58

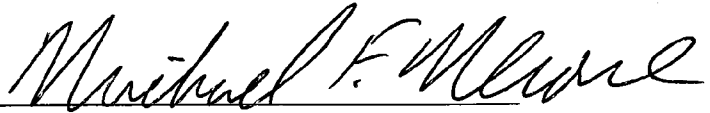
2. Upon information and belief, the parties have been informed that the Simon Claims are barred by the automatic stay imposed by 11 U.S.C. Section 362, upon the institution of bankruptcy proceedings, and upon the final liquidation of Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. .

3. All parties hereby consent to the discontinuance of the Simon Claims as indicated by the signatures of counsel affixed hereto.

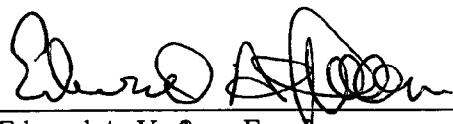
WHEREFORE, the undersigned parties request that the Plaintiff's Complaint against Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. and Defendants' Cross Claims against Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. , brought pursuant to Rule 2252 (d) of the Pennsylvania Rules of Civil Procedure, be discontinued without prejudice.

Respectfully submitted:

Jeffrey R. Owen, Esquire
Counsel for Plaintiff James U. Lux



Michael F. Nerone, Esquire
Counsel for Defendant Samuel Thomas Knight
And Ort Trucking



Edward A. Yurkon, Esquire
Counsel for ~~Ed~~ C. Robert and R and F Miller, Inc.

John R. Benty
Counsel for the Commonwealth of Pennsylvania,
Department of Transportation

2. Upon information and belief, the parties have been informed that the Simon Claims are barred by the automatic stay imposed by 11 U.S.C. Section 362, upon the institution of bankruptcy proceedings, and upon the final liquidation of Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. .

3. All parties hereby consent to the discontinuance of the Simon Claims as indicated by the signatures of counsel affixed hereto.

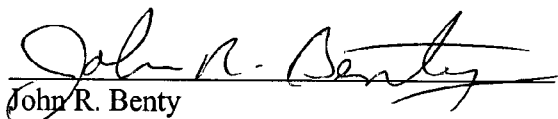
WHEREFORE, the undersigned parties request that the Plaintiff's Complaint against Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. and Defendants' Cross Claims against Simon Transportation Services, Inc. and Dick Simon Trucking, Inc. , brought pursuant to Rule 2252 (d) of the Pennsylvania Rules of Civil Procedure, be discontinued without prejudice.

Respectfully submitted:

Jeffrey R. Owen, Esquire
Counsel for Plaintiff James U. Lux

Michael F. Nerone, Esquire
Counsel for Defendant Samuel Thomas Knight
And Ort Trucking

Edward A. Yurkon, Esquire
Counsel for Edie C. Robert and R and F Miller, Inc.


John R. Benty
Counsel for the Commonwealth of Pennsylvania,
Department of Transportation

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES,
INC., R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION.

Defendants.

CIVIL DIVISION

No. 01-466-⁶²~~60~~

VERIFICATION TO
ANSWER AND NEW MATTER
AND NEW MATTER UNDER
PA R.C.P. 2252(d)

Filed on Behalf of Defendant:
Pennsylvania Department
of Transportation

Counsel of Record for this
party:

JOHN R. BENTY
Sr. Deputy Attorney General
Pa. I. D. #44606

Office of Attorney General
Tort Litigation Unit
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-3539

FILED ^{NO} cc
611 7/11/28/01
JAN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

#51

LUX (JRB)

VERIFICATION

I, PETER M. FILO, have read the foregoing
Answer and New Matter. The statements therein are correct to the best of my personal
knowledge or information and belief.

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

Peter M. Filo
DATED: 1/4/05

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing VERIFICATION TO ANSWER AND NEW MATTER AND NEW MATTER UNDER PA. R.C.P. 2252(d) was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid, on January 6, 2004.

Jeffrey R. Owen, Esq.
COOPER OWEN & RENNER, P.C.
1600 Benedum-Trees Bldg.
223 Fourth Ave.
Pittsburgh, PA 15222-1713
(Counsel for Plaintiff)

Michael F. Nerone, Esq.
Suite 400, Two PPG Place
Pittsburgh, PA 15222
(Counsel for Ort Trucking
and Samuel Knight)

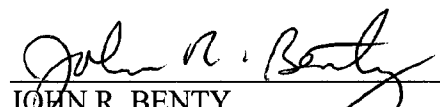
Nancy L. Heilman, Esq.
15th Fl., 11 Stanwix St.
Pittsburgh, PA 15222-1319
(Counsel for Simon Transportation)

Edward A. Yurcon, Esq.
1300 Gulf Tower
Pittsburgh, PA 15219
(Counsel for R. and F. Miller, Inc.
and E. Roberts)

Robert A. Seiferth, Esq.
33 W. Third St., Suite 200
Williamsport, PA 17701
(Counsel for Parker)

GERALD J. PAPPERT
Attorney General

BY:


JOHN R. BENTY
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

Reply to New Matter Pursuant to Rule
2252(d)

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT
TRUCKING, INC. AND SAMUEL
THOMAS KNIGHT

Defendants.

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

FILED
m/8:59/01 cc
JAN 10 2005
William A. Shaw
Prothonotary/Clerk of Courts

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

Reply to New Matter Pursuant to Rule
2252(d)

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

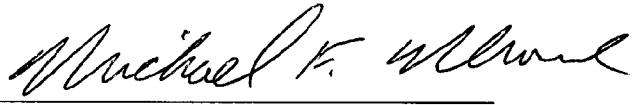
REPLY TO NEW MATTER PURSUANT TO RULE 2252(d)

**AND NOW, come the Defendants, Gerald E. Ort Trucking, Inc., Ort
Trucking, Inc., and Samuel Thomas Knight, by and through their counsel, Dickie,
McCamey & Chilcote, P.C. and Michael F. Nerone, Esquire, and files this Reply to New
Matter Pursuant to Rule 2252(d), in support of which they aver the following:**

**1. In response to paragraph 57 and 58 of PennDOT's New Matter pursuant to
Rule 2252(d), it is averred that said allegations state conclusions of law to which no
response is required. To the extent a response may be deemed required, said allegations
are denied. By way of further response, these Defendants incorporate herein by reference
the Release previously executed by Plaintiff in their favor as if the same were set forth
herein at length.**

WHEREFORE, these Defendants deny any and all liability under any theory of law whatsoever and respectfully requests that judgment be entered in their favor together with costs.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 

Michael F. Nerone, Esquire
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

VERIFICATION

I, Michael F. Nerone, Esquire, of Dickie, McCamey & Chilcote, P.C., have read the foregoing Reply to New Matter Pursuant to Rule 2252(d). The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

A handwritten signature in cursive script, reading "Michael F. Nerone".

Michael F. Nerone, Esquire

DATED 1/6/05

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Reply to New Matter Pursuant to Rule 2252(d) this 6th day of January, 2005, by


U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

Amended New Matter

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT
TRUCKING, INC. AND SAMUEL
THOMAS KNIGHT

Defendants.

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

FILED
m 18:50
JAN 10 2005

William A. Shaw
Prothonotary/Clerk of Courts

#55

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

AMENDED NEW MATTER

AND NOW, come the Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight, by and through their counsel, Dickie, McCamey & Chilcote, P.C. and Michael F. Nerone, Esquire, and files this Amended New Matter in support of which they assert the following:

1. These defendants incorporate herein by reference their previously filed Answer and New Matter as if the same were set forth herein at length.
2. These defendants assert the Pro Tanto Joint Tort Feasor Release which is attached hereto as Exhibit "A" as a full and complete defense to any and all claims asserted against them in this action.

WHEREFORE, these defendants deny any and all liability to any party under any theory of law whatsoever and respectfully requests that judgment be entered in their favor together with costs.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: Michael F. Nerone

Michael F. Nerone, Esquire
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

○ VERIFICATION ○

I, Michael F. Nerone, Esquire, of Dickie, McCamey & Chilcote, P.C., have read the foregoing Amended New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Michael F. Nerone, Esquire

DATED

1/6/05

CERTIFICATE OF SERVICE

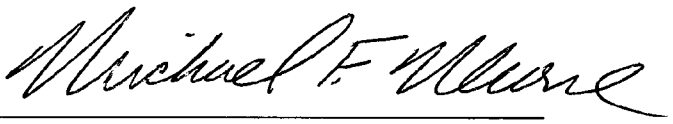
I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Amended New Matter were served this 5th day of January, 2005, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Michael F. Nerone, Esquire

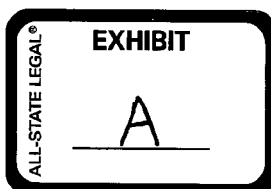
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

PRO TANTO JOINT TORTFEASOR RELEASE

1. KNOW ALL MEN BY THESE PRESENTS THAT, I, James U. Lux, for the total consideration of Five Hundred Thousand Dollars (\$500,000.00), do hereby release and forever discharge Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight, their heirs, successors, assigns and insurers to the extent of their direct liability to me and only them ("Releasees"), from any and all actions, causes of action, claims, compensatory damages, punitive damages and demands of whatsoever kind or nature on account of any and all known and unknown injuries, losses and damages to me sustained or received on or about October 24, 2000 and on account of which suit was brought in the Court of Common Pleas of Clearfield County, Pennsylvania at Case No. 01-466-CD including all claims which I have or could have asserted against Releasees in the context of said action.

2. The settlement proceeds identified above represent a total settlement of all claims I possess against the Releasees and is intended to cover and does cover not only all now known injuries, losses and damages, but any future injuries, losses and damages not now known or anticipated, but which may later develop or be discovered, including all the effects and consequences thereof.

3. It is understood and agreed that this settlement represents a compromise of disputed claims, and that the payment made is not to be construed as an admission of liability on the part of the Releasees. To the contrary, Releasees expressly deny any and all liability and I realize that there is doubt and uncertainty as to the liability of Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight. Furthermore, I do not concede that any Releasee is a joint tortfeasor.



4. I reserve the right to make claims against any and every other person, entity or organization, including but not limited to Simon Transportation Services, Inc., R and F Miller, Inc., Eddie C. Roberts, Jamie Harvey Parker and the Pennsylvania Department of Transportation, who may be liable to me and to claim that they, and not the Releasees, are solely liable or to the extent it is determined by any trier of fact, jointly liable, for the claimed injuries, losses and damages. It is expressly understood that no release is given to any other person or entity, provider of medical benefits and/or provider of under-insurance or un-insurance motorists coverage.

5. For the above consideration paid and pursuant to the Uniform Contribution Among Tortfeasors Act, 42 Pa.C.S.A. § 8321, should it be determined that the provisions of the Comparative Negligence Act, 42 Pa.C.S.A. § 1701 et. seq. apply to this action or that Releasees are joint tortfeasors, I further agree that the damages recoverable against any non-released person, association, governmental entity or corporation shall be reduced only to the extent of the amount of money in dollars paid to me for this Release, irrespective of the apportionment of pro rata liability determined by any trier of fact.

6. Should the jury return a verdict, or should there be any other such determination, that Releasees are not liable to any degree for my injuries and damages or that Releasees are not joint tortfeasors, then the amount claimed by me against any other alleged tortfeasor shall not be reduced by any amount.

7. It is expressly understood and agreed that I am solely responsible for satisfying any and all liens, subrogation interests, costs and expenses associated with or arising from the accident which is the subject matter of the above referenced action, including workers

compensation liens, health insurer liens, medical and/or health care provider liens and expenses, medicaid, medicare and/or any other governmental liens for any benefits which I have received or which I may receive in the future. Further, it is understood and agreed that I shall defend and indemnify the Releasees for any claims asserted by workers compensation carriers, health insurers, health care providers or governmental entities or programs regarding any and all benefits I received or will receive which relate to or arise from the accident which is the subject of the above referenced action.

8. The parties understand, agree and intend that this Release creates no third party beneficiaries and that this Release is solely for the benefit of the undersigned and Releasees.

9. It is further understood and agreed and made a part hereof, that neither I nor my attorneys, family members, or other representatives, will in any way discuss or publicize, including but not limited to newspapers, magazines, radio, internet or television, the facts or terms and conditions of this settlement. I hereby expressly agree to decline comment on any aspect of this settlement. However, it is agreed that my counsel may disclose the terms of this settlement to other named defendants in the above referenced action for the purposes of negotiating settlement with them as he deems appropriate. It is further understood and agreed that Releasees may disclose this settlement in the context of the above referenced action for any and all legitimate purposes. This paragraph is intended to become part of the consideration for settlement of this claim.

10. This Release shall be construed that wherever applicable the use of the singular number shall include the pleural number and shall be binding upon and inure to the successors, assigns, heirs, executors, administrators, and legal representatives of the respective parties hereto.

11. I have carefully read the foregoing with the assistance of legal counsel of my own choosing and know and understand the contents and meaning thereof, and sign the same as my free act.

IN WITNESS WHEREOF, and intending to be legally bound, I have hereunto set our hands and seal this 15 day August, 2002.

WITNESSED BY:

Erin Lux

James U. Lux
James U. Lux

Commonwealth of Pennsylvania

:

: SS:

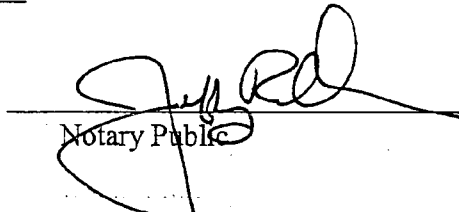
:

County of Allegheny

On this 15th day of August, 2002, before me personally appeared James
U. Lux to me known to be the person named in and who executed the above release and
acknowledged that he executed same as his free act and deed. Witness my hand and notarial seal
the date aforesaid.

Notarial Seal
Jeffrey R. Owen, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Dec. 4, 2004
Member, Pennsylvania Association of Notaries

My commission expires: _____


Notary Public

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES,
INC., R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION.

Defendants.

CIVIL DIVISION

No. 01-466-OO

ANSWER AND NEW MATTER
AND NEW MATTER UNDER
PA R.C.P. 2252(d)

Filed on Behalf of Defendant:
Pennsylvania Department
of Transportation

Counsel of Record for this
party:

JOHN R. BENTY
Sr. Deputy Attorney General
Pa. I. D. #44606

Office of Attorney General
Tort Litigation Unit
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-3539

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

John R. Benty
Attorney for Defendant PennDOT

FILED
6K m/11:29/57 cc
DEC 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

(#54)

ANSWER AND NEW MATTER AND NEW MATTER
UNDER PA. R.C.P. 2252(d)

AND NOW, comes the defendant, Pennsylvania Department of Transportation, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Answer and New Matter to Plaintiff's Complaint, averring in support thereof, as follows:

ANSWER

1. In response to the averments contained in paragraph 1 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

2. In response to the averments contained in paragraph 2 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

3. In response to the averments contained in paragraph 3 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

4. In response to the averments contained in paragraph 4 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments

contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

5. In response to the averments contained in paragraph 5 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

6. In response to the averments contained in paragraph 6 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

7. In response to the averments contained in paragraph 7 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

8. In response to the averments contained in paragraph 8 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

9. The averments contained in paragraph 9 of Plaintiff's Complaint are admitted.

10. In response to the averments contained in paragraph 10 of Plaintiff's Complaint, based upon information contained in the Police Accident Reports, it is admitted that the events complained about occurred in the general time frame and geographical area stated in Plaintiff's Complaint.

11. The averments contained in paragraph 11 of Plaintiff's Complaint are admitted.

12. The averments contained in paragraph 12 of Plaintiff's Complaint are admitted.

13. The averments contained in paragraph 13 of Plaintiff's Complaint are admitted.

14. The averments contained in paragraph 14 of Plaintiff's Complaint are admitted.

15. In response to the averments contained in paragraph 15 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

16. In response to the averments contained in paragraph 16 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

17. In response to the averments contained in paragraph 17 of Plaintiff's Complaint, based upon information contained in the Police Accident Reports, it is admitted that the events complained about occurred in the general time frame and geographical area stated in Plaintiff's Complaint.

consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

18. In response to the averments contained in paragraph 18 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

19. In response to the averments contained in paragraph 19 of Plaintiff's Complaint, the Defendant, PennDOT, hereby incorporates its responses to paragraphs 1 through 18 and 23 through 44 as though the same are set forth more fully herein.

20. The averments contained in paragraph 20 of Plaintiff's Complaint are admitted.

21. The averments contained in paragraph 21 of Plaintiff's Complaint are directed to Defendants, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., and Samuel T. Knight and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

22. In response to the averments contained in paragraph 22 of Plaintiff's Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

23. In response to the averments contained in paragraph 23 of Plaintiff's Complaint, this Defendant incorporates its responses to paragraphs 1 through 22 and 27 through 24 as though the same are set forth more fully herein.

24. The averments contained in paragraph 24 of Plaintiff's Complaint are admitted.

25. The averments contained in paragraph 25 of Plaintiff's Complaint are directed to Defendants, Eddie C. Roberts and R. and F. Miller, Inc., and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

26. The averments contained in paragraph 26 of Plaintiff's Complaint are directed to Defendants, Eddie C. Roberts and R. and F. Miller, Inc., and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

27. In response to the averments contained in paragraph 27 of Plaintiff's Complaint, this Defendant hereby incorporates its responses to paragraphs 1 through 26 and 30 through 44 as though the same are set forth more fully herein.

28. The averments contained in paragraph 28 of Plaintiff's Complaint are directed to Defendant, Jamie Harvey Parker, and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

29. The averments contained in paragraph 29 of Plaintiff's Complaint are directed to Defendant, Jamie Harvey Parker, and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

30. In response to the averments contained in paragraph 30 of Plaintiff's Complaint, this Defendant hereby incorporates its responses to paragraphs 1 through 29 and 33 through 44 as though the same are set forth more fully herein.

31. The averments contained in paragraph 31 of Plaintiff's Complaint are directed to Defendants, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., and Samuel T. Knight and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

32. The averments contained in paragraph 32 of Plaintiff's Complaint are directed to Defendants, Gerald E. Ort Trucking, Inc. and Ort Trucking, Inc., and Samuel T. Knight and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

33. In response to the averments contained in paragraph 33 of Plaintiff's Complaint, this Defendant hereby incorporates its responses to paragraphs 1 through 32 and 36 through 44 as though the same are set forth more fully herein.

34. The averments contained in paragraph 34 of Plaintiff's Complaint are directed to Defendants, Eddie C. Roberts and R. and F. Miller, Inc., and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

35. The averments contained in paragraph 35 of Plaintiff's Complaint are directed to Defendants, Eddie C. Roberts and R. and F. Miller, Inc., and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

36. In response to the averments contained in paragraph 36 of Plaintiff's Complaint, this Defendant hereby incorporates its responses to paragraphs 1 through 35 and 40 through 44 as though the same are set forth more fully herein.

37. In response to the averments contained in paragraph 37 of Plaintiff's Complaint, the Defendant, PennDOT, admits only that it has certain duties and responsibilities as set forth in relevant Pennsylvania law. Any further allegations or inferences contained in paragraph 37 are strictly denied.

38. The averments contained in paragraph 38 of Plaintiff's Complaint are denied.

39. The averments contained in paragraph 39 of Plaintiff's Complaint are denied.

40. In response to the averments contained in paragraph 40 of Plaintiff's Complaint, this Defendant hereby incorporates its responses to paragraphs 1 through 39 as though the same are set forth more fully herein.

41. The averments contained in paragraph 41 of Plaintiff's Complaint are directed to Defendant, Simon Transportation Services, and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

42. The averments contained in paragraph 42 of Plaintiff's Complaint are directed to Defendant, Simon Transportation Services, and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

43. The averments contained in paragraph 43 of Plaintiff's Complaint are directed to Defendant, Simon Transportation Services, and, therefore, no response is required. To the extent that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

44. The averments contained in paragraph 44 of Plaintiff's Complaint are directed to Defendant, Simon Transportation Services, and, therefore, no response is required. To the extent

that there are any allegations or inferences contained therein that refer to this answering Defendant, the same are denied.

NEW MATTER

By way of further and more complete answer to the Plaintiff's Complaint, this Defendant sets forth the following New Matter:

45. The cause of action against the Defendant, PennDOT, is barred by the Doctrine of Sovereign Immunity.

46. By way of further defense, it is averred that the cause of action against the Defendant, PennDOT, does not fall within one of the nine (9) categories enumerated by §8522 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8522.

47. By way of further defense, it is averred that the cause of action against the Defendant, PennDOT, fails as a result of the failure of this Defendant to receive actual written notice pursuant to §8555 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8522.

48. By way of further defense, it is averred that in the event that damages are awarded in this case, said damages are limited to the amounts and for the losses as set forth in §8528 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8528.

49. The rights of the Plaintiff in this action are diminished or fully barred by Plaintiff's contributory negligence in accordance with the provisions of the Pennsylvania Comparative Negligence Law, 42 Pa. C.S.A. §7102.

50. The injuries, losses, damages or occurrences alleged in the Plaintiff's Complaint were the result of an independent and intervening cause or caused over which the Defendant, PennDOT, had no control or in any way participated.

51. The injuries, losses, damages or occurrences alleged in the Plaintiff's Complaint were the result of the assumption of the risk of such injuries, losses or damages by the Plaintiff.

52. All rights which might otherwise exist against this party are barred in whole or in part by the applicable statutes of limitations, other similar statutes, contractual provisions and/or other fundamental provisions, including waiver, estoppel and laches.

53. The responsibility of the Defendant, PennDOT, to maintain the highway at issue is limited by its financial ability to do so (in accord with appropriations made by the General Assembly) or articulated by the Administrative Code, 71 P.S. §512.

54. The purported highway defect alleged to be a cause or contributing factor to the happening of the accident in question did not cause but, at most, only facilitated the happening of the accident in suit; accordingly, the cause of action against PennDOT is barred under applicable law.

55. The accomplishment of the work assigned to PennDOT to perform under applicable authority was made impossible to attain as a result of the economic resources which limited PennDOT's ability to attain such goal.

56. Plaintiff has failed to allege or document the election of full tort option on the Pennsylvania Motor Vehicle Financial Responsibility Law.

WHEREFORE, the cause of action against the Defendant, PennDOT, should be dismissed as against it with costs assessed against the Plaintiff.

New Matter Under PA. R.C.P. 2252(d) Addressed to
Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon
Transportation Services, Inc., R. and F. Miller, Inc.,
Samuel Thomas Knight, Eddie C. Roberts and Jamie Harvey Parker

57. PennDOT avers that if the accident occurred as alleged in the Plaintiff's Complaint, then any injuries or damages allegedly sustained by the Plaintiff were due to the negligence, carelessness and recklessness of Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts and Jamie Harvey Parker, as more specifically set forth in the Plaintiff's Complaint, which paragraphs are incorporated herein solely for purposes of this crossclaim, as though the same were set forth in full herein.

58. The Defendant, PennDOT, hereby incorporates allegations contained in Plaintiff's Complaint for purposes of its crossclaims against the Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts and Jamie Harvey Parker, only.


WHEREFORE, Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts and Jamie Harvey Parker, are alone liable to the Plaintiff. In the event that PennDOT is held to be liable to the Plaintiff, which is expressly and specifically denied, then the Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts and Jamie Harvey Parker, are jointly and/or

severally liable with PennDOT or liable over to PennDOT in indemnity and/or contribution on the cause of action as set forth in the Plaintiffs Complaint.

Respectfully Submitted,

GERALD J. PAPPERT
Attorney General

BY:


JOHN R. BENTY
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER AND NEW MATTER AND NEW MATTER UNDER PA. R.C.P. 2252(d) was served upon the following counsel of record by mailing the same via first class mail, postage pre-paid, on December 22, 2004.

Jeffrey R. Owen, Esq.
COOPER OWEN & RENNER, P.C.
1600 Benedum-Trees Bldg.
223 Fourth Ave.
Pittsburgh, PA 15222-1713
(Counsel for Plaintiff)

Michael F. Nerone, Esq.
Suite 400, Two PPG Place
Pittsburgh, PA 15222
(Counsel for Ort Trucking
and Samuel Knight)

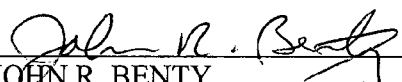
Nancy L. Heilman, Esq.
15th Fl., 11 Stanwix St.
Pittsburgh, PA 15222-1319
(Counsel for Simon Transportation)

Edward A. Yurcon, Esq.
1300 Gulf Tower
Pittsburgh, PA 15219
(Counsel for R. and F. Miller, Inc.
and E. Roberts)

Robert A. Seiferth, Esq.
33 W. Third St., Suite 200
Williamsport, PA 17701
(Counsel for Parker)

GERALD J. PAPPERT
Attorney General

BY:


JOHN R. BENTY
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.:

Case No.: 01-466-CD

PRAECIPE TO
PLACE AT ISSUE

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:

Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

(412) 281-9696

FILED

SEP 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

#53

PRAECIPE TO PLACE AT ISSUE

PRAECIPE TO PLACE AT ISSUE

TO THE PROTHONOTARY:

Please place the above captioned matter at issue.

Respectfully submitted,

COOPER OWEN & RENNER, P.C.

BY: 

JEFFREY R. OWEN
COUNSEL FOR PLAINTIFF,
JAMES U. LUX

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's PRAECIPE TO PLACE AT ISSUE has been served upon the following counsel by mailing a copy, postage pre-paid, this 13th day of September, 2004, to the following:

Michael F. Nerone, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222

Edward A. Yurcon, Esquire
Anstandig, McDyer, Burdette &
Yurcon, P.C.
Pittsburgh, PA 15219-1911

John R. Benty, Esquire
Senior Deputy Attorney General
Office of the Attorney General
Tort Litigation Unit
Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219

Nancy L. Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319

COOPER OWEN & RENNER, P.C.

BY: 

Jeffrey R. Owen, Esq.
Counsel for Plaintiff, James U. Lux

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

AMENDED ANSWER AND NEW MATTER

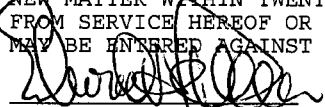
Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

To: ALL PARTIES

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


EDWARD A. YURCON, ESQUIRE
Attorney for Defendant

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

FEB 24 2003

William A. Shaw
Prothonotary

#52

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
v.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

AMENDED ANSWER AND NEW MATTER

AND NOW, come the defendants, Eddie C. Roberts (hereinafter "Roberts") and R. and F. Miller, Inc. (hereinafter "Miller"), by and through their attorneys, ANSTANDIG, MCDYER, BURDETTE, & YURCON, P.C. and EDWARD A. YURCON, ESQUIRE, and files the following Amended Answer and New Matter to Plaintiff's Complaint, and in support thereof, avers as follows:

1-53. Defendants incorporate by reference as though stated more fully herein paragraphs 1 through 53 of the Answer and New Matter previously filed on their behalf in the instant action.

54. Plaintiffs' claims against defendants R. and F. Miller, Inc. and Eddie C. Roberts are barred by virtue of a joint tortfeasor's release executed by plaintiffs Randall D. Wells and

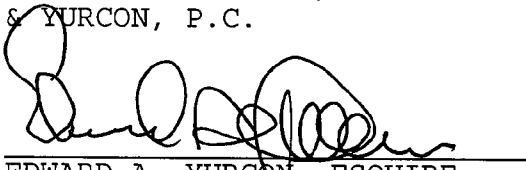
Tammy Wells in favor of defendants R. and F. Miller, Inc. and Eddie C. Roberts, said release being executed pursuant to provisions of the Uniform Contribution Among Joint Tortfeasor's Act 42 Pa.C.S.A. §8321 and the Pennsylvania Comparative Negligence Act 42 Pa.C.S.A. §7102, a copy of said release being attached hereto as Exhibit "A", the same being hereby pled as a bar and/or affirmative defense.

WHEREFORE, defendants Eddie C. Roberts and R. and F. Miller, Inc. deny liability and demand judgment in their favor and against plaintiff and all other parties.

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY:


EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR DEFENDANTS, EDDIE C.
ROBERTS and R. AND F. MILLER, INC.

JURY TRIAL DEMANDED

EXHIBIT 'A'

SETTLEMENT AGREEMENT AND JOINT TORTFEASOR RELEASE

This Settlement Agreement and Joint Tortfeasor Release is made by and between JAMES U. LUX, (hereinafter referred to as "Releasor") and R. & F. MILLER, INC. and, EDDIE C. ROBERTS (hereinafter referred to as "Releasees") and their insurer SAFECO INSURANCE COMPANY (hereinafter referred to as "Insurer").

WHEREAS, JAMES U. LUX was involved in a motor vehicle accident which occurred on October 24, 2000, on Interstate Highway Route 80 in Union Township, Clearfield County, Pennsylvania;

WHEREAS, JAMES U. LUX initiated a lawsuit in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 01-466-C.D. alleging that the accident and resulting injuries and damages were the result of the negligence of Gerald E. Ort Trucking, Inc.; Ort Trucking, Inc.; Simon Transportation Services, Inc.; R. & F. Miller, Inc.; Samuel Thomas Knight; Eddie C. Roberts; Jamie Harvey Parker; and Pennsylvania Department of Transportation;

WHEREAS, defendant Parker has been dismissed from the lawsuit pursuant to Opinion and Order of Court dated August 21, 2001;

WHEREAS, JAMES U. LUX released Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight to the extent of their direct liability pursuant to a Pro Tanto Joint Tortfeasor Release dated August 15, 2002;

WHEREAS, the parties hereto wish to enter into a full and final release and settlement of Releasor's claims against Releasees for injuries and damages sustained by JAMES U. LUX as a result of the October 24, 2000, accident which Releasor alleges

was, in part, the result of the negligent acts and/or omissions of Releasees;

WHEREAS, SAFECO INSURANCE COMPANY is the liability insurer of R. & F. MILLER, INC. and EDDIE C. ROBERTS, and as such, would be obligated to pay any claim made or judgment against R. & F. MILLER, INC. and/or EDDIE C. ROBERTS which is covered by its policy;

WHEREAS, the parties desire to enter into this Settlement Agreement and Joint Tortfeasor Release in order to provide for certain payments in full settlement and discharge of all claims which Releasees has, or might make against Releasees by reason of the accident of October 24, 2000, upon the terms and conditions set forth below;

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1.0 RELEASE AND DISCHARGE

1.1 Releasor, for and in consideration of the payment of One Million Two Hundred Thousand Dollars (\$1,200,000.00) by SAFECO INSURANCE COMPANY, the receipt of which sum is hereby acknowledged, and in further consideration of the promise of future payments to Releasees as herein set forth, does hereby release and forever discharge and, by these presents, does for himself, his heirs, executors, administrators and assigns, release and forever discharge R. & F. MILLER, INC., EDDIE C. ROBERTS and SAFECO INSURANCE COMPANY, and their respective heirs, executors, administrators, agents, employees, successors and assigns from any

and all liability, claims, causes of action, liens, damages, costs and demands, whatsoever, in law or in equity, which against the said parties Releasor ever had, now has, or which his heirs, executors, administrators or assigns hereafter can or may have by reason of the bodily and personal injury sustained by Releasor and the consequences thereof, known or unknown, foreseen or unforeseen, arising or which may arise as a result of, or in any way connected with, the accident referred to above.

1.2 It is understood that no claims or demands are being released which Releasor may have against any other party on account of the aforesaid accident or any injuries arising therefrom; but the damages recoverable against such other parties shall be reduced, extinguished or satisfied in accordance with the terms of this Release if the verdict or judgment is also against any of the entities being released herein. The damages against such other party shall be reduced by that proportion of the total dollar amount awarded as damages in the ratio of the amount of causal negligence of the parties herein released to the amount of the causal negligence attributed to all parties against whom a verdict or judgment is obtained.

1.3 Should Releasor receive a verdict or judgment solely against a party other than the Released parties, then the reduction or damages referred to herein shall not apply. But if a verdict or judgment in favor of Releasor results in a claim, verdict or judgment for contribution and/or indemnity against any of the released parties at any time, then Releasor agrees that he will not enforce his right to collect the verdict or judgment to

the extent that such enforcement creates any further liability against the released parties, it being the express intent and purpose of this Agreement to hold the released parties harmless from and against further liability which may arise by virtue of Releasor's claim against any other party. In such event, Releasor agrees that he will reduce his claim or satisfy the verdict or judgment to the extent necessary to eliminate any further liability of the released parties, either to Releasor or to any party claiming contribution and/or indemnity.

1.4 It is specifically intended that this Agreement is to be a Joint Tortfeasor's Release Agreement pursuant to the terms of the Uniform Contribution Among Tortfeasor Act, 1951, July 19, P.L. 1130, as reenacted by the Act of 1976, July 9, P.L. 586 (42 Pa.C.S., §8321, et seq.) to the extent modified by the Comparative Negligence Statute, 42 Pa.C.S. §7102..

1.5 Releasor hereby warrants that he has not made any previous settlements with, and has not released any party for damages arising out of the aforesaid claim, except as indicated in this Settlement Agreement and Joint Tortfeasor Release, and he further agrees to indemnify, save, defend and hold forever harmless the released parties, SAFECO and their respective heirs, executors, administrators, successors and assigns, of and from any loss, claim, liability, cost or expense growing out of any claim or suit against any of them for contribution and/or indemnity by any other tortfeasor or alleged tortfeasor as a result of the breach of this agreement and warranty or by anyone acting on behalf of Releasor for the purpose of enforcing a further claim

for damages on account of the accident referred to herein.

1.6 This Settlement Agreement and Joint Tortfeasor Release shall also apply to Releasees and their insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.7 This Settlement Agreement and Joint Tortfeasor Release shall be a fully binding and complete agreement among Releasor, Releasees and Insurer and their heirs, assigns and successors.

1.8 It is understood and agreed that the Releasor has entered into a separate agreement with his worker's compensation insurer whereby all subrogation claims of the worker's compensation insurer have been resolved.

1.9 The Releasor hereby discharges and agrees to indemnify and save harmless the Releasees and Insurer from any liens asserted by any health care provider, hospital, insurer, or attorney for medical expenses, hospital expenses, lost earnings, payments, attorney's liens, subrogation claims or liens and any worker's compensation liens as a result of this accident or occurrence.

2. In consideration of the Settlement Agreement and Joint Tortfeasor Release set forth above, the insurers on behalf of Releasees agrees to pay to the Releasor the sums outlined in this Section 2 below:

2.1 Payments due at the time of settlement are as follows:

\$1,200,000.00 paid to JAMES U. LUX and Cooper, Owen & Renner, his counsel.

2.2(a) Periodic Payments made to James U. Lux according to the schedule as follows (the "Periodic Payments"):

1. Guaranteed lump sum of \$25,000.00 payable on December 1, 2003;
2. Guaranteed lump sum of \$25,000.00 payable on December 1, 2004;
3. Guaranteed lump sum of \$25,000.00 payable on December 1, 2005;
4. Guaranteed lump sum of \$33,656.50 payable on December 1, 2006;

2.2(b) The Releasor authorizes and instructs payment to be made to his attorney as provided herein. The Releasor acknowledges and agrees that these payment instructions are solely for the Releasor's convenience and do not provide the Releasor's attorney with any ownership interest in any portion of the annuity or the settlement other than the right to receive the payments in the future as more specifically set forth herein:

14 payments to Cooper, Owen & Renner of \$17,469.13 paid semi-annually beginning on May 15, 2004 with the last payment being made on November 15, 2010.

All parties warrant that the sums set forth above constitute damages on account of physical injuries arising from an occurrence within the meaning of Section 104(a)(2) and Section 130 of the Internal Revenue Code and no portion of the settlement proceeds represents exemplary or punitive damages nor pre-judgment or post-judgment interest, but that such claims are nonetheless being released by Releasor.

3. Any payments to be made after the death of James Lux pursuant to the terms of this Release and Settlement Agreement shall be made to Erin Lux. Payee may submit a change of

beneficiary in writing to Assignee. The designation must be in a form acceptable to Assignee.

4. Within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, (the "Code") General Insurance Company of America may make a "qualified assignment" to American General Annuity Service Corporation ("Assignee") of Releasees' obligation to make their portion of the future payments as described in section 2.2 hereof (the "Periodic Payments"). Releasor hereby consents to such an assignment and agrees (a) that Releasor's rights to the Periodic Payments and against the Assignee shall be those of a Secured Creditor.

Upon making such a "qualified assignment," Releasees and/or Insurer shall be fully released from all obligations to make the Periodic Payments and only Assignees shall be obligated to make the Periodic Payments. Assignees' obligation to make each Periodic Payment shall be discharged upon mailing of a valid check in the amount due to the address so designated by Releasor.

5. Assignee may fund the Periodic Payments by purchasing a "qualified funding asset," within the meaning of Section 130(d) of the Code, in the form of an annuity policy from American General Life Insurance Company, with James Lux designated as "measuring life" or "limiting life" under said contracts. All rights of ownership and control of such annuity policy shall be vested in the Assignee, but Assignee may have American General Life Insurance Company make payments directly to Releasor for Assignee's convenience. Payments made pursuant to said annuity

contract shall operate as a discharge of the payment obligations set forth in section 2.2(a).

6. It is expressly understood and agreed that none of the recipients of the FUTURE PAYMENTS provided herein shall have the right to:

- a) accelerate or defer said future payments to any time or vary in any respects the payments;
- b) receive the present discounted value of future payments;
- c) have any control of the investments of funds from which payments are made;
- d) increase or decrease the future payments;
- e) change or modify the manner, mode or method of meeting any payments or discharging any obligations set forth in this agreement;
- f) sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

7. It is further understood and agreed that there will be no fees or charges made to the recipient by the Releasees or any of their employees or agents (including, without limitation, the issuer or owner of the annuities described herein), for the purchase or administration of the annuities or payments described herein.

8. Releasor agrees that neither he nor his attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to by Releasees or their Insurer in writing, any of the terms of this Release or any of the amounts, numbers or terms and conditions of any sums payable to Releasor herein.

9. It is further expressly warranted by the Releasor that no other person or entity has asserted or is able to assert any lien, claim or entitlement to any portion of the consideration

recited above which has not been satisfied, or will not be satisfied immediately out of the above recited consideration being paid for the Release. The Releasor further expressly agrees to indemnify and hold harmless Releasees and their present and former insurers, directors, officers, agents, employees, successors and assigns from any lien, claim or entitlement to any portion of the consideration recited above being paid for this release which may be asserted at any time by any person or entity.

10. Releasor shall bear all attorneys' fees and costs arising from the actions of his own counsel in connection with the Complaint, the Settlement Agreement and Joint Tortfeasor Release, and the matters and documents referred to herein, the filing of the Complaint and all related matters.

11. In entering into this Settlement Agreement and Joint Tortfeasor Release, the Releasor represents that the Releasor has relied upon the advice of his attorneys, who are the attorneys of his own choice, concerning the legal and income tax consequences of this Settlement Agreement and Joint Tortfeasor Release; that the terms of this Settlement Agreement and Joint Tortfeasor Release have been completely read and explained to the Releasor by his attorneys; and that the terms of the Settlement Agreement and Joint Tortfeasor Release are fully understood and voluntarily accepted by Releasor.

12. Releasor represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in the Settlement

Agreement and Joint Tortfeasor Release, except as otherwise set forth herein; that Releasor has the sole right and exclusive authority to execute this Settlement Agreement and Joint Tortfeasor Release and receive the sums specified in it; and that Releasor, has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Joint Tortfeasor Release.

13. This Settlement Agreement and Joint Tortfeasor Release shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

14. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Joint Tortfeasor Release.

15. This Settlement Agreement and Joint Tortfeasor Release contains the entire agreement between the Releasor, the Releasees and the Insurer with regard to the matters set forth in it and shall be binding upon all and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

16. It is understood between the parties that Releasor has not relied upon any representation, expressed or implied, made by the SAFECO INSURANCE COMPANY or any of its representatives, as to the tax consequence of this Settlement Agreement and Joint Tortfeasor Release and that Releasor shall release SAFECO

INSURANCE COMPANY and its representatives from any and all liability in conjunction with any such tax consequences.

17. This Settlement and Joint Tortfeasor Release shall become effective immediately following execution by each of the parties.

RELEASOR

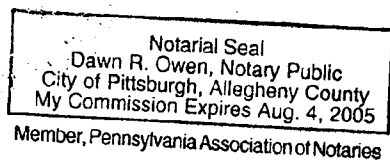
JAMES U. LUX

By: James U. Lux
Date: 12/23/02

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF)

Personally subscribed and acknowledged before me this day of 12-23, 2002, to be the true and correct signature of the above named party.

Dawn R. Owen
NOTARY PUBLIC

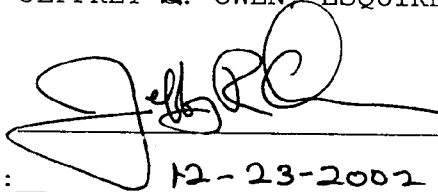


Releasor's Attorney

JEFFREY R. OWEN ESQUIRE

By:

Date:

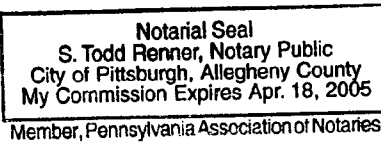

12-23-2002

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF)

SS:

Personally subscribed and acknowledged before me this 23rd
day of December, 2002, to be the true and correct
signature of the above named party.


NOTARY PUBLIC



Insurer

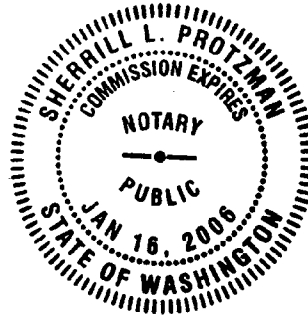
SAFECO INSURANCE COMPANY

BY: Vell Koper
Title: agent
Date: 1/8/03

STATE OF WA.)
COUNTY OF King) SS:

Personally subscribed and acknowledged before me this day of January 8, 2003, to be the true and correct signature of the above named party.

Sherill L. Protzman
NOTARY PUBLIC



WITNESSED BY:

Erin E. Lux
ERIN E. LUX

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF) SS:

Personally subscribed and acknowledged before me this
day of 12-23, 2002, to be the true and correct
signature of the above named party.

Dawn R. Owen
NOTARY PUBLIC

Notarial Seal
Dawn R. Owen, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Aug. 4, 2005
Member, Pennsylvania Association of Notaries

VERIFICATION

I, EDDIE C. ROBERTS hereby verify that the statements set forth in the foregoing AMENDED ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 1-24-03


Eddie C Roberts
EDDIE C. ROBERTS

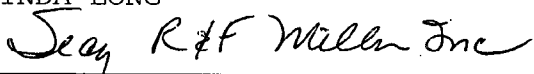
VERIFICATION

I, LINDA LONG hereby verify that the statements set forth in the foregoing AMENDED ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 2/12/03



LINDA LONG


Title:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within AMENDED ANSWER AND NEW MATTER has been served upon the following counsel by U.S. mail, postage pre-paid, this 20th day of February, 2003, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Robert A. Seiferth, Esquire
33 W. Third Street
Suite 200
Williamsport, PA 17701

Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Nancy Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

William A. Shaw
Proprietary

FEB 24 2003

FILED

No
cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

STIPULATION

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT TRUCKING,
INC. AND SAMUEL THOMAS KNIGHT

Defendants.

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

FILED

JAN 13 2003

JURY TRIAL DEMANDED

William A. Shaw
Prothonotary

(#51)

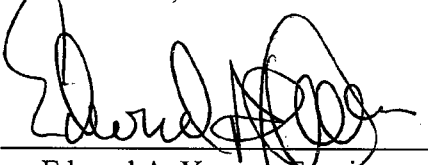
STIPULATION

AND NOW, come the Defendants Gerald E. Ort Trucking, Ort Trucking, Inc., Samuel Thomas Knight, R&F Miller, Inc. and Eddie C. Roberts, by and through their counsel, Dickie McCamey & Chilcote, P.C., John T. Pion, Esquire and Michael F. Nerone, Esquire and do hereby stipulate and agree as follows:

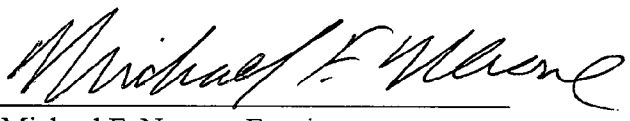
1. Defendants R&F Miller, Inc., and Eddie C. Roberts do hereby waive, release, discharge and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity which have been asserted or could have been asserted against Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight.

2. Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight do hereby waive, release, discharge and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity which have been asserted or could have been asserted against R&F Miller, Inc., and Eddie C. Roberts.

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY: 
Edward A. Yurcon, Esquire
Attorneys for Eddie C. Roberts and
R&F Miller, Inc.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 
Michael F. Nerone, Esquire
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Stipulation have been served this 8th day of January, 2002, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By Michael F. Nerone
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

FILED
JAN 13 2003
11:34 AM
cc

William A. Shaw
Prothonotary

JAMES U. LUX

Plaintiff

V.

GERALD E. ORT;
ORT TRUCKING, INC.;
SIMON TRANSPORTATION
SERVICES, INC.;
R. AND F. MILLER, INC.;
SAMUEL THOMAS KNIGHT;
EDDIE C. ROBERTS;
JAMIE HARVEY PARKER; and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

Defendants

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

: CIVIL ACTION – LAW
: NO. 01-466-CD

: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Robert A. Seiferth, Esquire, hereby certify that I have served a true and correct copy of the foregoing **Rule to File Complaint** upon Plaintiff:

VIA UNITED STATES REGULAR MAIL:

Gregory M. Kruk, Esquire
690 Main Street
Brockway, PA 15824

FILED

DEC 17 2002

William A. Shaw
Prothonotary

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY

Robert A. Seiferth

Attorney for Defendant Parker

I.D. #20481

33 W. Third Street, Suite 200

Williamsport, PA 17701

(570)326-9094

Date: 12/16/02

#50

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

Sandy Township
Oklahoma Civilian Defense Fire Company

Vs.

Case No. #2002-01669-CD

Gerald E. Ort; Gerald E. Ort Trucking, Inc.;
Ort Trucking, Inc.; Samuel Thomas Knight;
Simon Transportation Services, Inc.; R. and F. Miller, Inc.;
Eddie C. Roberts; Jamie Harvey Parker;
Pennsylvania Department of Transportation

RULE TO FILE COMPLAINT

TO: Sandy Township and Oklahoma Civilian Defense Fire Company

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



William A. Shaw, Prothonotary

Dated: December 10, 2002

03023-00259/RAS

SANDY TOWNSHIP,
OKLAHOMA CIVILIAN DEFENSE FIRE
COMPANY

Plaintiffs

v.

GERALD E. ORT;
GERALD E. ORT TRUCKING, INC.;
SIMON TRANSPORTATION SERVICES,
INC.;
R. AND F. MILLER, INC.;
SAMUEL THOMAS KNIGHT;
EDDIE C. ROBERTS;
JAMIE HARVEY PARKER; and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

Defendants

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

: CIVIL ACTION - LAW
: NO. 02-1669-CD

I hereby certify that this is a true
and correct copy of the original
statement filed in this case.

DEC 10 2002

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

: JURY TRIAL DEMANDED

PRAECIPE TO ENTER RULE ON PLAINTIFF TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Please enter a Rule upon the Plaintiffs to file a Complaint against the Defendant Jamie
Harvey Parker within twenty (20) days or suffer a judgment of non pros.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By: *Robert A. Seiferth*
Robert A. Seiferth
I.D. #20481
Attorney for Defendant Jamie Harvey Parker

* * * * *

RULE TO FILE A COMPLAINT

AND NOW, this 10TH day of December, 2002, a Rule is hereby entered upon
Plaintiffs to file a Complaint within twenty (20) days of the date of service hereof or suffer the entry
of a judgment of non pros.

William A. Shaw
Prothonotary

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

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:
Original record, Superior Court Certified Order of Dismissal

As remanded from said court in the following matter:

James Lux v Gerald E. Ort etc.

No. 222 WDA 2002

Court of Common Pleas, Civil Division, Clearfield County

At No. 01-466-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: November 26, 2002

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.

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: December 2, 2002

FILED

11:52 AM
DEC 02 2002

William A. Shaw
Prothonotary

William A. Shaw
(Signature & Title)

~~Deputy~~ Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

119

In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No.

222 WDA 2002

JAMES U. LUX
VS
GERALD E. ORT TRUCKING, INC ET AL.

: APPEAL FROM THE ORDER ENTERED
1-9-2002 BY THE HONORABLE
JOHN K. REILLY, JR.,

: COURT OF COMMON PLEAS, CIVIL
DIVISION, CLEARFIELD COUNTY

APPEAL OF: GERALD E. ORT ETC.

: NO. 01-466-CD

Certified from the Record

"ORDER

AND NOW, this 15th day of OCTOBER, 2002, this Court hereby **SUA SPONTE DISMISSES** the above-captioned appeal. as the matter has been settled, rendering the issues raised in the appeal moot. **See In Re Cain**, 590 A.2d 291 (Pa. 1991) (providing that an appellate court will not decide moot questions).

PER CURIAM"

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

Pa. this 26TH DAY OF NOVEMBER,

2002

FILED

11/52/02
DEC 02 2002
E
KPL

William A. Shaw
Prothonotary

Eleanor R. Valech
Deputy Prothonotary

#48

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
Defendants.

ORDER

AND NOW, this 16th day of October 2002, upon consideration of Defendant Jamie Harvey Parker's Preliminary Objections to New Matter Pursuant to Pa.R.C.P. 2252(d) of Defendants' Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight, it is the Order of this Court that consistent with its Opinions and Orders dated August 21, 2001 and October 1, 2001, said Preliminary Objections be and are hereby GRANTED.

BY THE COURT:

President Judge

FILED

OCT 16 2002

William A. Shaw
Prothonotary

47

FILED

OCT 16 2002

0/3:55/445
William A. Shaw
Prothonotary

CERT TO

BENTY
HEILMAN
OWEN
YURLOV
S RIFKIN
NARON

A handwritten signature, possibly reading "Bent", is written over a horizontal line.

FILED

JUL 01 2002

**William A. Shaw
Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

**REPLY TO NEW MATTER PURSUANT
TO RULE 2252 (d)**

**GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,**

**Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT TRUCKING,
INC. AND SAMUEL THOMAS KNIGHT**

Defendants.

Counsel of record for this party:

**John T. Pion, Esq.
PA. I.D. #43675**

**Michael F. Nerone, Esq.
PA. I.D. #62446**

**DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402**

(412) 281-7272

JURY TRIAL DEMANDED

#466

REPLY TO NEW MATTER PURSUANT TO RULE 2252(d)

AND NOW, come the Defendants Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, by and through their counsel, Dickie McCamey & Chilcote, P.C., John T. Pion, Esquire and Michael F. Nerone, Esquire and files the Reply to New Matter Pursuant to Rule 2252(d), in support of which they aver the following:

1. In response to Paragraph 32 of Defendant R. and F. Miller, Inc. and Eddie C. Roberts crossclaim these Defendants incorporate herein by reference the averments set forth in their previously filed Answer, New Matter and New Matter Pursuant to Rule 2252(d).

2. In response to Paragraph 33 of Co-Defendant R. and F. Miller and Eddie C. Roberts crossclaim, it is averred that said allegations state conclusions of law to which no response is required. To the extent a response may be deemed required, said allegations are denied.

WHEREFORE, these Defendants deny any and all liability to any party under any theory of law whatsoever and respectfully requests judgment be entered in their favor together with costs.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 

Michael F. Nerone, Esquire
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Reply to New Matter Pursuant to Rule 2252(d) have been served this 25th day of June, 2002, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

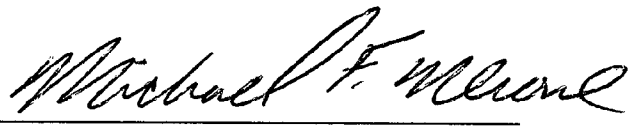
Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
COHEN & GRIGSBY
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

FILED

M11:09 8X
JUL 01 2002

NO
ce
EAD

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

TO: ALL PARTIES

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


EDWARD A. YURCON, ESQUIRE

ATTORNEY FOR DEFENDANTS, EDDIE C. ROBERTS and
R. AND F. MILLER, INC.

CIVIL DIVISION

Case No. 01-466-C.D.

ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO RULE
2252(d)

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

JUN 21 2002

m/1:08/10cc

William A. Shaw
Prothonotary

#45

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
v.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d)

AND NOW, come defendants, R & F Miller, Inc. (hereinafter "Miller"), and Eddie C. Roberts (hereinafter "Roberts"), by their attorneys, ANSTANDIG, MCDYER, BURDETTE & YURCON, P.C., and file the within Answer, New Matter and New Matter Pursuant to Rule 2252(d) in response to the plaintiff's Complaint as follows:

1. The averments contained in paragraph 1 of the Complaint are admitted.

2. These defendants are advised and therefore aver that the averments contained in paragraphs 2 through 5 of the Complaint are directed to the co-defendants and that no response to those averments is, therefore, required from these defendants.

3. The averments contained in paragraph 6 of the Complaint are admitted.

4. The averments contained in paragraph 7 of the Complaint

are admitted in part and denied in part. It is admitted that defendant Eddie C. Roberts, an adult individual, was driving the 2000 Freightliner truck owned by co-defendant R & F Miller, Inc. It is strictly and specifically denied that Roberts' operation of that truck was in any way relevant to the injuries and damages claimed in the plaintiff's Complaint. To the contrary, Roberts' conduct pertained to an entirely separate occurrence, unrelated by law or fact to the injuries and damages claimed in the Complaint.

5. These defendants are advised and, therefore, aver that the averments contained in paragraphs 8 and 9 of the Complaint are directed to co-defendants and that no response to those averments is required from these defendants.

6. The averments contained in paragraphs 10 and 11 of the Complaint are admitted.

7. The averments contained in paragraphs 12 and 13 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

8. These defendants are advised and therefore aver that the averments contained in paragraph 14 of the Complaint pertain to a co-defendant and that no response to those averments is required from these defendants.

9. After reasonable investigation these defendants are presently without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 15 and 16 of the Complaint. Those averments are, therefore, denied and strict proof thereof is demanded at the time of trial.

10. These defendants are advised and therefore aver that

the averments contained in paragraph 17 of the Complaint are directed to a co-defendant and that no response to those averments is required from these defendants.

11. The averments contained in paragraph 18 of the Complaint and its subparts are denied generally pursuant to Pa. R.C.P. No. 1029(e).

12. In response to the averments contained in paragraph 19 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

13. These defendants are advised and therefore aver that the allegations contained in paragraphs 20 through 22 of the Complaint are directed to co-defendants and that no response to those averments is required from these defendants.

14. In response to the averments contained in paragraph 23 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

15. The averments contained in paragraph 24 of the Complaint are admitted in so far as they aver that defendant Eddie C. Roberts was acting as an employee of defendant R. and F. Miller, Inc. while he was driving Miller's 2000 Freightliner truck on the date in question and that he was acting within the course and scope of his employment while he was operating that vehicle. It is strictly and specifically denied that Roberts' operation of the Freightliner was in any way relevant to the injuries and damages claimed in the plaintiff's Complaint. To the contrary, Roberts' conduct on the date in question was entirely separate in

law and in fact from any event which may be judicially determined to have caused the injuries and damages claimed by the plaintiff in his Complaint.

16. The averments contained in paragraph 25 of the Complaint and its subparts and paragraph 26 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

17. In response to the averments contained in paragraph 27 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

18. These defendants are advised and therefore aver that the averments contained in paragraph 28 of the Complaint and its subparts and paragraph 29 of the Complaint are directed to a co-defendant and that no response to those averments is required from these defendants.

19. In response to the averments contained in paragraph 30 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

20. These defendants are advised and therefore aver that the averments contained in paragraph 31 of the Complaint and its subparts and paragraph 32 of the Complaint are directed to co-defendants and that no response to those averments is required from these defendants.

21. In response to the averments contained in paragraph 33 of the Complaint the preceding paragraphs of this answer are incorporated herein by reference.

22. The averments contained in paragraph 34 of the

Complaint and its subparts and paragraph 35 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

23. In response to the averments contained in paragraph 36 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

24. These defendants are advised and therefore aver that the averments contained in paragraphs 37 through 39 of the Complaint and their subparts and directed to a co-defendant and that no response to those averments is required from these defendants.

25. In response to the averments contained in paragraph 40 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

26. These defendants are advised and therefore aver that the averments contained in paragraphs 41 through 44 of the Complaint are directed to a co-defendant and that no response to those averments is required from these defendants.

NEW MATTER

By way of further answer to the plaintiff's Complaint, these defendants assert the following as New Matter:

27. These defendants are advised and therefore aver that the affirmative defenses of comparative negligence, contributory negligence and assumption of the risk need not be pled specifically under the Pennsylvania Rules of Civil Procedure.

28. These defendants plead as an affirmative defense the provisions of the Pennsylvania Motor Vehicle Financial

Responsibility Law.

29. To the extent that the plaintiff is asserting a claim for medical bills incurred as a result of the complained of incident, these defendants assert as an affirmative defense the principles of law set forth in Moorehead v. Crozer Chester Medical Center, 763 A.2d (Pa. 2000), corrected opinion, 765 A.2d 786 (Pa. 2001).

30. In the event it is judicially determined that the plaintiff sustained the injuries and damages set forth in his Complaint, strict proof of which has been demanded hereinabove, these defendants further assert as an affirmative defense that any such injuries and damages arose from an occurrence entirely separate in law and in fact from the conduct of these defendants, who as a result cannot be held liable for any such injuries and damages which may be adjudged to have occurred.

31. In the event Miller and/or Roberts are adjudicated liable along with any of the other defendants named in this matter, all allegations of liability being denied by these defendants, it is pled and averred that defendants Miller and Roberts are not jointly and severally liable with any other party in this action in that the incidents described in plaintiff's Complaint were entirely separate occurrences, unrelated by law or fact. These defendants assert as a defense to any claim of joint and several liability the principles of law enunciated in Embrey v. Borough of West Mifflin, 390 A.2d 765 (Pa.Super. 1978), Harka v. Nabati, 487 A.2d 432 (Pa.Super. 1985).

WHEREFORE, defendants Eddie C. Roberts and R & F Miller, Inc., demand that the Complaint against them be dismissed with costs sustained in their behalf.

NEW MATTER - CROSS-CLAIM

R. and F. MILLER, INC. and EDDIE C. ROBERTS v. GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., SIMON TRANSPORTATION SERVICES, INC., SAMUEL THOMAS KNIGHT, EDDIE C. ROBERTS, JAMIE HARVEY PARKER and DEPARTMENT OF TRANSPORTATION OF THE COMMONWEALTH OF PENNSYLVANIA

AND NOW, come defendants, R. and F. Miller, Inc. and Eddie C. Roberts, pursuant to Pa. R.C.P. No. 2252(d), assert the following cross-claim against their co-defendants:

32. The averments contained in the preceding paragraphs of this Answer and New Matter are incorporated herein by reference.

33. In the event it is judicially determined that the plaintiff sustained the injuries and damages alleged in his Complaint, strict proof of which has been demanded hereinabove, and if it further judicially determined that any such injuries and damages arose from any conduct legally or factually attributable to these defendants, which has also been strictly and specifically denied herein, these defendants assert, in the alternative, a claim for contribution or, alternatively, indemnification, against those co-defendants, for any amount adjudged due and owing to the plaintiff.

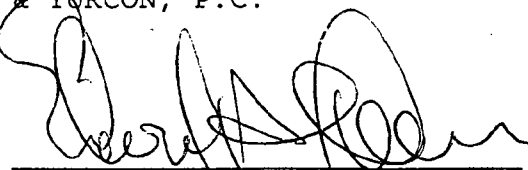
WHEREFORE, defendants R. and F. Miller, Inc. and Eddie C.

Roberts, demand that judgment be entered in their favor and against the co-defendants.

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY:



EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR DEFENDANTS, R. AND F.
MILLER, INC. and EDDIE C. ROBERTS


JURY TRIAL DEMANDED

VERIFIED STATEMENT

I, Linda Long hereby verify that the statements set forth in the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 6-3-02


LINDA LONG
Secy R&F Miller Inc
Title:

VERIFIED STATEMENT

I, Eddie Roberts hereby verify that the statements set forth in the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date:

5-27-02



EDDIE ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) has been served upon the following counsel by mailing a copy, postage pre-paid, this 6th day of June, 2002, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Robert A. Seiferth, Esquire
33 W. Third Street
Suite 200
Williamsport, PA 17701

Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Nancy Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

RESPONSE TO DEFENDANTS GERALD
E. ORT TRUCKING, INC., ORT
TRUCKING, INC., AND SAMUEL T.
KNIGHT'S NEW MATTER PURSUANT
TO RULE 2252(d)

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Stephen J. Taczak, Esquire
Pa. I.D. #86124

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

JUN 21 2002 *mas*
m/1:08 (no cc)
William A. Shaw
Prothonotary

#44

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
v.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO
RULE 2252(d)

AND NOW, come defendants, R. and F. Miller, Inc.
(hereinafter "Miller") and Eddie C. Roberts (hereinafter
"Roberts"), by and through their attorneys, ANSTANDIG, MCDYER,
BURDETTE, & YURCON, P.C. and EDWARD A. YURCON, ESQUIRE, and files
the following Response to Defendants Gerald E. Ort Trucking,
Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter
Pursuant to Rule 2252(d), and in support thereof, avers as
follows:

1. The averments contained in paragraph 53 constitute
conclusions of law to which no response is required. To the
extent a response is required, these Defendants deny any and all
allegations of liability. In further response, these defendants

incorporate by reference, as though set forth more fully herein, the Answer and New Matter filed in the instant action.

2. The averments contained in paragraph 54 constitute conclusions of law to which no response is required. To the extent a response is required, these Defendants deny any and all allegations of liability. In further response, these defendants incorporate by reference, as though set forth more fully herein, the Answer and New Matter filed in the instant action.

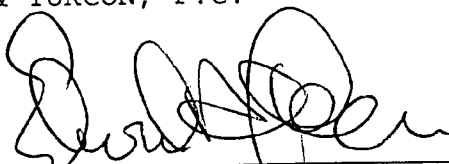
3. The averments contained in paragraph 54 constitute conclusions of law to which no response is required. To the extent a response is required, these Defendants deny any and all allegations of liability. In further response, these defendants incorporate by reference, as though set forth more fully herein, the Answer and New Matter filed in the instant action.

WHEREFORE, defendants Eddie C. Roberts and R. and F. Miller, Inc. deny liability and demand judgment in their favor and against plaintiff and all other parties.

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY:



EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR DEFENDANTS, EDDIE C.
ROBERTS and R. AND F. MILLER, INC.


JURY TRIAL DEMANDED

VERIFIED STATEMENT

I, Linda Long hereby verify that the statements set forth in the foregoing RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 6-3-02


LINDA LONG
Secy R/F Miller Inc
Title

VERIFIED STATEMENT

I, Eddie Roberts hereby verify that the statements set forth in the foregoing RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 5-27-02


EDDIE ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO RULE 2252(d) has been served upon the following counsel by mailing a copy, postage pre-paid, this 16th day of June, 2002, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Robert A. Seiferth, Esquire
33 W. Third Street
Suite 200
Williamsport, PA 17701

Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Nancy Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

JAMES U. LUX

Plaintiff

v.

GERALD E. ORT TRUCKING, INC.;
ORT TRUCKING, INC.;
SIMON TRANSPORTATION
SERVICES, INC.;
R. AND F. MILLER, INC.;
SAMUEL THOMAS KNIGHT;
EDDIE C. ROBERTS;
JAMIE HARVEY PARKER; and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

Defendants

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

:
: CIVIL ACTION - LAW
: NO. 01-466-CD

: JURY TRIAL DEMANDED

RULE TO SHOW CAUSE

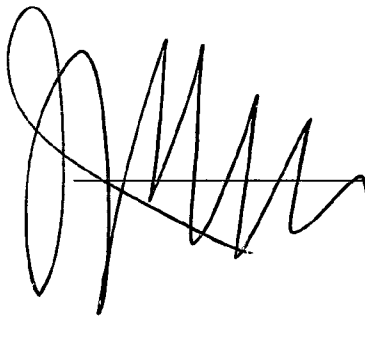
AND NOW, this 21st day of June, 2002, upon consideration of the within Preliminary Objections, a Rule is directed to be issued to the Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight to show cause if any they have, why the relief requested in the foregoing Preliminary Objections shall not be granted.

RULE RETURNABLE the 5 day of September, 2002 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

FILED

JUN 21 2002

William A. Shaw
Prothonotary

 J.

FILED
01/10:22 81
JUN 21 2002
acc Amy Seifert

William A. Shaw
Prothonotary



4. The second accident occurred at approximately 3:30 a.m. when a vehicle occupied by Plaintiff James U. Lux was rear ended by a truck operated by Defendant Samuel Thomas Knight.

5. At the time of the second accident, Plaintiff Lux was providing emergency services in his capacity as a police officer and/or volunteer fireman.

6. On or about April 8, 2001, counsel for Defendant Jamie Harvey Parker filed Preliminary Objections to Plaintiff's Complaint, alleging that the Complaint failed to state a cause of action against Defendant Parker on the basis that any alleged negligence on his part was not a substantial factor in causing Plaintiff's harm.

7. By Opinion and Order dated October 1, 2001, this Court found that Plaintiff's allegations against Defendant Parker with respect to the first accident were insufficient to maintain an action of negligence against Defendant Parker.

8. Subsequent to this Court's October 1, 2001 Order, Plaintiff filed a Motion for Reconsideration which was joined by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight.

9. By Opinion and Order dated January 4, 2002, this Court denied and dismissed the Motion to Reconsider the Court's October 1, 2001 Order.

10. Prior to the Court's ruling dismissing Defendant Parker from Plaintiff's Complaint, Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel T. Knight had filed an Answer With New Matter pursuant to Pa.R.Civ.P. 2252(d) asserting a crossclaim against Defendant Jamie Harvey Parker. As his Preliminary Objections had been sustained by the Court, Defendant Parker believed that no responsive pleading to the above New Matter was required.

11. At no time has Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel T. Knight filed a notice of default on Defendant Parker for failure to respond to the above-referenced New Matter.

12. More recently, the progress of this case has been delayed by the bankruptcy filing of certain Defendants as well as filing of Interlocutory appeals on behalf of some Defendants.

13. On or about June 6, 2002, Defendants R&F Miller, Inc. and Eddie C. Roberts, filed an Answer With New Matter and New Matter Pursuant to Pa.R.Civ.P. 2252(d). Defendants R&F Miller, Inc. and Eddie C. Roberts' New Matter Pursuant to Pa.R.Civ.P. 2252(d) asserts a crossclaim against Defendant Jamie Harvey Parker.

14. Neither of the above-referenced crossclaims asserted against Defendant Jamie Harvey Parker allege any basis for liability against Defendant Parker, beyond the allegations previously dismissed by this Court through Defendant Parker's Preliminary Objections to Defendant Lux's Complaint.

15. Given the recent assertion of a counterclaim against Jamie Harvey Parker by Defendant R&F Miller, Inc. and Eddie C. Roberts, Defendant Parker believes that it is appropriate for the Court to determine whether crossclaims against Defendant Parker can be maintained.

Defendant Jamie Harvey Parker's Demurrer to Crossclaims
Asserted Against Him Pursuant to Pa.R.Civ.P. 2252(d) by Defendants
Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel T. Knight,
R&F Miller, Inc. and Eddie C. Roberts

16. Paragraphs 1-15 of these Preliminary Objections are incorporated herein by reference as though fully set forth.

17. As stated above, it has been judicially determined that plaintiff cannot maintain a cause of action against Jamie Harvey Parker by this Court both in its Opinion and Order dated October 1, 2001 and its Opinion and Order dated January 4, 2002.

18. The above-referenced Defendants' Crossclaims asserted against Defendant Parker alleges no independent basis for their crossclaims other than the allegations contained in Plaintiff's Complaint.

19. As Plaintiff's Complaint against Defendant Parker have been dismissed by this Court, Defendants' Crossclaims against Defendant Parker fail to state a claim upon which relief can be granted.

WHEREFORE, Defendant Jamie Harvey Parker respectfully requests this Court to sustain his Preliminary Objections against the Crossclaims filed by Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Samuel T. Knight, R&F Miller, Inc. and Eddie C. Roberts and dismiss Defendants' Crossclaims against Defendant Parker with prejudice.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY Robert A. Seiferth
Robert A. Seiferth I.D. #20481
David F. Wilk I.D. #65992
Attorneys for Defendant Parker
33 W. Third Street, Suite 200
Williamsport, PA 17701
(570)326-9094

Date: 6/18/02

CERTIFICATE OF SERVICE

I, Robert A. Seiferth, Esquire, hereby certify that I have served a true and correct copy of the foregoing **Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa.R.Civ.P. 2252(d) of Defendant Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel T. Knight** upon all parties:

VIA UNITED STATES REGULAR MAIL:

Jeffrey R. Owen, Esquire
Cooper, Owen & Renner
1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713
Attorney for Plaintiff

Michael F. Nerone, Esquire
Dickie, McCamey & Chilcote
2 PPG Place, Suite 400
Pittsburgh, PA 15222
Attorney for Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel T. Knight

Nancy L. Heilman, Esquire
Cohen & Grigsby
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1312
Attorney For Simon Transportation

Edward A. Yurcon, Esquire
Anstandig, McDyer, Burdette & Yurcon
707 Grant Street, Suite 1300
Pittsburgh, PA 15219-1911
Attorney for R&F Miller, Inc. and Eddie C. Roberts

John R. Benty, Esquire
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Attorney for PennDOT

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY Robert A. Seiferth
Robert A. Seiferth I.D. #20481
David F. Wilk I.D. #65992
Attorneys for Defendant Parker
33 W. Third Street, Suite 200
Williamsport, PA 17701
(570)326-9094

Date: 6/18/02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

CIVIL DIVISION

Plaintiff,

Case No. 01-466-CD

v.

**REPLY TO NEW MATTER PURSUANT
TO RULE 2252 (d)**

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT TRUCKING,
INC. AND SAMUEL THOMAS KNIGHT

Defendants.

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

JUN 17 2002

William A. Shaw
Prothonotary

#41

REPLY TO NEW MATTER PURSUANT TO RULE 2252(d)

AND NOW, come the Defendants Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, by and through their counsel, Dickie McCamey & Chilcote, P.C., John T. Pion, Esquire and Michael F. Nerone, Esquire and files the Reply to New Matter Pursuant to Rule 2252(d), in support of which they aver the following:

1. In response to Paragraph 32 of Defendant R. and F. Miller, Inc. and Eddie C. Roberts crossclaim these Defendants incorporate herein by reference the averments set forth in their previously filed Answer, New Matter and New Matter Pursuant to Rule 2252(d).

2. In response to Paragraph 33 of Co-Defendant R. and F. Miller and Eddie C. Roberts crossclaim, it is averred that said allegations state conclusions of law to which no response is required. To the extent a response may be deemed required, said allegations are denied.

WHEREFORE, these Defendants deny any and all liability to any party under any theory of law whatsoever and respectfully requests judgment be entered in their favor together with costs.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 

Michael F. Nerone, Esquire
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Reply to New Matter Pursuant to Rule 2252(d) have been served this 14 day of June, 2002, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

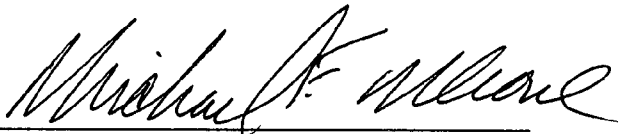
Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
COHEN & GRIGSBY
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

VERIFICATION

I, Michael F. Nerone,, Esquire, Attorney for E. Ort Trucking, Inc. and Samuel T. Knight, have read the foregoing Reply to New Matter Pursuant to Rule 2252(d). The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Michael F. Nerone

DATED: _____

6/14/02

FILED

NO

M 11:31 AM
JUN 17 2002

cc
[Signature]

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-C.D.

ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO RULE
2252(d)

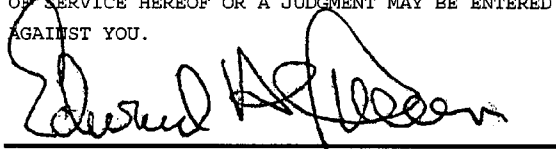
Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

TO: ALL PARTIES

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



EDWARD A. YURCON, ESQUIRE
ATTORNEY FOR DEFENDANTS, EDDIE C. ROBERTS and
R. AND F. MILLER, INC.

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

JUN 10 2002

m/11:17/10cc

William A. Shaw
Prothonotary

40

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
v.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d)

AND NOW, come defendants, R & F Miller, Inc. (hereinafter "Miller"), and Eddie C. Roberts (hereinafter "Roberts"), by their attorneys, ANSTANDIG, MCDYER, BURDETTE & YURCON, P.C., and file the within Answer, New Matter and New Matter Pursuant to Rule 2252(d) in response to the plaintiff's Complaint as follows:

1. The averments contained in paragraph 1 of the Complaint are admitted.

2. These defendants are advised and therefore aver that the averments contained in paragraphs 2 through 5 of the Complaint are directed to the co-defendants and that no response to those averments is, therefore, required from these defendants.

3. The averments contained in paragraph 6 of the Complaint are admitted.

4. The averments contained in paragraph 7 of the Complaint

are admitted in part and denied in part. It is admitted that defendant Eddie C. Roberts, an adult individual, was driving the 2000 Freightliner truck owned by co-defendant R & F Miller, Inc. It is strictly and specifically denied that Roberts' operation of that truck was in any way relevant to the injuries and damages claimed in the plaintiff's Complaint. To the contrary, Roberts' conduct pertained to an entirely separate occurrence, unrelated by law or fact to the injuries and damages claimed in the Complaint.

5. These defendants are advised and, therefore, aver that the averments contained in paragraphs 8 and 9 of the Complaint are directed to co-defendants and that no response to those averments is required from these defendants.

6. The averments contained in paragraphs 10 and 11 of the Complaint are admitted.

7. The averments contained in paragraphs 12 and 13 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

8. These defendants are advised and therefore aver that the averments contained in paragraph 14 of the Complaint pertain to a co-defendant and that no response to those averments is required from these defendants.

9. After reasonable investigation these defendants are presently without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 15 and 16 of the Complaint. Those averments are, therefore, denied and strict proof thereof is demanded at the time of trial.

10. These defendants are advised and therefore aver that

the averments contained in paragraph 17 of the Complaint are directed to a co-defendant and that no response to those averments is required from these defendants.

11. The averments contained in paragraph 18 of the Complaint and its subparts are denied generally pursuant to Pa. R.C.P. No. 1029(e).

12. In response to the averments contained in paragraph 19 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

13. These defendants are advised and therefore aver that the allegations contained in paragraphs 20 through 22 of the Complaint are directed to co-defendants and that no response to those averments is required from these defendants.

14. In response to the averments contained in paragraph 23 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

15. The averments contained in paragraph 24 of the Complaint are admitted in so far as they aver that defendant Eddie C. Roberts was acting as an employee of defendant R. and F. Miller, Inc. while he was driving Miller's 2000 Freightliner truck on the date in question and that he was acting within the course and scope of his employment while he was operating that vehicle. It is strictly and specifically denied that Roberts' operation of the Freightliner was in any way relevant to the injuries and damages claimed in the plaintiff's Complaint. To the contrary, Roberts' conduct on the date in question was entirely separate in

law and in fact from any event which may be judicially determined to have caused the injuries and damages claimed by the plaintiff in his Complaint.

16. The averments contained in paragraph 25 of the Complaint and its subparts and paragraph 26 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

17. In response to the averments contained in paragraph 27 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

18. These defendants are advised and therefore aver that the averments contained in paragraph 28 of the Complaint and its subparts and paragraph 29 of the Complaint are directed to a co-defendant and that no response to those averments is required from these defendants.

19. In response to the averments contained in paragraph 30 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

20. These defendants are advised and therefore aver that the averments contained in paragraph 31 of the Complaint and its subparts and paragraph 32 of the Complaint are directed to co-defendants and that no response to those averments is required from these defendants.

21. In response to the averments contained in paragraph 33 of the Complaint the preceding paragraphs of this answer are incorporated herein by reference.

22. The averments contained in paragraph 34 of the

Complaint and its subparts and paragraph 35 of the Complaint are denied generally pursuant to Pa. R.C.P. No. 1029(e).

23. In response to the averments contained in paragraph 36 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

24. These defendants are advised and therefore aver that the averments contained in paragraphs 37 through 39 of the Complaint and their subparts and directed to a co-defendant and that no response to those averments is required from these defendants.

25. In response to the averments contained in paragraph 40 of the Complaint the preceding paragraphs of this Answer are incorporated herein by reference.

26. These defendants are advised and therefore aver that the averments contained in paragraphs 41 through 44 of the Complaint are directed to a co-defendant and that no response to those averments is required from these defendants.

NEW MATTER

By way of further answer to the plaintiff's Complaint, these defendants assert the following as New Matter:

27. These defendants are advised and therefore aver that the affirmative defenses of comparative negligence, contributory negligence and assumption of the risk need not be pled specifically under the Pennsylvania Rules of Civil Procedure.

28. These defendants plead as an affirmative defense the provisions of the Pennsylvania Motor Vehicle Financial

Responsibility Law.

29. To the extent that the plaintiff is asserting a claim for medical bills incurred as a result of the complained of incident, these defendants assert as an affirmative defense the principles of law set forth in Moorehead v. Crozer Chester Medical Center, 763 A.2d (Pa. 2000), corrected opinion, 765 A.2d 786 (Pa. 2001).

30. In the event it is judicially determined that the plaintiff sustained the injuries and damages set forth in his Complaint, strict proof of which has been demanded hereinabove, these defendants further assert as an affirmative defense that any such injuries and damages arose from an occurrence entirely separate in law and in fact from the conduct of these defendants, who as a result cannot be held liable for any such injuries and damages which may be adjudged to have occurred.

31. In the event Miller and/or Roberts are adjudicated liable along with any of the other defendants named in this matter, all allegations of liability being denied by these defendants, it is pled and averred that defendants Miller and Roberts are not jointly and severally liable with any other party in this action in that the incidents described in plaintiff's Complaint were entirely separate occurrences, unrelated by law or fact. These defendants assert as a defense to any claim of joint and several liability the principles of law enunciated in Embrey v. Borough of West Mifflin, 390 A.2d 765 (Pa.Super. 1978), Harka v. Nabati, 487 A.2d 432 (Pa.Super. 1985).

WHEREFORE, defendants Eddie C. Roberts and R & F Miller, Inc., demand that the Complaint against them be dismissed with costs sustained in their behalf.

NEW MATTER - CROSS-CLAIM

R. and F. MILLER, INC. and EDDIE C. ROBERTS v. GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., SIMON TRANSPORTATION SERVICES, INC., SAMUEL THOMAS KNIGHT, EDDIE C. ROBERTS, JAMIE HARVEY PARKER and DEPARTMENT OF TRANSPORTATION OF THE COMMONWEALTH OF PENNSYLVANIA

AND NOW, come defendants, R. and F. Miller, Inc. and Eddie C. Roberts, pursuant to Pa. R.C.P. No. 2252(d), assert the following cross-claim against their co-defendants:

32. The averments contained in the preceding paragraphs of this Answer and New Matter are incorporated herein by reference.

33. In the event it is judicially determined that the plaintiff sustained the injuries and damages alleged in his Complaint, strict proof of which has been demanded hereinabove, and if it further judicially determined that any such injuries and damages arose from any conduct legally or factually attributable to these defendants, which has also been strictly and specifically denied herein, these defendants assert, in the alternative, a claim for contribution or, alternatively, indemnification, against those co-defendants, for any amount adjudged due and owing to the plaintiff.

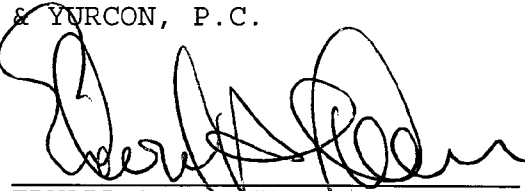
WHEREFORE, defendants R. and F. Miller, Inc. and Eddie C.

Roberts, demand that judgment be entered in their favor and against the co-defendants.

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY:


EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR DEFENDANTS, R. AND F.
MILLER, INC. and EDDIE C. ROBERTS


JURY TRIAL DEMANDED

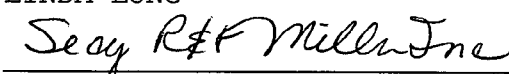
VERIFIED STATEMENT

I, Linda Long hereby verify that the statements set forth in the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 6-3-02



LINDA LONG


Title:

VERIFIED STATEMENT

I, Eddie Roberts hereby verify that the statements set forth in the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date:

5-27-02

A handwritten signature in cursive script, appearing to read "Eddie Roberts", written over a horizontal line.

EDDIE ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO RULE 2252(d) has been served upon the following counsel by mailing a copy, postage pre-paid, this 6th day of June, 2002, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Robert A. Seiferth, Esquire
33 W. Third Street
Suite 200
Williamsport, PA 17701

Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
Two PPG Place, Suite 400
Pittsburgh, PA 15222

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Nancy Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,
Plaintiff,
vs.

CIVIL DIVISION
Case No. 01-466-C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

RESPONSE TO DEFENDANTS GERALD
E. ORT TRUCKING, INC., ORT
TRUCKING, INC., AND SAMUEL T.
KNIGHT'S NEW MATTER PURSUANT
TO RULE 2252(d)

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Stephen J. Taczak, Esquire
Pa. I.D. #86124

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

JUN 10 2002
7/1/17/no cc
William A. Shaw
Prothonotary *RES*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
v.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO
RULE 2252(d)

AND NOW, come defendants, R. and F. Miller, Inc.
(hereinafter "Miller") and Eddie C. Roberts (hereinafter
"Roberts"), by and through their attorneys, ANSTANDIG, MCDYER,
BURDETTE, & YURCON, P.C. and EDWARD A. YURCON, ESQUIRE, and files
the following Response to Defendants Gerald E. Ort Trucking,
Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter
Pursuant to Rule 2252(d), and in support thereof, avers as
follows:

1. The averments contained in paragraph 53 constitute
conclusions of law to which no response is required. To the
extent a response is required, these Defendants deny any and all
allegations of liability. In further response, these defendants

incorporate by reference, as though set forth more fully herein, the Answer and New Matter filed in the instant action.

2. The averments contained in paragraph 54 constitute conclusions of law to which no response is required. To the extent a response is required, these Defendants deny any and all allegations of liability. In further response, these defendants incorporate by reference, as though set forth more fully herein, the Answer and New Matter filed in the instant action.

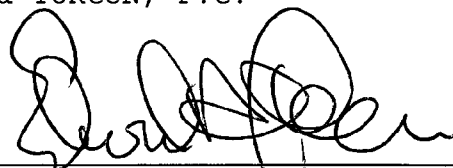
3. The averments contained in paragraph 54 constitute conclusions of law to which no response is required. To the extent a response is required, these Defendants deny any and all allegations of liability. In further response, these defendants incorporate by reference, as though set forth more fully herein, the Answer and New Matter filed in the instant action.

WHEREFORE, defendants Eddie C. Roberts and R. and F. Miller, Inc. deny liability and demand judgment in their favor and against plaintiff and all other parties.

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY:



EDWARD A. YURCON, ESQUIRE
ATTORNEYS FOR DEFENDANTS, EDDIE C.
ROBERTS and R. AND F. MILLER, INC.


JURY TRIAL DEMANDED

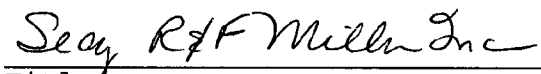
VERIFIED STATEMENT

I, Linda Long hereby verify that the statements set forth in the foregoing RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date: 6-3-02



LINDA LONG


Title

VERIFIED STATEMENT

I, Eddie Roberts hereby verify that the statements set forth in the foregoing RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO RULE 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Date:

5-27-02


EDDIE ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within RESPONSE TO DEFENDANTS GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC., AND SAMUEL T. KNIGHT'S NEW MATTER PURSUANT TO RULE 2252(d) has been served upon the following counsel by mailing a copy, postage pre-paid, this 16th day of June, 2002, to the following:

Jeffrey R. Owen, Esquire
COOPER OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Robert A. Seiferth, Esquire
33 W. Third Street
Suite 200
Williamsport, PA 17701

Michael F. Nerone, Esquire
DICKIE, McCAMEY & CHILCOTE
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Pittsburgh, PA 15222

John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Nancy Heilman, Esquire
Cohen & Grigsby, P.C.
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS,
R & F MILLER, INC. AND
EDDIE C. ROBERTS

01-466-00

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Received by (Please Print Clearly) X PARAC</p> <p>B. Date of Delivery 4-4-02</p> <p>C. Signature XX [Signature] <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to: Superior Court of PA Office of the Prothonotary 1015 Grant Building Pittsburgh, PA 15219</p>		<p>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. </p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Copy from service label) 7099 3400 0016 7880 57,20</p>			
<p>PS Form 3811, July 1999</p>		<p>Domestic Return Receipt 102595-00-M-0952</p>	

FILED

APR 08 2002
 11:31 AM
 William A. Shaw
 Prothonotary

#38

FILED

APR 03 2002

0/3:30/AM
William A. Shaw
Prothonotary

7099 3400 0016 7680 5720

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
Domestic Mail Only. No Insurance Coverage Provided.	
Superior Court of PA 01-466-CD	
Postage	\$ 7.70
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
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Recipient's Name (Please Print Clearly) (to be completed by mailer)	
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Street, Apt. No., or PO Box No.	
1015 Grant Building	
City, State, ZIP+4	
Pittsburgh, PA 15219	
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JAMES U. LUX

-vs-

No. 01 - 466 - CD

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

ORDER

NOW, this 27th day of March, 2002, upon consideration of Motion to Amend Interlocutory Order filed on behalf of Defendants R. and F. Miller, Inc. and Eddie C. Roberts, seeking to have this Court amend its Opinion and Order dated August 21, 2001, it is the ORDER of this Court that said Motion be and is hereby DENIED.

By the Court,

President Judge

FILED

MAR 27 2002

013156
William A. Shaw
Prothonotary

36

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

CIVIL DIVISION

Case No. 01-466-C.D.

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Defendants.

**MOTION TO AMEND INTERLOCUTORY
ORDER**

Filed on behalf of R. AND F.
MILLER, INC. and EDDIE C.
ROBERTS, Defendants

Counsel of Record for this
Party:

Edward A. Yurcon, Esquire
Pa. I.D. #30830

Stephen J. Taczak, Esquire
Pa. I.D. #86124

ANSTANDIG, McDYER, BURDETTE &
YURCON, P.C.
Firm #866
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 765-3700

JURY TRIAL DEMANDED

FILED

MAR 25 2002

William A. Shaw
Prothonotary

#35

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
Plaintiff,	)	Case No. 01-466-C.D.
)	
Vs.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC., SIMON)	
TRANSPORTATION SERVICES, INC.,)	
R. AND F. MILLER, INC., SAMUEL)	
THOMAS KNIGHT, EDDIE C.)	
ROBERTS, JAMIE HARVEY PARKER,)	
and PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendants.)	

MOTION TO AMEND INTERLOCUTORY ORDER

AND NOW, come the Defendants, Eddie C. Roberts and R. and F. Miller, Inc., by and through their attorneys, ANSTANDIG, MCDYER, BURDETTE & YURCON, P.C., and file the following Motion to Amend Interlocutory Order pursuant to Pa. R.A.P. 1311 and 42 Pa.C.S.A §702(b), of which the following is a statement:

1. As this Honorable Court is aware, the instant case involves a motor vehicle accident which resulted in severe injuries to the plaintiff when a truck operated by Defendant Thomas Knight struck the plaintiff's parked vehicle on the side of the road.

2. The Plaintiff was a policeman who was at the accident site because of an earlier accident involving two vehicles including one owned and operated by these Defendants.

3. These defendants filed Preliminary Objections to

Plaintiff's Complaint arguing that Defendant Roberts was not the proximate cause of the second accident in which Plaintiff was injured.

4. This Honorable Court dismissed the aforesaid Preliminary Objections in its Opinion and Order dated August 22, 2001. (See Exhibit "A").

5. These Defendants then filed a Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission regarding the Court's Order.

6. On March 18, 2002, this Honorable Court entered the following Order regarding Defendants' Motion:
NOW, this 18th day of March 2002, upon consideration of the Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission filed on behalf of Defendants R. and F. Miller, Inc. and Eddie C. Roberts, it is the ORDER of this Court that said Motion to Reconsider be and is hereby DENIED and further that said Motion to Certify Interlocutory Appeal by permission be and is Hereby DENIED.

BY THE COURT: /s/ JOHN K. REILLY, JR., President Judge
(See Exhibit "B").

7. The Order denying Defendants' Motion to Reconsider is interlocutory and cannot be appealed unless it is amended to include the statement prescribed by 42 Pa.C.S.A. §702(b): "that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter."

8. Pa. R.A.P. 1311(b) provides that a party may apply for amendment of an interlocutory order to set forth expressly the statement specified in 42 Pa.C.S.A. §702(b) within thirty (30)

days of the entry of the interlocutory order.

9. In the instant case, the Order involves a controlling question of law as to which there is substantial ground for difference of opinion since it is disputed whether these Defendants actions could proximately cause the accident as a matter of law.

10. An immediate appeal from the order would materially advance the ultimate termination of the matter because it would foster resolution of the case by expeditiously clarifying whether these Defendants should remain as parties to the case. If the Order is not certified for interlocutory appeal, then an appeal of the Order requiring these Defendants to remain as parties in the matter would occur only after the conclusion of the trial. It is possible that these Defendants could lose at trial and then prevail in this appeal, thereby requiring the case to be retried.

WHEREFORE, Defendants Eddie C. Roberts and R. and F. Miller, Inc., respectfully requests this Honorable Court to amend its Order of March 18, 2002 to included the language specified by 42 Pa.C.S.A. §702(b).

Respectfully submitted,

ANSTANDIG, McDYER, BURDETTE
& YURCON, P.C.

BY: 

ATTORNEYS FOR DEFENDANTS.

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

JAMES U. LUX,
Plaintiff

v.

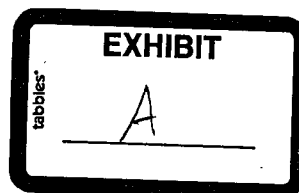
No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION

OPINION AND ORDER

In the early morning hours of October 24, 2000, two (2) collisions occurred on Interstate 80 between DuBois and Clearfield, Pennsylvania. Both collisions were caused in whole or in part by the fact that a driver of a tractor-trailer truck was asleep at the wheel.

The first accident occurred when a vehicle driven by Defendant Eddie C. Roberts (hereinafter "Defendant Roberts") drove at a high rate of speed into another truck traveling in front of him on the highway. The second occurred when a truck driven by Defendant Samuel Thomas Knight collided with a rescue squad truck positioned on the highway with its warning lights flashing and an illumination boom brightly lighting the scene of the clean up of the first accident. During the second collision, three volunteer firemen who were passengers in the rescue squad truck were severely injured, including the Plaintiff, James U. Lux, who was



permanently paralyzed from the waist down. Currently, Defendants Roberts and his employer trucking company, R & F Miller, Inc. (hereinafter "Defendant Miller"), seek to dismiss the claims of Plaintiff against them by Preliminary Objections in the nature of a Demurrer.

This Court must now determine whether the negligent conduct of Defendants Roberts and Miller, in falling asleep at the wheel and causing the initial collision was a substantial factor in bringing about the severe injuries suffered by the Plaintiff or is reserved to the jury and not an appropriate issue for Preliminary Objections in the Nature of a Demurrer or in essence, Summary Judgment.

As conceded by Defendants in their brief:

"In reviewing Preliminary Objections, the Court must accept as true all material facts set forth in the plaintiff's complaint, and all reasonable inferences deducible from those facts. All doubts as to whether a claim can go forward must be resolved in the favor of the pleader."

Field v. Philadelphia Electric Company, 388 Pa.Super. 400, 565 A 2d 1170 (1986).

Moreover, it is well established that "Summary Judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue remains". Salerno v. LaBarr, 159 Pa. Commonwealth Ct. 99, 632 A.2d 1002 (1993). In other words:

"The threshold a Plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the Plaintiff can prove no set of facts that would entitle the Plaintiff to relief."

Velleca v. Jones, 2000 WL 1470214 at p. 1 (E.D. Pa.), citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957).

In addition, Pennsylvania law clearly establishes that in circumstances such as those presented in the case at bar, summary judgment will not be granted. Contrary to the theory

asserted in the Defendants' brief, it is clear that under Pennsylvania law, summary judgment will not be granted to dismiss a claim against a negligent actor causing an initial collision, brought by a plaintiff injured in a subsequent collision occurring at the scene of the initial accident.

In Taylor v. Jackson, 164 Pa. Commonwealth Ct. 482, 643 A.2d 771 (1994), the Commonwealth Court, in an opinion rendered in the year following Bell v. Arace, 422 Pa.Super.365, 619 A.2d 365 (1993) determined that summary judgment was inappropriate in such two (2) collision scenarios, reversing the decision of the lower court.

In Taylor, a tractor-trailer jack-knifed at 6:15 P.M. while traveling on Interstate 80 as it attempted to avoid a vehicle that had stopped in the road. Traffic immediately began backing up behind the jack-knifed vehicle, which blocked both lanes of the highway. Taylor, 164 Pa. Commonwealth Ct. at 488, 643 A.2d at 774.

At 8:15 P.M., two (2) hours after the initial accident, a delivery truck collided with other vehicles stopped approximately one half mile from the second accident scene. It was this accident, which caused the serious injuries to plaintiff Taylor, who was a passenger in the vehicle struck by the delivery truck.

Although the Taylor trial court had granted summary judgment as to the claims against the defendants causing the initial two collisions, on appeal, the Commonwealth Court expressly rejected the identical arguments raised by the defendants herein, and determined that summary judgment was not appropriate.

In its decision, the Taylor court examines the concept of proximate cause, under the analysis of Section 431 of the Restatement (Second) of Torts and reviews the issue raised by the Defendants herein, namely, whether the actions of the first collision drivers were a

“substantial factor in producing the injury.” The court further cites Section 433 of the Restatement (Second) of Torts, as establishing the method of determining whether the negligent conduct of the initial tortfeasor is a substantial factor in bringing about harm to another. Section 433 establishes the following considerations to be used in determining whether an actor’s conduct is a substantial factor in bringing about harm to another. These factors are:

- “a. The number of other factors which contribute in producing the harm and the extent of the effect, which they have in producing it;
- b. Whether the actor’s conduct has created a force or series of forces, which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; and
- c. Lapse of time.”

Section 431 of the Restatement (Second) of Torts.

Applying the Section 433 standard to the facts before it, the Taylor court reaches a conclusion that is in direct contravention to the position currently argued by the Defendants in their brief, holding instead that the actions causing the first collision were indeed a substantial factor in causing the third collision.

In finding summary judgment to be inappropriate, the Taylor court specifically held that the passage of two hours between the first and the last accident did not provide a valid basis for summary judgment as the trial court had determined. Instead, the Court cites comment (f) of the Restatement, which states that “where it is evident that the influence of the actor’s negligence is still a substantial factor, mere lapse of time, no matter how long it is, is not sufficient to prevent it from being the legal cause of the other harm. Taylor, 164 Pa.

Commonwealth Ct. at 492, 643 A.2d at 776, *citing*, the Restatement (Second) of Torts, Section 431.

As to whether a jury could reasonably determine that the negligent actions of Defendant Roberts in falling asleep at the wheel and causing the first collision is a foreseeable cause and substantial factor in the harm suffered by the Plaintiff, one need only to refer to the decision rendered by the court in Herman v. Welland Chemical, Inc., 580 F.Supp. 823 (M.D. Pa. 1984) by the United States District Court for the Middle District of Pennsylvania. In Herman, applying Pennsylvania law in a fact situation similar to the present, a volunteer fireman was struck while directing traffic at an accident scene also located in Pennsylvania on Interstate 80. In finding that the presence of a firefighter at the scene was a foreseeable consequence to the first collision, the Herman court stated:

“To the extent that [defendant] argues that these plaintiffs may not recover on the ground that they were not, as a matter of law, within the foreseeable zone of harm, the court rejects this contention by looking to Justice Cardozo’s comments in another case:

‘Danger invites rescue. The cry of distress in the summons to relief. The law does not ignore these reactions in the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer.’ Wagner v. International R. Co., 232 N.Y. 176, 180, 133 N.E. 437 (1921).

Cardozo, then, believed that rescuers always should be Regarded as foreseeable plaintiffs. Prosser, Handbook of The Law of Torts, Section 43 at 258-59 (4th Ed. 1971).

Herman, 580 F.Supp. at 826.

Moreover, Pennsylvania law clearly establishes that a jury is to determine the question of whether a sleeping driver causing an initial accident scene is responsible for the injuries sustained by one summoned to aid in response to the accident, even in cases where the foreseeability of the second incident "is in doubt". Valleca v. Jones, 2000 WL 1470214 (E.D. Pa.), other citations unavailable.

In Valleca, the court reserved for the jury the determination of whether a sleeping driver who caused an initial collision was responsible for injuries sustained by a tow truck operator when a vehicle involved in the accident suddenly buckled and collapsed, striking his head. The Vellecca court cites the Taylor decision as the rational basis for its decision, applying the substantial factor test of the Restatement (Second) of Torts Section 433. Vellecca, 200 WL 1470214 at 1-2.

It is also clear that the second collision in the instant case was not caused by an extraordinary event, as the Defendant argue, but is rather a foreseeable event.

It is clear that both collisions were caused in whole or in part by sleeping drivers it clear and the foreseeability of such events is a determination for the jury to make in these proceedings. Defendants' arguments certainly fall far short of the requirement that any and all doubts as to whether a claim can go forward must be resolved in favor of the pleader and that summary judgment should only be granted in a clear case with the moving party bearing the burden of demonstrating that no material issue remains."

THEREFORE, this Court enters the following:

ORDER

NOW, this 21st day of August, 2001, it is the ORDER of this Court that all Defendants Preliminary Objections are hereby DISMISSED.

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.

AUG 22 2001

Attest.

William L. Shaw
Prothonotary

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
Defendants

ORDER

NOW, this 18th day of March 2002, upon consideration of the Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission filed on behalf of Defendants R. and F. Miller, Inc. and Eddie C. Roberts, it is the ORDER of this Court that said Motion to Reconsider be and is hereby DENIED, and further that said Motion to Certify Interlocutory Appeal by Permission be and is hereby DENIED.

BY THE COURT:

/s/JOHN K. REILLY, JR.

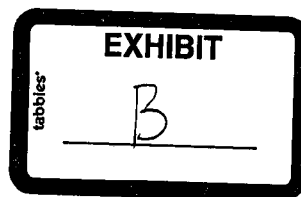
President Judge

Attest. I have attested copy of the original statement filed in this case.

MAR 18 2002

Attest.

William A. Shaw
Prothonotary



CERTIFICATE OF SERVICE

A true and correct copy of the above Motion and proposed Order of Court were mailed, postage prepaid, to adverse counsel on this 21st day of MARCH, 2002.

TO: Jeffrey R. Owen, Esquire
COOPER, OWEN & RENNER, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

John T. Pion, Esquire
Michael F. Nerone, Esquire
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John R. Benty, Esquire
Commonwealth of PA
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

ANSTANDIG, McDYER, BURDETTE & YURCON, P.C.

BY


ATTORNEY FOR DEFENDANTS.

FILED

MAR 25 2002

M11.31/22C

William A. Shaw
Prothonotary



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

JAMES U. LUX,
Plaintiff

v.

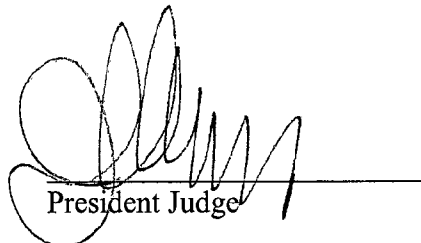
No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
Defendants

ORDER

NOW, this 18th day of March 2002, upon consideration of the Motion to
Reconsider/Motion to Certify Interlocutory Appeal by Permission filed on behalf of Defendants
R. and F. Miller, Inc. and Eddie C. Roberts, it is the ORDER of this Court that said Motion to
Reconsider be and is hereby DENIED, and further that said Motion to Certify Interlocutory
Appeal by Permission be and is hereby DENIED.

BY THE COURT:


President Judge

FILED

MAR 18 2002

William A. Shaw
Prothonotary

#34

FILED

MAR 18 2002

03:30 p.m.

William A. Shaw
Prothonotary

1 cc to Atty Owen
1 cc to Atty Benty
3 cc to Atty Herone
1 cc to Atty Heilman
2 cc to Atty Yurcon

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

v.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER,
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,

Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

Case No. 01-466-CO

SUGGESTIONS OF BANKRUPTCY

Filed on behalf of Defendant
Simon Transportation Services, Inc.

Counsel of Record for this Party:

Nancy L. Heilman
Pa. I.D. No. 51121

COHEN & GRIGSBY, P.C.
Firm I.D. No.621
11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319
(412) 297-4900

FILED

MAR 13 2002

m11:071h0cc
William A. Shaw
Prothonotary

[Handwritten signature]

SUGGESTIONS OF BANKRUPTCY

Debtors, Simon Transportation Services, Inc., and Dick Simon Trucking, Inc. (at times collectively referred to herein as "Debtors"), by and through their undersigned counsel, for their Suggestions of Bankruptcy, states the following:

1. Debtor Simon Transportation Services, Inc. filed its Voluntary Petition for Relief (the "Simon Transportation Petition") under Chapter 11 of the United States Bankruptcy Code ("Code"), Code §§ 101 through 1146, on February 25, 2002 (the "Filing Date"), in the United States Bankruptcy Court for the District of Utah, Central Division, and docketed as Chapter 11 Case No. 02 22906 GEC. A copy of the Simon Transportation Petition is attached as Exhibit "A" and incorporated by reference.

2. Debtor Dick Simon Trucking, Inc. filed its Voluntary Petition for Relief (the "Dick Simon Petition") under Chapter 11 of the Code, Code §§ 101 through 1146, on February 25, 2002 (the "Filing Date"), in the United States Bankruptcy Court for the District of Utah, Central Division, and docketed as Chapter 11 Case No. 02 22906 GEC. A copy of the Dick Simon Petition is attached as Exhibit "B" and incorporated by reference.

3. Since the Filing Date, Debtors have been in possession of their property and continue to possess and manage their property as debtors in possession in accordance with Code §§ 107 and 1108.

4. The captioned proceeding to the extent it concerns Debtors is automatically stayed pursuant to Code § 362.

Respectfully Submitted,

COHEN & GRIGSBY, P.C.

By: Nancy L. Heilman
Nancy L. Heilman
Pa. I.D. No. 51121

11 Stanwix Street, 15th Floor
Pittsburgh, PA 15222-1319
(412) 297-4900

Counsel for Defendant,
Simon Transportation Services, Inc.

FORM B1

United States Bankruptcy Court District of Utah

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):
Simon Transportation Services Inc.

Name of Joint Debtor (Spouse) (Last, First, Middle):

All Other Names used by the Debtor in the last 6 years
(include married, maiden, and trade names):

All Other Names used by the Joint Debtor in the last 6 years
(include married, maiden, and trade names):

Soc. Sec./Tax I.D. No. (if more than one, state all):
87-0545608

Soc. Sec./Tax I.D. No. (if more than one, state all):

Street Address of Debtor (No. & Street, City, State & Zip Code):
**5175 West 2100 South
West Valley City, UT 84120**

Street Address of Joint Debtor (No. & Street, City, State & Zip Code):

County of Residence or of the
Principal Place of Business: **Salt Lake**

County of Residence or of the
Principal Place of Business:

Mailing Address of Debtor (if different from street address):

Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor
(if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☒ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- ☐ Individual(s) ☐ Railroad
☒ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other _____

Chapter or Section of Bankruptcy Code Under Which
the Petition is Filed (Check one box)

- ☐ Chapter 7 ☒ Chapter 11 ☐ Chapter 13
☐ Chapter 9 ☐ Chapter 12
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

- ☐ Consumer/Non-Business ☒ Business

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under
11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- ☒ Full Filing Fee attached
☐ Filing Fee to be paid in installments (Applicable to individuals only.)
Must attach signed application for the court's consideration
certifying that the debtor is unable to pay fee except in installments.
Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there
will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Estimated Assets

\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Estimated Debts

\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Voluntary Petition

(This page must be completed and filed in every case)

Simon Transportation Services Inc.

FORM B1, Page 2

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location

Where Filed: - None -

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

Dick Simon Trucking, Inc.

Case Number:

Date Filed:

2/25/02

District:

United States Bankruptcy Court District of Utah

Relationship:

Parent/Wholly-Owned Subsidiary

Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney

X

Weston L. Harris

Signature of Attorney for Debtor(s)

Weston L. Harris UT #A1387

Printed Name of Attorney for Debtor(s)

Parsons, Davies, Kinghorn & Peters

Firm Name

185 South State Street, Suite 700

Salt Lake City, Utah 84111

Address

(801) 363-4300 Fax: (801) 363-4378

Telephone Number

February 25, 2002

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Robert T. Goates

Printed Name of Authorized Individual

Chief Financial Officer

Title of Authorized Individual

February 25, 2002

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☒ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X

Signature of Attorney for Debtor(s)

Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☒ No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

**United States Bankruptcy Court
District of Utah**

In re Simon Transportation Services Inc.

Debtor

Case No. _____

Chapter 11

Exhibit "A" to Voluntary Petition

1. If any of debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is 0-27208

2. The following financial data is the latest available information and refers to debtor's condition on 12/31/01

a. Total assets	\$	<u>132,242,081.00</u>	
b. Total debts (including debts listed in 2.c., below)	\$	<u>135,898,793.00</u>	
c. Debt securities held by more than 500 holders.			Approximate number of holders
secured / / unsecured / / subordinated / /	\$	<u>0.00</u>	<u>0</u>
secured / / unsecured / / subordinated / /	\$	<u>0.00</u>	<u>0</u>
secured / / unsecured / / subordinated / /	\$	<u>0.00</u>	<u>0</u>
secured / / unsecured / / subordinated / /	\$	<u>0.00</u>	<u>0</u>
secured / / unsecured / / subordinated / /	\$	<u>0.00</u>	<u>0</u>
d. Number of shares of preferred stock		<u>292,443</u>	<u>2</u>
e. Number of shares of common stock		<u>6,115,109</u>	<u>unknown</u>

Comments, if any:

d. shares issued

e. shares issued and outstanding

3. Brief description of debtor's business:

Simon Transportation Services Inc. is a truckload carrier that specializes in premium service, primarily through temperature-controlled transportation, predominately for major shippers in the U.S. food industry.

4. List the name of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:

Jerry Moyes; The Jerry & Vickie Moyes Family Trust Dated 12-11-87; Moyes Childrens' Limited Partnership; SME Steel Contractors, Inc.; Interstate Equipment Leasing; Dimensional Fund Advisors Inc.; Wynnefield Capital Management; and MaLeCo. The calculation includes vested options and conversion rights. See Form 10-K/A

United States Bankruptcy Court
District of Utah

In re Simon Transportation Services Inc.

Debtor

Case No. _____

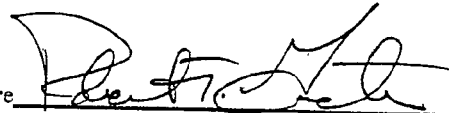
Chapter 11

VERIFICATION OF CREDITOR MATRIX

I, the Chief Financial Officer of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date February 25, 2002

Signature



Robert T. Goates
Chief Financial Officer

Ambest One Check
PO Box 1211
Franklin, TN 37065

Atlanta Freightliner
PO Box 218
Forest Park, GA 30298

Bridgestone USA Inc
PO Box 73418
Chicago, IL 60673-7418

Citicapital Commerical Corporation
300 East Carpenter Freeway
17 Plaza
Irving, TX 75062

Eastman Kodak Company
1600 Lexington Avenue
Building 605
Rochester, NY 14652

Exxon Company USA
PO Box 101537
Atlanta, GA 30392

First Insurance Funding
135 LaSalle Street
Department 8075
Chicago, IL 60674

Gallagher Bassett Service
Two Pierce Place
5th Floor
Itasca, IL 60143

Genesis Insurance Company
695 East Main Street
Stamford, CT 06901

Glaxo (CO) Fedex Supply Chain
2479 Edison Boulevard
Twinsburg, OH 44087

Greyhound Lines Inc
PO Box 660089
Dallas, TX 75266-0089

Imperial Premium Finance
PO Box 780
Morrisville, NC 27560

Michelin North America
135 S LaSalle Street
Department 1762
Chicago, IL 60674

Oregon Dept of Transportation
1905 Lana Avenue NE
Salem, OR 97314

Qualcomm
5775 Morehouse Drive
San Diego, CA 92121-1714

Rieskamp Equipment
8068 Woodland Drive
Indianapolis, IN 46278

Security Insurance Company
PO Box 120099
Nashville, TN 37212

Sierra Freightliner
1550 E Greg Street
Sparks, NV 89431-6550

Thermo King SVC Inc
75 Remittance Drive Street
Chicago, IL 60675

Thomas Lallier Esq
Foley & Mansfield PLLP
1108 Nicollet Mall Suite 200
Minneapolis, MN 55403

Tire Distribution Systems
F608 Space Park South
Nashville, TN 37211

Utah State Tax Commission
Collection Div Bankruptcy Unit
210 North 1950 West
Salt Lake City, UT 84134-3340

United States Bankruptcy Court
District of Utah

In re Simon Transportation Services Inc.

Debtor(s)

Case No.

Chapter

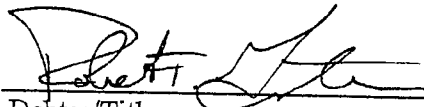
11

DESIGNATION OF AGENT

I hereby designate my attorney, whose signature, name, address, Bar No., telephone and fax numbers are set forth below, as my agent to receive service of process and service of all pleadings in all proceedings, including adversary actions and contested matters, pursuant to Bankruptcy Rule 7004(b)(8), in this Court arising in this case. This designation shall expire the 60th day after the latest of the following dates which may be applicable in this case: entry of Discharge of Debtor, the last date permitted for filing complaints objecting to discharge under 11 U.S.C. § 727 or dischargeability of debts under 11 U.S.C. § 523, or the date an order of confirmation of a Chapter 11 or Chapter 12 plan is entered.

February 25, 2002

Date



Debtor/Title:

Robert T. Goates/Chief Financial Officer

February 25, 2002

Date

Co-Debtor:

Weston L. Harris

Attorney Signature

(Type Attorney Name, Address, Phone and Bar Number Below)

Weston L. Harris

Parsons, Davies, Kinghorn & Peters

185 South State Street, Suite 700

Salt Lake City, Utah 84111

(801) 363-4300 Fax: (801) 363-4378

Bar Number: UT #A1387

FORM B1

United States Bankruptcy Court District of Utah

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):
Dick Simon Trucking, Inc.

Name of Joint Debtor (Spouse) (Last, First, Middle):

All Other Names used by the Debtor in the last 6 years
(include married, maiden, and trade names):

All Other Names used by the Joint Debtor in the last 6 years
(include married, maiden, and trade names):

Soc. Sec./Tax I.D. No. (if more than one, state all):
87-0293383

Soc. Sec./Tax I.D. No. (if more than one, state all):

Street Address of Debtor (No. & Street, City, State & Zip Code):
**5175 West 2100 South
West Valley City, UT 84120**

Street Address of Joint Debtor (No. & Street, City, State & Zip Code):

County of Residence or of the
Principal Place of Business: **Salt Lake**

County of Residence or of the
Principal Place of Business:

Mailing Address of Debtor (if different from street address):

Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor
(if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☒ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- ☐ Individual(s) ☐ Railroad
- ☒ Corporation ☐ Stockbroker
- ☐ Partnership ☐ Commodity Broker
- ☐ Other _____

Chapter or Section of Bankruptcy Code Under Which
the Petition is Filed (Check one box)

- ☐ Chapter 7 ☒ Chapter 11 ☐ Chapter 13
- ☐ Chapter 9 ☐ Chapter 12
- ☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

- ☐ Consumer/Non-Business ☒ Business

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- ☒ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only.)
Must attach signed application for the court's consideration
certifying that the debtor is unable to pay fee except in installments.
Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-15 16-49 50-99 100-199 200-999 1000-over

Estimated Assets

\$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million

Estimated Debts

\$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million

THIS SPACE IS FOR COURT USE ONLY

FEB 25 9 17 AM '02
UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH
BY CLERK OF COURT
DEPT. OF CLERK

PERGAD-Bayona, M. I.

EXHIBIT B

Voluntary Petition

(This page must be completed and filed in every case)

Dick Simon Trucking, Inc.

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location

Where Filed: - None -

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

Simon Transportation Services Inc.

Case Number:

Date Filed:

2/25/02

District:

United States Bankruptcy Court, District of Utah

Relationship:

Parent/Wholly-Owned Subsidiary

Judge:

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Debtor

X

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of AttorneyX Weston L. Harris

Signature of Attorney for Debtor(s)

Weston L. Harris UT #A1387

Printed Name of Attorney for Debtor(s)

Parsons, Davies, Kinghorn & Peters

Firm Name

185 South State Street, Suite 700
Salt Lake City, Utah 84111

Address

(801) 363-4300 Fax: (801) 363-4378

Telephone Number

February 25, 2002

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X

Signature of Authorized Individual

Robert T. Goates

Printed Name of Authorized Individual

Chief Financial Officer

Title of Authorized Individual

February 25, 2002

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X

Signature of Attorney for Debtor(s)

Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.☒ No**Signature of Non-Attorney Petition Preparer**

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court
District of Utah

In re Dick Simon Trucking, Inc.

Debtor

Case No. _____

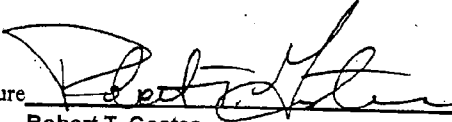
Chapter 11

VERIFICATION OF CREDITOR MATRIX

I, the Chief Financial Officer of the corporation named as the debtor in this case, hereby verify that the attached list of creditors is true and correct to the best of my knowledge.

Date February 25, 2002

Signature



Robert T. Goates
Chief Financial Officer

Ambest One Check
PO Box 1211
Franklin, TN 37065

Atlanta Freightliner
PO Box 218
Forest Park, GA 30298

Bridgestone USA Inc
PO Box 73418
Chicago, IL 60673-7418

Citicapital Commerical Corporation
300 East Carpenter Freeway
17 Plaza
Irving, TX 75062

District Director
Internal Revenue Service
Special Procedures Mail Stop 5021
Salt Lake City, UT 84111

Eastman Kodak Company
1600 Lexington Avenue
Building 605
Rochester, NY 14652

Exxon Company USA
PO Box 101537
Atlanta, GA 30392

First Insurance Funding
135 LaSalle Street
Department 8075
Chicago, IL 60674

Gallagher Bassett Service
Two Pierce Place
5th Floor
Itasca, IL 60143

Genesis Insurance Company
695 East Main Street
Stamford, CT 06901

Glaxo (CO) Fedex Supply Chain
2479 Edison Boulevard
Twinsburg, OH 44087

Greyhound Lines Inc
PO Box 660089
Dallas, TX 75266-0089

Imperial Premium Finance
PO Box 780
Morrisville, NC 27560

Michelin North America
135 S LaSalle Street
Department 1762
Chicago, IL 60674

Oregon Dept of Transportation
1905 Lana Avenue NE
Salem, OR 97314

Qualcomm
5775 Morehouse Drive
San Diego, CA 92121-1714

Rieskamp Equipment
8068 Woodland Drive
Indianapolis, IN 46278

Security Insurance Company
PO Box 120099
Nashville, TN 37212

Sierra Freightliner
1550 E Greg Street
Sparks, NV 89431-6550

Thermo King SVC Inc
75 Remittance Drive Street
Chicago, IL 60675

Thomas Lallier Esq
Foley & Mansfield PLLP
1108 Nicollet Mall Suite 200
Minneapolis, MN 55403

Tire Distribution Systems
F608 Space Park South
Nashville, TN 37211

Utah Dept of Employment Security
Collections Bankruptcy
140 East 300 South PO Box 45288
Salt Lake City, UT 84145-0288

Utah State Tax Commission
Collection Div Bankruptcy Unit
210 North 1950 West
Salt Lake City, UT 84134-3340

United States Bankruptcy Court
District of Utah

In re Dick Simon Trucking, Inc.

Debtor(s)

Case No.

Chapter

11

DESIGNATION OF AGENT

I hereby designate my attorney, whose signature, name, address, Bar No., telephone and fax numbers are set forth below, as my agent to receive service of process and service of all pleadings in all proceedings, including adversary actions and contested matters, pursuant to Bankruptcy Rule 7004(b)(8), in this Court arising in this case. This designation shall expire the 60th day after the latest of the following dates which may be applicable in this case: entry of Discharge of Debtor, the last date permitted for filing complaints objecting to discharge under 11 U.S.C. § 727 or dischargeability of debts under 11 U.S.C. § 523, or the date an order of confirmation of a Chapter 11 or Chapter 12 plan is entered.

February 25, 2002

Date



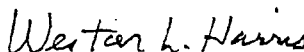
Debtor/Title:

Robert T. Goates/Chief Financial Officer

February 25, 2002

Date

Co-Debtor:



Attorney Signature

(Type Attorney Name, Address, Phone and
Bar Number Below)

Weston L. Harris

Parsons, Davies, Kinghorn & Peters

185 South State Street, Suite 700

Salt Lake City, Utah 84111

(801) 363-4300 Fax: (801) 363-4378

Bar Number: UT #A1387

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Suggestions of Bankruptcy was served by first-class mail, postage prepaid, on March 11, 2002, upon the following counsel of record:

Jeffrey R. Owen, Esq.
Cooper Owen & Renner, P.C.
1600 Benedum-Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Michael F. Nerone, Esq.
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Edward A. Yurcon, Esq.
Anstandig, McDyer, Burdette & Yurcon, P.C.
1300 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1911

Robert A. Seiferth, Esq.
Marshall, Dennehey, Warner, Coleman & Coggin
33 West Third Street, Suite 200
Williamsport, PA 17701

John R. Benty, Esq.
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Daney L. Heilman

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

JAMES U. LUX

-vs-

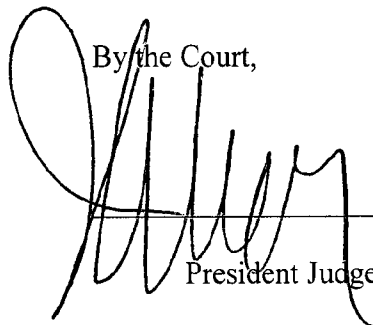
No. 01 - 466 - CD

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

ORDER

NOW, this 28th day of February, 2002, upon consideration of Motion to Certify
Interlocutory Order for Appeal, it is the ORDER of this Court that said Motion be and is hereby
DENIED.

By the Court,



President Judge

FILED

FEB 28 2002

William A. Shaw
Prothonotary

22

FILED

013:15-kt
MS 28 2002

William A. Shaw
Prothonotary

2cc
Atty Owen
HSD

9:27 A.M.

Appeal Docket Sheet

Docket Number: 222 WDA 2002

Page 1 of 5

February 5, 2002

Superior Court of Pennsylvania

COPY



James U. Lux

v

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R&F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker and Pennsylvania Department of Transportation
Appeal of: Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: February 5, 2002

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: February 19, 2002

Next Event Type: Original Record Received

Next Event Due Date: March 18, 2002

FILED

FEB 07 2002

MJ 1215/ was
William A. Shaw
Prothonotary

[Signature]

Appeal Docket Sheet**Docket Number: 222 WDA 2002****Page 2 of 5****February 5, 2002****Superior Court of Pennsylvania****COUNSEL INFORMATION**

Appellant Gerald E. Ort Trucking, Inc.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Pion, John Thomas
Bar No.: 43675 **Law Firm:** Dickie, McCamey & Chilcote, P.C.
Address: Dickie McCamey et al
Two PPG Place Ste 400
Pittsburgh, PA 15222
Phone No.: (412)281-7272 **Fax No.:**
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Attorney: Nerone, Michael F.
Bar No.: 62446 **Law Firm:** Dickie, McCamey & Chilcote, P.C.
Address: Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Phone No.: (412)392-5384 **Fax No.:** (412)392-5342
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellant Knight, Samuel Thomas
Pro Se: Appoint Counsel Status:
IFP Status:

Appellant Attorney Information:

Attorney: Pion, John Thomas
Bar No.: 43675 **Law Firm:** Dickie, McCamey & Chilcote, P.C.
Address: Dickie McCamey et al
Two PPG Place Ste 400
Pittsburgh, PA 15222
Phone No.: (412)281-7272 **Fax No.:**
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appeal Docket Sheet**Docket Number: 222 WDA 2002****Superior Court of Pennsylvania****Page 3 of 5****February 5, 2002**

Attorney: Nerone, Michael F.
Bar No.: 62446 Law Firm: Dickie, McCamey & Chilcote, P.C.
Address: Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222
Phone No.: (412)392-5384 Fax No.: (412)392-5342
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Commonwealth of Pennsylvania
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Benty, John R.
Bar No.: 44606 Law Firm: NON PARTICIAPTING
Address: Office of the Attorney General
4th Floor, Manor Bldg.
Pittsburgh, PA 15219
Phone No.: (412)565-7680 Fax No.:
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Lux, James U
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Simon Transportation
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Heilman, Nancy Lauffer
Bar No.: 51121 Law Firm: Cohen & Grigsby, P.C.
Address: Cohen & Grigsby PC
11 Stanwix St 15th Fl
Pittsburgh, PA 15222-1319
Phone No.: (412)297-4900 Fax No.:
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee R&F Miller Inc.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 222 WDA 2002**Page 4 of 5****February 5, 2002**

Attorney: Yurcon, Edward Anthony
 Bar No.: 30830 Law Firm: Anstandig McDyer Burdette & Yurcon, P.C.
 Address: Anstandig McDyer et al
 707 Grant St Ste 1300
 Pittsburgh, PA 15219-1911
 Phone No.: (412)765-3700 Fax No.: (412)765-3730
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Roberts, Eddie C
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Yurcon, Edward Anthony
 Bar No.: 30830 Law Firm: Anstandig McDyer Burdette & Yurcon, P.C.
 Address: Anstandig McDyer et al
 707 Grant St Ste 1300
 Pittsburgh, PA 15219-1911
 Phone No.: (412)765-3700 Fax No.: (412)765-3730
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

Appellee Parker, Jamie Harvey
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Seiferth, Robert Alan
 Bar No.: 20481 Law Firm:
 Address: Corestates Plaza
 33 W. Third St, Ste 200
 Williamsport, PA 17701
 Phone No.: (570)326-9091 Fax No.:
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
2/5/02	Notice of Appeal	55.00	55.00	2002SPRWD000169

TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division:

Civil

2/5/02

9:27 A.M.

Appeal Docket Sheet

Docket Number: 222 WDA 2002

Page 5 of 5

February 5, 2002

Superior Court of Pennsylvania



Date of Order Appealed From: January 9, 2002

Judicial District: 46

Date Documents Received: February 5, 2002

Date Notice of Appeal Filed: February 1, 2002

Order Type: Order Entered

OTN:

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

Lower Court Docket No.: 01-466-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
February 5, 2002	Notice of Appeal Filed	Appellant	Gerald E. Ort Trucking, Inc.
February 5, 2002	Docketing Statement Exited (Civil)		Valecko, Eleanor R.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff,

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, and PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION,

Defendants.

CIVIL DIVISION

Case No. 01-466-CD

NOTICE OF APPEAL

Filed on behalf of DEFENDANTS, GERALD
E. ORT TRUCKING, INC., ORT TRUCKING,
INC. AND SAMUEL THOMAS KNIGHT

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

Michael F. Nerone, Esq.
PA. I.D. #62446

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

FEB 01 2002

William A. Shaw
Prothonotary

#30

NOTICE OF APPEAL

Notice is hereby given that Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight, Defendants above named, hereby appeal to the Superior Court of Pennsylvania from the Order entered in this matter on the 9th day of January 2002. This Order has been entered in the docket as evidenced by the attached copy of the docket entry. There is no transcript of this matter, since this matter was decided based upon the Petition, Briefs and untranscribed oral argument. As such, no transcript was requested.

DICKIE, McCAMEY & CHILCOTE, P.C.

BY: 

Michael F. Nerone, Esquire *IS Emv*
Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas
Knight

Suite 400, Two PPG Place
Pittsburgh, PA 15222
(412) 281-7272

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

JAMES U. LUX,
Plaintiff

v.

No. 01-466- C.D.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC.,
R. AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C.
ROBERTS, JAMIE HARVEY PARKER
and PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION,
Defendants

OPINION AND ORDER

Introduction

This action arises out of two motor vehicle accidents that took place on October 24, 2000, on Interstate 80 between DuBois and Clearfield, Pennsylvania. The first accident occurred when a tractor and trailer owned by Defendant R&F Miller, Inc. and operated by Defendant Jamie Harvey Parker was rear-ended by a tractor and trailer owned and driven by Defendant Eddie C. Roberts. The second accident occurred when a truck driven by Defendant Samuel Thomas Knight collided with a Sandy Township Fire truck positioned on the highway for purposes of cleaning debris from the first accident. During the second collision, three volunteer firemen, Plaintiff, Jeffrey Kennedy and Randy Wells, all of whom were passengers in the rescue squad truck, were severely injured. On April 3, 2001, Plaintiff filed a Complaint setting forth claims for negligence relating to the accidents described above resulting in serious and permanent injuries. On November 2, 2001, Petitioners, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight, filed a Petition for Interpleader pursuant to

Pennsylvania Rule of Civil Procedure 2302, *et seq.*, requesting that this Court enter an Order directing Petitioners to pay into the Court the aggregate coverage limits under their liability insurance.

Opinion

In support of its Petition for Interpleader and in accordance with Pennsylvania Rule of Civil Procedure 2303¹, Petitioners allege that (1) there are several parties not of record that have made or are expected to make a demand upon Petitioners that will have the result of exposing Petitioners to multiple liability to the Plaintiff and such claimant, (2) that the petition is filed in good faith and not in collusion with the Plaintiff or any other claimant; (3) that Defendant Gerald E. Ort Trucking, Inc. (incorrectly referred to as Ort Trucking, Inc. in Plaintiff's Complaint) is insolvent, no longer actively conducts business, and owes substantial sums to a secured creditor, and that Defendant Samuel Knight possesses no assets from which any potential judgments obtained could be satisfied. Accordingly, Petitioner asserts that the only asset available for recovery for these claims from Defendant Gerald E. Ort Trucking, Inc. or Defendant Samuel Knight, is a policy of liability insurance having aggregate coverage limits of \$1,000,000. Petitioners assert that they have no interest in such fund and that such funds would be paid into the Court or to such person as this Court would direct; (4) that Petitioners have not subjected themselves to independent liability to the Plaintiff or any claimant with

¹ Rule 2303(a) of the Pennsylvania Rules of Civil Procedure provides that a petition for interpleader shall allege the following:

- (1) that a claimant not a party of record has made or expected to make a demand upon the defendant such that the defendant is or may be exposed to multiple liability to the plaintiff and to such claimant as to all or any part of the claim asserted by the plaintiff.
- (2) that the petition is filed in good faith and not in collusion with the plaintiff or any claimant.
- (3) The interest which the defendant claims in the money in controversy and whether the defendant is able to pay (or if not, the reasons therefore) or deliver that part of the money as to which he claims no interest into court or to such person as the court may direct.
- (4) Whether the defendant has admitted the claim of, or has subjected himself to independent liability to the plaintiff or any claimant in respect to the subject matter of the action.

respect to the second accident. Petitioners assert that upon information and belief, the aggregate value of these potential claims exceeds the \$1,000,000 in insurance proceeds, and that if these claims are permitted to proceed separately, Petitioners will be exposed to conflicting claims for the same property. Accordingly, in order to resolve the conflicting claims to the insurance proceeds, and claiming no interest in the money in controversy, Petitioners request that this Court enter an order interpleading the Plaintiff and the other claimants, directing that Petitioners pay into Court or other entity that this Court may designate the \$1,000,000 policy limits and discharging Petitioners from any further involvement or participation in this action.

Pennsylvania Rule of Civil Procedure 2306(a) provides that upon receipt of a petition for interpleader, “[t]he court shall direct an interpleader if the petition is in conformity with these rules and the allegations thereof are established either by proof or by failure of the plaintiff to file a sufficient answer.” However, the court may deny such petition where the defendant has “subjected himself . . . to independent liability to, the plaintiff or any claimant, with knowledge that an inconsistent claim would be later asserted against him . . . by any known or unknown person.” Pa.R.Civ.P. 2306(a)(2). The decision to grant or deny a petition for interpleader is within the “sound discretion” of this Court. Lewandowski v. Life Ins. Co. of North America, 608 A.2d 1087, 1088-89 (Pa. Super. 1992), *citing* U.S. Nat’l Bank in Johnstown v. Robel Constr., Inc., 482 A.2d 1037 (Pa. Super. 1984).

The Pennsylvania Superior Court has stated that the purpose of interpleader is “the avoidance of the expense of multiple actions arising out of identical claims of entitlement to a “stake” of money, property or debt.” Lewandowski, 608 A.2d at 1089. Accordingly, interpleader is only appropriate where a claimant’s claim is adverse to both the defendant and

to the claim made against the defendant by the plaintiff, because only one of such claims can be meritorious. Drobnak v. McKool, 28 D. & C.4th 553, 556 (Somerset County 1993), *citing* Genro Inc. v. Int'l Chem. and Nuclear Corp., 302 A.2d 466, 468 n.1 (Pa. Super. 1973); Goodrich-Amram 2d §2303(a):5, at 255 (1992). Where the facts indicate that the defendant may be liable to each claimant, and recovery by one claimant will not preclude recovery by another, interpleader is an inappropriate remedy because the purpose of interpleader is not to prevent a defendant from exposure to separate liability arising from independent obligations but rather is the prevention of "vexatious litigation and multiple liability" arising out of competing claims relating to the same obligation. Drobnak, 28 D. & C.4th at 556-57, *quoting* Goodrich-Amram 2d §2303(a):5, at 255.

In the case at hand, Petitioners allege that because the proceeds from Petitioners' liability insurance policy are the only source of recovery and because any potential cause of action asserted by any of the claimants will arise out of the second accident resulting in competing claims to the same fund, interpleader is an appropriate remedy. The Court disagrees. The facts at hand indicate that Petitioners have "independent liability to the plaintiff or any claimant in respect to the subject matter of the action." Pa.R.Civ.P. 2306(a)(2). While there may well be multiple claims against Petitioners arising out of the second accident, the Court finds that such claims are not competing claims. Petitioners may be independently liable to the Plaintiff and several or all of the claimants, or perhaps none of the claimants, and recovery by the Plaintiff in this action will not preclude recovery by any of the other claimants in this action.

The Common Pleas Court of Somerset County dealt with a similar scenario in Drobnak v. McKool, 28 D. & C. 4th 553 (1993), where the defendant's vehicle collided with another

vehicle after defendant drove through an intersection without stopping. The plaintiff in the case was a passenger in defendant's car. Defendant's insurance carrier sought to interplead five potential claimants who also sustained injuries in the accident, claiming that the defendant was at risk of multiple liability and lawsuits arising out of the same accident. The court refused to order interpleader, stating as follows:

Any claims which the potential claimants have arising out of defendant's operation of his automobile are multiple but not inconsistent with each other or with plaintiffs' claim even though they may be in excess of defendant's insurance coverage. To be inconsistent, the claims asserted against defendant must be mutually exclusive such that recovery by one precludes recovery by any and all other claimants and potential claimants. . . . [Here,] . . . any multiple liability that defendant may face arises out of the fact that he incurred independent liability to each of the potential claimants as a result of the accident.

Id. at 558-59.

Similarly, any liability that Petitioners may have incurred to Plaintiff and/or the claimants is a result of Petitioners' involvement in the second accident and its impact on the claimants, and is an independent claim specific to each such claimant. Accordingly, the Court finds that Petitioners have failed to satisfy the requisites of Pennsylvania Rule of Civil Procedure 2303, and that such Petition for Interpleader is and shall be denied.

WHEREFORE, this Court enters the following:

ORDER

NOW, this 9th day of January 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED.

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.

JAN 14 2002

CERTIFICATE OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Notice of Appeal have been served this 31st day of January, 2002, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

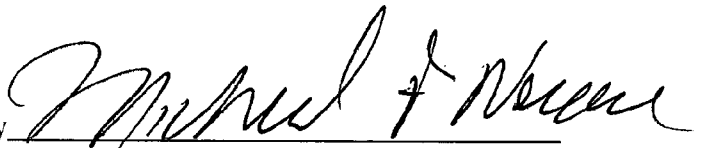
Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
COHEN & GRIGSBY
11 Stanwix Street
15th Floor
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Jeffrey R. Owen, Esquire
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By 
Michael F. Nerone, Esquire 15 EMM

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

PROOF OF SERVICE

I, Michael F. Nerone, Esquire, hereby certify that true and correct copies of the foregoing Notice of Appeal have been served this 31st day of January, 2002, by U.S. first-class mail, postage prepaid, to counsel of record listed below:

John R. Benty, Esquire
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

Nancy Heilman, Esquire
COHEN & GRIGSBY
11 Stanwix Street
15th Floor
Pittsburgh, PA 15222

Jeffrey R. Owen, Esquire
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223 Fourth Avenue
Pittsburgh, PA 15222-1713

Edward A. Yurcon, Esquire
1300 Gulf Tower
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By Michael F. Nerone
Michael F. Nerone, Esquire

Attorneys for Gerald E. Ort Trucking, Inc.,
Ort Trucking, Inc. and Samuel Thomas Knight

Current Judge: John K. Reilly Jr.

Civil Other

Date		Judge
04/03/2001	Filing: Civil Complaint Paid by: Jeffrey R. Owen, Esquire Receipt number: 1823002 Dated: 04/03/2001 Amount: \$80.00 (Check) Three Certified Copies to Attorney	No Judge
04/06/2001	Sheriff Return NOW April 4, 2001, served the within Complaint on PA. Dept. of Transportation, Defendant at Employment, was handed a true attested copy of the original complaint and made known the true and attested copy of original complaint. So Answers, Sheriff Hawkins, s/ Marilyn Hamm.	No Judge
04/19/2001	Praecipe for Appearance, on behalf of Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, by John T. Pion, Esq. and Michael F. Nerone, Esq. s/Michael F. Nerone, Esq. Certificate of Service no cc	No Judge
05/07/2001	Praecipe For Appearance, on behalf of R & F Miller, Inc. and Eddie C. Roberts. filed by s/Edward A. Yurcon, Esq. Cert of Svc no cc	No Judge
	Affidavit of Service, Complaint in Civil Action, upon Defendants of Record. s/Jeffrey R. Owen, Esquire no cc	No Judge
05/11/2001	Praecipe For Appearance, on behalf of Pennsylvania Department of Transportation. filed by s/John R. Benty, Esq. no cc Cert of Svc	No Judge
05/14/2001	Preliminary Objections in the Nature of a Demurrer. filed by s/Edward A. Yurcon, Esq. no cc	No Judge
	Entry of Appearance, on behalf of Simon Transportation Services, Inc. s/Nancy L. Heilman, Esq. Cert of Svc no cc	No Judge
	Answer and New Matter, Filed on behalf of Simon Trucking. s/Nancy L. Heilman, Esq. Verification, s/Mark E. Wilkey Cert of Svc no cc	No Judge
05/16/2001	Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Knight's Answer to Complaint, New Matter and New Matter Pursuant to Pa. R.Civ. P. 2252(D) filed by s/Michael F. Nerone, Esq. Verification, s/Samuel Knight Cert of Svc no cc	No Judge
05/21/2001	Preliminary Objections. filed by s/John R. Benty, Esq. Cert of Svc 1 cc atty Benty	No Judge
07/26/2001	Miscellaneous Payment: Copy Fee Paid by: Marshall, Dennehey, Warner, Coleman & Goggin Receipt number: 1828913 Dated: 07/26/2001 Amount: \$.25 (Cash)	John K. Reilly Jr.
07/31/2001	Entry of Appearance, on behalf of Defendant, Jamie Harvey Parker. s/Robert A. Seiferth, Esq. 1 cc to atty	John K. Reilly Jr.
08/10/2001	Preliminary Objections of Defendant Jamie Harvey Parker. Filed by s/Robert A. Seiferth, Esq. Cert of Svc 1 cc w/o Rule	John K. Reilly Jr.
08/15/2001	ORDER, NOW, this 14th day of August, 2001, re: P.O.'s are sustained to the extent that Plaintiff shall be limited in his allegations of proof in paragraphs 38(a,b and g), etc. by the Court, s/JKR,JR.,P.J. 1 cc atty Benty, J. Owen, M. Nesare, N. Heilman, E. Yuscon and R. Seifsteh	John K. Reilly Jr.
08/22/2001	Opinion and Order, filed. Cert. to Atty's Seiferth, Yurcon, Heilman, Bendtley, Nerone, Owen and copy to Mikesell NOW, this 21st day of August, 2001, it is the ORDER of this Court that all Defendants Preliminary Objections are hereby DISMISSED.	John K. Reilly Jr.
09/14/2001	Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
09/21/2001	ORDER, NOW, this 20th day of Sept. 2001, re:Rule is issued upon the parties, Returnable 15th day of Oct. 2001, at 9:30 a.m. by the Court, s/JKR,JR., P.J. 5 cc Atty Yurcon	John K. Reilly Jr.

Date: 02/01/2002

Time: 02:56 PM

Page 2 of 2



Fairfield County Court of Common Pleas

ROA Report

User: JKENDRICK

Case: 2001-00466-CD

Current Judge: John K. Reilly Jr.

Civil Other

Date		Judge
09/28/2001	Affidavit of Service, Order of Court of Sept. 20, 2001. upon Parties of Record. by s/Edward A. Yurcon, Esq. Cert of Svc no cc	John K. Reilly Jr.
10/01/2001	OPINION AND ORDER, NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED. by the Court, s/JKR,JR., P.J. 1 cc Atty Owen, Nerone, Heilman, Yurcon, Seiferth, and John Benty	John K. Reilly Jr.
10/26/2001	Plaintiff's Motion to Reconsider, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
10/30/2001	ORDER, AND NOW, this 29th day of Oct. 2001, a Rule is issued upon the parties, returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Owen	John K. Reilly Jr.
11/02/2001	Petition For Interpleader. Filed by s/John T. Pion, Esq. Cert. of Svc. no cc	John K. Reilly Jr.
11/05/2001	Preliminary Order of Court, And Now, to-wit, this 5th day of Nov. 2001, Rule to Show Cause is hereby issued to show cause why the Petition for Interpleader should not be granted. Rule Returnable Dec. 7, 2001, at 9:00 a.m. before the Honorable Judge Riley. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
11/09/2001	Motion to Join in Plaintiff's Motion to Reconsider, filed by s/Michael F. Nerone, Esq. No CC	John K. Reilly Jr.
11/13/2001	ORDER, NOW, this 13th day of Nov. 2001, re: Rule issued upon parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
12/04/2001	Answer to Petition for Interpleader. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
01/04/2002	OPINION AND ORDER, NOW, this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED. by the Court, s/JKR,JR.,P.J. 3 cc to Atty Nerone, Heilman, Yucon, Seiferth, Beaty and D. Mikesell	John K. Reilly Jr.
01/14/2002	OPINION AND ORDER, NOW, this 9th day of Jan. 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Owen, Atty Nerone, Atty Pion, Nancy L. Heilman, Edward Yuscon, R. Seiferth, J. Bentry and D. Mikesell.	John K. Reilly Jr.
01/24/2002	Notification of Bankruptcy, on behalf of EDDIE C. ROBERTS. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
02/01/2002	Motion to Certify Interlocutory Order for Appeal. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc Filing: Appeal to High Court Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$45.00 (Check) Filing: Miscellaneous Civil Filing Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$.50 (Check)	John K. Reilly Jr. I hereby certify this to be a true and attested copy of the original statement filed in this case.

FEB 01 2002

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

FILED

FEB 01 2002

m/2301 atty
William A. Shaw
Prothonotary

from pd \$45.00

1 cc Sup. Ct. w/ \$55.00 ck.

Eab

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,

Plaintiff

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,
SIMON TRANSPORTATION
SERVICES, INC.,
R. AND F. MILLER, INC.,
SAMUEL THOMAS KNIGHT,
EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, and
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION.

Defendants

CIVIL DIVISION

Case No.:

Case No.: 01-466-CO

MOTION TO CERTIFY
INTERLOCUTORY ORDER FOR
APPEAL

Filed on behalf of JAMES U. LUX,
Plaintiff

Counsel of Record for this Party:

Jeffrey R. Owen, Esquire
PA I.D. #45896

COOPER OWEN & RENNER, P.C.
Firm #233

1600 Benedum-Trees Building
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Pittsburgh, PA 15222-1713

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FILED

FEB 01 2002

m/11/36/2002
William A. Shaw
Prothonotary

#21

MOTION TO CERTIFY INTERLOCUTORY ORDER FOR APPEAL

AND NOW, comes the Plaintiff, James U. Lux, by and through his Counsel, Cooper Owen & Renner, P.C. and Jeffrey R. Owen, Esquire, and files this Motion To Certify Interlocutory Order For Appeal, of which the following is a statement.

1. In these proceedings, Defendant Jamie Harvey Parker filed Preliminary Objections to the Plaintiffs Complaint, which were granted by the Opinion and Order of this Honorable Court dated October 1, 2001.

2. Plaintiff filed a motion requesting that the Court reconsider its Order, which motion was joined by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight.

3. On January 4, 2002, the Court entered the following Order:

NOW this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by the Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED.

By the Court,

JOHN K. REILLY, JR., President Judge

4. The Order, dismissing the Plaintiff's Motion to Reconsider is interlocutory and cannot be appealed unless it is amended to include the statement prescribed by 42 Pa. Cons. Stat. Ann. § 702(b) , regarding interlocutory appeals by permission.

5. Pa. R.A.P. No. 1311(b) provides that an order may be amended to include the prescribed statement upon application filed within 30 days after entry of the order in question.

6. The Order in question is appropriate for interlocutory appeal by permission under the standards of 42 Pa. Cons. Stat. Ann. § 702(b) , because the issue of the negligence of Defendant Parker “involves a controlling question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the matter.”

7. An immediate appeal may materially advance the ultimate termination of this matter, because an order reversing the granting of summary judgment would make it clear that Defendant Parker must participate in these proceedings and proceed to trial.

8. If this appeal is not heard, the appeal of Parker’s dismissal from the action would occur only after the conclusion of these proceedings as to the other defendants. If such appeal is successful, it would necessitate the rehearing of the issues as to Defendant Parker.

9. Likewise, an order affirming the granting of Defendant Parker’s Preliminary Objections could remove an issue for appeal after trial, and may, by rendering the respective claims and defenses of all of the parties more certain, enhance the prospects of settlement before trial.

WHEREFORE, Plaintiff, James U. Lux respectfully requests that this Court amend its order of January 4, 2002 to include the statement prescribed by 42 Pa. Cons. Stat. Ann. § 702(b) .

Respectfully submitted,

COOPER OWEN & RENNER, P.C.

BY: 

JEFFREY R. OWEN
COUNSEL FOR PLAINTIFF,
JAMES U. LUX

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES U. LUX,	)	CIVIL DIVISION
)	
	)	Case No.: 01-466-CO
vs.)	
)	
GERALD E. ORT TRUCKING, INC.,)	
ORT TRUCKING, INC.,)	
SIMON TRANSPORTATION	)	AMENDED ORDER
SERVICES, INC.,)	
R. AND F. MILLER, INC.,)	
SAMUEL THOMAS KNIGHT,)	
EDDIE C. ROBERTS,)	
JAMIE HARVEY PARKER, and)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION.)	

AMENDED ORDER

AND NOW this _____ day of _____ 2002, the Court's ORDER of
January 4, 2002 is Amended to read as follows:

NOW this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by the Defendants Gerald E. Ort Trucking, Inc, Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED.

However, the Court is of the opinion that this Order involves a controlling question of law as to the Liability of Defendant Parker, to which there is substantial ground for difference of opinion, such that an immediate appeal may materially advance the ultimate termination of the matter.

BY THE COURT:

JOHN R. REILLY, JR.
President Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's MOTION TO CERTIFY INTERLOCUTORY ORDER FOR APPEAL has been served upon the following counsel by mailing a copy, postage pre-paid, this 31st day of January, 2002, to the following:

Robert A. Seiferth, Esquire
33 W. Third Street, Suite 200
Williamsport, PA 17701

John R. Benty, Esquire
Senior Deputy Attorney General
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Tort Litigation Unit

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Anstandig, McDyer, Burdette &
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Pittsburgh, PA 15219-1911

COOPER OWEN & RENNER, P.C.

BY: 

Jeffrey R. Owen, Esq.

Counsel for Plaintiff, James U. Lux