

01-478-CD  
MARK GARBUSOV et al -vs- KEEHART TRUCKING COMPANY

ANAPOL, SCHWARTZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
BY: LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE  
I.D. NO.: 30546, 80914  
1900 Delancey Place  
Philadelphia, PA 19103  
(215) 790-4567

ATTORNEYS FOR PLAINTIFFS

MARK GARBUZOV and  
LYUDMILA GARBUZOV  
124 Knickerbocker Road  
Cresskill, NJ 07626

v.

KEPHART TRUCKING COMPANY  
P.O. Box 386  
Bigler, PA 16825

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

CIVIL DIVISION

NO. 01-478-CD

JURY TRIAL DEMANDED

**FILED**

APR 06 2001

William A. Shaw  
Prothonotary

CIVIL ACTION

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted compla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

OFFICE OF COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET  
CLEARFIELD, PA 16830  
814-765-2641 (x1300-01)

ANAPOL, SCHWARTZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.

BY: LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE

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MARK GARBUZOV and  
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124 Knickerbocker Road  
Cresskill, NJ 07626

v.

KEPHART TRUCKING COMPANY  
P.O. Box 386  
Bigler, PA 16825

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

CIVIL DIVISION

NO.

JURY TRIAL DEMANDED

**COMPLAINT -CIVIL ACTION**

**NEGLIGENCE - MOTOR VEHICLE ACCIDENT**

1. The Plaintiffs, Mark Garbuzov and Lyudmila Garbuzov, h/w, are adult individuals residing at 124 Knickerbocker Road, Cresskill, NJ, 07626.

2. The Defendant, Kephart Trucking Company, is a corporation duly licensed in Pennsylvania and conducting business on a regular basis in Clearfield County, with a principle place of business at P.O. Box 386, Bigler, PA 16825.

3. On or about April 10, 1999, Defendant, Kephart Trucking Company regularly conducted business and personally availed itself to conduct business in Kings County, New York.

4. On or about April 10, 1999 at approximately 11:45 p.m., Plaintiff was seated properly in the front passenger seat, traveling in the third lane on the Brooklyn Queens Expressway, approaching the Atlantic Avenue exit.

5. At the same time and place, there was construction work occurring which created bumper to bumper traffic.

6. At the same time and place, Defendant employee, an employee of Kephart Trucking Company, driving a Kephart truck in the course and scope of his employment, was traveling in the same direction when, without warning, struck the Plaintiffs' vehicle, causing injuries to the Plaintiff as more specifically described herein.

7. Defendant, employee, had permission to drive and operate a truck on or about April 10, 1999.

8. The collision was caused solely the negligence of Defendant, employee, and vicariously, attributable to the Defendants, Kephart Trucking Company, in that he:

(a) operated his vehicle at a high and excessive rate of speed under the circumstances;

(b) failed to keep a prudent and careful outlook for others drivers such as Plaintiff;

(c) operated his vehicle in a careless, negligent and wanton and reckless manner with respect to Plaintiff;

(d) operated his vehicle in violation of the traffic laws of the state of York designed for the safe and smooth flow of traffic upon the highway;

(e) failed to use due care under all circumstances;

(f) failed to keep his vehicle under proper and adequate control;

(g) violated statutes governing vehicle or traffic; and

(h) was otherwise grossly negligent and wantonly reckless with respect to Plaintiff.

9. Defendant, Kephart Trucking Company, was negligent in entrusting Defendant, employee, with the operation of its vehicle.

10. As a result of the Defendants' aforesaid negligence, Plaintiff suffered internal and external injuries which rendered him sick, sore, lame and disabled. He was hurt, wounded in and about his limbs and body. More particularly, he suffered an acute traumatic cervical radiculitis, acute traumatic lumbosacral radiculitis, acute cervical musculo-ligamentous sprain, acute lumbosacral musculo-ligamentous sprain, contusion of the left shoulder and anxiety, tension and stress which was reactive to his pain.

11. As a further result of Defendant's aforesaid negligence, Plaintiff has been required to incur expenses for necessary and reasonable treatment for his aforesaid

injuries. Plaintiff is advised, believes and therefore avers that he will continue to require medical care for his injuries indefinitely into the future.

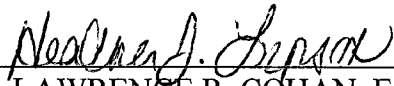
12. As a further result of the Defendant's aforesaid negligence, Plaintiff has suffered and will continue to suffer severe physical pain, disability, mental anguish and humiliation, all of which Plaintiff believes and therefore avers will be permanent in nature.

13. As a result of the accident aforementioned and her husband's injuries, the Wife-Plaintiff, Lyudmila Garbuzov, has been deprived of the comfort, companionship and consortium of her husband and will continue to be so deprived for an indefinite time into the future, to her great detriment and loss.

14. As a direct and reasonable result of the accident aforementioned, the Wife-Plaintiff has or may incur other financial expenses or losses which do or may exceed amounts which she may otherwise be entitled to recover.

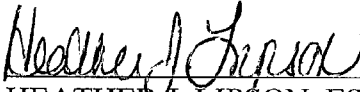
WHEREFORE, Plaintiffs, Mark Garbuzov and Lyudmila Garbuzov, demand judgment against Defendant, Kephart Trucking Company and Defendant, employee, in an amount in excess of Fifty Thousand (\$50,000.00) plus delay damages and costs.

ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.

BY:   
LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE  
Attorneys for Plaintiff

**VERIFICATION**

HEATHER J. LIPSON, ESQUIRE, hereby states that she is the attorney for the Plaintiffs and verifies that the statements made in Plaintiffs' Complaint are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statement therein is made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

  
HEATHER J. LIPSON, ESQUIRE

DATED: 4/5/01

FILED

APR 06 2001

William A. Shaw  
Prothonotary

*Wm. A. Shaw*  
Coham Rd \$80.00

*Lee Shewell*



**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 10873

GARBUZOV, MARK & LYUDMILA

01-478-CD

VS.

KEPHART TRUCKING COMPANY

COMPLAINT

**SHERIFF RETURNS**

NOW APRIL 11, 2001 AT 9:00 AM DST SERVED THE WITHIN COMPLAINT ON  
KEPHART TRUCKING COMPANY, DEFENDANT AT EMPLOYMENT, P.O. BOX 386,  
BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAVE KEPHART,  
VICE PRESIDENT, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT  
AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: MCCLEARY/COUDRIET

**Return Costs**

Cost	Description
22.50	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

16 Day Of April 2001  
[Signature] e/p

So Answers,

[Signature]  
by Marlye Hays  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiff,

v.

KEPHART TRUCKING COMPANY,

Defendant.

) CIVIL DIVISION  
)  
) No. 01-478-CO  
)  
) Code:  
)  
) **PRAECIPE FOR APPEARANCE**  
)  
) Filed on behalf of Defendant,  
) Kephart Trucking Company  
)  
) Counsel of Record for this Party:  
)  
) Charles A. Buechel, Jr., Esquire  
) Pa. I.D. # 18010  
)  
) GROGAN GRAFFAM MCGINLEY, P.C.  
) Firm I.D. No. 072  
) Three Gateway Center  
) Twenty-Second Floor  
) Pittsburgh, PA 15222  
) (412) 553-6300  
)  
) 53960/00004

FILED

APR 30 2001

*m/8:30/ m*  
William A. Shaw  
Prothonotary

*no 4c*  
*EP*  
*122*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA	)	CIVIL DIVISION
GARBUZOV,	)	
	)	No. 01-478-CO
Plaintiff,	)	
	)	
v.	)	
	)	
KEPHART TRUCKING COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

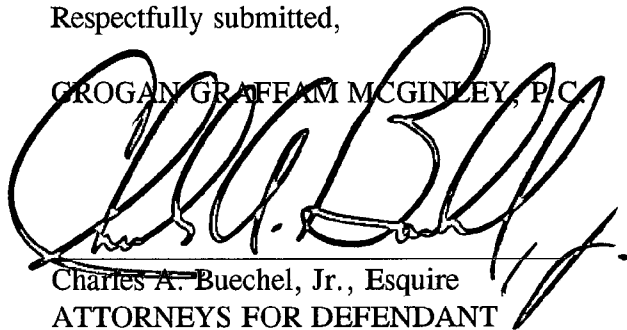
PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter my appearance in the above action on behalf of Defendant Kephart  
Trucking Company.

Respectfully submitted,

GROGAN GRAFFAM MCGINLEY, P.C.

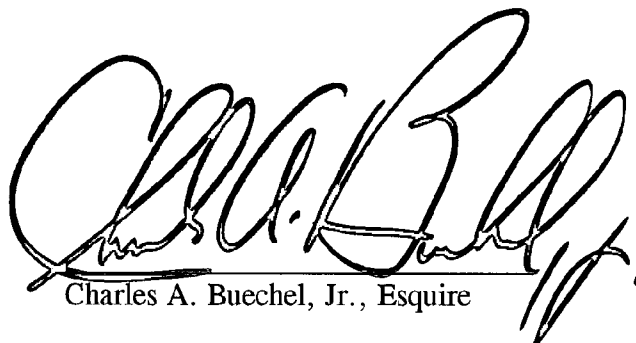


Charles A. Buechel, Jr., Esquire  
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praecipe for Appearance was served upon the following parties of record on this <sup>26th</sup>~~23rd~~ day of April, 2001 by United States mail, first-class, postage prepaid:

Lawrence R. Cohan, Esquire  
Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103



Charles A. Buechel, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiffs,

v.

KEPHART TRUCKING COMPANY,

Defendant.

**NOTICE TO PLEAD**

**TO: PLAINTIFF**

**YOU ARE HEREBY REQUIRED TO  
PLEAD TO THE ENCLOSED NEW  
MATTER WITHIN TWENTY (20) DAYS  
OR A DEFAULT JUDGMENT MAY BE  
ENTERED AGAINST YOU.**

**CHARLES A. BUECHEL, JR.  
ATTORNEY FOR DEFENDANT**

) CIVIL DIVISION

)  
) No. 01-478-CO

)  
) Code:

) **ANSWER AND NEW MATTER**

)  
) Filed on behalf of Defendant,  
) Kephart Trucking Company

)  
) Counsel of Record for this Party:

)  
) Charles A. Buechel, Jr., Esquire  
) Pa. I.D. # 18010

)  
) GROGAN GRAFFAM MCGINLEY, P.C.

) Firm I.D. No. 072

) Three Gateway Center

) Twenty-Second Floor

) Pittsburgh, PA 15222

) (412) 553-6300

)  
) 53960/00004

**FILED**

NOV 08 2001

m/11/19/2001  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA	)	CIVIL DIVISION
GARBUZOV,	)	
	)	No. 01-478-CO
Plaintiffs,	)	
	)	
v.	)	
	)	
KEPHART TRUCKING COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

**ANSWER AND NEW MATTER**

AND NOW, comes the Defendant, Kephart Trucking Company, by and through its attorneys, Grogan Graffam McGinley, P. C. and files this Answer and New Matter to the Plaintiffs' Complaint pursuant to the Amendment of the Rules of Civil Procedure 1029, 1030, 1032 and 1037, effective September 1, 1994:

1. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1, 10, 11, 12, 13, and 14, and, accordingly, the same are deemed to be specifically denied, with the result that strict proof thereof is demanded and will be required at the time of trial.

2. The allegations of paragraphs 2 and 3 of the Plaintiffs' Complaint are admitted.

3. In response to paragraph 4 of the Plaintiffs' Complaint, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 and, accordingly, the same are deemed to be specifically denied. By way of further answer, the police report involving a motor vehicle accident between driver

Lyudmila Garbuzov and the Kephart Truck indicates that the accident occurred on April 11, 1999, at approximately 11:45 p.m. A copy of the police report is marked as Exhibit "A" and attached hereto.

4. As alleged in paragraph 5 of the Plaintiffs' Complaint, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, accordingly, the same are deemed to be specifically denied, with the result that strict proof thereof is demanded and will be required at the time of trial. By way of further response, on April 11, 1999, there was construction work occurring on the Brooklyn Queens Expressway. Any remaining allegations of paragraph 5 are denied generally pursuant to Pennsylvania Rule of Civil Procedure 1029.

5. In response to paragraph 6 of the Plaintiffs' Complaint, there is a reference to the events described in the Complaint as occurring on April 10, 1999 in response to that allegation, this Defendant specifically denies all allegations of paragraph 6 generally pursuant to Pennsylvania Rule of Civil Procedure 1029. By way of further answer, if the Plaintiff meant to plead April 11, 1999 as the date of the accident, then it would be admitted that on April 11, 1999 an employee of the Kephart Trucking Company was driving a Kephart Trucking Company truck in the course and scope of his employment on the Brooklyn Queens Expressway. The remaining allegations of paragraph 6 are denied generally pursuant to Pennsylvania Rule of Civil Procedure 1029.

6. In response to paragraph 7 of the Plaintiff's Complaint, the allegations are denied generally pursuant to Pennsylvania Rule of Civil Procedure 1029. By way of further answer, if the date of the accident complained of by the Plaintiff is April 11, 1999, then the allegations of paragraph 7 would be admitted.

7. The averments contained in paragraph 8 and subparts (a) through (h) are denied generally pursuant to Pennsylvania Rule of Civil Procedure 1029.

8. The averments contained in paragraph 9 of the Plaintiffs' Complaint are denied generally pursuant to Pennsylvania Rule of Civil Procedure 1029.

WHEREFORE, this Defendant denies that it is liable to any party or parties in any sum or sums whatsoever.

### **NEW MATTER**

9. The affirmative defenses of Assumption of the Risk, Comparative Negligence, and Contributory Negligence are plead pursuant to Rule 1030 of the Pennsylvania Rules of Civil Procedure.

10. The Defendant avers that the items of damage set forth in Plaintiffs' Complaint are not proper under the Pennsylvania Motor Vehicle Financial Responsibility Act and avers that said items have been or could have been reimbursed to the Plaintiff by another and should not be included in the present lawsuit.

11. The Defendant avers that the Plaintiffs' Complaint fails to state a cause of action against the Defendant under the terms and provisions of the Pennsylvania Motor Vehicle Financial Responsibility Act.

12. The Plaintiffs' claims for damages in this action are fully or partially barred by the Pennsylvania Motor Vehicle Financial Responsibility Act (hereinafter the "Act"), and case law interpreting the Act. In the alternative, the Defendant avers that pursuant to the Act and case law interpreting the Act, some or all of the Plaintiffs' expenses for medical treatment and lost wages, if any, have been paid or are payable by the Plaintiffs' own insurance company or companies and, if any of those alleged expenses and/or wages are permitted to be introduced into



evidence is items of damages, and if a verdict is entered in the Plaintiffs' favor, the Defendant claims a right of set-off against the verdict for an amount equal to those sums which have been paid by the Plaintiffs' own insurance company or companies and the same are asserted as an affirmative defense and set-off.

13. The rights of the Plaintiffs in this action are governed, restricted, diminished and/or barred by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Act as set forth at 75 Pa.C.S.A. §1701 et seq., and this Defendant claims all the benefits of the provisions of said Act and pleads the same as an affirmative defense against any and all claims of the Plaintiff in this action.

14. The Plaintiffs' Complaint does not indicate if the Plaintiffs have elected a limited tort option under the Pennsylvania Financial Responsibility Act. See 75 P.S. §1705. Under the limited tort option, Plaintiffs are precluded from filing suit unless a Plaintiff has sustained a serious injury.

15. The allegations contained in the Plaintiffs' Complaint do not describe or define a serious injury and, accordingly, this Defendant raises as an affirmative defense the specific provisions of the Pennsylvania Financial Responsibility Act as a bar to all of the Plaintiffs' claims against the Defendant.

16. Under New York law, the allegations contained in the Plaintiff's Complaint fail to state a cause of action against the Defendant.

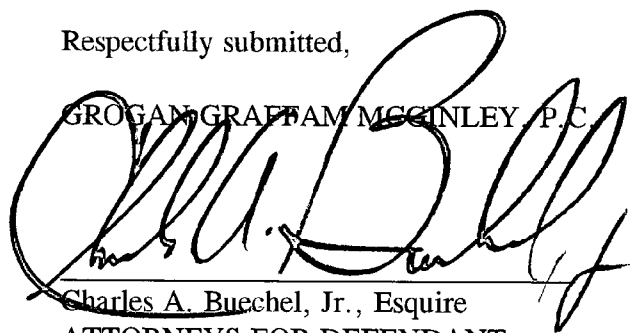
17. The Defendant believes, and therefore avers, that the motor vehicle accident complained of by the Plaintiffs was due solely to/and was proximately caused by the recklessness, carelessness, and negligence of the Plaintiff-Driver:

- (a) The Plaintiff-driver, Lyudmila Garbuzov, moved left into the Defendant's lane of travel, striking this Defendant's motor vehicle and causing property damage;
- (b) In being inattentive and failing to maintain a sharp, proper, and adequate lookout of the road and the surrounding traffic conditions, to include the Defendant's vehicle;
- (c) In continuing to operate her motor vehicle in the direction towards the Defendant's vehicle when she knew, or should have known, that further operation in that direction would result in a collision with the Defendant's vehicle;
- (d) In failing to give any warning of the approach of her motor vehicle to the Defendant's vehicle;
- (e) In failing to operate her brakes in such a manner that she could stop her car before colliding with the Defendant's vehicle;
- (f) In failing to yield the right-of-way to the Defendant's vehicle;
- (g) In failing to stop or turn aside before striking the Defendant's vehicle;
- (h) In failing to properly signal a left turn into the Defendant's lane of travel;
- (i) In otherwise failing to exercise due care and caution and otherwise being negligent under the circumstances then and there existing.

WHEREFORE, this Defendant denies that it is liable to the Plaintiffs and requests that judgment be entered in its favor.

Respectfully submitted,

GROGAN GRAFFAM MCGINLEY P.C.

A large, stylized handwritten signature in black ink, appearing to read 'C. A. Buechel, Jr.', is written over the printed name and firm name.

Charles A. Buechel, Jr., Esquire

ATTORNEYS FOR DEFENDANT

New York State Department of Motor Vehicles  
**LICENSE ACCIDENT REPORT (NY)**  
 MV-104AN (3/97)

DMV  
 USE

Precinct 089  
 Accident No. 878

1	Accident Date Month <u>04</u> Day <u>11</u> Year <u>99</u>	Day of Week <u>Sun</u>	Time <u>1145</u> <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	No. of Vehicles <u>2</u>	No. Injured <u>0</u>	No. Killed <u>0</u>	Non-Highway <input type="checkbox"/>	Not Investigated <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No	
2	VEHICLE 1						VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/>				
1	Driver Name—exactly as printed on license <u>Ludmila Garbuzov</u>						DMV USE				
1	Address (Include Number & Street) <u>124 Knickerbocker Rd</u>						Apt. No.				
1	City or Town <u>Cresskill</u>						State <u>NJ</u> Zip Code <u>07626</u>				
3	Date of Birth <u>01/29/39</u>	Sex <u>F</u>	Unlicensed <input type="checkbox"/>	No. of Occup. <u>2</u>	Public Property Damaged <input type="checkbox"/>	State of Lic. <u>NJ</u>					
1	Name—exactly as printed on registration <u>Minax Inc</u>						Date of Birth				
1	Address (Include Number & Street) <u>167 Riverside Dr.</u>						Apt. No.				
1	City or Town <u>Hackensack</u>						State <u>NJ</u> Zip Code <u>07601</u>				
5	Plate Number <u>JF980m</u>	State of Reg. <u>NJ</u>	Vehicle Year & Make <u>1997-Lin</u>	Vehicle Type <u>205</u>	Ins. Code <u>01</u>	Plate Number <u>A881039</u>	State of Reg. <u>PA</u>	Vehicle Year & Make <u>Truck</u>	Vehicle Type <u>025</u>	Ins. Code	
5	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.						Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				
6	VEHICLE 1 DAMAGE CODES						VEHICLE 2 DAMAGE CODES				
1	Box 1 - Point of Impact Box 2 - Most Damage						Box 1 - Point of Impact Box 2 - Most Damage				
1	Enter up to three more Damage Codes						Enter up to three more Damage Codes				
1	Vehicle By Towed: To						Vehicle By Towed: To				
ACCIDENT DIAGRAM Check the diagram below that describes the accident or draw your own diagram in the space provided (9). Number the vehicles. 											
VEHICLE DAMAGE CODING: 1-13. See diagram on right. 14. UNDERCARRIAGE 15. TRAILER 16. OVERTURNED 17. DEMOLISHED 18. NO DAMAGE 19. OTHER											
Location Code County <input type="checkbox"/> Bronx <input checked="" type="checkbox"/> Kings <input type="checkbox"/> New York <input type="checkbox"/> Queens <input type="checkbox"/> Richmond Route No. or Street Name on <u>BQE</u> <input type="checkbox"/> Miles <input type="checkbox"/> N <input type="checkbox"/> E <input type="checkbox"/> Feet <input type="checkbox"/> S <input type="checkbox"/> W of <input type="checkbox"/> At Intersection With <u>Atlantic Ave Exit</u> Ticket/Arrest Number(s) Violation Section(s) Complaint No.											
Accident Description/Officer's Notes <u>VEH #1 states that she was in the third lane on the BQE and there was construction work going on, so it was slower to bumper traffic when VEH #2 moved into her lane a little bit hitting her VEH, causing above damage.</u>											

ALL INVOLVED	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names - If Deceased, Give Date of Death
A	1	1	4	1	59	F	-	-	6	-	-	-	-	Ludmila Garbuzov
B	1	1	4	1	62	M	-	-	6	-	-	-	-	Mark Garbuzov
C														
D														
E														
F														
G														

SIGN HERE Lead Better 94943 Badge/ID No. 27087 Department 03030 Precinct 089 Date/Time Reviewed

ALL-STATE LEGAL®  
 DEFENDANT'S  
 EXHIBIT  
A

**VERIFICATION**

I, Burt Clearwater, verify that I am the SAFETY DIRECTOR of Kephart Trucking Company and that in that position I am authorized to execute this Verification; and that the foregoing Answer and New Matter is based upon information which he has furnished to his counsel and information which has been gathered by his counsel in the preparation of the lawsuit. The language of the Answer and New Matter that of counsel and not of this Party. This Party has read the Answer and New Matter and to the extent that the Answer and New Matter is based upon information which he has given to his counsel, it is true and correct to the best of his knowledge, information and belief. To the extent that the content of the Answer and New Matter is that of counsel, he has relied upon counsel in making this Affidavit. This Party understands that false statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

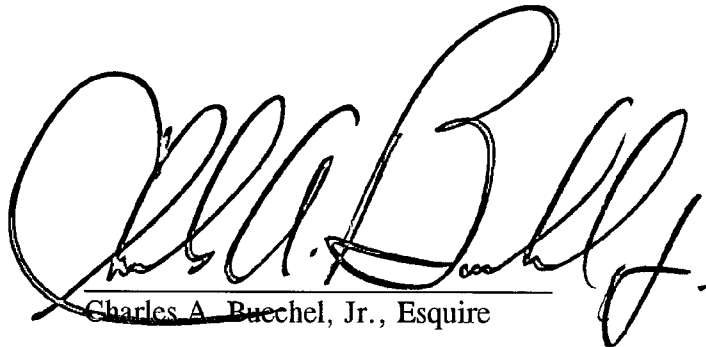
10/29/01

  
\_\_\_\_\_  
Burt Clearwater

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer and New Matter was served upon the following parties of record on this <sup>6th</sup> day of November, 2001 by United States mail, first-class, postage prepaid:

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103



Charles A. Buechel, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiffs,

v.

KEPHART TRUCKING COMPANY,

Defendant.

) CIVIL DIVISION

) No. 01-478-CO

) Code:

) **NOTICE OF SERVICE OF**  
) **DEFENDANT'S FIRST SET OF**  
) **INTERROGATORIES AND REQUEST**  
) **FOR PRODUCTION OF DOCUMENTS**  
) **DIRECTED TO PLAINTIFF, MARK**  
) **GARBUZOV**

) Filed on behalf of Defendant,  
) Kephart Trucking Company

) Counsel of Record for this Party:

) Charles A. Buechel, Jr., Esquire  
) Pa. I.D. # 18010

) GROGAN GRAFFAM MCGINLEY, P.C.  
) Firm I.D. No. 072  
) Three Gateway Center  
Twenty-Second Floor  
Pittsburgh, PA 15222  
(412) 553-6300

53960/00004

**FILED**

NOV 16 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARK GARBUZOV and LYUDMILA	)	CIVIL DIVISION
GARBUZOV,	)	
	)	No. 01-478-CO
Plaintiffs,	)	
	)	
v.	)	
	)	
KEPHART TRUCKING COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

**NOTICE OF SERVICE OF DEFENDANT'S FIRST SET OF**  
**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**  
**DIRECTED TO PLAINTIFF, MARK GARBUZOV**

I, Charles A. Buechel, Jr., Esquire, hereby certify that Defendant Kephart Trucking Company's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff Mark Garbuzov were served upon counsel for Plaintiff this 13<sup>th</sup> day of November, 2001, addressed as follows:

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103

Respectfully submitted:

GROGAN/GRAFFAM MCGINLEY, P.C.

By: 

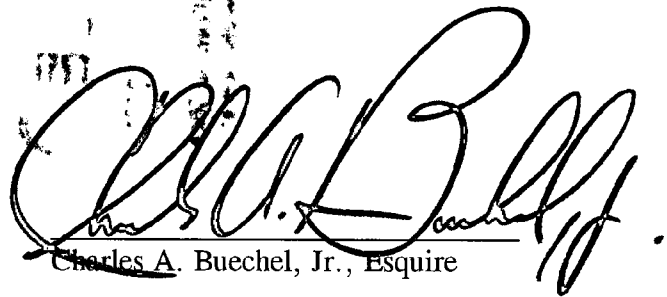
Charles A. Buechel, Jr.  
Attorneys for Defendant



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Notice of Service of Defendant's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff Mark Garbuzov was served upon the following parties of record on this 13<sup>th</sup> day of November, 2001 by United States mail, first-class, postage prepaid:

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103



Charles A. Buechel, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiffs,

v.

KEPHART TRUCKING COMPANY,

Defendant.

) CIVIL DIVISION

) No. 01-478-CO

) Code:

) NOTICE OF SERVICE OF  
) DEFENDANT'S FIRST SET OF  
) INTERROGATORIES AND REQUEST  
) FOR PRODUCTION OF DOCUMENTS  
) DIRECTED TO PLAINTIFF,  
) LYUDMILA GARBUZOV

) Filed on behalf of Defendant,  
) Kephart Trucking Company

) Counsel of Record for this Party:

) Charles A. Buechel, Jr., Esquire  
) Pa. I.D. # 18010

) GROGAN GRAFFAM MCGINLEY, P.C.  
) Firm I.D. No. 072  
) Three Gateway Center  
Twenty-Second Floor  
Pittsburgh, PA 15222  
(412) 553-6300

53960/00004

**FILED**

NOV 16 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARK GARBUZOV and LYUDMILA	)	CIVIL DIVISION
GARBUZOV,	)	
	)	No. 01-478-CO
Plaintiffs,	)	
	)	
v.	)	
	)	
KEPHART TRUCKING COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

**NOTICE OF SERVICE OF DEFENDANT'S FIRST SET OF**  
**INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**  
**DIRECTED TO PLAINTIFF, LYUDMILA GARBUZOV**

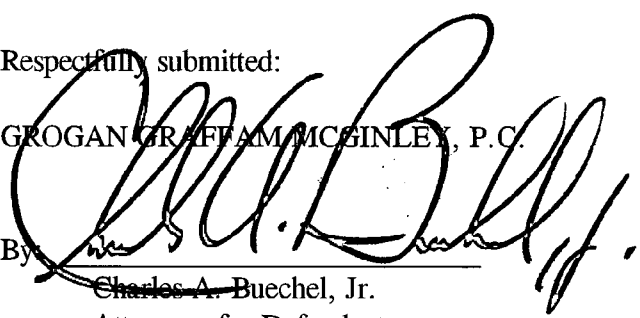
I, Charles A. Buechel, Jr., Esquire, hereby certify that Defendant Kephart Trucking Company's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff Lyudmila Garbuzov were served upon counsel for Plaintiff this 13<sup>th</sup> day of November, 2001, addressed as follows:

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103

Respectfully submitted:

GROGAN GRAFFAM MCGINLEY, P.C.

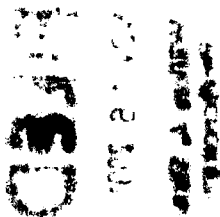
By

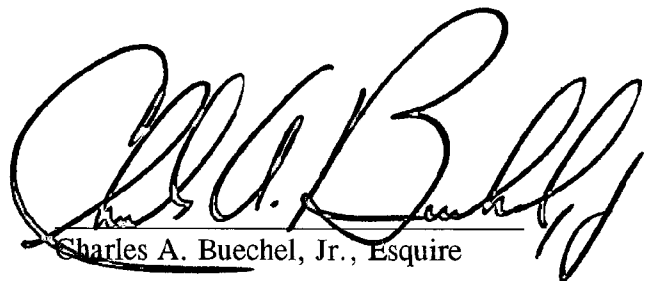
  
Charles A. Buechel, Jr.  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Notice of Service of Defendant's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff Lyudmila Garbuzov was served upon the following parties of record on this 13<sup>th</sup> day of November, 2001 by United States mail, first-class, postage prepaid:

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1900 Delancey Place  
Philadelphia, PA 19103



  
Charles A. Buechel, Jr., Esquire

ANAPOL, SCHWARTZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.

BY: LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE  
I.D. NO.: 30546, 80914

1900 Delancey Place  
Philadelphia, PA 19103  
(215) 790-4567

ATTORNEYS FOR PLAINTIFFS

LYUDMILA GARBUZOV and  
MARK GARBUZOV  
124 Knickerbocker Road  
Cresskill, NJ 07626

v.

KEPHART TRUCKING COMPANY  
P.O. Box 386  
Bigler, PA 16825

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PA

CIVIL DIVISION

NO. 01-478-CO

**FILED**

NOV 2 1 2001

William A. Shaw  
Prothonotary

**PLAINTIFFS' RESPONSE TO DEFENDANT, KEPHART  
TRUCKING COMPANY'S, NEW MATTER**

9. No responsive pleading is required to Defendant's assertion.
10. Denied as a conclusion of law to which no responsive pleading is required.
11. Denied as a conclusion of law to which no responsive pleading is required.
12. Denied as a conclusion of law to which no responsive pleading is required.
13. Denied as a conclusion of law to which no responsive pleading is required.
14. Denied. By way of further answer, Plaintiffs have sustained serious injuries.
15. Denied as a conclusion of law to which no responsive pleading is required.

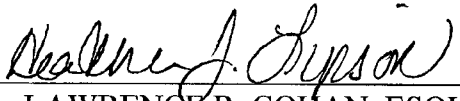
16. Denied as a conclusion of law to which no responsive pleading is required.

17. Denied as a conclusion of law to which no responsive pleading is required.

WHEREFORE, Plaintiffs, Mark Garbuzov and Lyudmila Garbuzov, demand judgment in their favor and against Defendant, Kephart Trucking Company.

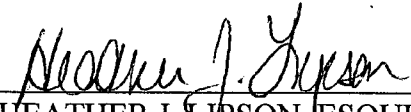
Respectfully submitted,

ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.

BY:   
\_\_\_\_\_  
LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE  
Attorneys for Plaintiffs

VERIFICATION

HEATHER J. LIPSON, ESQUIRE, hereby states that she is the attorney for the Plaintiffs and verifies that the statements made in Plaintiffs' Response to Defendant, Kephart Trucking Company's, New Matter are true and correct to the best of her knowledge, information and belief. The undersigned understands that the statement therein is made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

  
HEATHER J. LIPSON, ESQUIRE

DATED: 11/20/01

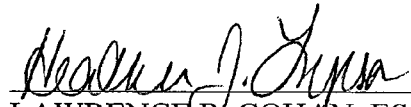
**CERTIFICATE OF SERVICE**

I, HEATHER J. LIPSON, ESQUIRE, hereby certify that I have served a true and correct copy of Plaintiffs' Response to Defendant, Kephart Trucking Company's, New Matter on the following counsel by placing same in the United States mail, postage prepaid, on the 20th day of November, 2001.

Charles A. Buechel, Jr., Esquire  
Grogan, Graffam, & McGinley  
Three Gateway Center, 22<sup>nd</sup> Floor  
Pittsburgh, PA 15222-1009

ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.

BY:



LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE



CA

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

MARK GARBUZOV and LYUDMILA  
GARBBUZOV,

Plaintiffs,

vs.

KEPHART TRUCKING COMPANY,

Defendant.

CIVIL DIVISION

Case No.: 01-478-CD

**MOTION FOR AN ENTRY OF  
JUDGMENT FOR NON PROS  
AND PROPOSED ORDER**

Filed on behalf of Defendant:  
Kephart Trucking Company

Counsel of Record for this Party:

Charles A. Buechel, Esquire  
Pa. I.D. #18010

GROGAN GRAFFAM, P.C.  
Firm I.D. No. 072

Four Gateway Center  
12<sup>th</sup> Floor  
Pittsburgh, PA 15222

Telephone No.: 412-553-6300  
Fax No.: 412-642-2601

File No. 53960/00004

**FILED**

FEB 25 2005

W/ 2:30/W  
William A. Shaw

Prothonotary/Clerk of Courts

no CFM copy

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

MARK GARBUZOV and LYUDMILA	::	CIVIL DIVISION
GARBUZOV,	::	
	::	Case No.: 01-478-CD
Plaintiffs,	::	
	::	
vs.	::	
	::	
KEPHART TRUCKING COMPANY,	::	
	::	
	::	
Defendant.	::	

**MOTION FOR AN ENTRY OF JUDGMENT FOR NON PROS**

Defendant, KEPHART TRUCKING COMPANY (alternatively “Defendant” and “Kephart Trucking”), by and through its attorneys, the law firm of Grogan Graffam, P.C., respectfully moves this Honorable Court for an entry of Judgment for Non Pros and, in support thereof, states as follows:

1. On or about April 6, 2001, Plaintiffs, Mark and Lyudmila Garbuzov (hereafter “Plaintiffs”) initiated this action by filing a negligence Complaint in the Court of Common Pleas, Clearfield County, Pennsylvania.
2. In response to Plaintiff’s Complaint, Defendant filed an Answer and New Matter on November 11, 2001.
3. Defendant filed a Notice of Service of Interrogatories and Requests for Production of Documents Directed to Plaintiffs on November 16, 2001.
4. Plaintiffs filed their Reply to New Matter on November 20, 2001, the *last docketed activity* in this matter.

5. Defendant's counsel requested by letter dated March 22, 2002 (attached hereto as Exhibit "A") that Plaintiffs respond to the Requests for Production of Documents and Interrogatories, as well as provide medical record authorizations. Though plaintiffs provided medical authorizations, to date Plaintiffs have not responded to Defendant's Request for Production of Documents and Interrogatories.

6. There has been no docket activity in this case for over three (3) years (since November 20, 2001). Defendant Kephart Trucking Company respectfully moves this Court to exercise its authority to enter a judgment of non pros for failure to prosecute pursuant to Clearfield County Local Rule 319 and subparts (a),(b),(c), and (d), which provide for the termination of inactive civil cases. Counsel for Defendant was informed by the Clearfield County Prothonotary's Office that, due to computer system changes, the inactive list has not been maintained for several years. Defendant files this Motion for Judgment for Non Pros as a result.

**WHEREFORE**, Defendant Kephart Trucking Company respectfully requests that this Honorable Court grant its Motion for an Entry of Judgment for Non Pros. Defendant submits the accompanying Brief in support of his Motion.

Respectfully Submitted:

GROGAN GRAFFAM P.C.

By:

Charles A. Buechel, Esquire  
Counsel for Defendant

**GROGAN  
&  
GRAFFAM**

A PROFESSIONAL CORPORATION

March 22, 2002

Charles A. Buechel, Jr.  
Phone: 412-553-6383  
Fax: 412-553-6702  
E-mail: cbuechel@ggml.com

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103

RE: Mark Garbuzov and Lyudmila Garbuzov v. Kephart Trucking Company  
No. 01-478-CO {Clearfield County}  
Our File: 53960/00004

Dear Ms. Lipson:

In our recent telephone conversation, I neglected to bring up the fact that back on November 13, 2001, I served you with Interrogatories, a Request for Production of Documents, and authorizations to be executed by your clients.

As of this date, I do not have any responses to those discovery materials. Considerable time has past and our efforts in evaluating this case are greatly limited as a result of not having the materials and/or information, which have been requested.

Would you kindly get back to me with your answers, reply/response, and properly executed authorizations within the next two weeks.

If I do not hear from you, I will have no recourse than to file a Motion to Compel with the Court in Clearfield County.

Very truly yours,

Grogan & Graffam, P.C.

Charles A. Buechel, Jr.

CAB/mmk

THREE GATEWAY CENTER  
412-553-6300

PHILADELPHIA, PA 15222-1009  
GGML.COM

(53960-00004 W00R1851.1)

EXHIBIT

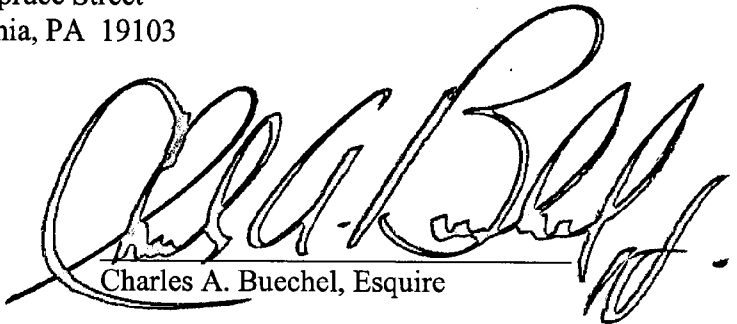
A

tabbles

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**Motion for an Entry of Judgment for Non Pros** was served on below counsel of record  
this 23<sup>rd</sup> day of February, 2005, via U.S. mail, postage prepaid.

Heather J. Lipson, Esquire  
ANAPOL, SCHWATZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103



Charles A. Buechel, Esquire

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

MARK GARBUZOV and LYUDMILA  
GARBBUZOV,

Plaintiffs,

vs.

KEPHART TRUCKING COMPANY,

Defendant.

CIVIL DIVISION

Case No.: 01-478-CD

**PRAECIPE FOR ARGUMENT DATE**

Filed on behalf of Defendant:  
Kephart Trucking Company

Counsel of Record for this Party:

Charles A. Buechel, Esquire  
Pa. I.D. #18010

GROGAN GRAFFAM, P.C.  
Firm I.D. No. 072

Four Gateway Center  
12<sup>th</sup> Floor  
Pittsburgh, PA 15222

Telephone No.: 412-553-6300  
Fax No.: 412-642-2601

File No. 53960/00004

**FILED**  
FEB 25 2005  
m/2:30/  
William A. Shaw  
Prothonotary/Clerk of Courts  
NO CLERK COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiffs,

vs.

KEPHART TRUCKING COMPANY,

Defendant.

:: CIVIL DIVISION

::

:: Case No.: 01-478-CD

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**PRAECIPE FOR ARGUMENT DATE**

TO: PROTHONOTARY

Kindly schedule the next available argument date for Defendant, Kephart Trucking  
Company's Motion for an Entry of Judgment of Non Pros.

Respectfully Submitted:

GROGAN GRAFFAM, P.C.

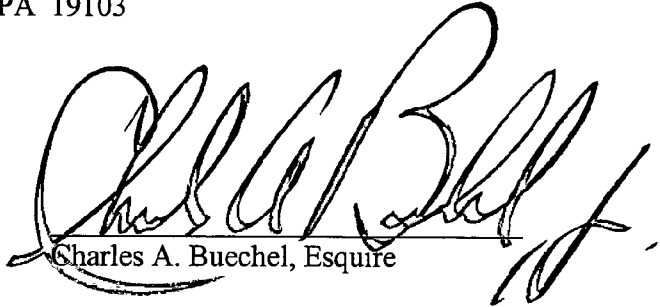
By:

Charles A. Buechel, Esquire  
Counsel for Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing  
**Praecipe for Argument Date** was served on below counsel of record this 23<sup>rd</sup> day of  
February, 2005, via U.S. mail, postage prepaid.

Heather J. Lipson, Esquire  
ANAPOL, SCHWATZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103



Charles A. Buechel, Esquire



CA

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

MARK GARBUZOV and LYUDMILA :  
GARBUZOV :

vs. :

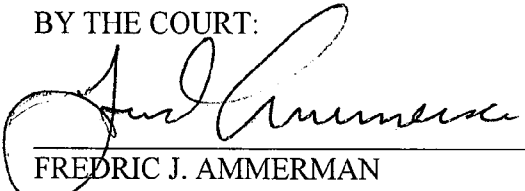
: No. 01-478-CD  
:

KEPHART TRUCKING COMPANY :

**ORDER**

AND NOW, this 28 day of February, 2005, it is the  
Order of the Court that argument on Defendant's Motion for an Entry of Judgment  
for Non Pros filed in the above-captioned matter has been scheduled for the 21  
day of March, 2005, at 1:30 P.M, in Courtroom No.  
1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

(LK) 10:43 AM 266 to 267 w memo  
MAR 01 2005

William A. Shaw  
Prothonotary

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

MARK GARBUZOV and LYUDMILA  
GARBBUZOV,

Plaintiffs,

vs.

KEPHART TRUCKING COMPANY,

Defendant.

CIVIL DIVISION

Case No.: 01-478-CD

**AFFIDAVIT OF SERVICE**

Filed on behalf of Defendant:  
Kephart Trucking Company

Counsel of Record for this Party:

Charles A. Buechel, Esquire  
Pa. I.D. #18010

GROGAN GRAFFAM, P.C.  
Firm I.D. No. 072

Four Gateway Center  
12<sup>th</sup> Floor  
Pittsburgh, PA 15222

Telephone No.: 412-553-6300  
Fax No.: 412-642-2601

File No. 53960/00004

**FILED** NO CC  
m/12:02/01  
MAR 11 2005 (62)  
William A. Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiffs,

vs.

KEPHART TRUCKING COMPANY,

Defendant.

:: CIVIL DIVISION  
::  
:: Case No.: 01-478-CD  
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**AFFIDAVIT OF SERVICE**

TO: PROTHONOTARY

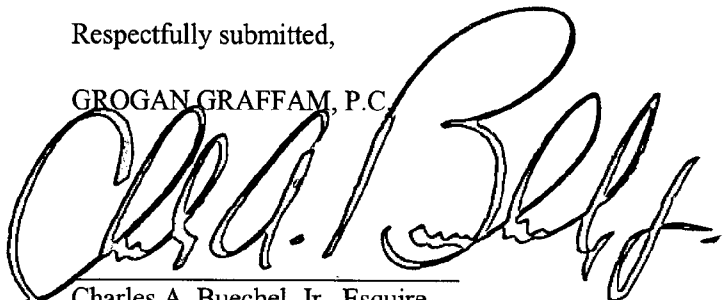
Before me, the undersigned authority, in and for the above-named County and Commonwealth, personally appeared Charles A. Buechel, Jr., Esquire, who first being duly sworn according to law, deposes and says that he served true and correct copies of the Motion for Entry of Judgment of Non Pros, Brief in Support and Order of Judge Frederic Ammerman dated 2/28/05 and received by the law office of Grogan Graffam on 3/7/05 on counsel for Plaintiff Heather J. Lipson, Esquire as evidenced by copy of correspondence dated March 9, 2005 attached hereto as Exhibit "A".

Sworn and subscribed before me  
this 9<sup>th</sup> day of March, 2005.

Respectfully submitted,

GROGAN GRAFFAM, P.C.

  
Notary Public

  
Charles A. Buechel, Jr., Esquire  
Attorneys for Defendant

{53960-00004 W0143019.1}

Notarial Seal  
Jane M. McGovern, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires Nov. 18, 2006  
Member, Pennsylvania Association Of Notaries

**GROGAN  
GRAFFAM**

A PROFESSIONAL CORPORATION

March 9, 2005

Charles A. Buechel, Jr.  
Phone: 412-553-6383  
Fax: 412-553-6702  
E-mail: cbuechel@ggml.com

Heather J. Lipson, Esquire  
Anapol, Schwartz, Weiss, Cohan  
Feldman & Smalley, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103

RE: Mark Garbuzov and Lyudmila Garbuzov v. Kephart Trucking Company  
No. 01-478-CO {Clearfield County}  
Our File: 53960/00004

Dear Ms. Lipson:

Pursuant to Clearfield County Rules of Civil Procedure 206, enclosed please find copies of the following:

1. Motion for Entry of Judgment of Non Pros and Brief;
2. Order of Court signed by Judge Frederic J. Ammerman, President Judge scheduling argument on this matter for March 21, 2005 at 1:30 p.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA; and
3. Affidavit of Service.

If you have any questions in regard to the above, please don't hesitate to contact me.

Very truly yours,

Grogan Graffam, P.C.

Charles A. Buechel, Jr.

CAB/dap

Enclosures



GROGAN GRAFFAM, P.C.

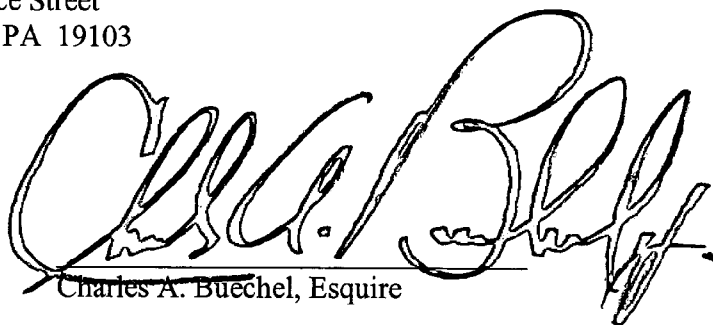
FOUR GATEWAY CENTER, 12TH FLOOR, PITTSBURGH, PA 15222  
412-553-6300 FAX: 412-642-2601 www.grogangraffam.com

ATTORNEYS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**Affidavit of Service** was served on below counsel of record this 9<sup>th</sup> day of March, 2005,  
via U.S. mail, postage prepaid.

Heather J. Lipson, Esquire  
ANAPOL, SCHWATZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103



Charles A. Buechel, Esquire

ANAPOL, SCHWARTZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
BY: LAWRENCE R. COHAN, ESQUIRE  
HEATHER J. LIPSON, ESQUIRE  
I.D. NO.: 30546, 80914

1710 Spruce Street  
Philadelphia, PA 19103  
(215) 790-4551

FILED <sup>NO</sup>cc  
m110:3701  
MAR 14 2005 (6)

William A. Shaw  
Prothonotary/Clerk of Courts

ATTORNEYS FOR PLAINTIFFS

MARK GARBUZOV and  
LYUDMILA GARBUZOV

v.

KEPHART TRUCKING COMPANY

: COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY, PA  
:  
: CIVIL DIVISION  
:  
: NO. 01-478-CO

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION  
FOR AN ENTRY OF JUDGMENT FOR NON PROS**

Plaintiffs, Mark Garbuzov and Lyudmila Garbuzov, by and through their attorneys, Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, P.C., hereby come and respond to defendant, Kephart Trucking Company's, Motion for an Entry of Judgment for Non Pros as follows:

1. Admitted.
2. Admitted.
3. Admitted in part, denied in part. It is admitted that there has been no docket activity since late November, 2001. However, there are compelling circumstances which exist involving the health of plaintiff, Mark Garbuzov and the separation and ultimate divorce of the parties, which caused a delay in this claim..
4. Admitted.
5. Admitted in part, denied in part. Plaintiffs have in fact responded to defendant's Request for Production of Documents and Interrogatories and in response thereto, have supplied the defendant with all of the medical records that are in plaintiffs'

possession and which are in fact, all that exist in this matter. Please see correspondence attached hereto as Exhibit "A".

6. Admitted in part, denied in part. It is admitted that there has been no docket activity since late November 2001. However, all of plaintiffs' responses to defendant's Request for Production of Documents and Interrogatories, along with all of the medical records in this matter have been provided to defendant. Additionally, plaintiffs have propounded Request for Production of Documents and Interrogatories upon defendant and have also given the defendant available dates for the deposition of plaintiffs. Please see correspondence attached hereto as Exhibit "B".


Pursuant to Clearfield County Local Rule 319(b), an order will be entered terminating the case unless some action is taken before the General Call or good cause is shown as to why the case should not be terminated. In this case there has been a substantial amount of activity that has occurred which include Plaintiffs' Responses to Defendant's Request for Production of Documents and Interrogatories, plaintiffs propounding Request for Production of Documents and Interrogatories upon defendant and plaintiffs' providing defendant with several available dates upon which to take the depositions of plaintiffs. Additionally, this delay has been the result of health problems on the part of plaintiff, Mark Garbuzov and the subsequent separation and ultimate divorce between the parties.

WHEREFORE, plaintiffs respectfully request that this Honorable Court deny defendant, Kephart Trucking Company's Motion for an Entry of Judgment of Non Pros.

Respectfully submitted,

ANAPOL SCHWARTZ WEISS COHEN  
FELDMAN & SMALLEY, P.C.

BY:

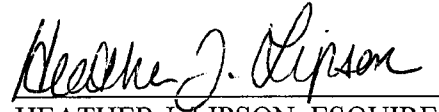
  
HEATHER J. LIPSON, ESQUIRE  
Attorney for Plaintiffs



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing  
**Plaintiffs' Response to Defendant's Motion for An Entry of Judgment for Non Pros**  
was served on below counsel of record this 11<sup>th</sup> day of March 11, 2005, via U.S. aml,  
postage prepaid.

Charles A. Buechel, Jr., Esquire  
Grogan Graffam, P.C.  
Four Gateway Center  
12<sup>th</sup> Floor  
Pittsburgh, PA 15222

  
HEATHER J. LIPSON, ESQUIRE





**ANAPOL  
SCHWARTZ**

ATTORNEYS AT LAW

ANAPOL, SCHWARTZ, WEISS, COHAN, FELDMAN & SMALLEY, P.C.

**HEATHER LIPSON, ESQUIRE**

1710 SPRUCE STREET  
PHILADELPHIA, PA 19103  
HLIPSON@ANAPOLSCHWARTZ.COM

DIRECT DIAL (215) 790-4551, FAX (215) 875-7717

March 2, 2005

Charles A. Buechel, Jr., Esquire  
Grogan Graffam, P.C.  
Four Gateway Center, 12<sup>th</sup> Floor  
Pittsburgh, PA 15222

Re: **Garbuzov v. Kephart Trucking Company**  
**No. 01-478-CO (Clearfield County)**  
**Your File No.: 53960/00004**

Dear Mr. Buechel:

Enclosed herein are Plaintiffs' Responses to Defendant's Request for Production of Documents and Plaintiffs' Responses to Defendant's Interrogatories in reference to the above captioned matter.

Very truly yours,

HEATHER J. LIPSON

HJL/tmm  
Enclosures

1900 Delancey Place  
Philadelphia, PA 19103

1710 Spruce Street  
Philadelphia, PA 19103

1040 Kings Hwy. North, Suite 304  
Cherry Hill, NJ 08034

146 N. 6th Street  
Reading, PA 19601

334 W. Front Street  
Media, PA 19063

920 Trenton Road  
Fairless Hills, PA 19030

355 W. Lancaster Ave., Suite E  
Haverford, PA 19041

WWW.ANAPOLSCHWARTZ.COM  
MAIN TEL. 215-735-1130 or TOLL FREE 866-735-ASWC (2792)





ANAPOL, SCHWARTZ, WEISS, COHAN, FELDMAN & SMALLEY, P.C.

HEATHER LIPSON, ESQUIRE  
1710 SPRUCE STREET  
PHILADELPHIA, PA 19103  
HLIPSON@ANAPOLSCHWARTZ.COM

DIRECT DIAL (215) 790-4551, FAX (215) 875-7717

March 10, 2005

Charles A. Buechel, Jr., Esquire  
Grogan Graffam, P.C.  
Four Gateway Center  
12<sup>th</sup> Floor  
Pittsburgh, PA 15222

Re: Mark and Lyudmila Garbuzov v. Kephart Trucking Company  
Your File No.: 53960/00004

Dear Mr. Buechel:

Enclosed please find Plaintiffs' Request for Production of Documents and Interrogatories. Kindly respond within the time period set forth in the Rules of Court. Additionally, please be advised that plaintiffs are available on the following dates for depositions: May 5, 2005, May 17, 2005, May 18, 2005, May 23 and 24, 2005.

Thank you for your attention in this regard.

Very truly yours,

HEATHER J. LIPSON

HJL/tmm  
Enclosures

1900 Delancey Place  
Philadelphia, PA 19103

1710 Spruce Street  
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1040 Kings Hwy. North, Suite 304  
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CP

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARK GARBUZOV and  
LYUDMILA GARBUZOV

-VS-

KEPHART TRUCKING COMPANY

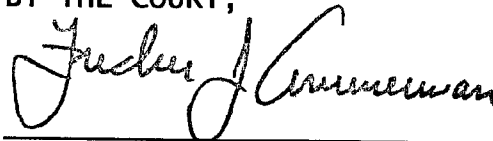
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No. 01-478-CD

O R D E R

NOW, this 21st day of March, 2005, following argument on the Motion for an Entry of Judgment for Non Pros filed on behalf of the Defendant; oral argument having been presented to the Court, it is the ORDER of this Court that said Motion be and is hereby dismissed, without prejudice to the Defendant to refile the same should it appear through the Discovery process that actual prejudice has been incurred.

BY THE COURT,



President Judge

**FILED**

01/9:11/05  
MAR 23 2005

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:  
L. Cohan  
H. Lipson  
C. Buechel  
(6K)

Date: 03/30/2005

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 12:17 PM

ROA Report














Page 1 of 1

Case: 2001-00478-CD

Current Judge: Fredric Joseph Ammerman

Mark Garbuzov, Lyudmila Garbuzov vs. Kephart Trucking Company

Civil Other

Date		Judge
04/06/2001	 Filing: Civil Complaint Paid by: Lawrence Cohan, Esquire Receipt number: 1823210 Dated: 04/06/2001 Amount: \$80.00 (Check) One CC to Sheriff	No Judge
04/16/2001	 Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/30/2001	 Praecipe for Appearance, on behalf of the Defendant. s/Charles A. Bucchel, Jr., Esq. Certificate of Service no cc	No Judge
11/08/2001	 Answer and New Matter. Filed by s/Charles A. Buechel, Jr., Esq. no cc Cert of Svc	No Judge
11/16/2001	 Notice of Service of Defendant's First Set of Interrogatories and Request for Production of Documents directed to Plaintiff, Mark Garbuzov, filed by s/Charles A. Buechel, Jr., Esq. No CC	No Judge
	 Notice of Service of Defendant's First Set of Interrogatories and Request for Production of Documents directed to Plaintiff, Lyudmila Garbuzov, filed by s/Charles A. Buechel, Jr., Esq. No CC	No Judge
11/21/2001	 Plaintiffs' Response to Defendant, Kephart Trucking Company's, New Matter. Filed by s/Heather J. Lipson, Esq. Verification. s/Heather J. Lipson, Esq. Cert of Svc 1 cc to Atty	No Judge
02/25/2005	 Motion For An Entry of Judgment For Non Pros and Proposed Order, filed by Atty. Buechel no cert. copies.	No Judge
	 Praecipe for Argument filed by Atty. Buechel no cert. copies.	No Judge
03/01/2005	 Order, AND NOW, this 28th day of Feb., 2005, it is the Order of the Court that argument on Def. motion for an Entry of judgment for Non Pros filed in the above -caption matter has been scheduled for the 21 day of March, 2005; at 1:30 p.m in Courtroom No. 1, Clfd. co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC to Atty w/memo	Fredric Joseph Ammerman
03/11/2005	 Affidavit of Service filed. Copies of Motion For Entry of Judgment of Non Pros, Brief in Support and Order of 2/28/05, upon counsel for Plaintiff on 3/7/05.	Fredric Joseph Ammerman
03/14/2005	 Plaintiffs' Response to Defendant's motion For an Entry Of Judgment For Non Pros. filed by s/ Heather J. Lipson, Esquire. No CC	Fredric Joseph Ammerman
03/23/2005	 Order, NOW, this 21st day of March, 2005, it is the ORDER of this Court that Motion for an Entry of Judgment for Non Pros filed on behalf of the Defendant is Dismissed, without prejudice. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. 1CC Attys L. Cohan, H. Lipson, C. Buechel	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBUZOV,

Plaintiffs,

v.

KEPHART TRUCKING COMPANY,

Defendant.

) CIVIL DIVISION

) No. 01-478-CO

) Code:

) NOTICE OF SERVICE OF  
) DEFENDANT KEPHART TRUCKING  
) COMPANY'S RESPONSE TO  
) PLAINTIFFS' FIRST REQUEST FOR  
) PRODUCTION OF DOCUMENTS

) Filed on behalf of Defendant,  
) Kephart Trucking Company

) Counsel of Record for this Party:

) Charles A. Buechel, Jr., Esquire  
) Pa. I.D. # 18010

) GROGAN GRAFFAM, P.C.  
) Firm I.D. No. 072  
) Four Gateway Center  
) 12<sup>th</sup> Floor Floor  
) Pittsburgh, PA 15222  
) (412) 553-6300

53960/00004

FILED <sup>no cc</sup>  
m/11:25/11  
APR 11 2005 (W)

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK GARBUZOV and LYUDMILA	)	CIVIL DIVISION
GARBUZOV,	)	
	)	No. 01-478-CO
Plaintiffs,	)	
	)	
v.	)	
	)	
KEPHART TRUCKING COMPANY,	)	
	)	
Defendant.	)	

**NOTICE OF SERVICE OF DEFENDANT KEPHART TRUCKING COMPANY'S  
RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

I, Charles A. Buechel, Jr., Esquire, hereby certify that Defendant Kephart Trucking Company's Response to Plaintiff's First Request for Production of Documents Directed to Plaintiff were served upon counsel for Plaintiff this 8<sup>th</sup> day of April, 2005, addressed as follows:

Heather J. Lipson, Esquire  
ANAPOL, SCHWATZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103

Respectfully submitted:

GROGAN GRAFFAM, P.C.

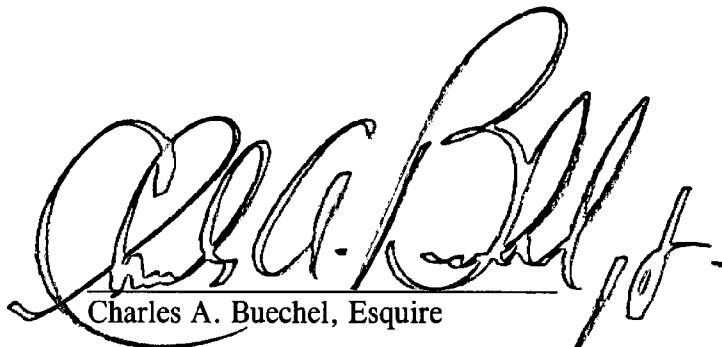
By: 

Charles A. Buechel, Jr.

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing  
**DEFENDANT KEPHART TRUCKING COMPANY'S RESPONSE TO PLAINTIFFS'**  
**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was served on below counsel  
of record this 8<sup>th</sup> day of April, 2005, via U.S. mail, postage prepaid.

Heather J. Lipson, Esquire  
ANAPOL, SCHWATZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103



Charles A. Buechel, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

MARK GARBUZOV and LYUDMILA  
GARBBUZOV,

Plaintiffs,

vs.

KEPHART TRUCKING COMPANY,

Defendant.

CIVIL DIVISION

Case No.: 01-478-CD

**BRIEF IN SUPPORT OF MOTION  
FOR AN ENTRY OF JUDGMENT  
FOR NON PROS**

Filed on behalf of Defendant:  
Kephart Trucking Company

Counsel of Record for this Party:

Charles A. Buechel, Esquire  
Pa. I.D. #18010

GROGAN GRAFFAM, P.C.  
Firm I.D. No. 072

Four Gateway Center  
12<sup>th</sup> Floor  
Pittsburgh, PA 15222

Telephone No.: 412-553-6300  
Fax No.: 412-642-2601

File No. 53960/00004

RECEIVED

FEB 25 2005

COURT ADMINISTRATOR'S  
OFFICE

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

MARK GARBUZOV and LYUDMILA	::	CIVIL DIVISION
GARBUZOV,	::	
	::	Case No.: 01-478-CD
Plaintiffs,	::	
	::	
vs.	::	
	::	
KEPHART TRUCKING COMPANY,	::	
	::	
Defendant.	::	

**BRIEF IN SUPPORT**

Defendant, KEPHART TRUCKING COMPANY (alternatively “Defendant” and “Kephart Trucking”), by and through his attorneys, the law firm of Grogan Graffam, P.C., files the following Brief in Support of his Motion for Entry of Judgment for Non-Pros:

**Factual Summary**

On or about April 6, 2001, Plaintiffs, Mark and Lyudmila Garbuzov (hereafter “Plaintiffs”) initiated this action by filing a Complaint in the Court of Common Pleas, Clearfield County, Pennsylvania. Plaintiff’s Complaint stems from an automobile accident. In response to Plaintiff’s Complaint, Defendant filed an Answer and New Matter on November 11, 2001. Defendant then filed a Notice of Service of Interrogatories and Requests for Production of Documents Directed to Plaintiffs on November 16, 2001. Plaintiffs filed their Reply to New Matter on November 20, 2001. There has been no subsequent docket activity in this matter in approximately three (3) years.

Defendant's counsel requested by letter dated March 22, 2002 (attached hereto as Exhibit "A") that Plaintiffs respond to the Requests for Production of Documents and Interrogatories, as well as provide medical record authorizations. To date Plaintiffs have not responded to Defendant's discovery requests.

### **Argument**

"To dismiss a case for inactivity, there must be a lack of due diligence on the part of the plaintiff in failing to proceed with reasonable promptitude. Second, the plaintiff must have no compelling reason for the delay. Finally, the delay must cause actual prejudice to the defendant." Shope v. Eagle, 710 A.2d 1105, 1107 (Pa.1998).

Where there has been a lack of due diligence to prosecute a case (evidenced by a long period of docket inactivity), plaintiff must provide a compelling reason for delay to survive a defendant's Motion for Non Pros or a Court-initiated Rule 1901 motion. Examples of compelling reasons for delay include, but are not limited to, non-docketed 'substantive discovery' (i.e., interrogatories, requests for admissions) and events impeding progress which were beyond Plaintiff's control. Hughes v. Fink, Fink & Assoc., 718 A.2d 316, 320 (Pa. Super. 1998).

Compelling reasons for a delay are determined on a case by case basis. Marino v. Hackman, et al., 710 A.2d 1108, 1111 (Pa.1998). It is a "well established rule that it is the plaintiff's responsibility to move the case forward ... and the plaintiff bears the risk of judgment of non pros if he fails to act within a reasonable time to prosecute his case." Hughes, 718 A.2d at 320. In the instant case, Plaintiffs have let over three (3) years pass without even a discovery request. Surely, if Plaintiffs were concerned about this action, they would have taken some steps in furtherance of this case. As far as Defendant is

aware, Plaintiffs have no compelling reason for his failure to actively prosecute this case for a period of over three (3) years.

There can be no question that a delay of three (3) years in a personal injury action prejudices the Defendant. In that course of time, pertinent medical records may be lost and memories of witnesses may fade. Besides the obvious aggravation, anxiety and expense of having a litigation pending, the fact that this case remains unresolved necessitates the continued services of legal representation.

### **Conclusion**

Plaintiffs clearly have no intention of proceeding with this case or they would have attempted to prosecute their case in some manner in the past three (3) years. There is no compelling reason for the Plaintiffs' delay. It is Plaintiffs' responsibility to pursue their case, and yet Defendant, Kephart Trucking Company, is the party expending time, energy, legal costs, and resources to bring this case to a conclusion. Plaintiffs' lack of due diligence, failure to provide a compelling reason for delay, and the continuing prejudice to Defendant warrant an entry of Judgment for Non Pros in this case.

Respectfully Submitted:

GROGAN GRAFFAM, P.C.

By:

Charles A. Buechel, Esquire  
Counsel for Defendant

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

MARK GARBUZOV and LYUDMILA	::	CIVIL DIVISION
GARBUZOV,	::	
	::	Case No.: 01-478-CD
Plaintiffs,	::	
	::	
vs.	::	
	::	
KEPHART TRUCKING COMPANY,	::	
	::	
	::	
Defendant.	::	

**ORDER OF THE COURT**

AND NOW, to-wit, this \_\_\_\_ day of \_\_\_\_\_, 2005, for good cause shown, Defendant's Motion for Entry of Judgment for Non Pros is GRANTED in the above-captioned case. It is hereby ORDERED, ADJUDGED, and DECREED that a Judgment of Non Pros is entered against Plaintiff and in favor of Defendant.

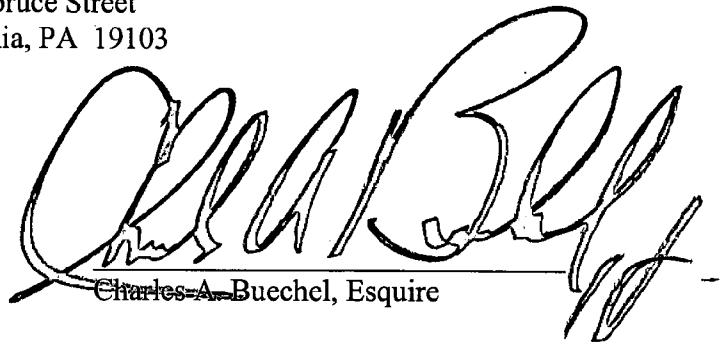
BY THE COURT:

\_\_\_\_\_, J.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **Brief in Support of Motion for an Entry of Judgment for Non Pros** was served on below counsel of record this 23<sup>rd</sup> day of February, 2005, via U.S. mail, postage prepaid.

Heather J. Lipson, Esquire  
ANAPOL, SCHWATZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.  
1710 Spruce Street  
Philadelphia, PA 19103



Charles A. Buechel, Esquire



## Notice of Proposed Termination of Court Case

March 2, 2012

RE: 2001-00478-CD

Mark Garbuzov  
Lyudmila Garbuzov

Vs.

Kephart Trucking Company

FILED

MAR 02 2012

William A. Shaw  
Prothonotary/Clerk of Courts *GK*

To All Parties and Counsel:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **May 2, 2012**.

**If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.**

By the Court,

*F. Cortez Bell III*

F. Cortez Bell, III, Esq.  
Court Administrator

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

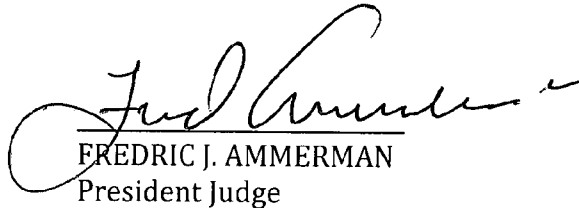
MARK GARBUZOV and LYUDMILA GARBUZOV  
Plaintiffs  
vs.  
KEPHART TRUCKING COMPANY  
Defendant

\* NO. 2001-478-CD  
\*  
\*  
\*  
\*

**ORDER**

NOW, this 28<sup>th</sup> day of February, 2013, upon the Court's review of the record, with the Court noting from the docket there has been no activity in the case since April 11, 2005, and that a Notice of Proposed Termination of Court Case had been mailed to the parties March 2, 2012 with no response having been received, pursuant to the provisions of Rule of Judicial Administration 1901 the case is hereby DISMISSED for inactivity. The Prothonotary shall code the case in Full Court as Z-1901A.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

5  
FILED 1cc Atty's.  
01/8:30am C. Buechel  
MAR 4 2013 L. Cohan

William A. Shaw  
Prothonotary/Clerk of Courts