

01-529-CD  
JOSHUA HESS -vs- BRIAN SCOTT LEIGEX et al

# FILED

APR 21 2005

(6K)

0/1:306 hrs  
William A. Shaw  
Prothonotary

709 340 6602  
0016 9100 004E 6602  
0882 7880 6123

U.S. Postal Service	
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Postage	\$12.65
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
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600 Grant Building	
City, State, ZIP+4	
Pittsburgh, PA 15219	
PS Form 3800, February 2000	
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\*\*\* ACTIVITY REPORT \*\*\*

Apr.21 '05 1:28

Tx. TOTAL PAGES 008066  
Rx. TOTAL PAGES 003312  
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1. Article Addressed to: <i>Superior Court of PA  Office of the Prothonotary  600 Grant Building  Pittsburgh, PA 15219</i>		B. Received by (Printed Name)	C. Date of Delivery <i>4-22</i>
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
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*01-101764* (62)  
**APR 25 2005**  
William A. Shaw  
Prothonotary/Clerk of Courts



COPY

April 21, 2005

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

Re: Joshua Hess, an adult individual  
Vs.  
Brian Scott Leigey, an adult individual;  
Judy Fusco, an adult individual; Dean Robert  
Owens, an adult individual; Catherine Owens,  
an adult individual; Christopher Smith, an  
adult individual; and Wendy Owens, an  
adult individual  
No. 01-529-CD  
Superior Court No. 487 WDA 2005  
Prior Superior Court No. 1110 WDA 2004

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed twenty-six transcripts and depositions under separate cover and listed on a separate cover index.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

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

Theron G. Noble, Esq.  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

Mary Lou Maierhofer  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Dennis J. Stofko  
PO Box 5500  
Johnstown, PA 15904

Joshua Hess, an adult individual

Vs.

Brian Scott Leigey, an adult individual;  
Judy Fusco, an adult individual; Dean Robert  
Owens, an adult individual; Catherine Owens,  
an adult individual; Christopher Smith, an  
adult individual; and Wendy Owens, an  
adult individual

Court No. 01-529-CD; Superior Court No. 487 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on April 21, 2005.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Date: 04/21/2005

## Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:45 AM

ROA Report

Page 1 of 5

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

## Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001	Praeipce for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brain Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.
	Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr.

Date: 04/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:45 AM

ROA Report

Page 2 of 5

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed	John K. Reilly Jr.
	Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr.
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G.Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certificate of Service no cc	John K. Reilly Jr.

Date: 04/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:45 AM

ROA Report

Page 3 of 5

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
09/10/2003	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/16/2004	Deposition of Brian Leigey, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Diane Bunk, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Samuel Unch, February 9, 2004, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Kevin Fusco, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Brandon E. Marshall, February 9, 2004, filed.	Fredric Joseph Ammerman

## Civil Other

Date		Judge
04/16/2004	Deposition of Candace C. Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Timothy Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Reaquest for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA, P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is herby denied.	Fredric Joseph Ammerman

Date: 04/21/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:45 AM

ROA Report

Page 5 of 5

Case: 2001-00529-CD

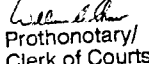
Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

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

APR 21 2005

Civil Other

Date		Attest. Judge	 Prothonotary/ Clerk of Courts
06/28/2004	Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & Noble's check for \$60.00 to Superior Court	Fredric Joseph Ammerman	
07/06/2004	Motion for Reconsideration, filed by s/Dennis J. Stofko, Esq. No CC	Fredric Joseph Ammerman	
07/09/2004	Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	Fredric Joseph Ammerman	
08/03/2004	Letters and copies of index mailed to: Theron G. Noble, Mary Lou Maierhofer, Dennis J. Stofko, and Fredric J. Ammerman, P.J.	Fredric Joseph Ammerman	
	Certified Mail Receipt, filed	Fredric Joseph Ammerman	
	Case records mailed to Superior Court.		
08/06/2004	Domestic Return Receipt, filed.	Fredric Joseph Ammerman	
	Return from Superior Court		
09/30/2004	Certificate of Contents of Remanded Record and Notice of Remand Copy to Superior Ct.	Fredric Joseph Ammerman	
	Order AND NOW, this 18th day of Aug. 2004 upon consideration of the motion to quash appeal and all related papers, it is hereby ORDERED: that said motion is Granted. See Pa.R.A.P. 341: Keefer v. Keefer, Bonner v. Fayne, and Bell v. State Farm Mutual Automobile Ins. Co. Per Curiam" In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh PA this 27th day of Sept. 2004. S/Eleann r. Valecko, Deputy Prothonotary.	Fredric Joseph Ammerman	
01/18/2005	Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey & Fusco, filed by Atty. Noble no cert. copies.	Fredric Joseph Ammerman	
02/04/2005	Rule to Show Cause, filed. Now, this 4th day of Feb., argument set for the 1st day of March, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Noble	Fredric Joseph Ammerman	
02/09/2005	Notice of Service, the 8th day of Feb., 2005, Rule Returnable as to Plaintiff's Petition for leave of court to discontinue Action as To Defendants Leigey and Fusco: upon Dennis J. Stofko, Esquire; Mary Lou Maierhofer, Esquire; and Troy J. Harper, Esquire. No CC	Fredric Joseph Ammerman	
03/01/2005	Order, filed Cert. to Atty's Noble, Maierhofer, Stofko & Harper NOW, this 1st day of March, 2005, RE: Discontinue of Action. Court hereby declares the case is settled as to all defendants not previously dismissed by Motion for Summary Judgment.	Fredric Joseph Ammerman	
03/07/2005	Notice of Service, Order issued as to Plaintiff's Petition for Leave Of Court To Discontinue Action as to Defendants Leigey and Fusco: upon counsels of record on March 4, 2005. No CC	Fredric Joseph Ammerman	
03/16/2005	Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1897634 Dated: 03/16/2005 Amount: \$45.00 (Check)	Fredric Joseph Ammerman	
	Notice of Appeal, filed by s/ Theron G. Noble, Esquire. 1CC & ck for 60.00 to Superior Court	Fredric Joseph Ammerman	
03/28/2005	Appeal Docket Sheet, filed Number 487 WDA 2005	Fredric Joseph Ammerman	
04/21/2005	Appeal Mailed to Superior Court April 21, 2005.	Fredric Joseph Ammerman	

Joshua Hess, an adult individual

Vs.

Brian Scott Leigey, an adult individual, and  
Judy Fusco, an adult individual

Superior Court No. 1110 WDA 2004  
Lower Court No. 01-529-CD

Separate Cover Index

#16	January 23, 2002	Deposition of Judith A. Frusco, Thursday, June 14, 2001, at 9:10 a.m.
#17	January 23, 2002	Deposition of Kevin L. Straw, July 2, 2001, at 9:30 a.m.
#18	January 23, 2002	Deposition of Alen Erskine, September 10, 2001, at 3:00 p.m.
#19	January 23, 2002	Deposition of Misty Jordan, July 2, 2001, at 11:45 a.m.
#20	January 23, 2002	Deposition of Sean Quick, July 2, 2001, at 10:40 a.m.
#21	January 23, 2002	Deposition of Jessica R. Hanes, Thursday, June 14, 2001, at 10:24 a.m.
#24	March 01, 2002	Deposition of Brian Scott Leigey, February 7, 2002, at 10:06 a.m.
#25	March 05, 2002	Deposition of Jessica R Hanes, Thursday, June 14, 2001, at 10:24 a.m.
#26	March 05, 2002	Deposition of Judith A. Fusco, Thursday, June 14, 2001, at 9:10 a.m.
#27	March 05, 2002	Deposition of Misty Jordon, July 2, 2001, at 11:45 a.m.
#28	March 05, 2002	Deposition of Kevin L. Straw, July 2, 2001, at 9:30 a.m.
#29	March 05, 2002	Deposition of Peggy Sue Williams, September 10, 2001, at 4:10 p.m.
#30	March 05, 2002	Deposition of Alen Erskine, September 10, 2001, at 3:00 p.m.
#54	April 16, 2004	Deposition of Brian Leigey, February 9, 2004, at 11:25 a.m.
#55	April 16, 2004	Deposition of Diane Bunk, February 9, 2004, at 3:26 p.m.
#56	April 16, 2004	Deposition of Samuel Unch, February 9, 2004, at 10:25 a.m.
#57	April 16, 2004	Deposition of Kevin Fusco, February 9, 2004, at 3:26 p.m.
#58	April 16, 2004	Deposition of Brandon E. Marshall, February 9, 2004, at 2:20 p.m.
#59	April 16, 2004	Deposition of Candace C. Wisor, February 9, 2004, at 9:00 a.m.
#60	April 16, 2004	Deposition of Timothy Wisor, February 9, 2004, at 9:35 a.m.
#69	May 10, 2004	Deposition of Wendy Owens, December 19, 2002
#70	May 10, 2004	Deposition of Neralie Kephart, December 19, 2002
#71	May 10, 2004	Deposition of Luke Marshall, December 19, 2002, at 9:00 a.m.
#72	May 10, 2004	Deposition of Dean Owens, December 19, 2002
# 73	May 10, 2004	Deposition of Catherine Owens, December 19, 2002
#74	May 10, 2004	Deposition of Timothy Wisor, February 9, 2004, at 9:35 a.m.





# Supreme Court of Pennsylvania

Western District

December 13, 2005

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

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

Mr. William A. Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

RE: Joshua Hess, and Adult Individual, Petitioner  
v.  
Brian Scott Leigey, an Adult Individual,  
Judy Fusco, and Adult Individual, Dean  
R. Owens, an Adult Individual, Catherine  
J Owens, and Adult Individual, Christopher  
Smith an Adult Individual and Wendy Owens,  
an Adult Individual, Respondents  
Superior Docket Number - 487 WDA 2005

Trial Court/Agency Dkt. Number: 01-529-CD

No. 670 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 10, 2005

Disposition:

Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/kao

*[Signature]*  
**FILED** *no cc*  
*mld:5801*  
**DEC 15 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Docket Number: 487 WDA 2005

Superior Court of Pennsylvania

Page 1 of 4

March 23, 2005



Joshua Hess, and adult individual, Appellant

v.

Brian Scott Leifey, an adult individual,  
Judy fusco, and adult individual, Dean  
R. Owens, an adult individual, Catherine  
J Owens, and adult individual, Christopher  
Smith an adult individual and Wendy Owens,  
an adult individual

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 21, 2005

Awaiting Original Record

Record

26 Depos

Journal Number:

Case Category: Civil

CaseType:

Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

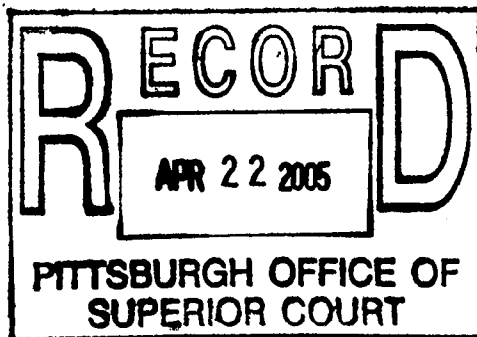
## SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: April 6, 2005

Next Event Type: Original Record Received

Next Event Due Date: May 2, 2005



FILED

MAR 28 2005

William A. Shaw

Prothonotary/Clerk of Courts

**Appeal Docket Sheet****Docket Number: 487 WDA 2005****Superior Court of Pennsylvania****Page 2 of 4****March 23, 2005****COUNSEL INFORMATION****Appellant** Hess, Joshua**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellant Attorney Information:****Attorney:** Noble, Theron G.**Bar No.:** 55942 **Law Firm:** Ferraraccio & Noble**Address:** 301 E Pine Street  
Clearfield, PA 16830**Phone No.:** (814)765-4990 **Fax No.:** (814)765-9377**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Smith, Christopher**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:****Attorney:** Harper, Troy Joseph**Bar No.:** 74753 **Law Firm:** Dennison, Dennison & Harper**Address:** 293 Main Street  
Brookville, PA 15825**Phone No.:** (814)849-8316 **Fax No.:** (814)849-4656**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Leigey, Brian Scott**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:****Attorney:** Maierhofer, Mary Lou**Bar No.:** 62175 **Law Firm:** Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C.**Address:** 120 Lakemont Pk Blvd  
Altoona, PA 16602**Phone No.:** (814)941-4600 **Fax No.:** (814)941-4605**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Fusco, Judy**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:**

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 487 WDA 2005****Page 3 of 4****March 23, 2005**

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Attorney: Stofko, Dennis John  
Bar No.: 27638 Law Firm:  
Address: 969 Eisenhower Blvd  
PO Box 5500  
Johnstown, PA 15904  
Phone No.: (814)262-0064 Fax No.: (814)262-0905  
Receive Mail: Yes  
E-Mail Address: stofkoesq@stofkolaw.com  
Receive E-Mail: No

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**Appellee** Owens, Dean R  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

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**Appellee** Owens, Catherine J  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

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**Appellee** Owens, Wendy  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

## Appeal Docket Sheet

Docket Number: 487 WDA 2005

Page 4 of 4

March 23, 2005

Superior Court of Pennsylvania



Attorney: Harper, Troy Joseph  
 Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
 Address: 293 Main Street  
 Brookville, PA 15825  
 Phone No.: (814)849-8316 Fax No.: (814)849-4656  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/21/05	Notice of Appeal	60.00	60.00	2005SPRWD000350

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: March 1, 2005 Judicial District: 46  
 Date Documents Received: March 21, 2005 Date Notice of Appeal Filed: March 16, 2005  
 Order Type: Order OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.: 01-529-CD  
 President Judge

## 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
March 21, 2005	Notice of Appeal Filed	Appellant	Hess, Joshua
March 23, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

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

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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:

01-529-CD


**Joshua Hess, an adult individual**  
VS.

**Brian Scott Leigey, Judy Fusco, Dean R. Owens, Catherine J. Owens,  
Christopher Smith, and Wendy Owens**

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

The documents comprising the record have been numbered from No. 1 to No. 92, 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 April 21, 2005.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

Date: 04/20/2005

Time: 04:22 PM

Page 1 of 5

Clerk of Field County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

## Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001	Praeipce for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brain Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.
	Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr.

Date: 04/20/2005

Time: 04:22 PM

Page 2 of 5

Cherokee County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed	John K. Reilly Jr.
	Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr.
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G.Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certfcate of Service no cc	John K. Reilly Jr.



## Civil Other

Date		Judge
09/10/2003	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR, JR., P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/16/2004	Deposition of Brian Leigey, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Diane Bunk, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Samuel Unch, February 9, 2004, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Kevin Fusco, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Brandon E. Marshall, February 9, 2004, filed.	Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

## Civil Other

Date		Judge
04/16/2004	Deposition of Candace C. Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Timothy Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Reaquest for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA, P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is herby denied.	Fredric Joseph Ammerman

Date: 04/20/2005

Time: 04:22 PM

Page 5 of 5

Field County Court of Common Pleas

ROA Report

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

User: BHUDSON

Civil Other

Date	Judge
06/28/2004	Fredric Joseph Ammerman
Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & Noble's check for \$60.00 to Superior Court	
07/06/2004	Fredric Joseph Ammerman
Motion for Reconsideration, filed by s/Dennis J. Stofko, Esq. No CC	
07/09/2004	Fredric Joseph Ammerman
Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	
08/03/2004	Fredric Joseph Ammerman
Letters and copies of index mailed to: Theron G. Noble, Mary Lou Maierhofer, Dennis J. Stofko, and Fredric J. Ammerman, P.J.	
	Fredric Joseph Ammerman
Certified Mail Receipt, filed Case records mailed to Superior Court.	
08/06/2004	Fredric Joseph Ammerman
Domestic Return Receipt, filed. Return from Superior Court	
09/30/2004	Fredric Joseph Ammerman
Certificate of Contents of Remanded Record and Notice of Remand Copy to Superior Ct.	
	Fredric Joseph Ammerman
Order AND NOW, this 18th day of Aug. 2004 upon consideration of the motion to quash appeal and all related papers, it is hereby ORDERED: that said motion is Granted. See Pa.R.A.P. 341: Keefer v. Keefer, Bonner v. Fayne, and Bell v. State Farm Mutual Automobile Ins. Co. Per Curiam" In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh PA this 27th day of Sept. 2004. S/Eleann r. Valecko, Deputy Prothonotary.	
01/18/2005	Fredric Joseph Ammerman
Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey & Fusco, filed by Atty. Noble no cert. copies.	
02/04/2005	Fredric Joseph Ammerman
Rule to Show Cause, filed. Now, this 4th day of Feb., argument set for the 1st day of March, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Noble	
02/09/2005	Fredric Joseph Ammerman
Notice of Service, the 8th day of Feb., 2005, Rule Returnable as to Plaintiff's Petition for leave of court to discontinue Action as To Defendants Leigey and Fusco: upon Dennis J. Stofko, Esquire; Mary Lou Maierhofer, Esquire; and Troy J. Harper, Esquire. No CC	
03/01/2005	Fredric Joseph Ammerman
Order, filed Cert. to Atty's Noble, Maierhofer, Stofko & Harper NOW, this 1st day of March, 2005, RE: Discontinue of Action. Court hereby declares the case is settled as to all defendants not previously dismissed by Motion for Summary Judgment.	
03/07/2005	Fredric Joseph Ammerman
Notice of Service, Order issued as to Plaintiff's Petition for Leave Of Court To Discontinue Action as to Defendants Leigey and Fusco: upon counsels of record on March 4, 2005. No CC	
03/16/2005	Fredric Joseph Ammerman
Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1897634 Dated: 03/16/2005 Amount: \$45.00 (Check)	
	Fredric Joseph Ammerman
Notice of Appeal, filed by s/ Theron G. Noble, Esquire. 1CC & ck for 60.00 to Superior Court	
03/28/2005	Fredric Joseph Ammerman
Appeal Docket Sheet, filed Number 487 WDA 2005	

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

APR 20 2005

Attest.

*William B. Shaw*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 01-529-CD

Joshua Hess

VS.

Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
		APPEAL MAILED TO SUPERIOR COURT AUGUST 3, 2004	
83	08/03/04	Certified Mail Receipt	01
84	08/06/04	Domestic Return Receipt	01
85	09/30/04	Certificate of Contents of Remanded Record and Notice of Remand	01
86	09/30/04	Order, Re: Motion to Quash Appeal granted	01
87	01/18/05	Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey and Fusco with Rule filed February 4, 2005 scheduling argument	06
88	02/09/05	Notice of Service	01
89	03/01/05	Order, Re: Discontinuance as to certain Defendants	01
90	03/07/05	Notice of Service	01
91	03/16/05	Notice of Appeal to Superior Court	09
92	03/28/05	Appeal Docket Sheet, Superior Court Number 487 WDA 2005	04

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	04/12/01	Complaint	08
02	04/18/01	Sheriff Return	01
03	04/23/01	Entry of Appearance	01
04	04/30/01	Praecipe for Entry of Appearance	03
05	05/01/01	Answer, New Matter and New Matter Under 2252 (d)	08
06	05/09/01	Plaintiff's Reply to New Matter of Defendant Fusco	04
07	05/17/01	Reply to Defendant, Judy Fusco's Answer, New Matter, and New Matter Under 2252(d)	05
08	05/17/01	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d)	10
09	05/22/01	Reply to New Matter under 2252(d)	03
10	05/23/01	Plaintiff's Reply to New Matter of Defendant Leigey	04
11	05/25/01	Notice of Service, Notice of Deposition	02
12	08/23/01	Notice of Service, Notice of Deposition	01
13	11/06/01	Notice of Service, Plaintiff's First Request for Production of Documents	21
14	12/11/01	Certificate of Service, Response to Request for Production of Documents	02
15	01/23/02	Motion for Summary Judgment	03
16	01/23/02	Transcript of Judith A Fusco, Thursday June 14, 2001 at 9:10 a.m.	Separate Cover
17	01/23/02	Transcript of Kevin L Straw, July 2, 2001, at 9:30 a.m.	Separate Cover
18	01/23/02	Transcript of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
19	01/23/02	Transcript of Misty Jordan, July 2, 2001, at 11:45 a.m.	Separate Cover
20	01/23/02	Transcript of Sean Quick, July 2, 2001, at 10:40 a.m.	Separate Cover
21	01/23/02	Transcript of Jessica R Hanes, Thursday, June 14, 2001, at 10:24 a.m.	Separate Cover
22	02/04/02	Notice of Service, Re: Notice of Deposition concerning Brian Scott Leigey	02
23	03/01/02	Plaintiff's Motion to Compel (as to Defendant Brian Scott Leigey), Motion for Continuance (as to Defendant Judy Fusco's Motion for Summary Judgment) and Motion to Consolidate Cases (as to 01-1889-CD)	19
24	03/01/02	Deposition of Brian Scott Leigey, February 7, 2002, at 10:06 a.m.	Separate Cover
25	03/05/02	Deposition of Jessica R Hanes, Thursday, June 14, 2002, at 10:24 a.m.	Separate Cover
26	03/05/02	Deposition of Judith A Fusco, Thursday, June 14, 2001, at 9:10 a.m.	Separate Cover
27	03/05/02	Deposition of Misty Jordon, July 2, 2001, at 11:45 a.m.	Separate Cover
28	03/05/02	Deposition of Kevin L Straw, July 2, 2001, at 9:30 a.m.	Separate Cover
29	03/05/02	Deposition of Peggy Sue Williams, September 10, 2001, at 4:10 p.m.	Separate Cover
30	03/05/02	Deposition of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
31	03/14/02	Notice of Service, March 8 <sup>th</sup> Rule Returnable as to Plaintiff's Motion to Compel, for Continuance and to Consolidate	02
32	03/18/02	Motion for Continuance with Rule filed March 19, 2002	08

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,**

**Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
33	03/27/02	Certificate of Service, Rule scheduling Motion to Compel (Original not in file)	---
34	04/10/02	Opposition/Response to the Motion to Compel, Motion for Continuance & Motion to Consolidate	08
35	05/07/02	Order, Re: trial consolidate with 01-1889-CD; all subsequent filings to 01-529-CD	01
36	05/07/02	Order, Re: Motion for Summary Judgment	01
37	06/19/02	Order, Re: Briefing schedule	01
38	02/27/02	Reply to Plaintiff's Brief in Support of the Motion to Compel	05
39	07/15/02	Order, Re: Motion to Compel	01
40	03/03/03	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer	01
41	04/03/03	Certificate of Service, Answers for Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper	01
42	09/10/03	Answer to Motion to Compel	11
43	09/10/03	Certificate of Service, Defendants' Answer to Plaintiffs Interrogatories	03
44	09/16/03	Motion for Partial Summary Judgment	67
45	10/08/02	Plaintiff's Reply to Defendant Leigey	09
46	11/21/03	Order, Re: Motion for Partial Summary Judgment filed on behalf of Defendant, Brian Scott Leigey	01
47	12/17/03	Order, Re: Argument on Atty. Stofko's Motion of Summary Judgment rescheduled	01
48	12/17/03	Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery	08
49	01/09/04	Order, Re: Briefing schedule	01
50	02/17/04	Plaintiff's Motion for Contempt and Sanctions As To Non-Party Jaime Lingle with Rule scheduling written response and argument filed February 19, 2004	05
51	02/24/04	Certificate of Service, Rule to Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle	01
52	03/10/04	Answer to Plaintiff's Motion For Contempt And Sanctions as to Non-Party Jamie Lingle	03
53	03/30/04	Notice of Service, Plaintiff's First Request for Admissions upon Dennis J Stofko	03
54	04/16/04	Deposition of Brian Leigey, February 9, 2004, at 11:25 a.m.	Separate Cover
55	04/16/04	Deposition of Diane Bunk, February 9, 2004, at 3:26 p.m.	Separate Cover
56	04/16/04	Deposition of Samuel Unch, February 9, 2004, at 10:25 a.m.	Separate Cover
57	04/16/04	Deposition of Kevin Fusco, February 9, 2004, at 3:26 a.m.	Separate Cover
58	04/16/04	Deposition of Brandon E Marshall, February 9, 2004, at 2:20 p.m.	Separate Cover
59	04/16/04	Deposition of Candace C Wisor, February 9, 2004, at 9:00a.m.	Separate Cover
60	04/16/04	Deposition of Timothy Wisor, February 9, 2004, at 9:35 a.m.	Separate Cover
61	04/19/04	Praeipce for Oral Argument	04
62	04/19/04	Motion for Summary Judgment	09
63	04/19/04	Certificate of Service filed by Atty. Maierhofer, Re: Answers to Plaintiff's First Request for Admissions	01
64	04/20/04	Order, Re: Argument on Attorney Harper's Motion for Summary Judgment	01

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
65	04/26/04	Defendant Judy Fusco's Answers To Plaintiff's First Request For Admissions	04
66	04/26/04	Certificate of Service, Re: Responses to Plaintiff's Request for Admissions	03
67	04/26/04	Certificate of Service, Two Orders of Court scheduling Oral Argument	03
68	05/10/04	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment (Original not in file)	---
69	05/10/04	Transcript of Wendy Owens, December 19, 2002	Separate Cover
70	05/10/04	Transcript of Natalie Kephart, December 19, 2002	Separate Cover
71	05/10/04	Transcript of Luke Marshall, December 19, 2002, at 9:00 a.m.	Separate Cover
72	05/10/04	Transcript of Dean Owens, December 19, 2002	Separate Cover
73	05/10/04	Transcript of Catherine Owens, December 19, 2002	Separate Cover
74	05/10/04	Transcript of Timothy Wisor, December 19, 2002, at 9:35 a.m.	Separate Cover
75	05/14/04	Order, Re: Oral Argument cancelled (Copy—Original filed to 01-1889-CD)	01
76	06/01/04	Order, Re: Motion for Summary Judgment	03
77	06/07/04	Plaintiff's Motion for Reconsideration as to Defendants Dean and Catherine Owens' Motion for Summary Judgment	04
78	06/15/04	Order, Re: Judy Fusco's Motion for Summary Judgment	01
79	06/23/04	Order, Re: Plaintiff's Motion for Reconsideration	01
80	06/28/04	Notice of Appeal to High Court	06
81	07/06/04	Motion for Reconsideration s/Dennis Stofko	07
82	07/09/04	Appeal Docket Sheet, Superior Court 1110 WDA 2004	04

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

**Joshua Hess**

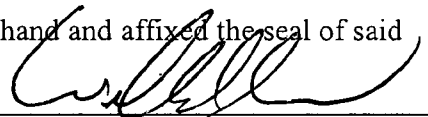
VS.

**Brian Scott Leigey, Judy Fusco, Dean R. Owens, Catherine J. Owens,  
Christopher Smith, and Wendy Owens**

**01-529-CD**

So full and entire as the same remains of record before the said Court, at No. **01-529-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 21<sup>st</sup> Day of April, 2005.

  
Prothonotary/Clerk of Courts

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

  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, 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 21  
day of April, 2005

  
Prothonotary/Clerk of Courts



## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1110 WDA 2004

Page 1 of 4

July 7, 2004



01-529-05

Joshua Hess, an adult individual, Appellant

v.

Brian Scott Leigey, an adult individual Judy Fusco, an adult individual, Dean R. Owens, an adult individual,  
Catherine J. Ownes, an adult individual, Christopher Smtih, an adult individual and Wendy Ownes, an adult  
individual

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 2, 2004

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: July 21, 2004

Next Event Type: Original Record Received

Next Event Due Date: August 9, 2004



FILED

JUL 09 2004

W/ 3:00 PM

William A. Shaw

Prothonotary/Clerk of Courts

Record - 1  
Transcripts - 26

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1110 WDA 2004

Page 2 of 4  
July 7, 2004

## COUNSEL INFORMATION

**Appellant** Hess, Joshua

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellant Attorney Information:**

Attorney: Noble, Theron G.

Bar No.: 55942

Law Firm: Ferraraccio &amp; Noble

Address: 301 E Pine Street  
Clearfield, PA 16830

Phone No.: (814)765-4990

Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Leigey, Brian Scott

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellee Attorney Information:**

Attorney: Maierhofer, Mary Lou

Bar No.: 62175

Law Firm: Meyer, Darragh, Buckler, Bebenek &amp; Eck, P.L.L.C.

Address: 120 Lakemont Pk Blvd  
Altoona, PA 16602

Phone No.: (814)941-4600

Fax No.: (814)941-4605

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Fusco, Judy

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellee Attorney Information:**

Attorney: Stofko, Dennis J.

Bar No.:

Law Firm:

Address: P.O. Box 5500  
Johnstown, PA 15904

Phone No.: (814)262-0064

Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Owens, Dean R

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellee Attorney Information:**

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1110 WDA 2004

Page 3 of 4  
July 7, 2004

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Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: Yes  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Owens, Catherine J  
Pro Se: Appoint Counsel Status:  
IFP Status: No

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Smtih, Christopher  
Pro Se: Appoint Counsel Status:  
IFP Status: No

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Owens, Wendy  
Pro Se: Appoint Counsel Status:  
IFP Status: No

**Appellee Attorney Information:**

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1110 WDA 2004

Page 4 of 4  
July 7, 2004

Attorney: Harper, Troy Joseph  
 Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
 Address: 293 Main Street  
 Brookville, PA 15825  
 Phone No.: (814)849-8316 Fax No.: (814)849-4656  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/28/04	Notice of Appeal	60.00	60.00	2004SPRWD000860

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: May 28, 2004 Judicial District: 46  
 Date Documents Received: July 2, 2004 Date Notice of Appeal Filed: June 28, 2004  
 Order Type: Order OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.:  
 President Judge

## ORIGINAL RECORD CONTENTS

Original Record Item Filed Date Content/Description

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 2, 2004	Notice of Appeal Filed	Appellant	Hess, Joshua
July 7, 2004	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:

**01-529-CD**

**Joshua Hess**

**VS.**

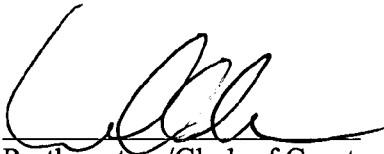
**Brian Scott Leigey and Judy Fusco**

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

The documents comprising the record have been numbered from **No. 1 to No. 82**, 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

Aug 3, \_\_\_\_\_, 2004.

  
Prothonotary/Clerk of Courts

(seal)

## Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001	Praeipice for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brian Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
03/01/2002	Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr.
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed	John K. Reilly Jr.
	Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr.
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G.Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certificate of Service no cc	John K. Reilly Jr.
	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/16/2004	Deposition of Brian Leigey, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Diane Bunk, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Samuel Unch, February 9, 2004, February 9, 2004, filed.	Fredric Joseph Ammerman



Date: 07/29/2004

Clerk of Court  
Clarendon County Court of Common Pleas

User: BHUDSON

Time: 04:06 PM

ROA Report

Page 4 of 5

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco

Civil Other

Date		Judge
04/16/2004	Deposition of Kevin Fusco, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Brandon E. Marshall, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Candace C. Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Timothy Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Request for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA,P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman

Date: 07/29/2004

Clarendon County Court of Common Pleas

User: BHUDSON

Time: 04:06 PM

ROA Report

Page 5 of 5

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco


Civil Other

Date		Judge
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is hereby denied.	Fredric Joseph Ammerman
06/28/2004	Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & Noble's check for \$60.00 to Superior Court	Fredric Joseph Ammerman
07/06/2004	Motion for Reconsideration, filed by s/Dennis J. Stofko, Esq. No CC	Fredric Joseph Ammerman
07/09/2004	Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	Fredric Joseph Ammerman

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

JUL 29 2004

Attest.

  
Prothonotary/  
Clerk of Courts

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

**No. 01-529-CD  
Joshua Hess  
VS.  
Brian Leigey and Judy Fusco**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	04/12/01	Complaint	08
02	04/18/01	Sheriff Return	01
03	04/23/01	Entry of Appearance	01
04	04/30/01	Praecipe for Entry of Appearance	03
05	05/01/01	Answer, New Matter and New Matter Under 2252 (d)	08
06	05/09/01	Plaintiff's Reply to New Matter of Defendant Fusco	04
07	05/17/01	Reply to Defendant, Judy Fusco's Answer, New Matter, and New Matter Under 2252(d)	05
08	05/17/01	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d)	10
09	05/22/01	Reply to New Matter under 2252(d)	03
10	05/23/01	Plaintiff's Reply to New Matter of Defendant Leigey	04
11	05/25/01	Notice of Service, Notice of Deposition	02
12	08/23/01	Notice of Service, Notice of Deposition	01
13	11/06/01	Notice of Service, Plaintiff's First Request for Production of Documents	21
14	12/11/01	Certificate of Service, Response to Request for Production of Documents	02
15	01/23/02	Motion for Summary Judgment	03
16	01/23/02	Transcript of Judith A Fusco, Thursday June 14, 2001 at 9:10 a.m.	Separate Cover
17	01/23/02	Transcript of Kevin L Straw, July 2, 2001, at 9:30 a.m.	Separate Cover
18	01/23/02	Transcript of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
19	01/23/02	Transcript of Misty Jordan, July 2, 2001, at 11:45 a.m.	Separate Cover
20	01/23/02	Transcript of Sean Quick, July 2, 2001, at 10:40 a.m.	Separate Cover
21	01/23/02	Transcript of Jessica R Hanes, Thursday, June 14, 2001, at 10:24 a.m.	Separate Cover
22	02/04/02	Notice of Service, Re: Notice of Deposition concerning Brian Scott Leigey	02
23	03/01/02	Plaintiff's Motion to Compel (as to Defendant Brian Scott Leigey), Motion for Continuance (as to Defendant Judy Fusco's Motion for Summary Judgment) and Motion to Consolidate Cases (as to 01-1889-CD)	19
24	03/01/02	Deposition of Brian Scott Leigey, February 7, 2002, at 10:06 a.m.	Separate Cover
25	03/05/02	Deposition of Jessica R Hanes, Thursday, June 14, 2002, at 10:24 a.m.	Separate Cover
26	03/05/02	Deposition of Judith A Fusco, Thursday, June 14, 2001, at 9:10 a.m.	Separate Cover
27	03/05/02	Deposition of Misty Jordon, July 2, 2001, at 11:45 a.m.	Separate Cover
28	03/05/02	Deposition of Kevin L Straw, July 2, 2001, at 9:30 a.m.	Separate Cover
29	03/05/02	Deposition of Peggy Sue Williams, September 10, 2001, at 4:10 p.m.	Separate Cover
30	03/05/02	Deposition of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
31	03/14/02	Notice of Service, March 8 <sup>th</sup> Rule Returnable as to Plaintiff's Motion to Compel, for Continuance and to Consolidate	02
32	03/18/02	Motion for Continuance with Rule filed March 19, 2002	08

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey and Judy Fusco**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
33	03/27/02	Certificate of Service, Rule scheduling Motion to Compel (Original not in file)	---
34	04/10/02	Opposition/Response to the Motion to Compel, Motion for Continuance & Motion to Consolidate	08
35	05/07/02	Order, Re: trial consolidate with 01-1889-CD; all subsequent filings to 01-529-CD	01
36	05/07/02	Order, Re: Motion for Summary Judgment	01
37	06/19/02	Order, Re: Briefing schedule	01
38	02/27/02	Reply to Plaintiff's Brief in Support of the Motion to Compel	05
39	07/15/02	Order, Re: Motion to Compel	01
40	03/03/03	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer	01
41	04/03/03	Certificate of Service, Answers for Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper	01
42	09/10/03	Answer to Motion to Compel	11
43	09/10/03	Certificate of Service, Defendants' Answer to Plaintiffs Interrogatories	03
44	09/16/03	Motion for Partial Summary Judgment	67
45	10/08/02	Plaintiff's Reply to Defendant Leigey	09
46	11/21/03	Order, Re: Motion for Partial Summary Judgment filed on behalf of Defendant, Brian Scott Leigey	01
47	12/17/03	Order, Re: Argument on Atty. Stofko's Motion of Summary Judgment rescheduled	01
48	12/17/03	Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery	08
49	01/09/04	Order, Re: Briefing schedule	01
50	02/17/04	Plaintiff's Motion for Contempt and Sanctions As To Non-Party Jaime Lingle with Rule scheduling written response and argument filed February 19, 2004	05
51	02/24/04	Certificate of Service, Rule to Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle	01
52	03/10/04	Answer to Plaintiff's Motion For Contempt And Sanctions as to Non-Party Jamie Lingle	03
53	03/30/04	Notice of Service, Plaintiff's First Request for Admissions upon Dennis J Stofko	03
54	04/16/04	Deposition of Brian Leigey, February 9, 2004, at 11:25 a.m.	Separate Cover
55	04/16/04	Deposition of Diane Bunk, February 9, 2004, at 3:26 p.m.	Separate Cover
56	04/16/04	Deposition of Samuel Unch, February 9, 2004, at 10:25 a.m.	Separate Cover
57	04/16/04	Deposition of Kevin Fusco, February 9, 2004, at 3:26 a.m.	Separate Cover
58	04/16/04	Deposition of Brandon E Marshall, February 9, 2004, at 2:20 p.m.	Separate Cover
59	04/16/04	Deposition of Candace C Wisor, February 9, 2004, at 9:00a.m.	Separate Cover
60	04/16/04	Deposition of Timothy Wisor, February 9, 2004, at 9:35 a.m.	Separate Cover
61	04/19/04	Praeipie for Oral Argument	04
62	04/19/04	Motion for Summary Judgment	09
63	04/19/04	Certificate of Service filed by Atty. Maierhofer, Re: Answers to Plaintiff's First Request for Admissions	01
64	04/20/04	Order, Re: Argument on Attorney Harper's Motion for Summary Judgment	01

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey and Judy Fusco**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
65	04/26/04	Defendant Judy Fusco's Answers To Plaintiff's First Request For Admissions	04
66	04/26/04	Certificate of Service, Re: Responses to Plaintiff's Request for Admissions	03
67	04/26/04	Certificate of Service, Two Orders of Court scheduling Oral Argument	03
68	05/10/04	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment (Original not in file)	---
69	05/10/04	Transcript of Wendy Owens, December 19, 2002	Separate Cover
70	05/10/04	Transcript of Natalie Kephart, December 19, 2002	Separate Cover
71	05/10/04	Transcript of Luke Marshall, December 19, 2002, at 9:00 a.m.	Separate Cover
72	05/10/04	Transcript of Dean Owens, December 19, 2002	Separate Cover
73	05/10/04	Transcript of Catherine Owens, December 19, 2002	Separate Cover
74	05/10/04	Transcript of Timothy Wisor, December 19, 2002, at 9:35 a.m.	Separate Cover
75	05/14/04	Order, Re: Oral Argument cancelled (Copy—Original filed to 01-1889-CD)	01
76	06/01/04	Order, Re: Motion for Summary Judgment	03
77	06/07/04	Plaintiff's Motion for Reconsideration as to Defendants Dean and Catherine Owens' Motion for Summary Judgment	04
78	06/15/04	Order, Re: Judy Fusco's Motion for Summary Judgment	01
79	06/23/04	Order, Re: Plaintiff's Motion for Reconsideration	01
80	06/28/04	Notice of Appeal to High Court	06
81	07/06/04	Motion for Reconsideration s/Dennis Stofko	07
82	07/09/04	Appeal Docket Sheet, Superior Court 1110 WDA 2004	04

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

**Joshua Hess**

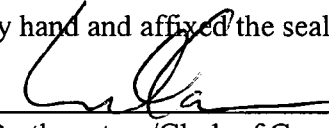
VS.

**Brian Leigey and Judy Fusco**

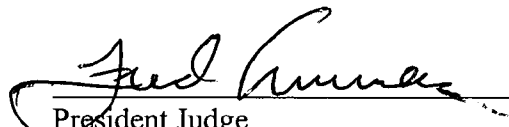
**01-529-CD**

So full and entire as the same remains of record before the said Court, at No. **01-529-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 30<sup>th</sup> Day of June, 2004.

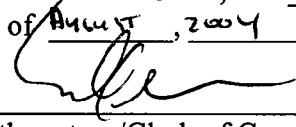
  
Prothonotary/Clerk of Courts

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

  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, 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 3<sup>rd</sup> day of August, 2004

  
Prothonotary/Clerk of Courts

**Appeal Docket Sheet****Superior Court of Pennsylvania****Docket Number: 487 WDA 2005****Page 1 of 4****March 23, 2005**

Joshua Hess, and adult individual, Appellant

v.

Brian Scott Leifey, an adult individual,  
Judy fusco, and adult individual, Dean  
R. Owens, an adult individual, Catherine  
J Owens, and adult individual, Christopher  
Smith an adult individual and Wendy Owens,  
an adult individual

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 21, 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: April 6, 2005

Next Event Type: Original Record Received

Next Event Due Date: May 2, 2005

**FILED**

MAR 28 2005

William A. Shaw

Prothonotary/Clerk of Courts

(92)

**Appeal Docket Sheet****Docket Number: 487 WDA 2005****Superior Court of Pennsylvania****Page 2 of 4****March 23, 2005****COUNSEL INFORMATION****Appellant** Hess, Joshua**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellant Attorney Information:****Attorney:** Noble, Theron G.**Bar No.:** 55942**Law Firm:** Ferraraccio & Noble**Address:** 301 E Pine Street

Clearfield, PA 16830

**Phone No.:** (814)765-4990**Fax No.:** (814)765-9377**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Smith, Christopher**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:****Attorney:** Harper, Troy Joseph**Bar No.:** 74753**Law Firm:** Dennison, Dennison & Harper**Address:** 293 Main Street

Brookville, PA 15825

**Phone No.:** (814)849-8316**Fax No.:** (814)849-4656**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Leigey, Brian Scott**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:****Attorney:** Maierhofer, Mary Lou**Bar No.:** 62175**Law Firm:** Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C.**Address:** 120 Lakemont Pk Blvd

Altoona, PA 16602

**Phone No.:** (814)941-4600**Fax No.:** (814)941-4605**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Fusco, Judy**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:**





## Appeal Docket Sheet

Docket Number: 487 WDA 2005

Page 3 of 4

March 23, 2005



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Attorney: Stofko, Dennis John  
Bar No.: 27638 Law Firm:  
Address: 969 Eisenhower Blvd  
PO Box 5500  
Johnstown, PA 15904  
Phone No.: (814)262-0064 Fax No.: (814)262-0905  
Receive Mail: Yes  
E-Mail Address: stofkoesq@stofkolaw.com  
Receive E-Mail: No

---

**Appellee** Owens, Dean R  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Owens, Catherine J  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Owens, Wendy  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

## Appeal Docket Sheet

Docket Number: 487 WDA 2005

Page 4 of 4

March 23, 2005

Superior Court of Pennsylvania



Attorney: Harper, Troy Joseph  
 Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
 Address: 293 Main Street  
 Brookville, PA 15825  
 Phone No.: (814)849-8316 Fax No.: (814)849-4656  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/21/05	Notice of Appeal	60.00	60.00	2005SPRWD000350

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: March 1, 2005 Judicial District: 46  
 Date Documents Received: March 21, 2005 Date Notice of Appeal Filed: March 16, 2005  
 Order Type: Order OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.: 01-529-CD  
 President Judge

## 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
March 21, 2005	Notice of Appeal Filed	Appellant	Hess, Joshua
March 23, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

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

**JOSHUA HESS, an adult individual,  
Plaintiff**

**v**

**BRIAN SCOTT LEIGEY, an adult individual,  
JUDY FUSCO, an adult individual, DEAN R.  
OWENS, an adult individual, CATHERINE J.  
OWENS, an adult individual, CHRISTOPHER  
SMITH, and adult individual and WENDY  
OWENS, an adult individual,  
Defendants**

**No. 01-529-CD**

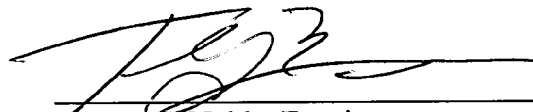
**NOTICE OF APPEAL**

Notice is hereby given that Plaintiff named above hereby appeals to the Superior Court of Pennsylvania from the Order entered on the First day of June, 2004, as to Defendants Dean R. Owens and Catherine J. Owens only, granting said Defendants' Motion for Summary Judgment, said Order now having been finalized, pursuant to Pa. R.A.P. 341, by this Court's Order on the First day of March, 2005, declaring the case settled as to all defendants not previously dismissed. These Orders of the Court have been entered in the docket, as evidenced by the attached copy of the docket entries.

**FILED** Any pd. 45.00

01/2-18/05 1CC-CK-1791  
MAR 16 2005 for 60.00 to

WILLIAM A. BREWER  
Prothonotary, Clerk of Courts Superior Court  
(64)



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814) 375-2221  
PA I.D. No.: 55942

~~Theron G. Noble, Esquire~~  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814) 375-2221  
PA I.D. No.: 55942

Date: 03/15/2005

Time: 02:59 PM

Page 1 of 5

Clarendon County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001	Praecipe for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brian Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.
	Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr.

Date: 03/15/2005

Time: 02:59 PM

Page 2 of 5

Chamfield County Court of Common Pleas

ROA Report

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

User: BHUDSON

Civil Other

Date		Judge
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed	John K. Reilly Jr.
	Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr.
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G.Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent fillings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certificate of Service no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
09/10/2003	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/16/2004	Deposition of Brian Leigey, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Diane Bunk, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Samuel Unch, February 9, 2004, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Kevin Fusco, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Brandon E. Marshall, February 9, 2004, filed.	Fredric Joseph Ammerman

## Civil Other

Date		Judge
04/16/2004	Deposition of Candace C. Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Timothy Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
04/19/2004	Praeipce for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Reaquest for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA, P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is herby denied.	Fredric Joseph Ammerman



Date: 03/15/2005

Time: 02:59 PM

Page 5 of 5

Clark County Court of Common Pleas

ROA Report

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

User: BHUDSON

Civil Other

Date		Judge
06/28/2004	Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & Noble's check for \$60.00 to Superior Court	Fredric Joseph Ammerman
07/06/2004	Motion for Reconsideration, filed by s/Dennis J. Stofko, Esq. No CC	Fredric Joseph Ammerman
07/09/2004	Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	Fredric Joseph Ammerman
08/03/2004	Letters and copies of index mailed to: Theron G. Noble, Mary Lou Maierhofer, Dennis J. Stofko, and Fredric J. Ammerman, P.J.	Fredric Joseph Ammerman
	Certified Mail Receipt, filed	Fredric Joseph Ammerman
	Case records mailed to Superior Court.	
08/06/2004	Domestic Return Receipt, filed.	Fredric Joseph Ammerman
	Return from Superior Court	
09/30/2004	Certificate of Contents of Remanded Record and Notice of Remand Copy to Superior Ct.	Fredric Joseph Ammerman
	Order AND NOW, this 18th day of Aug. 2004 upon consideration of the motion to quash appeal and all related papers, it is hereby ORDERED: that said motion is Granted. See Pa.R.A.P. 341: Keefer v. Keefer, Bonner v. Fayne, and Bell v. State Farm Mutual Automobile Ins. Co. Per Curiam" In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh PA this 27th day of Sept. 2004. S/Eleann r. Valecko, Deputy Prothonotary.	Fredric Joseph Ammerman
01/18/2005	Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey & Fusco, filed by Atty. Noble no cert. copies.	Fredric Joseph Ammerman
02/04/2005	Rule to Show Cause, filed. Now, this 4th day of Feb., argument set for the 1st day of March, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Noble	Fredric Joseph Ammerman
02/09/2005	Notice of Service, the 8th day of Feb., 2005, Rule Returnable as to Plaintiff's Petition for leave of court to discontinue Action as To Defendants Leigey and Fusco: upon Dennis J. Stofko, Esquire; Mary Lou Maierhofer, Esquire; and Troy J. Harper, Esquire. No CC	Fredric Joseph Ammerman
03/01/2005	Order, filed Cert. to Atty's Noble, Maierhofer, Stofko & Harper NOW, this 1st day of March, 2005, RE: Discontinue of Action. Court hereby declares the case is settled as to all defendants.	Fredric Joseph Ammerman
03/07/2005	Notice of Service, Order issued as to Plaintiff's Petition for Leave Of Court To Discontinue Action as to Defendants Leigey and Fusco: upon counsels of record on March 4, 2005. No CC	Fredric Joseph Ammerman

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

MAR 15 2005

Attest.

*William D. Shaw*  
Prothonotary/  
Clerk of Courts

Date: 03/15/2005

Chambers County Court of Common Pleas

User: BHUDSON

Time: 02:59 PM

ROA Report

Page 1 of 2

Case: 2001-01889-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Dean Robert Owens, Catherine J. Owens, Christopher Smith, Wendy Louise Owens, Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
11/19/2001	Filing: Civil Complaint Paid by: Ferraraccio & Noble Receipt number: 1834361 Dated: 11/19/2001 Amount: \$80.00 (Check) 6 cert. to Atty.	No Judge
12/20/2001	Appearance on behalf of Defendants. by s/Troy J. Harper, Esq. Cert of Svc no cc	No Judge
01/11/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/18/2002	Complaint to Join Additional Defendants Pursuant to Pa. R.C.P. 2252(b). Filed by s/Troy J. Harper, Esq. Verification Cert of Svc 2 cc Sheriff	No Judge
	Answer and New Matter. Filed by s/Troy J. Harper, Esq. Verification Cert of Svc	No Judge
02/01/2002	Answer, New Matter and New Matter Pursuant to PA. R.C.P. 2252(d) to the Complaint to Join Additional Defendants. Filed by s/Mary Lou Maierhofer, Esq. Verification s/Brian Scott Leigey Cert. of Svc. no cc	No Judge
02/05/2002	Entry of Appearance on behalf of Additional Defendant JUDY FUSCO ONLY. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
02/06/2002	Reply to New Matter Under 2252(d). s/Dennis J. Stofko, Esq. Verification s/Dennis J. Stofko, Esq. no cc	No Judge
02/08/2002	Answer, New Matter and New Matter Under 2252(d). filed by s/Dennis J. Stofko, Esq. Verification s/Judy Fusco no cc	No Judge
02/11/2002	Reply to New Matter. Filed by s/Theron G. Noble, Esquire Certificate of Service no cc	No Judge
02/19/2002	Reply to New Matter Pursuant to 2252(d) of Additional Defendant, Judy Fusco. Filed by s/Mary Lou Maierhofer, Esq. Verification s/Brian Scott Leigey Certificate of Service No cc	No Judge
03/01/2002	Motion to Consolidate. Filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
03/08/2002	Response to the Motion to Consolidate. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	No Judge
	Reply to Additional Defendant, Brian Leigey's, New Matters. Filed by s/Troy J. Harper, Esq. Verification s/Wendy Owens, s/Dean Owens, s/Catherine Owens, and s/Christopher Smith Certificate of Service no cc	No Judge
	Reply to Additional Defendant, Judy Fusco's, New Matters. Filed by s/Troy J. Harper, Esq. Verification. s/Wendy Owens, s/Dean Owens, s/Catherine Owens, and Christopher Smith Certificate of Service no cc	No Judge
03/11/2002	RULE TO SHOW CAUSE, NOW, this 8th day of March, 2002, issued upon all Defendants. Rule Returnable for filing Written Response 28th day of March, 2002, and Argument on the Motion set for 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/20/2002	Response to Motion to Consolidate AND, NOW, come the original defendants through their atty's filing a response to the plf's motion to consolidate. Filed by Troy J. Harper, Esq no cc	John K. Reilly Jr.
03/25/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: This matter to be consolidated w/01-529-CD for Trial and all subsequent fillings. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Harper, Maierhofer, and Stofko	John K. Reilly Jr.
07/31/2003	Motion to Compel, filed by Atty. Nobel No Cert. Copies.	John K. Reilly Jr.

Date: 03/15/2005

Time: 02:59 PM

Page 2 of 2

Orangeburg County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-01889-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Dean Robert Owens, Catherine J. Owens, Christopher Smith, Wendy Louise Owens, Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
08/01/2003	RULE TO SHOW CAUSE, NOW, this 1st day of August, issued upon Defendants: Dean, Catherine and Wendy Owens and Christopher Smith. RULE RETURNABLE, for filing Written Response, is set for the 21st day of August, 2003, and Argument on the Petition set for the 15th day of September, 2003, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Noble	John K. Reilly Jr.
08/25/2003	Certificate of Service of Rule Returnable filed by Atty. Noble. No cc.	John K. Reilly Jr.
04/16/2004	Transcript Of Deposition Of Diane Bunk, Feb. 9, 2004. filed.	John K. Reilly Jr.
	Transcript Of Deposition Of Kevin Fusco, Feb. 9, 2004. filed.	John K. Reilly Jr.
	Transcript Of Deposition Of Brian Leigey, Feb. 9, 2004. filed.	John K. Reilly Jr.
	Transcript Of Deposition Of Brandon E. Marshall, Feb. 9, 2004. filed	John K. Reilly Jr.
	Transcript Of Deposition Of Samuel Unch, Feb. 9, 2004. filed.	John K. Reilly Jr.
	Transcript Of Deposition Of Candace C. Wisor, Feb .9, 2004. filed.	John K. Reilly Jr.
	Transcript Of Deposition Of Timothy Wisor, Feb. 9, 2004. filed.	John K. Reilly Jr.
04/19/2004	Praeipce for Oral Argument, filed by s/Troy J. Harper No CC	John K. Reilly Jr.
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	John K. Reilly Jr.
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of Mayh, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Service Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Certificate of Service, upon Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Request for Admissions upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument Dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. no cc	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, 2 cc Atty Harper, Maierhofer and Stofko	Fredric Joseph Ammerman

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

MAR 15 2005

Attest.

*William L. Shaw*  
Prothonotary/  
Clerk of Courts

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

No. 01- 529 -CD

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

**NOTICE OF SERVICE**

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, this 4th day of March, 2005, via United States Mail, postage pre-paid, at the addresses therein indicated, the ORDER issued as to Plaintiff's PETITION FOR LEAVE OF COURT TO DISCONTINUE ACTION AS TO DEFENDANTS LEIGEY AND FUSCO:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

FILED 10  
m/12:38/1 c  
MAR 07 2005 60

William A. Shaw  
Prothonotary/Clerk of Courts

60

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSHUA HESS

:

VS.

: NO. 01-529-CD

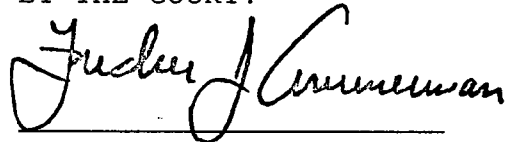
BRIAN SCOTT LEIGEY, et al.

:

O R D E R

NOW, this 1st day of March, 2005, this being the day set for hearing on Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey and Fusco; the Court hereby declares that the case is settled as to all Defendants, not previously dismissed by Motion for Summary Judgment, which Order is now declared final pursuant to Pa. R.A.P. 341 (see McNeal v. Eaton Corporation, 806 A.2d 899 (2002)).

BY THE COURT:



President Judge

FILED

MAR 01 2005

0/4:00/6  
William A. Shaw

Prothonotary/Clerk of Courts

CERT TO ATT'Y NOBLE

MAIERHOFER

STOFKO

+

HARPER, TRACY

89

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

No. 01- 529 -CD

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

**NOTICE OF SERVICE**

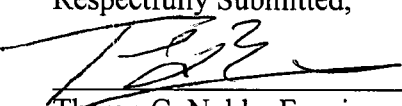
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, this 8th day of February, 2005, via United States Mail, postage pre-paid, at the addresses therein indicated, the RULE RETURNABLE issued as to Plaintiff's PETITION FOR LEAVE OF COURT TO DISCONTINUE ACTION AS TO DEFENDANTS LEIGEY AND FUSCO:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,

  
Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**  
M 1:57 PM NOBLE

FEB 09 2005

William A. Shaw  
Prothonotary

88

CP

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, AN D JUDY FUSCO, AN  
ADULT INDIVIDUAL, et.al.

DEFENDANTS.

No. 01- 529 -CD

Type of Pleading:

PLAINTIFF'S PETITON FOR  
LEAVE OF COURT TO  
DISCONTINUE ACTION AS TO  
DEFENDANTS LEIGEY & FUSCO

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

FILED

JAN 18 2005

m/12230/c  
William A. Shaw  
Prothonotary

no court copies

87

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**FILED** *ck*  
0 11:32 AM *ICC atty Noble*  
FEB 04 2005

William A. Shaw  
Prothonotary

**RULE TO SHOW CAUSE**

Now, this 4<sup>th</sup> day of February, 2005, upon consideration of the attached Plaintiff's PETITION FOR LEAVE OF COURT TO DISCONTINUE ACTION AS TO DEFENDANT LEIGEY AND FUSCO, a RULE is hereby issued upon the Defendants to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the \_\_\_\_\_ day of \_\_\_\_\_, 2005 and argument on the PETITION set for the 1 day of March, 2005, at 9:20, A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

**NOTICE**

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

Court Administrator  
Second & Market Streets  
Clearfield, PA 16830  
(814)-765-2641

By The Court,

*Frederick J. Zimmerman*  
Judge

87



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL, et.al.,

DEFENDANTS.

No. 01- 529 -CD

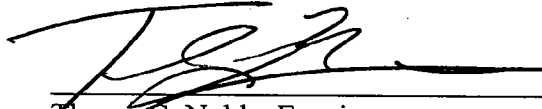
**PLAINTIFF'S PETITION FOR LEAVE OF COURT TO DISCONTINUE  
ACTION AS TO DEFENDANTS LEIGEY AND FUSCO**

**AND NOW, comes the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of the above referenced motion:**

1. That Plaintiff has reached an amicable settlement with Defendant Brian Leigey and Judy Fusco.
2. That by previous ORDER of Court, all other defendants have been dismissed pursuant to their Motion for Summary Judgment.
3. That Plaintiff wishes to discontinue the action as to Defendants Leigey and Fusco while preserving his right to appeal as to certain of the other Defendants.
4. That pursuant to Pa.R.Civ.P. 229(b), plaintiff requests leave of court to so discontinue as to Defendant Leigey and Fusco.

**WHEREFORE, Plaintiff requests that he be granted permission to file a DISCONTINUANCE only as to Defendant Brain Scott Leigey and Defendant Judy Fusco.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', written over a horizontal line.

Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Plaintiff  
301 E. Pine Street  
Clearfield, PA 16830  
(814)-375-2221

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**ORDER**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2005, upon  
consideration of Plaintiff's PETITION FOR LEAVE OF COURT TO DISCONTINUE  
ACTION AS TO DEFENDANTS BRIAN SCOTT LEIGEY AND JUDY FUSCO, the  
same is hereby GRANTED and Plaintiff shall proceed to file a DISCONTINUANCE  
only as to said Defendants.

By The Court,

\_\_\_\_\_  
Judge

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

No. 01- 529 -CD

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

**NOTICE OF SERVICE**

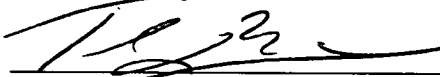
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, this 14th day of January, 2005, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's PETITION FOR LEAVE OF COURT TO DISCONTINUE ACTION AS TO DEFENDANTS LEIGEY AND FUSCO:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

JAN 18 2005

William A. Shaw  
Prothonotary

In the Superior Court of  
Pennsylvania  
Sitting at Pittsburgh

01-529-CD

No. 1110 WDA 2004

JOSHUA HESS, AN ADULT INDIVIDUAL : APPEAL FROM THE ORDER OF 5-28-2004  
APPELLANT : BY THE HONORABLE FREDRIC J.  
AMMERMAN  
VS : COURT OF COMMON PLEAS-CIVIL DIV  
BRIAN SCOTT LEIGEY ET AL. : CLEARFIELD COUNTY – NO. 01-529-CD

Certified from the Record  
JULY 23, 2004 APPLICATION TO QUASH APPEAL FILED:

FILED No  
18:47:01 CC  
SEP 30 2004

**ORDER**

William A. Shaw  
Prothonotary Clerk of Courts

AND NOW, this 18<sup>th</sup> day of AUGUST, 2004, upon consideration of the motion to

quash appeal and all related papers, **IT IS HEREBY ORDERED:**

THAT said motion is **GRANTED**. See Pa.R.A.P. 341; *see also Keefer v. Keefer*, 741 A.2d 808, 812 (Pa. Super. 1999) ("Since we hold that the consolidation order below effectively created one action, an order dismissing any portion of that action or any number of defendants is interlocutory and not appealable as a final order."); *Bonner v. Fayne*, 657 A.2d 1001 (Pa. Super. 1995) (quashing appeal taken from grant of partial summary judgment); *Bell v. State Farm Mutual Automobile Ins. Co.*, 634 A.2d 1137 (1993) (quashing appeal taken from order which sustained the defendant's preliminary objections and struck one count of a multi-count complaint).

PER CURIAM"

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

Pa. this 27Th Day of September 2004

*Eleanor K. Valechko*  
Deputy Prothonotary

86

**The Superior Court of Pennsylvania**  
**Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

FILED *copy*  
# m/8:47/61 to  
SEP 30 2004 Sup.  
Court  
William A. Shaw  
Prothonotary, Clerk of Courts

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND**  
under

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

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

**RECORD 1 PART- 26 TRANSCRIPTS, CERTIFIED COPY ORDER OF COURT DATED  
AUGUST 18, 2004**

As remanded from said court in the following matter:

**JOSHUA HESS V LEIGEY ET AL.  
NO. 1110 WDA 2004**

**COURT OF COMMON PLEAS-CIVIL DIVISION-CLEARFIED COUNTY  
NO. 01-529-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded SEPTEMBER 27, 2004

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

*Eleanor K. Valecko*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: 9/30/04

*William A. Shaw*  
(Signature & Title)

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

(83)

01-529-CD

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to:

Superior Court of Pennsylvania-Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

01-529-CD

2. Article Number (Copy from service label)

7002 3150 0000 7855 1512

PS Form 3811, July 1999

Domestic Return Receipt

2595-00-M, 1992

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

B. Date of Delivery

8/4

C. Signature

X *J. Dulh*

☐ 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

*File*  
**FILED**

*No CC*  
*m/10:38*  
**AUG 06 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

84



FILED

AUG 03 2004

0/3:00/1m  
William A. Shaw  
Prothonotary

101-529-10

7002 3150 0000 7855 1512

U.S. Postal Service <sup>TM</sup>	
CERTIFIED MAIL <sup>TM</sup> RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided) <sup>1,2</sup>	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
OFFICIAL USE	
PITTSBURGH PA 15219	
Postage	\$ 12.65
Certified Fee	\$ 2.30
Return Receipt Fee (Endorsement Required)	\$ 1.75
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 16.70

0830  
08/03/2004  
Postmark  
Here

08/03/2004  
DI-529-10

Sent To  
Superior Court of PA-Prothonotary  
Street, Apt. No.,  
or PO Box No. 600 Grant Building  
City, State, ZIP+4  
Pittsburgh, PA 15219

PS Form 3800, June 2002 See Reverse for Instructions

83

2:46 P.M.

**Appeal Docket Sheet**

**Superior Court of Pennsylvania**

**Docket Number: 1110 WDA 2004**

**Page 1 of 4**

**July 7, 2004**



Joshua Hess, an adult individual, Appellant

v.

Brian Scott Leigey, an adult individual Judy Fusco, an adult individual, Dean R. Owens, an adult individual, Catherine J. Ownes, an adult individual, Christopher Smtih, an adult individual and Wendy Ownes, an adult individual

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: July 2, 2004

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: July 21, 2004

Next Event Type: Original Record Received

Next Event Due Date: August 9, 2004

**FILED**  
**COPY**  
JUL 09 2004  
m/3:00  
William A. Shaw  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1110 WDA 2004

Page 2 of 4

July 7, 2004



## COUNSEL INFORMATION

**Appellant** Hess, Joshua

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellant Attorney Information:**

Attorney: Noble, Theron G.

Bar No.: 55942

Law Firm: Ferraraccio &amp; Noble

Address: 301 E Pine Street  
Clearfield, PA 16830

Phone No.: (814)765-4990

Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Leigey, Brian Scott

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellee Attorney Information:**

Attorney: Maierhofer, Mary Lou

Bar No.: 62175

Law Firm: Meyer, Darragh, Buckler, Bebenek &amp; Eck, P.L.L.C.

Address: 120 Lakemont Pk Blvd  
Altoona, PA 16602

Phone No.: (814)941-4600

Fax No.: (814)941-4605

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Fusco, Judy

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellee Attorney Information:**

Attorney: Stofko, Dennis J.

Bar No.:

Law Firm:

Address: P.O. Box 5500  
Johnstown, PA 15904

Phone No.: (814)262-0064

Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Owens, Dean R

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellee Attorney Information:**

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1110 WDA 2004

Page 3 of 4  
July 7, 2004

---

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: Yes  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Owens, Catherine J  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Smtih, Christopher  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

---

**Appellee** Owens, Wendy  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellee Attorney Information:**

**Appeal Docket Sheet****Superior Court of Pennsylvania****Docket Number: 1110 WDA 2004****Page 4 of 4****July 7, 2004**

Attorney: Harper, Troy Joseph  
 Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
 Address: 293 Main Street  
 Brookville, PA 15825  
 Phone No.: (814)849-8316 Fax No.: (814)849-4656  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/28/04	Notice of Appeal	60.00	60.00	2004SPRWD000860

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: May 28, 2004 Judicial District: 46  
 Date Documents Received: July 2, 2004 Date Notice of Appeal Filed: June 28, 2004  
 Order Type: Order OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.:  
 President Judge

**ORIGINAL RECORD CONTENTS**

Original Record Item Filed Date Content/Description

Date of Remand of Record:

**BRIEFS****DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
July 2, 2004	Notice of Appeal Filed	Appellant	Hess, Joshua
July 7, 2004	Docketing Statement Exited (Civil)		Western District Filing Office

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOSHUA HESS, an adult individual

Plaintiff

vs.

No. 01-529 CD

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO,  
an adult individual,

Defendants

MOTION FOR RECONSIDERATION  
Counsel of record for this party:  
Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

FILED  
JUL 30 AM 11:42  
CLERK OF ORPHANS COURT

FILED No  
m/11:39/64 CC  
JUL 06 2004

WAS  
William A. Shaw  
Prothonotary/Clerk of Courts

MOTION FOR RECONSIDERATION

NOW COMES the Defendant, Judy Fusco, by and through counsel, Dennis J. Stofko, and files the following Motion for Reconsideration of the Order dated June 14, 2004. Said order was not forwarded to counsel until June 25 by the Clearfield County Prothonotary. A copy of said order is attached hereto and marked as Exhibit A.

1. The Defendant, Judy Fusco originally filed her Motion for Summary Judgment with the Court on January 21, 2002.

2. Thereafter by Court Order of Judge Reilly argument was continued until Plaintiff had sufficient time to conduct discovery including the deposition of an incarcerated defendant, Brian Scott Leigey.

3. Oral argument was held before Judge Ammerman on January 6, 2004 at which time the Court allowed plaintiff further time to schedule the deposition of all parties and briefs to be filed no later than March 5, 2004.

4. Subsequently the defendants, Dean Owens, Catherine Owens, Wendy Owens and Christopher Smith by and through their counsel, Troy Harper, Esquire, filed a Motion for Summary Judgment.

5. The issue in the Motion filed by Attorney Harper as well as the issue presented in the Motion filed by Defendant Fusco was whether or not the plaintiff had plead sufficient evidence to establish social host liability in that the defendants "knowingly" served alcohol to a minor.

6. The Court in the opinion granting Dean R. Owens, Catherine J. Owens, Christopher Smith and Wendy Owens Motion for summary Judgment correctly stated the plaintiff failed to produce any evidence that

Defendants Owens and Smith were involved in planning or funding a party. Furthermore the Court correctly stated that the Plaintiff failed to show that Defendants knowingly served alcohol to a minor. A copy of said Order is attached hereto and marked as Exhibit B.

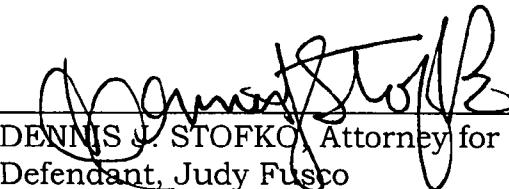
7. The Defendant Fusco avers there was no evidence presented by plaintiff nor contained anywhere in the record that the Defendant purchased or otherwise supplied the alcohol allegedly consumed by Defendant Leigey.

8. Furthermore, Plaintiff has failed to produce any evidence to show the Defendant Fusco served any alcohol to Defendant Leigey.

9. Plaintiff has failed to show on the night in question that there was any participation by Defendant Fusco in the minor plaintiff's alleged alcohol consumption on her premises.

10. The Defendant Fusco avers that the same issues presented in the Dean R. Owens, et al. in granting the Motion for Summary Judgment apply likewise in the Judy Fusco case in that there was absolutely no factual evidence to support that the Defendant Fusco was knowingly served alcohol to the minors.

WHEREFORE, the Defendant, Judy Fusco, requests your Honorable Court to reconsider the Order dated June 14, 2004 and grant the Motion for Summary Judgment filed by Defendant Fusco.

  
DENNIS J. STOFKO, Attorney for  
Defendant, Judy Fusco



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

JOSHUA HESS, adult individual,  
Plaintiff,

v.

No. 01-529-CD

BRIAN SCOTT LEIGEY, an adult  
Individual, and JUDY FUSCO, an adult  
Individual,  
Defendants.

ORDER

AND NOW THIS 14<sup>th</sup> day of June 2004, following oral argument and submission of  
briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after  
considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for  
Summary Judgment.

By the Court:

*Frederick J. Cunningham*  
President Judge

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

JUN 25 2004

Attest.

*William L. R.*  
Prothonotary/  
Clerk of Courts



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

JOSHUA HESS, adult individual,  
Plaintiff,

v.

BRIAN SCOTT LEIGEY, an adult  
Individual, and JUDY FUSCO, an adult  
Individual,  
Defendants.

No. 01-529-CD

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

JUN 01 2004

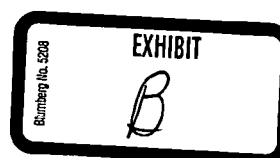
Attest.

*William L. Shaw*  
Prothonotary/  
Clerk of Courts

ORDER

NOW this 28<sup>th</sup> day of May 2004, following submission of briefs on the Motion for Summary Judgment filed on behalf of Defendants Dean R. Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, and after considering the record as a whole, the Court FINDS as follows:

1. The Court hereby GRANTS Defendant Christopher Smith's Motion for Summary Judgment. The Court notes that Plaintiff agrees in his Reply Brief in Opposition to Defendants Motion for Summary Judgment that Defendant Christopher Smith should be dismissed from the present action. Plaintiff's Reply Brief at 18. Additionally, the record lacks any indication that Defendant Christopher Smith was an owner of the property whereupon Plaintiff alleges underage individuals consumed alcohol on the evening of December 4, 1999 and early morning of December 5, 1999, that he provided any alcohol to any underage individuals or that he was even present on the evening in question. Summary judgment in regard to Christopher Smith is therefore proper.



2. The Court, after reviewing the totality of the record in a light most favorable to the non-moving party, after having given the benefit of all reasonable inferences to the non-moving party, and after resolving all doubts in the non-moving party's favor, hereby GRANTS Defendant Wendy Owens' Motion for Summary Judgment. It is clear that on December 4-5, 1999 Defendant Wendy Owens was 20 years old<sup>1</sup> and thus a minor in the eyes of the law in regard to the consumption of alcohol. Congini v. Portersville Valve Company, 504 Pa. 157, 470 A.2d 515 (1983); Section 6308 of the Crimes Code, 18 Pa.C.S. § 6308. Regardless of federal courts' interpretation of the law of Pennsylvania on this point, it is clear that the appellate courts of the Commonwealth have refused to extend Social Host Liability to persons under the age of 21 who serve alcohol to minors that injure either themselves or a third party. Kapres v. Heller, 536 Pa. 551, 640 A.2d 888 (1994); Sperando v. Commonwealth of Pennsylvania, Department of Transportation, 537 Pa. 352, 643 A.2d 1079 (1994). Defendant Wendy Owens' Motion for Summary Judgment is therefore GRANTED.

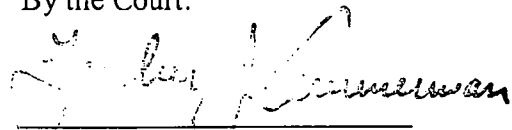
3. The Court, after reviewing the totality of the record in a light most favorable to the non-moving party, after having given the benefit of all reasonable inferences to the non-moving party, and after resolving all doubts in the non-moving party's favor, hereby GRANTS Dean R. and Catherine J. Owens' (Defendants) Motion for Summary Judgment. In order for Social Host Liability to exist, a plaintiff must show that a defendant "knowingly" served alcohol to a minor. Alumni Association v. Sullivan, 524 Pa. 356, 572 A.2d 1209 (1990). This requires more than a showing that a defendant facilitated underage alcohol consumption by owning the property on which the consumption took place; it requires a showing that the defendant was also involved in the planning of the event, serving, supplying or purchasing of the alcohol consumed. Alumni

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<sup>1</sup>Wendy Owens stated in her deposition that her date of birth is October 31, 1979. Deposition of Wendy Owens, Page 8, Line 13.

Association v. Sullivan, supra.; Harry v. McNay, 17 Pa. D & C 4<sup>th</sup> 158 (Cm.Pl.Ct. 1992), *aff'd*, 633 A.2d 1227 (Pa.Super. 1993) (per curium). Plaintiff failed to adduce any evidence that Defendants were involved in the planning or funding of the party that allegedly occurred during the evening or December 4, 1999 and early morning of December 5, 1999 on their property in Frenchville, Clearfield County. Indeed, the record does not reflect any evidence that Defendants specifically knew that a party was going to occur that evening at that location. Additionally, there is no evidence present in the record indicating that said Defendants purchased or otherwise supplied the alcohol allegedly consumed by Defendant-Leigey or that Defendants served any alcohol to Defendant-Leigey. Plaintiffs did present evidence that Defendants knew of occasional underage consumption of alcohol occurring on the property in question but, again, Plaintiffs failed to show that Defendants were aware of underage consumption on the night of the accident involving Plaintiff and Defendant-Leigey. Granting summary judgement is therefore appropriate, as Plaintiff has failed to show that Defendants knowingly served alcohol in the sense required in order to impart Social Host Liability to Defendants. Congini v. Portersville Valve Company, supra, Alumni Association v. Sullivan, supra.; Winwood v. Bregman, 788 A.2d 983 (Pa.Super. 2001); Harry v. McNay, supra.

By the Court:

  
\_\_\_\_\_  
President Judge

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

**JOSHUA HESS, an adult individual,**  
**Plaintiff**


v

**BRIAN SCOTT LEIGEY, an adult individual,**  
**JUDY FUSCO, an adult individual, DEAN R.**  
**OWENS, an adult individual, CATHERINE J.**  
**OWENS, an adult individual, CHRISTOPHER**  
**SMITH, and adult individual and WENDY**  
**OWENS, an adult individual,**  
**Defendants**

**No. 01-529-CD**

**NOTICE OF APPEAL**

Notice is hereby given that plaintiff named above, hereby appeals to the Superior Court of Pennsylvania from the Order entered on the First day of June, 2004, as to Defendants Dean R. Owens and Catherine J. Owens only, granting said Defendants' Motion for Summary Judgment. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

  
\_\_\_\_\_  
Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814) 375-2221  
PA I.D. No.: 55942

**FILED**

**JUN 28 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

#80

## Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001	Praecipe for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brian Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
03/01/2002	Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr.
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed	John K. Reilly Jr.
	Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr.
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G.Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certificate of Service no cc	John K. Reilly Jr.
	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman



Date: 06/28/2004

Clearfield County Court of Common Pleas

User: ACCESS

Time: 03:24 PM

ROA Report

Page 4 of 4

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco

Civil Other

Date		Judge
04/19/2004	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Reaquest for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA,P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is herby denied.	Fredric Joseph Ammerman

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

**JOSHUA HESS, an adult individual,  
Plaintiff**

**v**

**BRIAN SCOTT LEIGEY, an adult individual,  
JUDY FUSCO, an adult individual, DEAN R.  
OWENS, an adult individual, CATHERINE J.  
OWENS, an adult individual, CHRISTOPHER  
SMITH, and adult individual and WENDY  
OWENS, an adult individual,  
Defendants**

**No. 01-529-CD**

**CERTIFICATE OF SERVICE**

I, THERON G. NOBLE, Esquire, counsel for the Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, and all other persons required to be served with Plaintiff's NOTICE OF APPEAL, this 28th day of June, 2004, via United States Mail, First Class Mail, Postage Prepaid, certified as follows:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904  
(Counsel for Def. Judy Fusco)


Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602  
(Counsel for Def. Brian Scott Leigey)

Troy J. Harper, Esquire  
Dennison Dennison & Harper  
293 Main Street  
Brookville, PA 15825  
(Counsel for all other Defendants)

Honorable Fredric J. Ammerman, PJ  
Court of Common Pleas  
Clearfield County Courthouse  
2<sup>nd</sup> & Market Streets  
Clearfield, PA 16830

David A. Meholick, Court Administrator  
Court of Common Pleas  
Clearfield County Courthouse  
2<sup>nd</sup> and Market Streets  
Clearfield, PA 16830

Date: June 28, 2004

  
Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814) 375-2221  
PA I.D. No.: 55942

FILED

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03:30 PM to Superior Court  
JUN 28 2004

William A. Shaw  
Prothonotary/Clerk of Courts  
Atty Noble pd. 45.00

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

CIVIL DIVISION

JOSHUA HESS

:

VS.

: NO. 01-529-CD

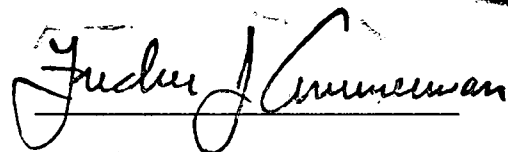
BRIAN SCOTT LEIGEY

:

O R D E R

NOW, this 21st day of June, 2004, the Court being in receipt of the Plaintiff's Motion for Reconsideration as to Defendants Dean and Catherine Owens' Motion for Summary Judgment; upon further review of the deposition transcripts and the law; the Court being satisfied that the original determination to grant the Motion for Summary Judgment thereby removing Dean and Catherine Owens to be appropriate, it is the ORDER of this Court that the said Plaintiff's Motion for Reconsideration be and is hereby denied.

BY THE COURT:



President Judge

FILED

JUN 23 2004

William A. Shaw  
Prothonotary/Clerk of Courts

#79

(2007)

FILED

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1cc Augs Noble, Harper, Maishofe, Stofko

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

JOSHUA HESS, adult individual,  
Plaintiff,

v.

BRIAN SCOTT LEIGEY, an adult  
Individual, and JUDY FUSCO, an adult  
Individual,  
Defendants.

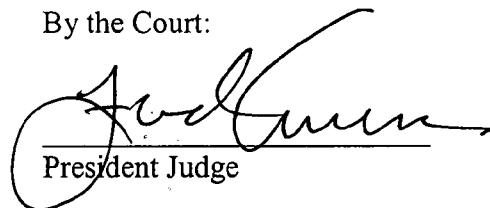
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No. 01-529-CD

ORDER

AND NOW THIS 14<sup>th</sup> day of June 2004, following oral argument and submission of  
briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after  
considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for  
Summary Judgment.

By the Court:

  
President Judge

**FILED**

JUN 15 2004

William A. Shaw  
Prothonotary

78

FILED

10:28:17 Secretary Nason/Leifer

JUN 15 2004

6-25-04  
Cert. copy to Stofko, Harper, Noble  
fax copy to Stofko

William A. Shaw  
Prothonotary



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL, et.al.  
DEFENDANTS.

No. 01- 529 -CD

FILED

JUN 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**PLAINTIFF'S MOTION FOR RECONSIDERATION AS TO**  
**DEFENDANTS DEAN AND CATHERINE OWENS**  
**MOTION FOR SUMMARY JUDGMENT**

Procedural Posture

This matter was commenced by the filing of a civil complaint. On May 28, 2004, this Court wrote an Order, filed June 1, 2004, GRANTING a MOTION FOR SUMMARY JUDGMENT filed by Defendants Dean Owens, Catherine Owens, Wendy Owens and Christopher Smith. Still pending before the Court is a similar motion filed by Defendant Judy Fusco. Plaintiff requests that this Court reconsider its decision as follows:

**AND NOW, comes the Plaintiff Joshua Hess, by his counsel of record, Theron G., Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his timely MOTION FOR RECONSIDERATION:**

1. That this Honorable Court erred in application of law and fact in its ORDER, filed June 1, 2004.
2. That specifically the Court erred in its interpretation of law in that it failed to include the Defendants Dean and Catherine Owens furnished alcohol to Defendant Leigey, the



driver of the subject automobile and to Plaintiff Hess, by permitting minors to possess and consume alcohol on premises owned by said defendants, as per 18 Pa.C.S.A. 6310.1(a) and 6310.6.

3. That specifically the Court erred in its interpretation of fact when the Court stated: "Plaintiff(s) failed to show that Defendants were aware of underage consumption on the night of the accident involving Plaintiff and Defendant Leigey".

4. In fact, Plaintiff did present evidence that not only were said Defendants aware of the camp activities they facilitated the same by watching Defendant Wendy Owens child so she could go to camp and consume alcohol. See Catherine Owens deposition testimony pages 15 and 16, lines 18 - 7.

5. In response to questioning, Mrs. Owens, also implicating her husband by stating "we watched and we assumed", not only admits to facilitating the activities at camp but clearly testifies about knowledge of underage consumption at their camp when she stated "it was better there than out in a bar or running the roads while they were drinking". See page 16. lines 1 - 7.

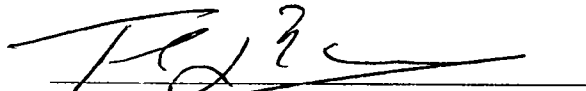
6. Furthermore, at her deposition, Wendy Owens testified that on the night of the accident, she had told her parents were she was going (to the camp) and doing. Wendy Owens Deposition, page 20, lines 17 - 22.

7. This Honorable Court failed to either consider such facts or failed to give Plaintiff Hess the inference he is entitled to when the Court states that Defendant Dean and

Catherine Owens were unaware of the underage consumption on the night of the accident.

**WHEREFORE, Plaintiff Joshua Hess respectfully requests this Court to  
RECONSIDER its ORDER filed June 1, 2004, and deny Defendants  
Dean and Catherine Owens' MOTION FOR SUMMARY JUDGMENT.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

No. 01- 529 -CD

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL. JUDY FUSCO. AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

**NOTICE OF SERVICE**

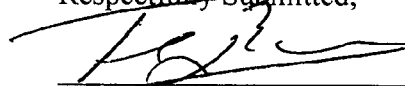
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, this 4th day of June, 2004, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's MOTION FOR RECONSIDERATION as to the ORDER entered concerning MOTION FOR SUMMARY JUDGMENT filed by Defendants Dean and Catherine Owens.

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

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JUN 11 11:14 AM  
JUN 07 2004  
ce  
fey

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSHUA HESS, adult individual,  
Plaintiff,

v.

BRIAN SCOTT LEIGEY, an adult  
Individual, and JUDY FUSCO, an adult  
Individual,  
Defendants.

No. 01-529-CD

**FILED**

JUN 01 2004

ORDER

William A. Shaw  
Prothonotary

NOW this 28<sup>th</sup> day of May 2004, following submission of briefs on the Motion for Summary Judgment filed on behalf of Defendants Dean R. Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, and after considering the record as a whole, the Court FINDS as follows:

1. The Court hereby GRANTS Defendant Christopher Smith's Motion for Summary Judgment. The Court notes that Plaintiff agrees in his Reply Brief in Opposition to Defendants Motion for Summary Judgment that Defendant Christopher Smith should be dismissed from the present action. Plaintiff's Reply Brief at 18. Additionally, the record lacks any indication that Defendant Christopher Smith was an owner of the property whereupon Plaintiff alleges underage individuals consumed alcohol on the evening of December 4, 1999 and early morning of December 5, 1999, that he provided any alcohol to any underage individuals or that he was even present on the evening in question. Summary judgment in regard to Christopher Smith is therefore proper.

#76

2. The Court, after reviewing the totality of the record in a light most favorable to the non-moving party, after having given the benefit of all reasonable inferences to the non-moving party, and after resolving all doubts in the non-moving party's favor, hereby GRANTS Defendant Wendy Owens' Motion for Summary Judgment. It is clear that on December 4-5, 1999 Defendant Wendy Owens was 20 years old<sup>1</sup> and thus a minor in the eyes of the law in regard to the consumption of alcohol. Congini v. Portersville Valve Company, 504 Pa. 157, 470 A.2d 515 (1983); Section 6308 of the Crimes Code, 18 Pa.C.S. § 6308. Regardless of federal courts' interpretation of the law of Pennsylvania on this point, it is clear that the appellate courts of the Commonwealth have refused to extend Social Host Liability to persons under the age of 21 who serve alcohol to minors that injure either themselves or a third party. Kapres v. Heller, 536 Pa. 551, 640 A.2d 888 (1994); Sperando v. Commonwealth of Pennsylvania, Department of Transportation, 537 Pa. 352, 643 A.2d 1079 (1994). Defendant Wendy Owens' Motion for Summary Judgment is therefore GRANTED.

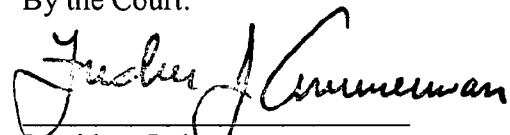
3. The Court, after reviewing the totality of the record in a light most favorable to the non-moving party, after having given the benefit of all reasonable inferences to the non-moving party, and after resolving all doubts in the non-moving party's favor, hereby GRANTS Dean R. and Catherine J. Owens' (Defendants) Motion for Summary Judgment. In order for Social Host Liability to exist, a plaintiff must show that a defendant "knowingly" served alcohol to a minor. Alumni Association v. Sullivan, 524 Pa. 356, 572 A.2d 1209 (1990). This requires more than a showing that a defendant facilitated underage alcohol consumption by owning the property on which the consumption took place; it requires a showing that the defendant was also involved in the planning of the event, serving, supplying or purchasing of the alcohol consumed. Alumni

---

<sup>1</sup>Wendy Owens stated in her deposition that her date of birth is October 31, 1979. Deposition of Wendy Owens, Page 8, Line 13.

Association v. Sullivan, *supra.*; Harry v. McNay, 17 Pa. D & C 4<sup>th</sup> 158 (Cm.Pl.Ct. 1992), *aff'd*, 633 A.2d 1227 (Pa.Super. 1993) (per curium). Plaintiff failed to adduce any evidence that Defendants were involved in the planning or funding of the party that allegedly occurred during the evening of December 4, 1999 and early morning of December 5, 1999 on their property in Frenchville, Clearfield County. Indeed, the record does not reflect any evidence that Defendants specifically knew that a party was going to occur that evening at that location. Additionally, there is no evidence present in the record indicating that said Defendants purchased or otherwise supplied the alcohol allegedly consumed by Defendant-Leigey or that Defendants served any alcohol to Defendant-Leigey. Plaintiffs did present evidence that Defendants knew of occasional underage consumption of alcohol occurring on the property in question but, again, Plaintiffs failed to show that Defendants were aware of underage consumption on the night of the accident involving Plaintiff and Defendant-Leigey. Granting summary judgement is therefore appropriate, as Plaintiff has failed to show that Defendants knowingly served alcohol in the sense required in order to impart Social Host Liability to Defendants. Congini v. Portersville Valve Company, *supra*, Alumni Association v. Sullivan, *supra.*; Winwood v. Bregman, 788 A.2d 983 (Pa.Super. 2001); Harry v. McNay, *supra.*

By the Court:

  
\_\_\_\_\_  
President Judge

FILED

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JUN 01 2004

cc atty Nable  
cc atty Kasper  
cc atty MacArthur  
cc atty Staples

William A. Shaw  
Prothonotary



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

JOSHUA HESS,  
Plaintiff

vs.

BRIAN SCOTT LEIGEY, al,  
Defendants

NO. 2001-529-C.D.

JOSHUA HESS,  
Plaintiff

vs.

DEAN ROBERT OWENS, al,  
Defendants

NO. 2001-1889-C.D.

ORDER

NOW, this 14<sup>th</sup> day of May, 2004, this being the date set to for this Court to hear Attorney Troy J. Harper's Motion for Summary Judgment, it is the ORDER of this Court that based upon the pleadings, oral argument scheduled for 2:00 p.m. today be and is hereby cancelled This Court shall issue its decision forthwith.

**FILED**

MAY 14 2004

William A. Shaw  
Prothonotary

By the Court,

*Fredric J. Ammerman*

HONORABLE FREDRIC J. AMMERMAN

President Judge

*Original filed  
to 01-1889-CD*

#75

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MAY 14 2004

1cc atty Nade  
2cc atty Harper  
2cc atty Inwood  
2cc atty Stephens

WILLIAM J. CRAW  
PROSECUTOR

WJ

Original Not

In File

DENNISON, DENNISON & HARPE  
ATTORNEYS AT LAW  
293 MAIN STREET  
BROOKVILLE, PENNSYLVANIA 15825



COURT OF COMMON PLEAS OF CRAWFORD COUNTY,  
PENNSYLVANIA

**Consolidated at 2001 - 529 C.D.**

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

)

) JOSHUA HESS, an adult individual,

)

) Plaintiff,

)

)

) vs.

)

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants.

)

)

) vs.

)

) BRIAN LEIGEY, an adult  
) individual; and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the two Orders of Court scheduling Oral

Argument dated April 20, 2004, were served on the 23rd day of April,

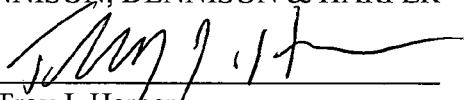
2004, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Theron G. Noble, Esq.  
Ferraracio & Noble  
301 East Pine Street  
Clearfield, Pennsylvania 16830

Mary Lou Maierhofer, Esq.  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, Pennsylvania 16602

Dennis J. Stofko, Esq.  
969 Eisenhower Boulevard  
P.O. Box 5500  
Johnstown, Pennsylvania 15904

DENNISON, DENNISON & HARPER

By   
Troy J. Harper  
Attorneys for Defendants, Dean  
Owens Catherine Owens, Christopher  
Smith, Wendy Owens

FILED No  
M/15/04 cc  
APR 26 2004 d.p.

William A. Shaw  
Prothonotary/Clerk of Courts



DENNISON, DENNISON & HARPE.

ATTORNEYS AT LAW

293 MAIN STREET

BROOKVILLE, PENNSYLVANIA 15825

**Consolidated at 2001 - 529 C.D.**

### Additional Defendants.

#1060

COURT OF COMMON PLEAS OF CRAWFORD COUNTY,  
PENNSYLVANIA

**Consolidated at 2001 - 529 C.D.**

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

)

) JOSHUA HESS, an adult individual,

)

) Plaintiff,

)

) vs.

)

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants.

)

) vs.

)

) BRIAN LEIGEY, an adult  
) individual; and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

**CERTIFICATE OF SERVICE**

I certify that the original copy of the Defendants, Dean Robert Owens, Catherine J.

Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Request for Admissions

was served on the 23<sup>rd</sup> day of April, 2004, by United States Mail, First

Class, Postage Prepaid, addressed to the following:

Theron G. Noble, Esq.  
Ferraracio & Noble

301 East Pine Street  
Clearfield, Pennsylvania 16830

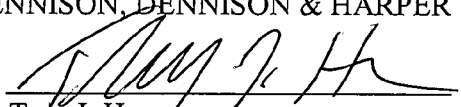
and a certified copy of the same was served on the following in the same manner:

Mary Lou Maierhofer, Esq.  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, Pennsylvania 16602

Dennis J. Stofko, Esq.  
969 Eisenhower Boulevard  
P.O. Box 5500  
Johnstown, Pennsylvania 15904

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper

Attorneys for Defendants, Dean  
Owens Catherine Owens, Christopher  
Smith, Wendy Owens

William A. Shaw  
Prothonotary/Clerk of Courts

FILED *W*  
*M 11:51 AM*  
APR 26 2004 *ac*

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

DEFENDANT JUDY FUSCO'S ANSWERS TO  
**PLAINTIFF'S FIRST REQUESTS FOR ADMISSIONS**  
(Directed to all Defendants)

**NOW COMES** the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who propounds the following **REQUESTS FOR ADMISSIONS** on all Defendants, pursuant to Pa. R.Civ.P. 4000, et.q,seq., and demands responses within thirty (30) days hereof:

1. During the evening of December 4, 1999, or early morning of December 5, 1999, Defendant Brian Leigey was at the residence of Defendant Judy Fusco, located in the Kerr Edition of Clearfield, Clearfield County, Pennsylvania.

Response Admitted. It is admitted that the Defendant, Brian Leigey was at the residence of Defendant Judy Fusco on the evening of December 4, 1999 for a short period of time.

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William A. Shaw  
Prothonotary/Clerk of Courts

465

2. While at the residence of Defendant Judy Fusco, as referenced in Request #1, Defendant Brian Leigey consumed alcohol.

Response Denied. It is specifically denied that Defendant Brian Leigey consumed alcohol while on the premises of Defendant Judy Fusco. To the contrary, the Defendant Judy Fusco has no knowledge or information as to where the Defendant Brian Leigey may have obtained, purchased or consumed any alcohol.

3. During the evening of December 4, 1999, or early morning of December 5, 1999, Defendant Brian Leigey was at the camp, commonly known as "Smitty's Camp", owned by Defendants Dean Robert Owens and Catherine J. Owens, located in the Frenchville area, Clearfield County, Pennsylvania.

Response Denied. The answering defendant Judy Fusco is without personal knowledge or information as to whether or not the Defendant Brian Leigey was at "Smitty's Camp".

4. While at the camp owned by Dean Robert Owens and Catherine J. Owens, as referenced in Request #3, Defendant Brian Leigey consumed alcohol.

Response Denied. See Answer 3.

5. Defendant Brian Leigey consumed alcohol sometime during the evening of December 4, 1999, or early morning of December 5, 1999.

Response Denied. See answer 2.

6. Defendant Brian Leigey, after he departed the camp owned by Dean Robert Owens and Catherine J. Owens, drove an automobile, and Plaintiff Joshua Hess was a passenger in the Leigey automobile.

Response Denied. The answering defendant, Judy Fusco, has no personal knowledge or information concerning if Defendant Brian Leigey was at Smitty's Camp or if he left with Joshua Hess as a passenger. However these facts have been reported on a police report.

7. Defendant Brian Leigey did wreck the automobile he was driving on State Route 879 in Girard Township, Clearfield County, Pennsylvania at approximately 2:50 A.M., December 5, 1999.

Response Admitted.



8. That following the wreck of the Leigey automobile, Defendant Brian Leigey was transported to the Clearfield Area Hospital.

Response Admitted.

9. While at the Clearfield Area Hospital, Defendant Brian Leigey had blood withdrawn for the purposes of determining the percentage of alcohol in his blood.

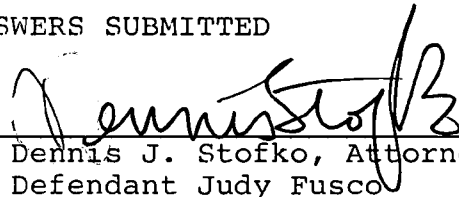
Response Admitted.

10. The BAC performed by Clearfield Area Hospital on Brian Leigey following the wreck of his automobile on December 6, 1999, at approximately 2:50 A.M., on State Route 879 in Girard Township, reflected that Defendant Brian Leigey's BAC was .19%.

Response Admitted.

ANSWERS SUBMITTED

By

  
Dennis J. Stofko, Attorney for  
Defendant Judy Fusco

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William A. Shaw  
Prothonotary/Clerk of Courts

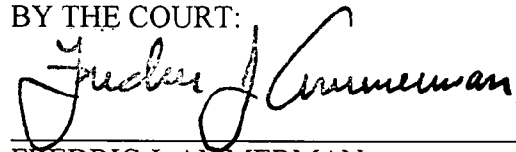
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

JOSHUA HESS, an adult individual :  
 :  
vs. : No. 01-529-CD  
 :  
BRIAN SCOTT LEIGEY, an adult :  
individual, and JUDY FUSCO, an :  
adult individual :

**ORDER**

NOW, this 20<sup>th</sup> day of April, 2004, it is the ORDER of the  
Court that argument on Attorney Harper's Motion for Summary Judgment in the  
above matter has been scheduled for the 14 day of May, 2004, at  
2:00 P.M. in Courtroom No. 1, Clearfield County  
Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

FILED

APR 20 2004

William A. Snow  
Prothonotary/Clerk of Courts

#164

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APR 30 2004 Rule memo

William A. S. to Amy Harper  
Prothonotary, Clerk of Courts

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

JOSHUA HESS, an adult individual,  
Plaintiff

-vs-

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants

Civil Action No. 01-529-CD

JURY TRIAL DEMANDED

APR 19 2004

W. J. ...  
Prothonotary

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Answers to Plaintiff's First Requests for Admissions, on behalf of Defendant, Brian Scott Leigey, was served this **16<sup>th</sup> day of April, 2004**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

Troy J. Harper, Esquire  
DENNISON, DENNISON & HARPER  
239 Main Street  
Brookville, PA 15825

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

  
\_\_\_\_\_  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

463

(2)

FILED  
M/I:2124  
APR 19 2004  
NO  
cc-

APR 19 2004

DENNISON, DENNISON & HARPER

ATTORNEYS AT LAW

293 MAIN STREET

BROOKVILLE, PENNSYLVANIA 15825

**Consolidated at 2001 - 529 C.D.**

**BRIAN SCOTT LEIGEY, an adult individual,  
and JUDY FUSCO, an adult individual,**

**Defendants.**

**VS.**

DEAN ROBERT OWENS, an adult individual, CATHERINE J. OWENS, an adult individual, CHRISTOPHER SMITH, an adult individual, and WENDY OWENS, an adult individual,

Defendants,

**vs.**

**BRIAN LEIGEY, an adult individual, and JUDY FUSCO, an adult individual,**

### Additional Defendants.

**Type of Pleading: Motion for Summary Judgment**

Filed on behalf of: Defendants, Dean Robert Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens

Counsel of Record for this Party:

Troy J. Harper  
Supreme Court Number: 74753

John C. Dennison, II  
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

FILED

APR 19 2004

William A. Shaw  
Prothonotary/Clerk of Courts

6072



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

**Consolidated at 2001 - 529 C.D.**

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

)

) JOSHUA HESS, an adult individual,

)

) Plaintiff,

)

) vs.

)

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants,

)

) vs.

)

) BRIAN LEIGEY, an adult  
) individual, and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

**MOTION FOR SUMMARY JUDGMENT**

AND NOW, come the Defendants, DEAN ROBERT OWENS, CATHERINE J.  
OWENS, CHRISTOPHER SMITH and WENDY OWENS, by and through their attorneys,  
Dennison, Dennison & Harper, who file the following Motion for Summary Judgment Pursuant to  
Pa.R.C.P. 1035.2:

1. The Plaintiff instituted the above-captioned matter against the Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, by filing a Complaint at Docket Number 2001 - 1889 C.D. (hereinafter "Owens Complaint").

2. The Plaintiff also instituted a separate action against the Defendants, Judy Fusco and Brian Leigey, by filing a Complaint at Docket Number 2001 - 529 C.D.

3. By Order of this Honorable Court dated May 7, 2002, the two above-referenced actions were consolidated.

4. The Owens Complaint alleges that on or about December 5, 1999, the Plaintiff was a passenger in a vehicle operated by the Defendant, Brian Leigey, which was involved in a one-vehicle accident on State Route 879 in Clearfield County after leaving a party in the Frenchville, Clearfield County area. (Owens Complaint ¶ 11 and 15).

5. The Owens Complaint alleges that the Plaintiff and Defendant, Brian Leigey, had been drinking alcohol at the residence of the Defendant, Judy Fusco, earlier in the day. (Owens Complaint ¶ 12 and 13).

6. The Owens Complaint alleges that the Plaintiff and Defendant then left the Fusco residence and traveled to a party in the Frenchville, Clearfield County area and that the Defendant, Brian Leigey, consumed alcohol at the party. (Owens Complaint ¶14).

7. The Owens Complaint alleges that the premises in Frenchville where the party was occurring was owned by the Defendants, Robert Dean Owens and Catherine J. Owens, and that the party was being held by the Defendants, Wendy Owens and Christopher Smith. (Owens

Complaint ¶ 27, 33 and 34).

8. The Owens Complaint attempts to set forth causes of action against the Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, with respect to the party in the Frenchville Area.

9. The pleadings are closed, and the parties have completed discovery.

**I. CLAIM AGAINST THE DEFENDANT, WENDY OWENS**

10. Paragraphs 1 through 9 of this Motion are incorporated herein by reference thereto.

11. Count II of the Owens Complaint attempts to set forth a cause of action against the Defendant, Wendy Owens, based on a negligence theory by alleging that the Defendant, Wendy Owens, was negligent in providing or permitting the Defendant, Brian Leigey, to consume alcohol while at the premises in Frenchville.

12. The Owens Complaint alleges that the Defendant, Brian Leigey, was only 19 years old at the time of the party and the accident. (Owens Complaint ¶16).

13. The Defendant, Wendy Owens, was also under the age of 21 and, specifically, she was 20 years old at the time of the alleged party and the accident. (Page 8 of the Deposition Transcript for the Deposition of Wendy Owens completed on December 19, 2002, is attached hereto as Exhibit A).

14. In order to establish a claim for negligence against the Defendant, Wendy Owens, the Plaintiff must adduce evidence of facts to establish the following four elements: (1) the Defendant owed a duty to the Plaintiff; (2) the Defendant breached that duty; (3) the breach was the

proximate or legal cause of the Plaintiff's accident; and (4) the breach resulted in an injury to the Plaintiff.

15. Inasmuch as the Defendant, Wendy Owens, was under 21 years of age and the Defendant, Brian Leigey, was under 21 years of age, the Defendant, Wendy Owens, did not owe a duty to the Plaintiff regarding the furnishing to or consumption of alcohol by Defendant Leigey.

16. The Plaintiff has failed to adduce evidence of facts essential to his support of cause of action specifically that the Defendant, Wendy Owens, owed a duty to the Plaintiff.

17. In light of the foregoing, there is no genuine issue of material fact and, therefore, the Defendant, Wendy Owens, is entitled to a judgment as a matter of law.

**WHEREFORE**, the Defendant, Wendy Owens, respectfully requests that this Court enter summary judgment in her favor and against the Plaintiff on all claims set forth in the Owens Complaint.

## **II. CLAIM AGAINST THE DEFENDANT, CHRISTOPHER SMITH**

18. Paragraphs 1 through 9 of this Motion are incorporated herein by reference thereto.

19. The Owens Complaint alleges that the Defendant, Christopher Smith, is the son of the Defendant, Catherine J. Owens. (Owens Complaint ¶16).

20. Count II of the Owens Complaint attempts to set forth a cause of action against the Defendant, Christopher Smith, based on a negligence theory by alleging that the Defendant, Christopher Smith, was negligent in providing or permitting the Defendant, Brian Leigey, to consume alcohol while at the premises in Frenchville.

21. In order to establish a claim for negligence against the Defendant, Christopher Smith, the Plaintiff must adduce evidence of facts to establish the following four elements: (1) the Defendant owed a duty to the Plaintiff; (2) the Defendant breached that duty; (3) the breach was the proximate or legal cause of the Plaintiff's accident; and (4) the breach resulted in an injury to the Plaintiff.

22. The Plaintiff has failed to adduce any evidence that the Defendant, Christopher Smith: (a) knowingly served alcoholic beverages to Defendant Leigey; (b) was at the party in Frenchville; (c) he purchased any alcohol that is alleged to have been consumed on the premises that evening or that he was even aware that there was a party at the premises that evening.

23. The Plaintiff has failed to adduce evidence of facts essential to his support of cause of action specifically that the Defendant, Christopher Smith, owed a duty to the Plaintiff.

24. In light of the foregoing, there is no genuine issue of material fact and, therefore, the Defendant, Christopher Smith, is entitled to a judgment as a matter of law.

**WHEREFORE**, the Defendant, Christopher Smith, respectfully requests that this Court enter summary judgment in his favor and against the Plaintiff on all claims set forth in the Owens Complaint.

**III. CLAIM AGAINST THE DEFENDANTS, DEAN ROBERT OWENS  
AND CATHERINE J. OWENS**

25. Paragraphs 1 through 9 of this Motion are incorporated herein by reference thereto.

26. Count I of the Owens Complaint attempts to set forth a cause of action against the

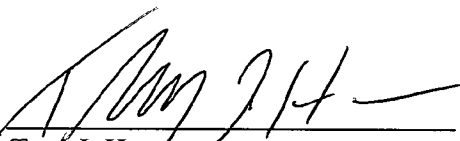
Defendants, Dean Robert Owens and Catherine J. Owens, based on negligence theory by alleging that the Defendants, Dean Robert Owens and Catherine J. Owens, as owners of the premises in Frenchville where the alleged party occurred, were negligent in allowing a party to occur where minors are alleged to have been drinking alcoholic beverages.

27. The Plaintiff has failed to adduce any evidence to support his claim inasmuch as he has failed to produce any evidence that the Defendants, Dean Robert Owens and Catherine J. Owens, knowingly served any alcoholic beverages to Defendant Leigey or otherwise planned the party or served, supplied or purchased alcoholic beverages for the party on the date in question.

28. In light of the foregoing, there is no genuine issue of material fact and, therefore, the Defendants, Dean Robert Owens and Catherine J. Owens, are entitled to a judgment as a matter of law.

**WHEREFORE**, the Defendants, Dean Robert Owens and Catherine J. Owens, respectfully request that this Court enter summary judgment in their favor and against the Plaintiff on all claims set forth in the Owens Complaint.

DENNISON, DENNISON & HARPER

By   
Troy J. Harper  
Attorneys for Defendants, Dean  
Owens, Catherine Owens, Christopher  
Smith, and Wendy Owens

1 here for you to give a verbal  
2 response, because she can't  
3 transcribe a shaking of the head one  
4 way or the other. Fair enough?

5 A. Yes.

6 Q. And if at any point this  
7 morning, you feel the need that you  
8 want to speak with your Counsel,  
9 please let us know that and you and  
10 Mr. Harper can go discuss whatever  
11 you need to discuss. What's your  
12 date of birth?

13 A. 10/31/79.

14 Q. How old are you currently?

15 A. Twenty-three (23).

16 Q. What's your Social Security  
17 number?

18 A. 169-64-6182.

19 Q. Where do you reside at?

20 A. 507 South 4th Street,  
21 Clearfield.

22 Q. And who do you reside there  
23 with?

24 A. Anthony English and my  
25 daughter, Kayla English.

**EXHIBIT**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Motion for Summary Judgment was served on the 16<sup>th</sup> day of April, 2004, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Theron G. Noble, Esq.  
Ferraracio & Noble  
301 East Pine Street  
Clearfield, Pennsylvania 16830

Mary Lou Maierhofer, Esq.  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, Pennsylvania 16602

Dennis J. Stofko, Esq.  
969 Eisenhower Boulevard  
P.O. Box 5500  
Johnstown, Pennsylvania 15904

DENNISON, DENNISON & HARPER

By Troy J. Harper  
Troy J. Harper  
Attorneys for Defendants, Dean  
Owens, Catherine Owens, Christopher  
Smith, and Wendy Owens



FILED *cc*  
APR 19 2004  
William A. Shaw  
Prothonotary/Clerk of Courts

DENNISON, DENNISON & HARPE  
ATTORNEYS AT LAW  
293 MAIN STREET  
BROOKVILLE, PENNSYLVANIA 15825

**Consolidated at 2001 - 529 C.D.**

### Additional Defendants.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

**Consolidated at 2001 - 529 C.D.**

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

)

) JOSHUA HESS, an adult individual,

)

) Plaintiff,

)

) vs.

)

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants.

)

) vs.

)

) BRIAN LEIGEY, an adult  
) individual; and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

**PRAECIPE FOR ORAL ARGUMENT**

**TO THE PROTHONOTARY:**

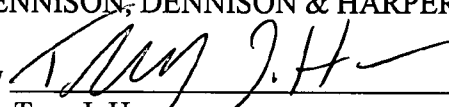
**KINDLY SUBMIT THIS MATTER TO THE COURT FOR ORAL ARGUMENT.**

1. The matter to be submitted for oral argument is the Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Motion for Summary Judgment.
2. Oral Argument is requested.

3. A Briefing Schedule has not been set.
4. This is not a discovery matter.
5. I certify that notice of the filing of this Praecipe has been given to all counsel of record and to all unrepresented parties of record.

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper

Attorneys for Defendants, Dean  
Owens, Catherine Owens, Christopher  
Smith, Wendy Owens

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Praecipe for Oral Argument was served on the 16<sup>th</sup> day of April, 2004 by United States Mail, First

Class, Postage Prepaid, addressed to the following:

Theron G. Noble, Esq.  
Ferraracio & Noble  
301 East Pine Street  
Clearfield, Pennsylvania 16830

Mary Lou Maierhofer, Esq.  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, Pennsylvania 16602

Dennis J. Stofko, Esq.  
969 Eisenhower Boulevard  
P.O. Box 5500  
Johnstown, Pennsylvania 15904

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper

Attorneys for Defendants, Dean  
Owens Catherine Owens, Christopher  
Smith, Wendy Owens

FILED <sup>N/O</sup>  
<sup>m11:1024</sup>  
APR 19 2004 cc

  
William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

No. 01-\_\_529\_\_-CD

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN ROBERT OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AN ADULT INDIVIDUAL,  
CHRISTOPHER SMITH, AN ADULT  
INDIVIDUAL, and WENDY OWENS, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

**NOTICE OF SERVICE**

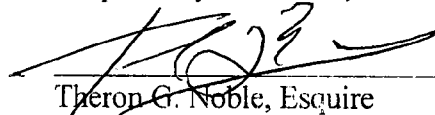
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, this 29th day of March, 2004, via United States Mail, postage pre-paid, at the addresses therein indicated. Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants):

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

MAR 30 2004

William A. Shaw  
Prothonotary

4453



FILED

14 1:09 PM ND CC

MAR 30 2004

*[Signature]*

William A. Shaw  
Prothonotary

JAMES A. NADDEO

ATTORNEY AT LAW

PO BOX 552

CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

of 1:00 PM  
MAR 10 2004

200

Atty Naddeo

William A. Shaw

Prothonotary/Clerk of Courts

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

JOSHUA HESS, an adult  
Individual,  
Plaintiff

vs.

BRIAN SCOTT LEIGEY, an  
adult individual, and JUDY  
FUSCO, an adult individual,  
et al,  
Defendants

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 01 - 529 - CD

**ANSWER TO PLAINTIFF'S MOTION FOR CONTEMPT  
AND SANCTIONS AS TO NON-PARTY JAIME LINGLE**

NOW COMES, Jamie Lingle, by and through her attorney,  
James A. Naddeo, Esquire, and avers as follows:

1. Denied. After reasonable investigation Respondent  
is without knowledge or information sufficient to form a belief as  
to the truth of said averment.

2. Denied. On the contrary it is alleged that  
Plaintiff failed to tender the proper fees as required by  
Pa.R.C.P. 234.2(c).

3. Admitted.

4. Admitted but in further answer thereto, it is  
alleged that Respondent informed counsel for Plaintiff that she  
would be unable to attend depositions on February 9, 2004, because  
of her class schedule at the Pennsylvania State University DuBois  
Campus.

5. Admitted in so far as it states that Respondent informed Plaintiff's counsel that she could not attend the depositions on February 9, 2004, because of her class schedule. It is denied that she informed him that she did not have to attend because the date was changed.

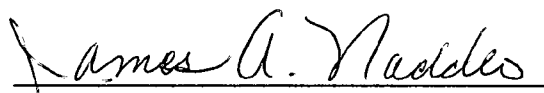
6. States of conclusion to which no answer is required. To the extent that an answer may be required, it is admitted that Plaintiff requested a scheduled deposition change and promised through her counsel to cooperate for attendance at a future date. It is also admitted that Respondent failed to sign for her certified mail, but in further answer thereto it is alleged that Respondent did not nor did she have any way of knowing the contents of said certified mail.

7. Denied. After reasonable investigation Respondent is without knowledge or information sufficient to form a belief as to the truth of said averment.

7. Admitted.

WHEREFORE, Respondent respectfully requests your Honorable Court to dismiss Plaintiff's Motion for Contempt.

Respectfully submitted,

  
James A. Naddeo, Esquire  
Attorney for Respondent

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL, et.al,

DEFENDANTS.

No. 01- 529 -CD

**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record and interested individuals, this 23rd day of February, 2004, via United States Mail, postage pre-paid, at the addresses therein indicated, the RULE TO SHOW CAUSE issued upon Plaintiff's MOTION FOR CONTEMPT OR SANCTIONS AS TO NON-PARTY JAIME LINGLE:

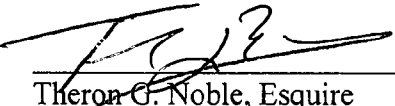
Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Jaime Lingle  
180 High Street  
Woodland, PA 16881

Respectfully Submitted,

  
Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

**FEB 24 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

(51)

FILED

NO  
RE

11/24/2004

2004

William A. Shaw

Prothonotary/Clerk of Courts

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, AND JUDY FUSCO, AN  
ADULT INDIVIDUAL, et.al.

DEFENDANTS.

No. 01- 529 -CD

Type of Pleading:

MOTION FOR CONTEMPT AND  
SANCTIONS AS TO NON-PARTY  
JAIME LINGLE

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

**FEB 17 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

150



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL, et.al.  
DEFENDANTS.

No. 01- 529 -CD

**RULE TO SHOW CAUSE**

Now, this 18th day of February, 2004, upon consideration of the attached Plaintiff's MOTION FOR CONTEMPT AND SANCTIONS AS TO NON-PARTY JAIME LINGLE a RULE is hereby issued upon non-party Lingle to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the 9 day of March, 2004 and argument on the PETITION set for the 10 day of March, 2004, at 1:30, P.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

**NOTICE**

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

Court Administrator  
Second & Market Streets  
Clearfield, PA 16830  
(814)-765-2641

**FILED**

**FEB 19 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

By The Court,

Judith J. Zimmerman  
Judge...

450

FILED

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0193204

Hwy Noble

FEB 19 2004



William A. Shaw  
Prothonotary/Clerk of Courts

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL, et.al.  
DEFENDANTS.

No. 01- 529 -CD

**PLAINTIFF'S MOTION FOR CONTEMPT AND SANCTIONS AS TO NON-PARTY  
JAIME LINGLE**

**AND NOW, comes the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of his motion:**

1. This matter concerns injuries sustained from an automobile accident.
2. That Depositions were scheduled to be held on February 6, 2004, and a due and proper subpoena served upon potential witness non-party Jaime Lingle by personal service of process.
3. That given the severe weather conditions, the depositions were re-scheduled for the next business day being February 9th and notice given via phone to all witnesses.
4. That at the scheduled time for her deposition, non-party Lingle did not show for her deposition.
5. That upon being called, she said she had class that day and was not coming as she did not have too in that the date had been changed.
6. That this follows a pattern of conduct by this non-party witness which includes: (i) a change to an original scheduled deposition from which her cooperation was assured and (ii) failing to sign for certified mail as to the most recent deposition requiring personal service.
7. That of all nine deponents scheduled for depositions in the same method, she was the only

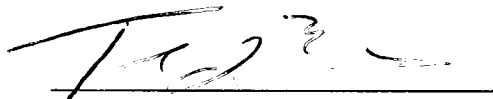
deponent who did not testify or make alternative arrangements concerning the deposition.

7. It is not known what information this potential witness has as she has informed Plaintiff's counsel that she will not answer any questions unless she is compelled to do so.

**WHEREFORE, Plaintiff requests that this Court SANCTION, or in the alternative, hold non-party Lingle in CONTEMPT OF COURT for unilaterally refusing to attend her deposition, without prior notice, and order as follows:**

1. ORDER a date certain for the re-scheduled deposition;
2. Have Ms. Lingle make the necessary arrangements for the date certain which shall include (i) a mutually convenient date for all counsel and a court reporter;
3. Pay the appearance fee for the Court Reporter;
4. Pay Plaintiff's reasonable attorney's fees for preparation and presentation of this Motion; or in the alternative,
5. Hold Ms. Lingle in CONTEMPT OF COURT with an appropriate fine and incarceration to assure her compliance with lawful orders in the future.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Pa. I.D.#: 55942  
301 East Pine Street  
Clearfield, PA 16830

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, this 14th day of February, 2004, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's MOTION FOR CONTEMPT OR SANCTIONS AS TO NON-PARTY JAIME LINGLE:


Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Jaime Lingle  
180 High Street  
Woodland, PA 16881

Respectfully Submitted,

  
Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

FILED

M/18:58 AM  
FEB 17 2004

NO  
CC  
4/2/2

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSHUA HESS

:

-VS-

: No. 01-529-CD

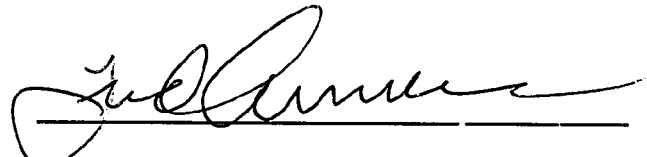
BRIAN SCOTT LEIGEY, al

:

O R D E R

NOW, this 6th day of January, 2004, following reargument on the Motion for Summary Judgment previously filed on behalf of the Defendant Judy Fusco; the Court having been advised that Discovery will be completed in the month of January 2004, with transcripts of depositions being received thereafter, it is the ORDER of this Court that counsel for the Plaintiff submit further brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional Discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to provide supplemental brief to the Court within the same deadline.

BY THE COURT,



President Judge

FILED

JAN 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

#49

ICC:

FILED

0111:12 PM  
JAN 09 2004

William A. Shaw  
Prothonotary, Clerk of Courts

*ES*

*Atty Noble*

*Atty Troy Harper*

*Atty Maierhofer*

*Atty Stofko*



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD.

**PLAINTIFF'S REQUEST TO CONTINUE ARGUMENT ON DEFENDANT  
FUSCO'S MOTION FOR SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, TO FILE A SUPPLEMENTAL BRIEF PENDING  
COMPLETION OF DISCOVERY**

AND NOW, comes the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of the above referenced motion:

1. By ORDER of Court, dated May 7, 2002, argument and decision on Defendant Fusco's pending MOTION FOR SUMMARY JUDGMENT was continued pending completion of discovery. See Exhibit "A" attached hereto.
2. That by letter of November 13, 2003, Defendant Fusco's counsel asserted that discovery had been completed and requested argument on said pending motion to be scheduled. See Exhibit "B" attached hereto.
3. By letter of November 15, 2003, Plaintiff's counsel informed the Court that discovery was not completed, Plaintiff's investigation was continuing, and additional depositions would be forthcoming. See Exhibit "C".
4. That same was informed to counsel who were present and attended argument on another motion on October 20th, which Defendant Fusco's counsel did not attend in that said defendant had no interest in the motion.
5. In fact, a date, being February 6th, has been arranged with counsel for said depositions.

**FILED**

DEC 17 2003

William A. Shaw  
Prothonotary

#48

6. That said depositions will provide additional evidence directly relative to the pending motion, which concern (i) a witness who alters defendant Fusco's timeline of how long Defendant Leigey and Plaintiff Hess remained at her residence; and (ii) Defendant Fusco's persistent pattern of providing alcoholic beverages to under-age persons on a routine basis.

7. That by letter of December 4, the court administrator's office indicated that brief's were due and oral argument on Defendant Fusco's pending motion would be held. See Exhibit "D" attached hereto.

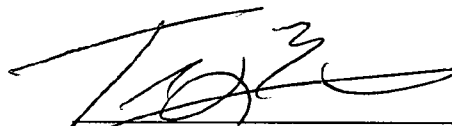
8. That said letter contradicts the previous court order and assumes that Defendant Fusco's position is correct that discovery is completed.

9. That Plaintiff will honor said scheduling directions and will submit a brief and argue against said motion, but wanted to more fully document the assertions in his letter of November 15th.

WHEREFORE, Plaintiff requests that:

- 1) Decision on Defendant Fusco's MOTION FOR SUMMARY JUDGMENT be CONTINUED until discovery is actually completed;
- 2) In the alternative, permit Plaintiff to file a supplemental brief when discovery is completed; and
- 3) Set forth a schedule to complete discovery.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', is written over a horizontal line.

Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Plaintiff  
301 E. Pine Street  
Clearfield, PA 16830  
(814)-375-2221

# STOFKO LAW OFFICES

COPY

DENNIS J. STOFKO  
ANDREW L. HORVATH  
ROBERT L. FREY, JR.

969 EISENHOWER BOULEVARD, SUITE E  
P.O. BOX 5500  
JOHNSTOWN, PENNSYLVANIA 15904

TELEPHONE 814-262-0064 or 814-262-7341  
FAX 814-262-0905  
E-MAIL stofkoesq@stofkolaw.com

November 13, 2003

The Honorable Judge John K. Reilly, Jr.  
Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, Pennsylvania 16830

Re: Hess vs. Leigey, et al.  
No. 01-529 CD

Exhibit "B"

Dear Judge Reilly:

By order dated May 7, 2002, you continued argument on our Motion for Summary Judgment pending completion of discovery. Discovery is now complete in the above matter and I would like to have the Motion for Summary Judgment filed on behalf of Judy Fusco heard before the Court.

Thank you for your cooperation.

Sincerely,

Dennis J. Stofko

DJS/dd

cc: Theron G. Noble, Esquire  
Mary Lou Maierhofer, Esquire  
Troy J. Harper, Esquire

**FERRARACCIO & NOBLE**

301 East Pine Street  
Clearfield, PA 16830  
(814) 765-4990  
(814) 375-2221  
FAX: (814) 765-9377

Hon John K. Reilly Jr.  
c/o Court Administrator  
Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, PA 16830

COPY

November 15, 2003

Re: Hess v. Leigey, et.al.;  
01-529-CD

Exhibit "C"

Dear Judge Reilly:

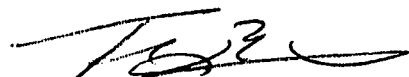
I write you in response to Attorney Stofko's letter claiming that discovery has been completed. This is not accurate as Plaintiff for about the last two months has had a private investigator tracking down other possible witnesses. These would be names who other witnesses have said were, or might have been, at either of the parties attended by Plaintiff Hess and Defendant Leigey before the accident.

I know that there are about a half dozen other depositions which will be scheduled from this aspect of the investigation. I was awaiting the investigator to complete his job before scheduling the depositions to determine whether there are additional depositions needed. With the number of parties, it is difficult to arrange deposition dates so it is hoped by first determining who is to be deposed we can get this aspect of the case wrapped up in two days of depositions, rather than doing a deposition here and there.

As such, although approaching an appropriate time to respond to Defendant Fusco's Motion, we are not currently at that point. I would also note that this was mentioned to counsel who attended argument on October 20th.

With regards, I am

Sincerely,

  
Theron G. Noble, Esquire

tn/TGN.

cc: Mr. Joshua Hess.  
Dennis J. Stofko, Esquire  
Mary Lou Maierhofer, Esquire  
Troy J. Harper, Esquire



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

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

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

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

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

December 4, 2003

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

Dennis J. Stofko, Esquire  
Attorney at Law  
Post Office Box 5500  
Johnstown, PA 15904

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

RE: JOSHUA HESS  
vs.  
BRIAN SCOTT LEIGEY, al  
No. 01-529-CD

Exhibit "D"

Dear Counsel:

Pursuant to Attorney Stofko's letter of November 13, 2003, please be advised that argument on Attorney Stofko's Motion for Summary Judgment has been scheduled for **Monday, December 29, 2003 at 1:30 P.M.**, in Chambers, Clearfield County Courthouse, Clearfield, PA.

Additionally, copies of Briefs regarding the above Motion should be supplied to the undersigned no later than Monday, December 22, 2003.

Very truly yours,

*Marcy Kelley*  
Marcy Kelley  
Deputy Court Administrator

cc: Honorable John K. Reilly, Jr.  
Mary Lou Maierhofer, Esquire

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

JOSHUA HESS, an adult individual

-VS-

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO, an  
adult individual

No. 01 - 529 - CD

Exhibit "A"

**ORDER**

NOW, this 7<sup>th</sup> day of May, 2002, this being the day and date set for argument into Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, upon agreement of the parties, it is the ORDER of this Court that said argument shall be and is hereby continued pending completion of discovery.

By the Court,

151 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.

**MAY 07 2002**

Attest:

*William L. ...*  
Prothonotary

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's MOTION TO CONTINUE OR IN THE ALTERNATIVE FILE A SUPPLEMENTAL BRIEF, this 15th day of December, 2003.

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

*01:11 134 No EC*  
DEC 17 2003

William A. Shaw  
Prothonotary



**FERRARACCIO & NOBLE**

301 East Pine Street  
Clearfield, PA 16830  
(814) 765-4990  
(814) 375-2221  
FAX: (814) 765-9377

William A. Shaw, Prothonotary  
Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, PA 16830

December 14, 2003

Re: Hess v. Leigey, et.al.;  
01-529-CD

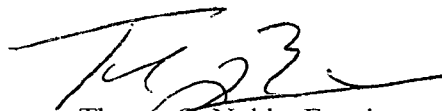
Dear Mr. Shaw:

Please find enclosed Plaintiff's MOTION TO CONTINUE OR TO FILE SUPPLEMENTAL BRIEF as to Defendant Fusco's MOTION FOR SUMMARY JUDGMENT. Under cover of this letter, I have done as indicated on the attached certificate of service. Also, I have provided a courtesy copy of the same to the Court Administrator's office.

Thank you for your efforts in this regards.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN w.encl.

cc: Mr. Joshua Hess w.encl.

Dennis J. Stofko, Esquire w.encl.

Mary Lou Maierhofer, Esquire w.encl.

Troy J. Harper, Esquire w.encl.

Ms. Marcy Kelley, Deputy Court Administrator

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

JOSHUA HESS

vs.

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO, an  
adult individual

:  
:  
: No. 01-529-CD  
:  
:

**ORDER**

AND NOW, this 17<sup>th</sup> day of December, 2003, it is the ORDER of  
the Court that argument on Attorney Stofko's Motion for Summary Judgment in the  
above matter has been rescheduled from December 29, 2003 to **Tuesday, January 6,**  
**2004 at 10:00 A.M.** before the Honorable Fredric J. Ammerman, in Courtroom No. 1,  
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

**FILED**

DEC 17 2003

William A. Shaw  
Prothonotary

  
\_\_\_\_\_  
JOHN K. REILLY, JR.  
President Judge

#47

**FILED**

10

12:07 PM

DEC 17 2003

*cc atty Rolle  
cc Mary Maierhofer Esq  
cc Mary Maierhofer  
cc Dennis Staphko  
cc Dennis Staphko  
cc atty*

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

JOSHUA HESS, an adult individual :

-vs-

No. 01 – 529 – CD

BRIAN SCOTT LEIGEY, an adult :

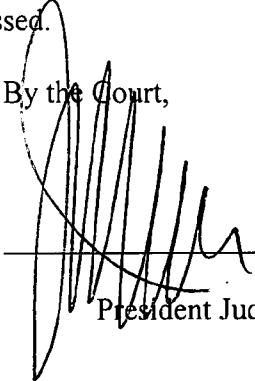
individual, and JUDY FUSCO, an adult :

individual :

**ORDER**

NOW, this 21<sup>st</sup> day of November, 2003, upon consideration of Motion for Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigey, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby granted and Plaintiff's claim for punitive damages dismissed.

By the Court,

  
\_\_\_\_\_  
President Judge

**FILED**

NOV 21 2003

William A. Shaw  
Prothonotary

*style*

FILED

5 3 36 87 100% City Noble  
100% City Manselgus

NOV 21 2003

*WAS*

William A. Shaw  
Prothonotary

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, AND JUDY FUSCO, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

Type of Pleading:

PLAINTIFF'S REPLY TO  
DEFENDANT LEIGEY'S MOTION  
FOR PARTIAL SUMMARY JUDMENT

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

OCT 08 2003

m/11-20/MS  
William A. Shaw

Prothonotary/Clerk of Courts

No CENS COPY

#45

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,  
DEFENDANTS.

No. 01- 529 -CD

**PLAINTIFF'S REPLY TO DEFENDANT LEIGEY'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who responds as follows to Defendant Leigey's MOTION FOR PARTIAL SUMMARY JUDGMENT:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. The same is a legal conclusion for which no response is deemed necessary. To the extent a response is deemed necessary the same is DENIED as the same is merely permissible alternative pleading.
8. Admitted.
9. The same is a legal conclusion for which no response is deemed necessary. The same will be

addressed more fully in Plaintiff's Brief submitted herewith.

10. The same is a legal conclusion for which no response is deemed necessary. The same will be addressed more fully in Plaintiff's Brief submitted herewith.

11. The same is a legal conclusion for which no response is deemed necessary. The same will be addressed more fully in Plaintiff's Brief submitted herewith.

12. Admitted.

13. Denied. The Order does not state that the deposition is limited to such information but Plaintiff believes that he should be and is permitted to follow information which will flow from those matters. By way of further response, the same is Admitted that there is sufficient opportunity without the remainder of Defendant Leigey's deposition to defend against the present motion.

14. Admitted.

15. Denied. The facts stated in the pleadings and as developed through discovery amply provide the basis from which a jury could levy punitive damages as to Defendant Leigey.

16. Denied. For the reasons stated in response to averment 15, the same is denied.

17. Denied. For the reasons stated in response to averment 15, the same is denied.

WHEREFORE, Plaintiff respectfully requests that Defendant Leigey's Motion for Partial Summary Judgment be DENIED.

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Pa. I.D.#: 55942  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221



# PAVANIA STATE POLICE CITATION REPORT

CLEARFIELD 1330 CO3-0621475  
 3 OTN F 3497024 4. TWP-BORO-CITY GIRARD 5. COUNTY CLEARFIELD

500 FEET SOUTH OF T640 (BALD HILL RD.) VIL. OF LEWISTON MILLS

7. ACCIDENT ☒ YES ☐ NO

10. DRIVER'S NO. 25593405 STATE PA

NAME BRIAN SCOTT LEIGLEY

11. ADDRESS PO BOX 813, PALMER ST. CLEARFIELD, PA 16830 CITY STATE ZIP CODE TELEPHONE NO 814-765-1995

12. HEIGHT 503 WEIGHT 125 HAIR BLONDE EYES BLUE 13. VEHICLE YEAR-MAKE-TYPE 1988 CHRYSLER-SHOW, BN48055 REG. NO. 1999 STATE PA

14. OBSERVATION	ODOR OF ALCOHOLIC BEVERAGE ON BREATH <input type="checkbox"/> NONE <input type="checkbox"/> FAINT <input checked="" type="checkbox"/> MODERATE <input type="checkbox"/> STRONG	DRESS <input type="checkbox"/> NEAT <input type="checkbox"/> UNKEMPT <input type="checkbox"/> DIRTY <input type="checkbox"/> RAGGED <input type="checkbox"/> UNUSUAL <input type="checkbox"/> OTHER	ATTITUDE <input type="checkbox"/> COOPERATIVE <input type="checkbox"/> INDIFFERENT <input type="checkbox"/> UNCOOPERATIVE <input type="checkbox"/> INSULTING <input type="checkbox"/> COMBATIVE <input type="checkbox"/> OTHER	WALKING <input type="checkbox"/> SURE <input type="checkbox"/> FALLING <input type="checkbox"/> STAGGERING <input type="checkbox"/> STUMBLING <input type="checkbox"/> SWAYING <input type="checkbox"/> UNSURE	SPEECH <input type="checkbox"/> NORMAL <input type="checkbox"/> FAIR <input checked="" type="checkbox"/> INCOHERENT <input type="checkbox"/> CONFUSED <input type="checkbox"/> STUTTERING <input type="checkbox"/> SLURRED <input type="checkbox"/> OTHER	UNUSUAL ACTIONS <input type="checkbox"/> SLEEPY <input type="checkbox"/> TALKATIVE <input type="checkbox"/> BELCHING <input type="checkbox"/> VOMITING <input type="checkbox"/> CRYING <input type="checkbox"/> OTHER
-----------------	--	---	--	--	--	---

15. MIRANDA WARNING GIVEN ☐ YES ☒ NO TIME ACKNOWLEDGED ☐ YES ☒ NO

16. IMPLIED CONSENT WARNING GIVEN ☐ YES ☒ NO TIME ACKNOWLEDGED ☐ YES ☒ NO

Section 1547 of the "Vehicle Code," in part reads as follows: "Any person who drives, operates or is in actual physical control of the movement of a motor vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving operating or in actual physical control of the movement of a motor vehicle."

REFUSAL TO SUBMIT TO CHEMICAL TESTING WILL RESULT IN THE SUSPENSION OF THAT PERSON'S OPERATING PRIVILEGES FOR A PERIOD OF 12 MONTHS

17. TYPE OF TEST <input type="checkbox"/> BREATH <input checked="" type="checkbox"/> BLOOD <input type="checkbox"/> URINE <input type="checkbox"/> NO TEST <input type="checkbox"/> DL-26	18. B.A.C. 19	19. BREATH TEST INSTRUMENT USED	20. DATE 12/05/99
21. TIME OF TEST OR REFUSAL 0415		22. BREATH TEST OPERATOR/BADGE NO.	

23. WERE YOU OPERATING A VEHICLE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	WHERE WERE YOU GOING?	WHERE DID YOU START FROM?	WHAT TIME?	WHAT IS THE TIME NOW?
WHAT WAS YOUR DIRECTION OF TRAVEL?	ARE YOU NOW UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	ARE YOU ILL?	HAVE YOU RECENTLY BEEN TO A DOCTOR/ DENTIST? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF SO, WHEN?
WHAT IS THE DOCTOR'S/DENTIST'S NAME?	WHAT WAS THE ILLNESS/DISEASE?	ARE YOU TAKING ANY MEDICATION? (TRANQUILIZERS, PILLS, ETC.) <input type="checkbox"/> YES <input type="checkbox"/> NO	IF SO, WHAT?	
WHAT WAS THE TIME OF THE LAST DOSAGE?	DO YOU HAVE DIABETES? <input type="checkbox"/> YES <input type="checkbox"/> NO	ARE YOU TAKING INSULIN? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF SO, WHAT WAS THE TIME OF THE LAST DOSAGE?	WERE YOU INVOLVED IN AN ACCIDENT TODAY? <input type="checkbox"/> YES <input type="checkbox"/> NO
IF SO, WHERE?	ARE YOU HURT? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF SO, HOW?		
HAVE YOU HAD ANY ALCOHOLIC BEVERAGES SINCE THE ACCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	HOW MUCH? WHAT KIND?	DO YOU HAVE ANY PHYSICAL DEFECTS? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF SO, WHAT?	

24. SECTION/SS	25. DAY	26. DATE	27. TIME	28. ROUTE	29. LOC. CODE	30. ZONE	31. ST/08	32. STD	33. SPR	34. SA	35. DIS	36. DATE
3731	SUN	12/05/99	0250	SR879	17/214	15	10					
3735.1(a)	"	"	"	"	"	"	"					
3718(a)	"	"	"	"	"	"	"					
330(a)	"	"	"	"	"	"	"					
37. <input type="checkbox"/> VOID AB INITIO <input checked="" type="checkbox"/> SUMMONS <input type="checkbox"/> ARRAIGNED	38. DATE FINGERPRINTED 01/26/00		39. DATE PHOTOGRAPHED 01/26/00		40. MAGISTERIAL DISTRICT NO. 46-3-03		41. COMMITTED TO RELEASED RULE 102		BAIL			

42. DETAILS REFER TO ACCIDENT REPORT CO3-0621475

OCA C-28442

CONTINUED:

43. SIGNATURE TPR MURRAY T. GROTJAN BADGE NO. 6138 44. DATE OF REPORT 12/19/99 45. SUPV. INITIALS & BADGE NO. UCR DEC 99 A-R-C

STATION

CLEARFIELD HOSPITAL, PO BOX 992, CLEARFIELD, PA 16830  
EMERGENCY DEPARTMENT RECORD

PATIENT: LEIGEY, BRIAN SCOTT MR #:0000080655  
DATE OF SERVICE: 12/05/99  
PHYSICIAN: Przemyslaw P. Smolarczyk, M.D.  
TIME DICTATED: 06:38:38 TIME TRANSCRIBED: 06:54:38

PRIORITY

Exhibit "B"

TIME SEEN: 0404.

The patient arrived by private vehicle. The history was taken from the paramedics.

CHIEF COMPLAINT: Motor vehicle accident.

HISTORY OF PRESENT ILLNESS: The patient is a 19-year-old white male who was the unrestrained driver who lost control and hit a pole head on. The patient was walking at the scene. The paramedics immobilized the patient and brought him to the Emergency Room. The patient admits to drinking alcohol and he has altered mental status. He does not remember the accident. He was arousable but then he falls asleep very easily. No other history available from the patient. The paramedics said the other passenger sustained major injury and he was flown to a tertiary care center by chopper. The patient admits to drinking alcohol and driving the car.

PHYSICAL EXAMINATION:

HEENT: Normocephalic, atraumatic. Pupils were equal and reactive to light. Extraocular eye muscles are intact. Sclerae anicteric. Throat - Pierced tongue. Mucosa is dry.

NECK: The patient is fully immobilized, although denies any pain, but because of the status of the patient, the collar remained. The patient was moving all extremities.

CHEST: Does not seem to be tender.

LUNGS: Clear to auscultation.

HEART: Regular rate and rhythm.

ABDOMEN: Soft, non-tender. Positive bowel sounds.

EXTREMITIES: There is a small skin laceration/abrasion on the elbow not requiring suturing. Full range of motion. No clubbing, cyanosis or edema noted.

NEUROLOGIC: Besides the change in mental status is non-focal.

TESTS IN THE EMERGENCY DEPARTMENT: The patient had a portable cervical spine which did not show any fracture or dislocation. The patient had a CAT scan of the head and cervical spine which was normal. The patient was given IV fluids with multiple vitamins and vitamin B 100 mg. Alcohol level was 0.190 which is elevated. Also urine obtained by the Foley catheter is positive for marijuana. After CAT scan, immobilization was removed and I checked the back of the head which showed a small scalp laceration about 2 cm which after cleaning was repaired with three staples. The patient became more alert but was still falling asleep easily.

DIAGNOSIS: Status post motor vehicle accident with skin laceration to right elbow and scalp

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CRIMINAL ACTION

COMMONWEALTH OF PENNSYLVANIA :

-vs-

: No. 00-58-CRA

BRIAN S. LEIGEY

:

S E N T E N C E

NOW, this 8th day of November, 2001, Defendant having entered Guilty Pleas to Accidents Involving Death or Personal Injury, a Misdemeanor of the First Degree, Driving Under the Influence, a Misdemeanor of the Second Degree, and Summary Offense of Driving on Right Side of Roadway; he being fully and competently represented by counsel and the Court being satisfied he has knowingly and intelligently entered said Pleas, it is the SENTENCE of this Court that on the Offense of Accidents Involving Death or Personal Injury he pay for the benefit of Clearfield County Three Hundred (\$300.00) Dollars, plus costs of prosecution; that he serve a period of Probation of five (5) years under the supervision of the Clearfield County Department of Probation Services, Adult Division, among the terms and conditions of which shall be that he serve nine (9) months incarceration in the Clearfield County Jail; effective immediately, the Defendant shall refrain from the possession or use of alcoholic beverages; he shall attend and successfully complete

Exhibit "C"

outpatient drug and alcohol treatment as recommended by his supervising Probation Officer, plus any follow up recommended and be responsible for all costs associated therewith; he shall make restitution in an amount to be determined by the Court.

On the Offense of Driving Under the Influence, that he pay for the benefit of Clearfield County Three Hundred (\$300.00) Dollars, plus costs of prosecution; that he be incarcerated in the Clearfield County Jail for a term the minimum of which shall be two (2) days and the maximum of which shall be one (1) year. Said period of incarceration to be served concurrent to the period of Probation and incarceration as set forth above for Accidents Involving Death or Personal Injury. Effective immediately, he shall not use or possess alcoholic beverages and shall surrender his operator's license. He shall attend and successfully complete the DUI School of Concerns, Incorporated, for which he shall pay costs of One Hundred Seventy-Five (\$175.00) Dollars and complete within eight (8) weeks from date hereof, together with any follow-up counseling or treatment recommended and be responsible for all costs associated therewith.

On the Summary Offense of Driving on Right Side of Roadway, that he pay a Thirty-Five (\$35.00) Dollar fine, plus costs.

Pursuant to the provisions of the Vehicle Code, 75  
Purdens 1540(a) and 1540(a.1), the Defendant shall  
immediately surrender his operator's license. Credit towards  
serving the period of suspension shall not commence until the  
date of the Defendant's release from incarceration.

BY THE COURT,

*Frederick J. Zimmerman*

Judge

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01-\_\_529\_\_-CD

**CERTIFICATE OF SERVICE**

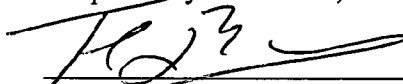
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's Reply to Defendant Leigey's Motion for Summary Judgment and REPLY BRIEF, this 7th day of October, 2003:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

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

JOSHUA HESS, an adult individual,  
Plaintiff

-vs-

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual

Defendants

: Civil Action No. 01-529-CD

: **TYPE OF DOCUMENT**

: Motion for Partial Summary Judgment

: **FILED ON BEHALF OF**

: Brian Scott Leigey

: Defendant

: **COUNSEL FOR DEFENDANT**

: Mary Lou Maierhofer, Esquire

: MEYER, DARRAGH, BUCKLER, BEBENEK

: & ECK, PLLC

: 120 Lakemont Park Boulevard

: Altoona, PA 16602

: (814) 941-4600

: Pennsylvania ID #62175

**FILED**

SEP 16 2003

William A. Shaw  
Prothonotary/Clerk of Courts

3414

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

JOSHUA HESS, an adult individual,  
Plaintiff

-vs-

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants

:  
:  
:  
: Civil Action No. 01-529-CD  
:  
:

: JURY TRIAL DEMANDED

**RULE**

NOW THIS \_\_\_\_\_ day of \_\_\_\_\_, 2003, a Rule is hereby issued upon  
Plaintiff, Joshua Hess, to show cause, if any there should be, why the Motion for Partial  
Summary Judgment of Defendant, Brian Scott Leigey, should not be granted.

Said Rule Returnable the \_\_\_\_\_ day of \_\_\_\_\_, 2003, at \_\_\_\_\_ o'clock,  
\_\_\_\_.m., Courtroom No. \_\_\_\_\_, Clearfield County Courthouse, Clearfield, Pennsylvania.

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



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

JOSHUA HESS, an adult individual,  
Plaintiff

-vs-

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants

:  
:  
:  
: Civil Action No. 01-529-CD  
:  
:

: JURY TRIAL DEMANDED

**ORDER OF COURT**

NOW THIS \_\_\_\_ day of \_\_\_\_\_, 2003, upon consideration of the  
Motion for Partial Summary Judgment by Defendant, Brian Scott Leigey, the Court does  
hereby Order, Direct and Decree that this Motion for Partial Summary Judgment is  
GRANTED and Plaintiff's claim for punitive damages as well as any claims for  
recklessness is DISMISSED.

BY THE COURT:

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



6. Plaintiff's claims of recklessness directed toward Defendant Leigey are the same basis for Plaintiff's claim of negligence (See Complaint, Paragraph 26).

7. Plaintiff cannot recover punitive damages, as a matter of law, for the same conduct which is alleged to have been merely negligent.

8. The Superior Court, in Focht v. Rubada, 268 A.2d 157 (Pa. Super. 1970), held that driving under the influence of intoxicating liquor, under certain circumstances, may be deemed outrageous conduct sufficient to allow imposition of punitive damages.

9. Focht appears to require more than merely driving under the influence. See also Kuehn v. Morgan, 50 Lehigh Legal Journal 13 (2002). (See Exhibit "A" attached hereto and incorporated as if fully set forth at length.)

10. Plaintiff's own contributory negligence and/or assumption of risk precludes the imposition of punitive damages, Weaver v. Clabaugh, 388 A.2d 1094 (Pa. Super. 1978).

11. Plaintiff had a duty to assess the safety of the circumstances in which he placed himself when he entrusted his safety to a driver he knew had consumed alcohol. Hannon v. City of Philadelphia, 587 A.2d 845 (Pa. Cmwlth. 1991).

12. Defendant Leigey's deposition has to be completed as a result of issues regarding attorney-client privilege. (See Exhibit "B" attached hereto and incorporated herein as if fully set forth at length.)

13. The continuation of Defendant Leigey's deposition is limited to responding to questions concerning information provided to Attorney Pentz. (See Exhibit "C" attached hereto and incorporated herein as if fully set forth at length.)

14. Thus the completion of Defendant Leigey's deposition will not impact or provide any additional information for either parties support or opposition to this Motion for Partial Summary Judgment.

15. Defendant Leigey asserts that there is no evidence to support a claim for punitive damages.

16. Defendant Leigey asserts that he is entitled to partial summary judgment as to the punitive damage claim as a matter of law.

17. It is clear that the Plaintiff in this case cannot claim punitive damages, thereby, the punitive damage claims as well as any reckless claims must be dismissed with prejudice.

WHEREFORE, Defendant, Brian Scott Leigey, prays this Honorable Court grant this Motion for Partial Summary Judgment and dismiss Plaintiff's claim for punitive damages as well as any claims for recklessness.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

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(814) 941-4600  
Pennsylvania ID #62175

Date: September 15, 2003

BRUCE L. KUEHN, SR. AND STEPHANIE L. KUEHN vs.  
DAVID S. MORGAN

*Evidence of Intoxication—Punitive Damages—Reckless Indifference—Unfair Prejudice—Expert Witness.*

1. Evidence of a driver's blood alcohol content alone is insufficient to prove intoxication to a degree that renders him unfit to drive or walk in the street.
2. The criminal presumption of intoxication at a blood alcohol level of 0.10 percent does not apply in civil cases.
3. If the evidence of intoxication is sufficient to establish unfitness to drive, the evidence is relevant. To determine whether it is admissible, the court must apply the Pa. R.E. 403 balancing test to weigh its probative value against the danger of unfair prejudice.
4. Under the appropriate circumstances, evidence of driving while under the influence of intoxicating liquors may constitute a sufficient ground for allowing punitive damages.
5. For evidence of consumption of alcohol to be admissible on the question of punitive damages, evidence of intoxication must reasonably establish a degree of intoxication which proves unfitness to drive, the evidence of intoxication must be probative on the issue of punitive damages, and the probative value of the evidence must outweigh its prejudicial effect.
6. In appropriate cases a plaintiff is entitled to recover punitive or exemplary damages in addition to compensatory damages. While compensatory damages are those damages which compensate a party for actual damage suffered and proved, punitive damages are awarded for no other purpose than to punish the wrongdoer for his outrageous conduct.
7. Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.
8. There are three elements of reckless indifference: (1) the actor must have intentionally done an act of unreasonable character; (2) he must have disregarded a risk known to him or so obvious that he must have been aware of it; and (3) the risk must have been so great as to make it highly probable that harm would follow.
9. Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "Unfair prejudice" means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially."
10. In weighing the admissibility of intoxication on the question of punitive damages, one has to look both at the surrounding circumstances and the nature of the harm that occurred which evaluation is more appropriately performed at the time of trial.
11. Plaintiffs are not permitted to present evidence of a presumption of an unfitness to drive with a blood alcohol content above 0.10 percent because that is not permitted in a civil case.

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<sup>12</sup> Where the factual situation is such that normally lay persons (jurors) would not have the special or expert knowledge needed to comprehend and understand the problem, then expert testimony is appropriate.

<sup>13</sup> Plaintiffs cannot introduce evidence of intoxication to establish entitlement to punitive damages in the absence of expert opinion.

In the Court of Common Pleas of Lehigh County—Civil Division. No. 2001-C-599. Bruce L. Kuehn, Sr. and Stephanie L. Kuehn, Plaintiffs vs. David S. Morgan, Defendant.

NICHOLAS R. SABATINE, III, ESQUIRE, on behalf of the Plaintiffs.

KEVIN C. REID, ESQUIRE, on behalf of the Defendant.

GARDNER, J., June 18, 2002. This matter is before the court on Defendant's Motion in Limine, filed November 14, 2001. Plaintiffs' Answer to Defendant's Motion in Limine was filed December 14, 2001. Oral argument was held before the undersigned on March 22, 2002. Upon consideration of the arguments of counsel and the briefs of the parties, and for the reasons expressed in this Opinion, we deny Defendant's Motion in Limine, and we grant plaintiffs leave to file a motion for extension of time in which to obtain expert witnesses.<sup>1</sup>

This is an action for personal injuries arising from a motor vehicle accident which occurred on September 17, 2000, at approximately 10:00 o'clock p.m. on MacArthur Road in South Whitehall Township, Lehigh County, Pennsylvania. Plaintiffs contend that plaintiff Bruce L. Kuehn, Sr. was driving his 1992 Toyota pickup truck south on MacArthur Road with his wife, plaintiff Stephanie Kuehn, in the right front passenger seat of the truck. Mr. Kuehn stopped at a traffic light near the entrance to the Lehigh Valley Mall. While waiting for the traffic light to turn green, the plaintiffs' truck was struck from behind by a vehicle operated by defendant David S. Morgan.

Each plaintiff alleges receiving "various injuries as a result of the collision including, but not limited to chronic low back pain, neck pain, cervical sprain and lumbar sprain, some

<sup>1</sup> Our ruling is without prejudice for defendant to file an amended motion in limine if we deny plaintiffs' request for an expert; or if we grant it, and plaintiffs fail to obtain an expert.

of which or all may be permanent."<sup>2</sup> Each plaintiff seeks compensatory damages for his or her injuries. Each seeks damages for the loss of consortium of the other spouse.<sup>3</sup> Each also seeks punitive damages.<sup>4</sup>

At oral argument on his motion in limine, defense counsel conceded that defendant's negligence caused the accident. More specifically, defendant conceded that he owed a legal duty of due care towards plaintiffs, and that he breached that duty.<sup>5</sup>

In their complaint,<sup>6</sup> plaintiffs allege that defendant violated the rules of the road and the laws of the Commonwealth of Pennsylvania, including Following too closely,<sup>7</sup> Driving vehicle at safe speed,<sup>8</sup> Careless driving,<sup>9</sup> Reckless driving,<sup>10</sup> and Driving under influence of alcohol or controlled substance.<sup>11</sup> In defendant's responses to plaintiffs' interrogatories, defendant stated that he was cited for Driving under influence of alcohol and Careless driving.<sup>12</sup>

Defendant also stated in his interrogatory responses that he was not given a field sobriety test,<sup>13</sup> but that he had consumed a six-pack of beer in a 24-hour period preceding the accident.<sup>14</sup> Defendant stated that the exact time of the beer consumption was unknown to him.<sup>15</sup>

<sup>2</sup> See Complaint filed June 4, 2001, paragraphs 12 (Bruce L. Kuehn, Sr.) and 22 (Stephanie L. Kuehn).

<sup>3</sup> See Complaint, Count II (husband plaintiff) and Count IV (wife plaintiff).

<sup>4</sup> See Complaint, paragraphs 13 (husband plaintiff) and 23 (wife plaintiff).

<sup>5</sup> Notes of Testimony of Argument held on March 22, 2002 ("N.T."), page 3.

<sup>6</sup> See Complaint, paragraphs 6(f) and 16.

<sup>7</sup> 75 Pa. C.S.A. §3310.

<sup>8</sup> 75 Pa. C.S.A. §3361.

<sup>9</sup> 75 Pa. C.S.A. §3714.

<sup>10</sup> 75 Pa. C.S.A. §3736.

<sup>11</sup> 75 Pa. C.S.A. §3731.

<sup>12</sup> Neither plaintiffs' interrogatories, nor defendant's responses, were filed of record. However, at oral argument, both counsel referred to the content of the interrogatories and responses. N.T. 24.

<sup>13</sup> N.T. 24.

<sup>14</sup> N.T. 18, 24.

<sup>15</sup> N.T. 24.

Defendant's responses indicated that he was administered a breath test, and that the results indicated that he had a blood alcohol content of 0.31 percent volume of alcohol by weight in the blood.<sup>16</sup> The record is silent concerning when, where, or by whom, the breath test was administered or the results analyzed.

According to defendant's interrogatory responses, defendant's ten-year-old daughter was riding with him at the time of the accident.<sup>17</sup> However, the record is silent concerning whether there were any other witnesses, other details of the accident, and other details of defendant's alcohol consumption or condition.

In his motion in limine, defendant seeks to preclude plaintiffs from producing any evidence at trial of defendant's alcohol consumption, intoxication, blood alcohol level, or anything related to alcohol.<sup>18</sup> In support of his request, defendant contends that any evidence of alcohol consumption or intoxication is irrelevant because he has conceded negligence.<sup>19</sup> Plaintiffs apparently agree with defendant to the extent that evidence of defendant's consumption of alcohol is not relevant or admissible to prove defendant's negligence because defendant has conceded negligence.<sup>20</sup> We agree as well.<sup>21</sup>

Nevertheless, plaintiffs contend that proof of defendant's consumption of alcohol, intoxication and blood alcohol level is relevant on the issue of punitive damages to establish that defendant was acting in a grossly negligent fashion and with wanton and reckless disregard for the safety of plaintiffs when defendant operated his vehicle in a highly inebriated state. Regarding plaintiffs' claims for punitive damages, defendant contends that, because he conceded negligence, his consumption of alcohol has no probative value on damages or punitive damages, as well as on negligence.<sup>22</sup>

<sup>16</sup> N.T. 17, 23-24.

<sup>17</sup> N.T. 17.

<sup>18</sup> N.T. 4.

<sup>19</sup> N.T. 4, 13.

<sup>20</sup> See N.T. 22, 35.

<sup>21</sup> N.T. 11-12.

<sup>22</sup> N.T. 6.

Defendant argues, in the alternative, that even if his alcohol consumption has some relevance on the issue of punitive damages, it should, nevertheless, be disallowed because under the circumstances of this case the prejudicial effect of the proposed evidence outweighs any relevance it might have. In this regard defendant asserts that in weighing the admissibility of intoxication on the question of punitive damages, one has to look both at the surrounding circumstances and the nature of the harm which occurred.<sup>23</sup>

Defendant contends that evidence of alcohol consumption is "inherently prejudicial."<sup>24</sup> The circumstances surrounding the accident, from defendant's perspective, include light damage to plaintiffs' vehicle, only soft tissue injuries, and treatment by a chiropractor for less than a year. In this context, defendant maintains, the relevance of the evidence of alcohol use regarding punitive damages is outweighed by its inherently prejudicial effect.

In Pennsylvania it is a criminal offense to drive a vehicle while the amount of alcohol by weight in the operator's blood is 0.10 percent or greater.<sup>25</sup> Accordingly, plaintiffs maintain that not only is defendant's 0.31 percent blood alcohol reading relevant on the issue of punitive damages, but that its relevance outweighs any prejudicial effect which the evidence might have.

The long-established rule in Pennsylvania accident cases regarding the admissibility of intoxication evidence is that such evidence of intoxication must reasonably establish a degree of intoxication which proves unfitness to drive or to walk. If it is capable of establishing such unfitness to drive, the intoxication evidence is relevant. *Morreale v. Prince*, 436 Pa. 51, 258 A.2d 508 (1969); *Locke v. Claypool*, 426 Pa. Superior Ct. 528, 532, 627 A.2d 801, 803 (1993). However, in *Whyte v. Robinson*, 421 Pa. Superior Ct. 33, 617 A.2d 380 (1992), evidence of an odor of alcohol on the breath and a blood alcohol content of 0.144 percent alone was held insufficient to establish unfitness to drive.

<sup>23</sup> N.T. 10.

<sup>24</sup> N.T. 6, 10.

<sup>25</sup> 75 Pa. C.S.A. §3731(a)(4)(i).

Evidence of a driver's blood alcohol content alone is insufficient to prove intoxication to a degree that renders him unfit to drive or walk in the street. *Billow v. Farmers Trust Co.*, 438 Pa. 514, 266 A.2d 92 (1970). Notably, the criminal presumption of intoxication at a blood alcohol level of 0.10 percent does not apply in civil cases. *Suskey v. Loyal Order of Moose Lodge No. 86*, 325 Pa. Superior Ct. 94, 472 A.2d 663 (1984).

If the evidence of intoxication is sufficient to establish unfitness to drive, the evidence is relevant. Nevertheless, to determine whether it is admissible, the court must apply the Pa. R.E. 403 balancing test, discussed below, to weigh its probative value against the danger of unfair prejudice.

As noted above, the parties agree that evidence of defendant's intoxication is not relevant to establish that defendant was negligent because defendant conceded negligence. They disagree, however, concerning whether evidence of intoxication nevertheless is admissible to prove punitive damages. Although the parties contend that this is an issue of first impression in Pennsylvania,<sup>36</sup> our research has revealed a case on point.

*Focht v. Rabada*, 217 Pa. Superior Ct. 35, 268 A.2d 157 (1970), is similar to the within case in that defendant conceded negligence. In *Focht* the Superior Court of Pennsylvania stated:

[W]e believe that driving while under the influence of intoxicating liquor with its very great potential for harm and serious injury may under certain circumstances be deemed 'outrageous conduct' and 'a reckless indifference to the interests of others' sufficient to allow the imposition of punitive damages.

• • •

Automobiles represent the most lethal and deadly weapons today entrusted to our citizenry. When automobiles are driven by intoxicated drivers, the possibility of death and serious injury increases substantially. Every licensed driver is aware that driving while under the influ-

<sup>36</sup> N.T. 39.

ence of intoxicating liquor presents a significant and very real danger to others in the area. Thus, we have no hesitancy in concluding that an intentional assault with fists may, in certain instances, constitute action less outrageous than attempting to drive while under the influence of intoxicating liquor which constitutes a threat to the life and safety of others. In certain factual [situations] the risk to others by the drunken driver may be so obvious and the probability that harm will follow so great that outrageous misconduct may be established without reference to motive or intent. . . . We conclude, therefore, that, under the appropriate circumstances, evidence of driving while under the influence of intoxicating liquors may constitute a sufficient ground for allowing punitive damages.

*Id.* at 40, 41-42, 268 A.2d at 60, 61 (footnote omitted).

Accordingly, we reject defendant's contention that evidence of intoxication is not relevant to the issue of punitive damages. For evidence of consumption of alcohol to be admissible on the question of punitive damages, however, the same rules, quoted above, concerning the admissibility of drinking on the question of negligence, apply. That is, such evidence of intoxication must reasonably establish a degree of intoxication which proves unfitness to drive, the evidence of intoxication must be probative on the issue of punitive damages, and the probative value of the evidence must outweigh its prejudicial effect.

In appropriate cases a plaintiff is entitled to recover punitive or exemplary damages in addition to compensatory damages. While compensatory damages are those damages which compensate a party for actual damage suffered and proved, punitive damages are awarded for no other purpose than to punish the wrongdoer for his outrageous conduct. Restatement (Second) of Torts §908(1) (1977).

Specifically, Pennsylvania courts have adopted the Restatement (Second) of Torts §908 on punitive damages. *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984); *Chambers v. Montgomery*, 411 Pa. 339, 192 A.2d 355 (1963); *Dean Witter Reynolds, Inc. v. Genteele*, 346 Pa. Superior Ct. 336, 499 A.2d 637



(1985). *alloc. denied*, 514 Pa. 635, 522 A.2d 1104 (1987). Section 908(2) of the Restatement provides:

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

The court has defined a reckless indifference in *Smith v. Brown*, 283 Pa. Superior Ct. 116, 423 A.2d 743 (1980):

'Reckless indifference to the interests of others,' or as it is sometimes referred to, 'wanton misconduct,' means that 'the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.'

*Id.* at 120, 423 A.2d at 745.

In other words, there are three elements of reckless indifference: (1) the actor must have intentionally done an act of unreasonable character; (2) he must have disregarded a risk known to him or so obvious that he must have been aware of it; and (3) the risk must have been so great as to make it highly probable that harm would follow.

Plaintiffs assert that in assessing whether punitive damages are applicable here, the jury is entitled to determine whether defendant was intoxicated to the point that his intoxication formed the basis of a reckless indifference to the rights of plaintiffs. Plaintiffs contend that defendant's responses to plaintiffs' interrogatories indicate that defendant was convicted of Driving under the influence of alcohol, that defendant had a blood alcohol level of 0.31 percent, that defendant did not remember taking a field sobriety test, that defendant had consumed a "six-pack" of beer in the 24 hours preceding the accident, and that the defendant drove in this condition with his ten-year-old daughter in the car.

Plaintiffs also indicated that they would provide the testimony of the arresting officers to describe the condition, and extent of intoxication, of defendant at the time of the accident.

If plaintiffs can establish the foregoing at trial and can establish that a 0.31 percent blood alcohol reading renders defendant unfit to drive, it would constitute circumstantial evidence that defendant had intentionally done an act of unreasonable character (driving while highly intoxicated), had disregarded a risk (of harming people such as plaintiffs) so obvious that he must have been aware of it, and the risk must have been so great as to make it highly probable that harm would follow.

The foregoing would establish the relevance and probative value of the evidence of intoxication on the punitive damages issue, under the cases cited. Then the court must perform the "balancing test" to determine whether the proffered evidence has any prejudicial effect, and if so, whether the probative value is outweighed by its prejudicial effect.

The precise test is provided by Pa. R.E. 403 which provides, "Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." As stated in the Comment to Rule 403, " 'Unfair prejudice' means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially."

This balancing test is more appropriately performed by the trial judge in the context of the trial, than through a pre-trial motion in limine. However, based on plaintiffs' offer of proof, we reject the suggestion, implicit in defendant's argument, that as a matter of law, plaintiffs will be unable to establish punitive damages.

As noted above, the Restatement (Second) of Torts §908(2) provides that in "assessing punitive damages, the trier of fact can properly consider the character of the defendant's act [and] the nature and extent of the harm to the plaintiff. ..." Accordingly, defendant is correct in asserting that in weighing the admissibility of intoxication on the question of punitive damages,

one has to look both at the surrounding circumstances and the nature of the harm that occurred. This evaluation, also, is more appropriately performed at the time of trial.

Finally, defendant contends, in the alternative, that even if the relevance of the evidence outweighs its prejudicial effect, plaintiffs should be precluded from producing any evidence of defendant's 0.31 percent blood alcohol content because they have produced no expert testimony to explain the relevance of the blood alcohol level. Defendant asserts that in a civil case, unlike a criminal case, there is no presumption of an unfitnes to drive with a blood alcohol content above 0.10 percent. *Suskey v. Loyal Order of Moose Lodge No. 86*, supra. Defendant asserts plaintiffs need expert testimony to explain the effect of a 0.31 percent blood alcohol level to a jury.

Plaintiffs, on the other hand, contend that they do not need expert testimony to establish that defendant had a blood alcohol level of 0.31 percent. Plaintiffs argue that the trial judge should advise the jury that under Pennsylvania law a person with a blood alcohol level of 0.10 percent is legally incapable of safe driving, and that a reading of 0.31 percent is three times that level. Plaintiffs assert that, on that basis alone, a jury could reasonably conclude, without the support of expert testimony, that driving with a 0.31 percent blood alcohol level constitutes reckless indifference. For the following reasons, we disagree.

As noted above, plaintiffs are not permitted to present evidence of a presumption of an unfitnes to drive with a blood alcohol content above 0.10 percent because that is not permitted in a civil case. *Suskey*, supra. The general rule is that expert testimony is required where the jury is confronted with issues which require scientific or specialized knowledge to understand.

In *Dion v. Graduate Hospital of University of Pennsylvania*, 360 Pa. Superior Ct. 416, 520 A.2d 876 (1987), the Superior Court of Pennsylvania articulated the reasons for the general rule as follows:

Frequently, the jury, or the court trying a case without a jury, is confronted with issues which require scientific or specialized knowledge or experience in order to be properly understood. Certain questions cannot be deter-

mined intelligently merely from the deductions made and inferences drawn from practical experience and common sense. On such issues, the testimony of one possessing special knowledge or skill is required in order to arrive at an intelligent conclusion. 31 Am.Jur.2d *Expert and Opinion Evidence* §16 (1967). In these matters, where laymen have no knowledge or training, the court and jury are dependent on the explanations and opinions of experts.

In a logical and fundamental sense, a verdict is worth only as much as the evidence upon which it is based. In a complex case, a jury, in order to reach an intelligent conclusion, is dependent on expert testimony. If the jury is enlightened, it will reach the right verdict. Unaided by the explanations and opinions of those with specialized knowledge or skill, the ultimate conclusion might just as well be based on evidence presented in a language unfamiliar to the jury. Unless the jury is comprised of experts in the field, the verdict is based on mere conjecture. Such a verdict is worthless.

*Id.* at 425, 530 A.2d at 881.

However, there is an exception to the general rule requiring expert testimony. Plaintiff is not required to produce an expert witness in cases where the matter under investigation is so simple, and the lack of skill or want of care so obvious, as to be within the range of common knowledge and the ordinary experience and comprehension of the average lay juror, or the doctrine of *res ipsa loquitur* is applicable. *Jones v. Harrisburg Polyclinic Hospital*, 496 Pa. 465, 437 A.2d 1134 (1981); *Chandler v. Cook*, 438 Pa. 447, 265 A.2d 794 (1970).

There are a number of contentions being advanced by plaintiffs which require scientific or specialized knowledge to understand, and thus are beyond the knowledge of a lay person. These include what a 0.31 percent blood alcohol level means; the amount of alcohol a person would have to consume to raise a blood alcohol level of 0.31 percent; how, and at what rate, alcohol is absorbed into the bloodstream; and the effect that amount of alcohol has on a person's coordination and judgment.

"Where the factual situation is such that normally lay persons (jurors) would not have the special or expert knowledge

needed to comprehend and understand the problem, then expert testimony is appropriate." *Drew v. Laber*, 477 Pa. 297, 302, 383 A.2d 941, 944 (1978). At the oral argument on Defendant's Motion in Limine on March 22, 2002, the undersigned placed on the record various reasons why expert testimony is required to establish plaintiffs' contentions, and why the evidence is beyond the knowledge of a lay person.<sup>27</sup> The Notes of Testimony of that analysis are attached to this Opinion as Appendix A, and incorporated here.

Accordingly, we agree with defendant that plaintiffs cannot introduce evidence of intoxication to establish entitlement to punitive damages in the absence of expert opinion. At oral argument, plaintiffs' counsel made a motion to extend the time for production of expert reports in the event that we conclude that expert testimony is necessary. Because plaintiffs' motion was oral, defense counsel did not have an opportunity to formally respond.

Therefore, we will give plaintiffs until July 12, 2002 to file a formal written motion for extension of the deadline to produce expert reports, accompanied by a brief. Defendant shall have twenty days from receipt of plaintiffs' motion and brief in which to file an answer and response brief. In the event plaintiffs fail to file their motion by July 12, 2002, we will entertain an amended motion in limine on behalf of defendant to preclude evidence of intoxication.<sup>28</sup>

<sup>27</sup> N.T. 29-33.

<sup>28</sup> Defendant's Motion in Limine was filed November 14, 2001, prior to the expiration of the deadlines for the completion of discovery and the submission of expert reports. Moreover, at oral argument, plaintiffs' counsel stated that plaintiffs did not receive answers to their interrogatories until February 6, 2002 (N.T. 33). Our Discovery Order dated July 30, 2001, set December 3, 2001, as the deadline for both the completion of discovery and for the plaintiffs' submission of expert reports. We conclude that plaintiffs may not have been in possession of all of the information about defendant's level of intoxication necessary to determine whether expert testimony was required, notwithstanding counsel's argument that it was not necessary. At the time Defendant's Motion in Limine was filed, plaintiffs still could have produced a timely expert report.

We reserve decision on plaintiffs' motion to extend the deadline for submission of expert reports because we want to give plaintiffs the opportunity to reduce the motion to writing, supported by a brief, and for defendant to have the opportunity to formally respond in like kind before we decide this issue.

For all the foregoing reasons, we deny Defendant's Motion in Limine.<sup>29</sup>

## ORDER

NOW, this 18th day of June, 2002, upon consideration of Defendant's Motion in Limine, which motion was filed November 14, 2001; upon consideration of Plaintiffs' Answer to Defendant's Motion in Limine filed December 14, 2001; upon consideration of the briefs of the parties; after oral argument

<sup>29</sup> In the Brief in Support of Defendant's Motion in Limine filed November 14, 2001, and at oral argument, defense counsel argued that alcohol has no effect until absorbed into the bloodstream. Counsel stated that this occurs 30 to 90 minutes after consumption of alcohol. Defense counsel cited *Schwarzbach v. Dunn*, 252 Pa. Superior Ct. 454, 462, 381 A.2d 1295, 1298 (1977), for the proposition that any blood test evidence that "relates back" to a time earlier than the time the test was performed is viewed with skepticism as entirely too speculative.

For the guidance of counsel and the trial judge, we note that the language relied upon by defendant was dictum. Moreover, *Schwarzbach* was a plurality opinion. Only three of the seven judges of the Superior Court of Pennsylvania who participated in that decision (President Judge WATKINS, Judge JACOBS, and Judge VAN DER VOORT) adopted that proposition in the *Watkins* Opinion. Judge HOFFMAN dissented. Judge CERONE concurred in the result. Judge PRICE wrote a concurring opinion, joined by Judge SPARTO, in which they disagreed with the blood alcohol discussion in the *Watkins* Opinion.

An opinion which does not represent the views of a majority of the court is not precedent. *Commonwealth v. Davenport*, 462 Pa. 543, 559 n.3, 342 A.2d 67, 75 n.3 (1975). Plurality opinions do not have precedential authority. *Boyer v. Smith*, 345 Pa. Superior Ct. 66, 71, 497 A.2d 646, 648 (1985). A plurality opinion is an opinion of an appellate court in which more judges join than in any concurring opinion (though not a majority of the court). *Black's Law Dictionary* 1039 (5th Ed. 1979); *Ballentine's Law Dictionary* 956 (3rd Ed. 1969).

Either a majority opinion, a plurality opinion, or an opinion by an equally divided court will affirm the judgment of the lower court. But the opinion of affirmance by an equally divided court, or by a plurality, has no precedential value. *Commonwealth v. Covil*, 474 Pa. 375, 380-81, 378 A.2d 841, 844 (1977).

The vote of a judge concurring in the result is counted for purposes of affirming the judgment of the lower court. However, that vote does not contribute to a majority of the court participating necessary to create precedent. *Commonwealth v. Glover*, 497 Pa. 433, 435-36, 441 A.2d 1216, 1217 (1982).

Similarly, a concurring opinion expressing different reasons for the outcome is counted for purposes of affirming the judgment of the lower court. However, it does not count with the majority for creating precedent (unless the concurring opinion is being cited for a point or line of reasoning with which a majority of the court agrees). See *Commonwealth v. Bracero*, 325 Pa. Superior Ct. 494, 500 n.3, 473 A.2d 176, 179 n.3 (1984).

held on March 22, 2002; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that Defendant's Motion in Limine is denied without prejudice.

IT IS FURTHER ORDERED that on or before July 12, 2002, plaintiffs may file a motion for extension of the deadline to submit expert reports, accompanied by a brief.

IT IS FURTHER ORDERED that defendant shall have 20 days from receipt of plaintiffs' motion and brief to file an answer and response brief.

IT IS FURTHER ORDERED that in the event plaintiffs shall fail to file a motion for extension and brief by July 12, 2002, defendant shall have until August 1, 2002, to file an amended motion in limine to preclude evidence of intoxication.

#### APPENDIX A

#### COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

#### CIVIL ACTION—LAW

No. 2002-C-0599

BRUCE L. KUEHN, SR. and STEPHANIE L. KUEHN,

Plaintiffs

vs.

DAVID S. MORGAN,

Defendant

#### NOTES OF TESTIMONY OF ARGUMENT

HELD ON MARCH 22, 2002

HEARD BEFORE THE HONORABLE

JAMES KNOLL GARDNER, J.

NICHOLAS R. SABATINE, III, ESQUIRE, on behalf of the  
Plaintiffs.

KEVIN CHARLES REID, ESQUIRE, on behalf of the Defen-  
dant

#### COURT MONITOR: KIMBERLY BRADER

#### TRANSCRIBED BY: DIANE SNELL

MR. SABATINE: But I will say this. We expect every citizen who drives a vehicle to understand that driving a vehicle with an alcohol level of .1 or more is illegal and that it impairs your ability to react and drive safely. That, in and of itself, dealing with punitive damages now, not the negligence standard, but with respect to the punitive damages standard of recklessness, I think the average person would understand that if you have a blood alcohol level that's three times that you should not be driving a vehicle. I think that's common sense. And that's what we ask our jurors to do.

THE COURT: I don't think so. I don't think that's common sense. It's a number. Jurors don't know what the effects of .31 means without an expert telling them. They don't know whether it makes a difference whether it's a six-foot, seven-inch 280-pound male consuming boilermakers twenty minutes before the incident is different from a five-foot one, hundred pound female sipping Pinot Grigio two hours before the incident. The jury doesn't know that without speculating, without an expert. And, in fact, there are a lot of lawyers and judges who don't know that without the aid of an expert.

There's a lot of old wives tales out there about whether it matters what you eat or what you don't eat, whether it matters how long before the accident that you've consumed food, whether there's a difference between drinking beer or drinking wine or drinking whiskey. There are a lot of old wives tales that the experts can set you straight on and tell you what the risk really is.

But I don't share your view that the average juror knows instinctively and inherently that a .31 reading, as opposed to another number we might put in front of them, is so outrageously intoxicated that nothing else matters, that you don't need expert exposition that this was reckless.

I mean, what you're essentially asking for is an instruction by me telling the jury as a matter of law this is enough to be punitive. And I'm not sure that—I'm pretty sure that the law doesn't permit me to do that.

MR. SABATINE: I don't think that's what I was asking you to do.

THE COURT: Well, isn't that implicit in your argument which you say, well, judge, you just tell them that .10 is the legal—you know, the criminal legal limit, and then they can figure out that three times that is sufficient or words to that effect. I don't want to put words in your mouth. You said what you said. It's on the record. But that's really basically me telling them there is a minimum number. And this exceeds the minimum number. Ergo, you can, if in your wisdom you see fit and find that this was enough drinking and enough intoxication for you to find this man to be reckless. I don't think that's the law. And I don't think that in the absence of your putting evidence on the record before the jury, it's not the fact of this case, although it may be indeed the actual fact as far as the physical facts are concerned, the physical law would tell us.

But it's a different thing from my knowing that because I've said in a lot of trials and heard experts, and your knowing that for the same reason. And my telling the jury that in the absence of expert evidence on the record, I don't think I can, I don't think you can. I'm willing to be persuaded that I'm not right, that the case law is otherwise, that you can get this in without an expert. But you need to convince me with citation to some authority that you can. You told me there's no—you don't believe there's cases that say you need an expert contrary—

MR. SABATINE: All—

THE COURT:—or that you found none, I think is more accurately what you've recited, contrary to his assertion about this case that he says does—and I have to read the case to see if it does or it doesn't. But you reverse that question—the corollary of that question is: are there any cases that you are aware of that say the jury doesn't need an expert under certain circumstances that, you know, it was so outrageous, you know, he chug-a-lugged two pints of whiskey and then jumped on his motorcycle and proceeded to run into a pedestrian. There you don't need an expert to establish that the drinking contributed to the accident. Now, are there such cases?

MR. SABATINE: I have no such cases. In fact, the cases seem to say that absent other objective indicia of intoxication, that the courts even look skeptically upon expert testimony and that—

THE COURT: Well, in .06—you've already cited that scenario. And they're reluctant to allow an expert to say, well, if he drank twenty-five Margaritas within an hour, that that was eight hours ago, that he'd be down to .06. But isn't drinking twenty-six Margaritas and then getting in a car evidence of recklessness or evidence of negligence in that particular case if it be that's what the court said? I guess I could understand why they would be reluctant to permit the speculation game. I mean .06 could mean that, or it could mean you had one-half of one beer fifteen minutes earlier, you know.

MR. SABATINE: Right.

THE COURT: And to permit the jury to speculate in between which extreme or unextreme situation this represented is not appropriate.

MR. SABATINE: I guess, Your Honor, all I can say is that if you conclude—if you pursue the Order, if you're going to preclude the plaintiff from providing expert testimony, and I will just say in my brief which I filed November 30th, I indicated that at that time that interrogatories were going to be issued. I received the answers to interrogatories on February 6th of 2002, which is the first time that I knew what the actual blood alcohol level was.

THE COURT: Okay. So you're saying—

SABATINE: But my brief was filed—

THE COURT: You couldn't have known prior to the expiration of the discovery deadline that there was a high blood alcohol reading here.

MR. SABATINE: Right. We knew there was a—...

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

\* \* \* \* \*

JOSHUA HESS, an \*

adult individual, \*

Plaintiff \* No.

vs. \* 01-529-CD

BRIAN SCOTT \*

LEIGEY, an adult \*

individual, and \*

JUDY FUSCO, an \*

adult individual, \*

Defendants \*

\* \* \* \* \*

DEPOSITION OF  
BRIAN SCOTT LEIGEY  
FEBRUARY 7, 2002

COPY

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EXHIBIT

"B"

## DEPOSITION

OF

BRIAN SCOTT LEIGEY was taken on  
behalf of the Plaintiff herein,  
pursuant to the Rules of Civil  
Procedure, taken before me, the  
undersigned, Tammie B. Elias, a  
Registered Professional Reporter and  
Notary Public in and for the  
Commonwealth of Pennsylvania, at the  
Clearfield County Jail, 410 21st  
Street, Clearfield, Pennsylvania, on  
Thursday, February 7, 2001, at 10:06  
a.m.

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## I N D E X

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NONE OFFERED

OBJECTION PAGEATTORNEYPAGE

MAIERHOFER

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## P R O C E E D I N G S

BRIAN SCOTT LEIGEY, HAVING FIRST  
BEEN DULY SWORN, TESTIFIED AS  
FOLLOWS:

## EXAMINATION

BY ATTORNEY NOBLE:

Q. Would you, please, state  
your name?

A. Brian Scott Leigey.

Q. Could you spell Leigey for  
us, please?

A. L-E-I-G-E-Y.

Q. Brian, my name is Attorney  
Terry Noble and I represent Josh  
Hess concerning an accident back in  
December of 1999. We're here today  
to take a deposition, which is an  
opportunity afforded by the  
Pennsylvania Rules of Civil  
Procedure to ask questions and find  
out some information that you might  
know. As you see, we have a Court  
Reporter and she's taking a

1 transcript of this testimony, which  
2 means she's writing down my  
3 questions and your responses. Okay?

4 A. Yes.

5 Q. And it's very important,  
6 as I'm sure your Counsel has already  
7 told you, that you give a verbal  
8 response because she can't  
9 transcribe shaking of the head,  
10 shrugging of the shoulders, okay?

11 A. Yes, sir.

12 Q. If at any point today you  
13 feel like you need to speak with  
14 your attorney, please let us know  
15 we'll be glad to take a recess. And  
16 also if you don't hear my questions,  
17 let me know that and I'll repeat it  
18 or if you don't understand it, let  
19 me know that and I'll try and  
20 rephrase it, fair enough?

21 A. Yes.

22 Q. Have you ever given a  
23 deposition before?

24 A. No, sir.

25 Q. Have you ever testified in

1 court before?

2 A. No, sir.

3 Q. Where do you live at  
4 currently?

5 A. Do you want the address.

6 Q. If you have it?

7 A. P.O. Box 813, Clearfield,  
8 PA.

9 Q. Who did you live there  
10 with?

11 A. My mother and father,  
12 Kathy and Jeffrey Leigey.

13 Q. And what would be the  
14 phone number there?

15 A. 765-1995.

16 ATTORNEY MAIERHOFER:

17 Just for a  
18 correction, that's your  
19 current legal residence;  
20 is that correct?

21 A. Yes.

22 ATTORNEY MAIERHOFER:

23 But you're living  
24 somewhere else currently?

25 A. Right now I'm living

1 here.

2 BY ATTORNEY NOBLE:

3 Q. Which would be at the  
4 Clearfield County Jail?

5 A. Yes, sir.

6 Q. What's your date of birth?

7 A. August 3rd, 1980.

8 Q. Social Security Number?

9 A. 161-68-1666.

10 Q. 1666?

11 A. Yeah.

12 Q. And why are you currently  
13 incarcerated at the Clearfield  
14 County Jail?

15 A. Due to a car accident that  
16 I had almost two years ago.

17 Q. Is that the accident from  
18 which Joshua Hess suffered injuries?

19 A. Yes, sir.

20 Q. Do you remember, did you  
21 go to trial or did you enter into a  
22 plea agreement?

23 A. Entered into a plea  
24 agreement.

25 Q. Do you remember the exact

1 charges that you plead guilty to?

2 A. Not all of them. Death or  
3 series injury due to a motor vehicle  
4 accident, driving under the  
5 influence, driving on the wrong side  
6 of the roadway, that's all of them  
7 that I remember.

8 Q. As to the second charge,  
9 Brian, driving under the influence,  
10 do you remember what sections or  
11 what you were under the influence of  
12 that you plead guilty to?

13 A. Alcohol.

14 Q. Did they also --- were you  
15 initially charged with a subsection  
16 dealing with drugs or marijuana?

17 A. My criminal attorney said  
18 that I was --- had THC in my urine.

19 Q. Pardon?

20 A. I had THC in my urine.

21 Q. But to your knowledge,  
22 that subsection was dropped as part  
23 of the plea agreement?

24 A. I don't know. Not to my  
25 knowledge.



1 ATTORNEY MAIERHOFER:

2 Just for the record  
3 the plea agreement I  
4 believe is of record at  
5 the Courthouse.

6 BY ATTORNEY NOBLE:

7 Q. Do you know Joshua Hess?

8 A. Yes, sir.

9 Q. How do you know Joshua?

10 A. He used to be my best  
11 friend, very, very good friend, good  
12 friend.

13 Q. Prior to the accident, how  
14 long had you known Joshua?

15 A. Four years maybe.

16 Q. Can you maybe elaborate a  
17 little bit, Brian, on the type of  
18 relationship you and Josh had before  
19 the accident?

20 A. Hanging out pretty much  
21 every day after school, playing  
22 basketball, just anything to do to  
23 have fun, pretty much every day,  
24 normal routine.

25 Q. Were you and Josh in

1 school together?

2 A. Yeah, he was a grade lower  
3 than me.

4 Q. Do you know what type of  
5 student Josh was prior to the  
6 accident?

7 A. As far as I know he's a  
8 good student, maybe he'd get  
9 detention and stuff, but he's smart.

10 Q. Do you know if he received  
11 honors-type grades at school?

12 A. No, I don't know.

13 Q. Do you remember much about  
14 the day of the accident?

15 A. Not much, no, sir. Bits  
16 and pieces.

17 Q. Why don't we start talking  
18 a little bit about that and start by  
19 you just telling me what you  
20 remember?

21 A. From the beginning?

22 Q. As much as you can  
23 remember?

24 A. I remember going to --- in  
25 the morning I remember I don't

1 remember picking Josh or anyone up,  
2 but I remember stopping at Palumbo's  
3 meat market for him, I think he got  
4 \$3 or \$4 off of his mother and then  
5 going from there to Triangle Tech  
6 because I had an admittance test to  
7 do because I was going to start  
8 school there. I remember taking the  
9 test, and then supposedly I went to  
10 State College, but I don't remember  
11 going to State College from there.

12 Q. If you don't mind let me  
13 interrupt you to ask you a  
14 question. When you stop with  
15 Palumbo's Meat Market, who was with  
16 you?

17 A. Josh Hess, Natalie Kephart  
18 and Luke Marshall I'm pretty sure.

19 Q. Natalie Kephart?

20 A. And Luke Marshall.

21 Q. Who was driving?

22 A. Me.

23 Q. Do you remember what car  
24 you were driving?

25 A. My LeBaron, the one that

1 was in the accident.

2 Q. Do you remember what day  
3 of the week this was?

4 A. No, sir, maybe Friday, but  
5 I don't remember.

6 Q. Would there have been any  
7 particular reason that you all  
8 weren't in school on that Friday?

9 A. No, it could have been ---  
10 I think maybe it was a Saturday, but  
11 I know I had an admittance test to  
12 take at Triangle Tech, so ---.

13 Q. And Natalie Kephart is  
14 that K-E-P-H-A-R-T?

15 A. Yes.

16 Q. And Luke Marshall, do you  
17 know is that a nickname or is that  
18 his real name?

19 A. That's his real name.

20 Q. Do you remember what time  
21 approximately you all went to  
22 Palumbo's Meat Market?

23 A. It was approximately --- I  
24 think my test was about 11:00 so it  
25 was probably a good 9:00 or 10:00

1 maybe in the morning.

2 Q. Do you remember how long  
3 the test lasted?

4 A. Maybe about an hour or so,  
5 round about, I'd say. It wasn't an  
6 easy test.

7 Q. And I think you said you  
8 supposedly went to State College,  
9 but you don't remember that?

10 A. Yeah, I don't remember  
11 driving to State College, but I know  
12 we went there shopping for clothes.  
13 I don't remember going or leaving.

14 Q. But you do remember being  
15 in State College?

16 A. No, I don't even remember  
17 being there, but that's supposedly  
18 where we went.

19 Q. How do you know that  
20 that's supposedly where you went?

21 A. From Luke Marshall and  
22 Natalie.

23 Q. Would there be any  
24 particular reason you don't remember  
25 driving there or being there?

1 A. No, no particular reason.

2 Q. Do you remember if you had  
3 consumed any alcoholic beverages or  
4 any drugs?

5 A. No alcoholic beverages,  
6 no. I don't --- I think maybe --- I  
7 think we smoked a joint on the way  
8 to State College, but ---.

9 ATTORNEY MAIERHOFER:

10 Do you remember?

11 A. Yes, I do remember.

12 BY ATTORNEY NOBLE:

13 Q. So you had smoked one?

14 A. Yes.

15 Q. Between the four of you?

16 A. Yes.

17 Q. Do you remember how long  
18 you stayed in State College or what  
19 time you got back?

20 A. No, sir, I don't remember.

21 Q. Do you know where you went  
22 to after you left State College?

23 A. No, sir, I don't remember.

24 Q. Did you consume any  
25 alcoholic beverages while you were

1 in State College?

2 A. No, I don't remember.

3 Q. What do you remember next?

4 A. Next I remember sitting

5 --- I do have a slight memory of

6 sitting at the Hillsdale Community

7 Hall with me, Josh Hess and Buckey

8 Ersten (phonetic), Allen Ersten.

9 Q. At the Hillsdale Community  
10 Center?

11 A. Community Hall, yes, sir.

12 Q. Do you have any idea what  
13 time that was?

14 A. No, sir, I don't know. I  
15 don't remember.

16 Q. Do you remember if it was  
17 daylight or dark?

18 A. It could have been --- I  
19 think --- I'm pretty sure I don't  
20 remember.

21 ATTORNEY MAIERHOFER:

22 Don't guess.

23 BY ATTORNEY NOBLE:

24 Q. Do you know what was going  
25 on at the Hillsdale Community Hall?

1 A. I think it was Christmas  
2 party for Buck --- Allen Ersten's  
3 relatives.

4 Q. Was there alcohol present  
5 at the Christmas party?

6 A. Yes, sir.

7 Q. There was?

8 A. I'm pretty sure.

9 Q. Do you remember if you  
10 consumed any there?

11 A. No, sir, I don't remember.

12 Q. What did you do while you  
13 were at the community center?

14 A. I don't remember, sir. I  
15 just remember standing inside. I  
16 don't remember.

17 Q. Did Natalie Kephart and  
18 Luke Marshall accompany you to the  
19 Hillsdale Community Center?

20 A. No, sir.

21 Q. Do you remember what  
22 happened to them?

23 A. No, I don't remember what  
24 happened to them.

25 Q. But you're certain they



1 didn't accompany you to the  
2 Hillsdale Community Center?

3 A. Yeah, because I remember  
4 standing there with Buckey and  
5 Joshua.

6 Q. Do you know how long you  
7 stayed at the Hillsdale Community  
8 Center?

9 A. No, sir, no.

10 Q. Do you remember anything  
11 that might help us determine the  
12 approximate time you left such as  
13 was it dark out when you left?

14 A. I don't remember sir,  
15 sorry.

16 Q. What do you remember next?

17 A. The next thing I remember  
18 is --- the only thing I can picture  
19 is sitting at the Fusco's house, at  
20 the end have their table, kitchen  
21 table.

22 Q. Is it a house that you had  
23 been to on prior occasion?

24 A. No, sir, just delivering  
25 pizzas because I was the delivery

1 driver for Fox's.

2 Q. Do you remember how it was  
3 that --- were you invited to go  
4 there or how you wound up there?

5 A. I don't remember, sir,  
6 whether I was invited or not.

7 Q. Do you remember anybody  
8 else being at the house?

9 A. The only face I could  
10 actually picture is her daughter, is  
11 the only face I could actually  
12 picture.

13 Q. Do you remember her  
14 daughter's name?

15 A. Jessica.

16 Q. Were there other people  
17 there?

18 A. Yes, but I don't  
19 remember. I'm pretty sure, but I  
20 don't remember, sorry.

21 Q. Did anybody else go with  
22 you to the Fusco's residence?

23 A. Joshua and Allen Ersten.  
24 Hearsay, I don't --- I guess that's  
25 who I showed up with.

1 ATTORNEY STOFKO:

2 Well, Mr. Noble is  
3 asking what you remember.

4 A. What I remember.

5 ATTORNEY STOFKO:

6 Yes. And I think  
7 that's the purpose of this  
8 not what somebody may have  
9 told you later on. It's  
10 very important that you  
11 give us actually recall.  
12 If you don't recall ---.

13 A. Okay. Then I don't recall  
14 then.

15 BY ATTORNEY NOBLE:

16 Q. Do you recall other people  
17 besides yourself and Jessica at the  
18 Fusco residence?

19 A. No, sir, I don't. Just  
20 Ms. Fusco. I just remember  
21 picturing sitting at the end of her  
22 kitchen table and seeing her  
23 daughter, that's all I can remember  
24 picturing.

25 Q. Do you know whether or not

1 Ms. Judy Fusco was home?

2 A. I can't --- I don't  
3 recall, sir.

4 Q. Do you remember what you  
5 did while you were at the Fusco  
6 residence?

7 A. No, I just remember  
8 sitting at her table.

9 Q. Do you know how long you  
10 were there?

11 A. Precisely I don't know how  
12 long we were there. The paper said  
13 about 2:30, but ---.

14 ATTORNEY MAIERHOFER:

15 You don't know. He's  
16 asking you, do you know.

17 A. No.

18 BY ATTORNEY NOBLE:

19 Q. Do you remember if there  
20 were alcoholic beverages at the  
21 Fusco residence?

22 A. I don't recall, sir.

23 Q. Do you recall if you  
24 consumed any alcoholic beverages  
25 while you were at the Fusco

1 residence?

2 A. No, I don't recall, sir.

3 Q. Brian, I'm going to show  
4 you a letter that I sent to Attorney  
5 Chris Pentz, who I believe  
6 represented you on the criminal  
7 charges, a letter I received in  
8 response from him as well as some  
9 notes he sent me as well as another  
10 letter he sent me and a letter  
11 purportedly signed by you. I'll  
12 first show them to your attorney and  
13 I believe they were each provided in  
14 discovery.

15 ATTORNEY MAIERHOFER:

16 I'm going to object  
17 to that documentation as  
18 being attorney/client  
19 privilege and instruct my  
20 client not to answer any  
21 questions. He never  
22 released or waived  
23 attorney/client privilege  
24 and Counsel who provided  
25 that to you did it

1                   improperly. The privilege  
2                   was never waived,  
3                   therefore, he will not be  
4                   answering any questions  
5                   specifically related to  
6                   those documents.

7                   ATTORNEY NOBLE:

8                   To both documents?

9                   ATTORNEY MAIERHOFER:

10                  Both documents.

11                  ATTORNEY NOBLE:

12                  Okay. I will accept  
13                  that your client's not  
14                  going to answer questions  
15                  and we'll take that before  
16                  a Judge at some point and  
17                  get a resolution on it.

18                  ATTORNEY MAIERHOFER:

19                  He's not going to  
20                  answer any questions  
21                  related to those two  
22                  documents. If you want to  
23                  ask him questions  
24                  independent of those  
25                  documents, you may do so.

1 But he will not answer any  
2 questions related those  
3 two documents because of  
4 the failure to obtain his  
5 permission to release  
6 those.

7 ATTORNEY NOBLE:

8 I would assume that  
9 the objection would also  
10 concerning any  
11 communications that he  
12 probably had with Attorney  
13 Pentz as well?

14 ATTORNEY MAIERHOFER:

15 Absolutely.

16 BY ATTORNEY NOBLE:

17 Q. Brian, when you say you  
18 don't remember things at the Fusco  
19 residence, do you have any reason as  
20 to whether that's because of  
21 intoxication, substance or just  
22 lapse of time?

23 A. It could be due to my  
24 accident.

25 Q. Can you tell me any reason

1 which leads you to believe why it  
2 might be because of the accident  
3 that you can't remember?

4 A. It would be the accident  
5 or it could be the alcohol that I  
6 consumed that day.

7 ATTORNEY MAIERHOFER:

8 Were you injured in  
9 the accident?

10 A. Yes, I was. I had a head  
11 injury due to the accident.

12 BY ATTORNEY NOBLE:

13 Q. Did any doctors ever tell  
14 you what type of head injury you  
15 sustained in the accident?

16 A. Just I know I had three  
17 staples in the back of my head.

18 Q. Do you remember consuming  
19 alcohol on the day of the accident?

20 A. The day of the accident, I  
21 really don't remember. I know that  
22 I did, but I really don't recall  
23 tipping a beer can or anything.

24 Q. Well, what makes you say  
25 that you know that you did?



1 A. Because that's what I was  
2 charged for. I'm pretty sure that I  
3 was drinking beer at the Fusco  
4 residence, but I really don't  
5 remember tipping the beer can. I  
6 can't picture myself remembering.

7 Q. And likewise, what makes  
8 you pretty sure that you were  
9 drinking beer at the Fusco's  
10 residence?

11 ATTORNEY STOFKO:

12 He didn't say that he  
13 was pretty sure. He said  
14 he doesn't remember at the  
15 Fusco ---?

16 A. Yes, I don't remember  
17 tipping the beer can.

18 BY ATTORNEY NOBLE:

19 Q. Do you have any  
20 recollection of where you were  
21 consuming alcoholic beverages on  
22 that day?

23 A. No, sir.

24 Q. Do you have any idea where  
25 you would have been able to obtain

1 alcoholic beverages?

2 A. Where I would have been  
3 able to or did? Because I don't  
4 remember anyone buying me the  
5 alcohol that evening.

6 Q. Was the consumption of  
7 alcohol something that you and Josh  
8 would do on a regular basis prior to  
9 the accident?

10 A. Not an every day thing,  
11 no, but we have drank alcohol.

12 Q. And prior to the day of  
13 the accident, where would you and  
14 Josh have been able to obtain  
15 alcoholic beverages?

16 A. Just I don't know, whoever  
17 possible.

18 Q. Were you friends with  
19 Jessica Haynes?

20 A. I didn't --- I knew her  
21 because my little sister hung out  
22 with her because they are about the  
23 same age. I knew her, I never  
24 really hung out with her on a  
25 regular basis or anything like that,

1 no.

2 Q. And if I understood your  
3 testimony, and correct me if I'm  
4 wrong, because it's your testimony,  
5 but this is the first time that you  
6 remember being at the Fusco's house  
7 other than for purposes of  
8 delivering pizza?

9 A. Delivering pizzas, stuff  
10 like that.

11 Q. Do you remember who  
12 suggested going to the Fusco house  
13 that day?

14 A. No, sir.

15 ATTORNEY MAIERHOFER:

16 Don't guess.

17 A. No, I'm not going to  
18 guess.

19 BY ATTORNEY NOBLE:

20 Q. Do you remember while you  
21 were at the Fusco house whether any  
22 problems arose because you were  
23 there and not invited there?

24 A. No, sir.

25 Q. Do you have any

1 recollection as to how long you  
2 stayed there?

3 A. No, sir, no recollection.

4 Q. Do you remember if there  
5 was any marijuana present at the  
6 Fusco house?

7 A. No, sir, I don't.

8 Q. Other than the marijuana  
9 joint that was smoked on your way to  
10 State College, do you remember  
11 consuming any other marijuana the  
12 day of the accident?

13 A. No, sir.

14 Q. Do you have any  
15 recollection as to where you  
16 consumed any alcoholic beverages on  
17 the day of the accident?

18 A. No, sir, I don't remember  
19 picturing --- I cannot picture  
20 myself drinking beer, drinking the  
21 beer.

22 Q. Do you remember leaving  
23 the Fusco residence?

24 A. I can picture myself one  
25 slight --- like I can remember us

1 driving down the road away from her  
2 house, but that's all I remember  
3 from leaving, that's all.

4 Q. Do you remember who was  
5 driving?

6 A. Me.

7 Q. Do you remember who was in  
8 the car with you?

9 A. No, I do not remember.

10 Q. Do you remember how many  
11 people were in the car with you?

12 A. No, sir.

13 Q. Do you remember what car  
14 you were driving?

15 A. It had to have been mine  
16 because I bumped into a friend's car  
17 on the way out supposedly. I don't  
18 remember hitting the car, but my  
19 insurance company took care of all  
20 of that and I heard about that the  
21 next day.

22 Q. Do you remember which  
23 friend's car was it you supposedly  
24 bumped into?

25 A. Yes, Sam Unch, U-N-C-H.

1 Q. But you don't remember  
2 that happening?

3 A. No, I don't remember that  
4 happening at all.

5 Q. But the next day somebody  
6 told you about it?

7 A. Yeah, he called my house  
8 and talked to my dad a bit. My dad  
9 told me.

10 Q. And to the best of your  
11 knowledge, your insurance company  
12 ---?

13 A. Took care of it.

14 Q. Settled with Sam Unch?

15 A. Yes.

16 Q. Do you remember where you  
17 were heading after you left the  
18 Fusco's residence?

19 A. Out towards Frenchville.

20 Q. Do you remember the road  
21 that you were on trying to get to  
22 Frenchville?

23 A. No, sir. I know what way  
24 to get there, but I don't remember  
25 the road that we were on to get

1 there.

2 Q. What was your purpose in  
3 going towards Frenchville?

4 A. A party, I guess there was  
5 a party.

6 Q. And what party would that  
7 be?

8 A. The one that's held at  
9 Smitty's camp.

10 Q. Would that be Christopher  
11 Smith?

12 A. Yeah.

13 Q. Do you remember if you  
14 were invited to the party at  
15 Smitty's camp?

16 A. No, sir.

17 Q. You don't remember or you  
18 weren't invited?

19 A. I don't remember.

20 Q. Prior to this night, had  
21 you been to other parties at  
22 Smitty's camp?

23 A. Yeah, I have been there  
24 once or twice.

25 Q. On the other occasions you

1     were there, did you consume  
2     alcoholic beverages?

3     A.             Yes, sir.

4     Q.             On the night of the  
5     accident, Brian, do you know if you  
6     ever got to Smitty's camp?

7     A.             I remember --- I can ---  
8     the only remember I have being there  
9     is standing there getting ready to  
10    shoot a dart is all I remember  
11    because I remember seeing --- I had  
12    a green Nike shirt on, a sweatshirt  
13    and my brand new pants is all I  
14    remember.

15    Q.             Shooting a dart?

16    A.             Yeah, getting ready to  
17    shoot a dart and standing like that  
18    is all I remember.

19    Q.             And you don't know where  
20    that was at?

21    A.             At their camp.

22    Q.             Do you remember if you  
23    consumed alcoholic beverages at  
24    Smitty's camp that day?

25    A.             No, sir.



1 ATTORNEY STOFKO:

2 No, sir, you don't  
3 remember?

4 A. No, sir I don't remember.

5 ATTORNEY STOFKO:

6 I just wanted to be  
7 sure I understood your  
8 answer.

9 BY ATTORNEY NOBLE:

10 Q. Do you remember anybody  
11 else being at Smitty's camp?

12 A. I remember seeing my  
13 ex-girlfriend.

14 Q. Who would that be?

15 A. Misty Jordan is her last  
16 name now. She's the only person I  
17 remember seeing.

18 Q. Do you have any  
19 recollection as to what time it was  
20 that you got to the camp?

21 A. No, sir.

22 Q. Do you have any  
23 recollection as to whether there was  
24 alcohol present at the camp?

25 A. No, sir, I don't have any

1 --- I don't remember seeing anyone  
2 drink alcohol.

3 Q. On these other occasions  
4 where I think you said once or twice  
5 you had been at Smitty's camp and I  
6 may have asked you this and if I did  
7 I apologize, but do you remember  
8 consuming alcohol there on previous  
9 occasions?

10 A. Yeah.

11 Q. Do you know who provided  
12 the alcohol?

13 A. No, sir.

14 Q. Was it provided free of  
15 charge?

16 A. I don't really recollect.  
17 Just ---.

18 Q. Besides yourself and Misty  
19 Jordan on the night of the accident,  
20 do you know whether others were  
21 there that you just don't know who  
22 they were?

23 A. Yeah, I remember noise.

24 Q. What type of noise do you  
25 remember?

1 A. Just people talking. I  
2 can't picture no one else's face, I  
3 can just remember seeing her face.

4 Q. Do you know about how many  
5 others there may have been there?

6 A. No, sir, I don't.

7 Q. Do you remember anything  
8 out of the ordinary happening while  
9 you were at Smitty's camp?

10 A. Nope.

11 Q. Do you remember leaving  
12 Smitty's camp?

13 A. No, sir, I don't remember  
14 leaving.

15 Q. What do you then remember?

16 A. The last thing I remember  
17 is picturing someone standing  
18 outside of my car, picturing someone  
19 in the passenger side seat talking  
20 to a fire --- or a fire person.

21 Q. The passenger in your car  
22 was talking to the fire person?

23 A. No, I could just see  
24 someone sitting in there. I was  
25 talking to the fire person.

1 Q. Do you know who the fire  
2 person was?

3 A. No, sir.

4 Q. Do you know what fire  
5 department?

6 A. I know Jeremy Ruffner said  
7 that he was talking to me the night  
8 of the accident out there, but I  
9 don't remember when it was that he  
10 talked to me. It could have been.

11 Q. Jeremy?

12 A. Ruffner. I remember him.  
13 I know him from school.

14 Q. Do you have any reason to  
15 know why Jeremy Ruffner would have  
16 been at the accident site that  
17 night?

18 A. He's with the fire  
19 company.

20 Q. Do you know which fire  
21 company?

22 A. Clearfield Fire Company.

23 Q. Do you remember talking to  
24 anybody else at the --- strike that  
25 because I think you don't remember

1 talking to Jeremy Ruffner; correct?

2 A. No, I don't remember.

3 Q. He's just told you later  
4 on that ---?

5 A. Yes. I remember talking  
6 to someone, but I don't know who it  
7 was. I don't really remember what  
8 was said. I just ---.

9 Q. Do you remember any  
10 details of the accident?

11 A. No, nothing.

12 Q. Have you ever talked with  
13 Sam Unch about hitting his vehicle  
14 the night of the accident?

15 A. Yeah, I'm pretty --- yes.  
16 He said I just bumped into his car.  
17 I bumped --- I messed his door up.  
18 And I told him I was going home and  
19 I never went home.

20 Q. Did he tell you anything  
21 else in this discussion? Was  
22 anything said about what you guys  
23 did while you were at the Fusco  
24 house that night?

25 A. No, he just said that he

1 was trying to keep me there and I  
2 told him I was going home and I  
3 never went home.

4 Q. Did he say why he was  
5 trying to keep you there?

6 A. Well, I was messed up.

7 Q. Have you ever talked with  
8 anybody else that saw you on the  
9 night of the accident?

10 A. Misty Jordan is the only  
11 one I talked to.

12 Q. And what was discussed  
13 between you and Misty?

14 A. She said that she saw me  
15 out at Smitty's. We was there for  
16 like 15, 20 minutes and left.

17 Q. Did she say anything about  
18 whether or not you consumed  
19 alcoholic beverages at Smitty's?

20 A. Yeah, she said she didn't  
21 see me consuming any alcoholic  
22 beverages there, but we was there  
23 half hour tops and then just left.

24 Q. Other than Sam Unch, have  
25 you talked with anybody that claims

1 to have seen you at the Fusco  
2 residence that night?

3 A. No, sir. Judy, but I  
4 talked to her on the phone the next  
5 day or so.

6 Q. And what was --- where  
7 were you at when you spoke to Judy?

8 A. My house the next morning  
9 or the day after.

10 Q. Do you remember, were you  
11 hospitalized following the accident?

12 A. I was, but I was released  
13 I think it was like 6:30 in the  
14 morning or something like that, 7:00  
15 because I remember --- the next  
16 memory after my accident just  
17 walking up to them taking the  
18 catheter out because it hurt so bad.

19 Q. And do you remember  
20 whether Judy Fusco called you or  
21 whether you call her?

22 A. She called me.

23 Q. And do you remember what  
24 was discussed?

25 A. She just said that she

1    went upstairs and we snuck out and  
2    left. That's all I can really  
3    remember of that.

4    Q.            Did Judy say anything to  
5    you about whether you were messed up  
6    the night of the accident?

7    A.            Yeah, she said that we  
8    snuck out of her house and left  
9    while she went upstairs. I grabbed  
10   my keys and we left.

11   Q.            What do you mean you  
12   grabbed your keys?

13   A.            Off the table and left.

14   Q.            Brian, can you help me  
15   understand the language you're using  
16   that Judy said that you snuck out?

17   A.            Well, we snuck off. She  
18   knew we were messed up. We snuck  
19   off while she went upstairs because  
20   I guess she didn't want us to leave.

21   Q.            Let's go back a little bit  
22   to where you're in State College.  
23   Do you remember where you were  
24   clothes shopping at?

25   A.            No, sir, I don't remember



1 being in State College.

2 Q. Do you remember if anybody  
3 bought any clothes?

4 A. No, I don't remember being  
5 in State College.

6 Q. Since that phone  
7 conversation you had with Judy Fusco  
8 the day after the accident, have you  
9 ever spoken with her since that  
10 time?

11 A. I have stopped up there to  
12 get --- talk to a friend or  
13 something and pick him up, we go  
14 play basketball or baseball and  
15 stuff like that, but that's about  
16 it.

17 Q. Would it be the same  
18 friends or a different friend,  
19 different friends?

20 A. Just different friends  
21 that hang up out there.

22 Q. Like who?

23 A. I don't know if they still  
24 do or not, but ---.

25 Q. Who would they be?

1 A. I remember picking Matt  
2 Wilsoncroft up there. Everyone else  
3 is too lazy to play.

4 Q. Do you know any particular  
5 reason why Matt Wilsoncroft would be  
6 at the Fusco's residence?

7 A. No, just friends.

8 Q. Friends with who?

9 A. Friends with her ---  
10 Jessica Haynes' boyfriend. I don't  
11 know if it's currently her  
12 boyfriend, but boyfriend at the  
13 time.

14 Q. Who would that be?

15 A. Kevin Straw.

16 Q. On these other occasions  
17 when you have been up there to pick  
18 other friends up or a friend, have  
19 you seen alcoholic beverages at the  
20 Fusco residence?

21 A. No, sir.

22 Q. What about marijuana?

23 A. No, sir.

24 Q. Other than that phone  
25 conversation a day or so after the

1 accident with Judy Fusco, have you  
2 ever discussed this accident with  
3 her?

4 A. No, sir.

5 Q. How about with Jessica  
6 Haynes?

7 A. No, sir.

8 Q. Anybody else?

9 A. Just my family, maybe the  
10 Hess', Josh's mom, but ---.

11 Q. Has anybody else told you  
12 anything that they knew anything  
13 about the day or the accident  
14 itself?

15 A. No, sir.

16 ATTORNEY NOBLE:

17 Thank you. That's  
18 all I have.

19 ATTORNEY STOFKO:

20 No.

21 EXAMINATION

22 BY ATTORNEY MAIERHOFER:

23 Q. A couple questions for  
24 you, Brian.

25 A. Yes.

1 Q. Typically, when you would  
2 be drinking alcohol, what would you  
3 be drinking?

4 A. Budweiser usually.

5 Q. And did anyone tell you at  
6 any time after the accident that you  
7 were drinking Budweiser on that day?

8 A. No.

9 Q. Now, you mentioned you  
10 talked to Josh's mother about the  
11 accident. What was that  
12 conversation?

13 A. She just wanted me to  
14 say --- she just told me that do the  
15 right thing and say that we were at  
16 Smitty's and because that's where  
17 she was pretty much wanting --- my  
18 opinion was that she knew that they  
19 had money and she just wanted their  
20 money, that's my opinion.

21 Q. What did she say to you?

22 A. She just said she thinks  
23 it would be better off. When I said  
24 no, she just got angry about it.  
25 The next thing, I know she wrote a

1 letter telling the Judge that we  
2 don't come see Joshua or anything  
3 like that. And the reason we don't  
4 come see Joshua is because she's a  
5 total basket case. She's always  
6 mean, she would be nice one minute  
7 and totally ferocious the next  
8 minute, flip. It's terrible.

9 ATTORNEY MAIERHOFER:

10 Thank you that's all  
11 I have.

12 ATTORNEY NOBLE:

13 I just have a few  
14 follow-up questions with  
15 that.

16 RE-EXAMINATION

17 BY ATTORNEY NOBLE:

18 Q. When you discussed or had  
19 discussions with Mrs. Hess, do you  
20 remember anything more than what you  
21 told us about today?

22 A. No, not really. She just  
23 told me that she thinks it would be  
24 good for me to tell the truth. And  
25 I said, I'm going to tell the truth.

1 Q. But she wanted you to say  
2 that ---?

3 A. We were out at Smitty's  
4 that evening. But she thinks that  
5 we consumed alcohol out there.  
6 That's what she's saying.

7 Q. Okay. I think I  
8 understand.

9 A. Okay.

10 Q. But as you sit here today,  
11 you don't remember whether you did  
12 or did not consume alcohol?

13 A. Yeah, I don't remember  
14 consuming any alcohol out at ---  
15 hearsay that we didn't is what I  
16 hear, but that's what I heard from  
17 Misty. That we didn't ---.

18 Q. But we want to ---.

19 A. I don't remember drinking  
20 any alcohol out there.

21 ATTORNEY NOBLE:

22 Okay. I think that  
23 really answers my  
24 questions. Okay.

25 ATTORNEY MAIERHOFER:

We'll waive.

\* \* \* \* \*

DEPOSITION CONCLUDED AT 10:56 A.M.

\* \* \* \* \*

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF INDIANA )

3 C E R T I F I C A T E

4 I, Tammie B. Elias, RPR, a Notary Public in and  
5 for the Commonwealth of Pennsylvania, do hereby  
6 certify:

7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

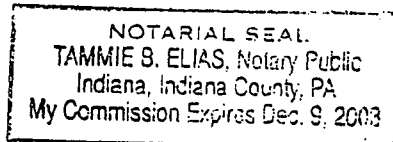
14 I further certify that the reading and signing  
15 of said depositions were (~~not~~) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 14<sup>th</sup> day of Feb. 2002.

23  
24  
25

*Tammie B. Elias*



• PITTSBURGH, PA

• CLEARFIELD, PA

• STATE COLLEGE, PA

• HOLLIDAYSBURG, PA

• ERIE, PA

• OIL CITY, PA

• HARRISBURG, PA

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Johnstown, PA 15901

• INDIANA, PA

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• SOMERSET, PA

• WILKES-BARRE, PA

• CHARLESTON, WV



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10305  
606

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

JOSHUA HESS, an adult individual

-VS-

No. 01 - 529 - CD

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual

**ORDER**

NOW, this 15<sup>th</sup> day of July, 2002, upon consideration of Motion to Compel filed on behalf of Plaintiff above-named, and hearing and briefs thereon, the Court being satisfied that Defendant Brian Scott Leigey has effectively waived any attorney/client privilege he enjoyed with Chris Pentz, Esquire, his counsel in the corresponding criminal prosecution, it is the ORDER of this Court that said Defendant be and is hereby ordered to respond to questions concerning the information provided to Plaintiff by Attorney Pentz. The Court is further satisfied that any future costs associated with this Order to include continued depositions of said Defendant shall be borne by the Plaintiff.

By the Court.

/s/ JOHN K. REILLY, JR.

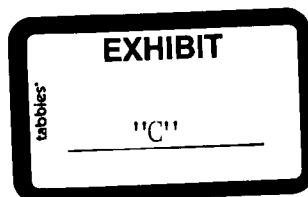
\_\_\_\_\_  
President Judge

I hereby certify this to be a true  
and attested copy of the  
statement of

JUL 15 2002

Attest:

*William L. ...*  
Prothonotary



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

**JOSHUA HESS, an adult individual,  
Plaintiff**

**-VS-**

: Civil Action No. 01-529-CD

BRIAN SCOTT LEIGEY, an adult :  
individual, and JUDY FUSCO, an adult :  
individual, :

**Defendants : JURY TRIAL DEMANDED**

## CERTIFICATE OF SERVICE

I, Mary Lou Maierhofer, Esquire, of the law firm, MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that on the **15<sup>th</sup> day of September, 2003**, a true and correct copy of the Motion for Partial Summary Judgment, on behalf of the Defendant, Brian Scott Leigey, was served upon Counsel of record by first class U.S. mail, postage prepaid as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

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969 Eisenhower Blvd.  
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Johnstown, PA 15904

**Troy J. Harper, Esquire**  
**DENNISON, DENNISON & HARPER**  
239 Main Street  
Brookville, PA 15825

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY:

Mary Lou Maierhofer, Esquire  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
(814) 941-4600  
Pennsylvania ID #62175

FILED NO  
M/1:30 PM  
SEP 16 2003  
cc  
W.A. Shaw  
Prothonotary/Clerk of Courts

DENNISON, DENNISON & HARPER

ATTORNEYS AT LAW

293 MAIN STREET

BROOKVILLE, PENNSYLVANIA 15825

**Consolidated at 2001 - 529 C.D.**

**Defendants.**

**Defendants.**

### Additional Defendants.

**DENNISON, DENNISON & HARPER**  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

William A. Shaw  
Prothonotary/Clerk of Courts

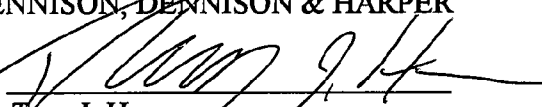
**Consolidated at 2001 - 529 C.D.**

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DENNISON, DENNISON & HARPER

By

  
Troy J. Harper

Attorneys for Defendants, Dean  
Owens Catherine Owens, Christopher  
Smith, Wendy Owens

Prothonotary/Clerk of Courts

William A. Shaw

SEP 10 2003

FILED

Nb  
cc

m/1:20x81

~~SEP 10 2003~~



DENNISON, DENNISON & HARPEL

ATTORNEYS AT LAW

293 MAIN STREET

BROOKVILLE, PENNSYLVANIA 15825



COURT OF COMMON PLEAS OF CRAWFORD COUNTY,  
PENNSYLVANIA

**Consolidated at 2001 - 529 C.D.**

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

)

) JOSHUA HESS, an adult individual,

)

) Plaintiff,

)

) vs.

)

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants.

)

) vs.

)

) BRIAN LEIGEY, an adult  
) individual; and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

**ANSWER TO MOTION TO COMPEL**

AND NOW, come the Defendants, DEAN ROBERT OWENS, CATHERINE J.  
OWENS, CHRISTOPHER SMITH, and WENDY OWENS, by and through their attorneys,  
Dennison, Dennison and Harper, who file the following Answer to Motion to Compel and the  
Rule to Show Cause issued by the Court on August 1, 2003, which was not filed with the  
Prothonotary until August 21, 2003, and which was not served until August 22, 2003.

1. Admitted only as to what has been alleged by the Plaintiff in his Complaints.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted insofar as of the time of the filing of the Petition, the Defendants had not responded to the discovery requests. However, the Defendants, Dean Owens, Catherine Owens, Christopher Smith and Wendy Owens, served full and complete Answers to the Plaintiff's Interrogatories on September 9, 2003. As copy of said Answers and Certificate of Service is attached hereto as Exhibit "A".

7. Admitted.

**WHEREFORE**, the Defendants, Dean Owens, Catherine Owens, Christopher Smith and Wendy Owens, request this Honorable Court to deny the Motion to Compel as the Defendants have provided full and complete Answers to the Plaintiff's Interrogatories.

DENNISON, DENNISON & HARPER

By 

Troy J. Harper  
Attorneys for Defendants, Dean Owens  
Catherine Owens, Christopher Smith,  
Wendy Owens

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,  
DEFENDANTS.

No. 01- 529 -CD

ANSWERS TO  
**PLAINTIFF'S INTERROGATORIES**  
(seeking location of possible witnesses)

**AND NOW COMES, the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who pursuant to Pa.R.Civ.P. 4000 et.seq., demands response to the following INTERROGATORIES within thirty (30) days:**

1. For the below listed persons, please provide the last known address, phone number, the date said address and phone number were last known to be valid, and places said person are often known to be located, i.e. "hangouts".

<u>Address</u>	<u>Phone</u>	<u>Date</u>	<u>Hangouts</u>
----------------	--------------	-------------	-----------------

Mike (Mickey) Height Defendants are unaware of any information as requested relative to this person.

Rob Speigle Defendants are unaware of any information as requested relative to this person.

Sam Unch The only requested information the Defendants are aware of relative to this person is that they believe he frequents an establishment on Nichols Street in Clearfield, PA, known as Dinger's Bar & Grill.

Eric Walk Defendants are unaware of any information as requested relative to this person.

Dan Charles Defendants are unaware of any information as requested relative to this person.

Brittany Wisor Defendants are unaware of any information as requested relative to this person.

Josh Bumbarger Defendants are unaware of any information as requested relative to this person.

**EXHIBIT**

Address

Phone

Date

Hangouts

Jennifer Urish Defendants are unaware of any information as requested relative to this person.

Jill Coudriet Defendants are unaware of any information as requested relative to this person.

Shawn Quick Defendants are unaware of any information as requested relative to this person.

Alyson Young Defendants are unaware of any information as requested relative to this person.

Jason Hurley Defendants are unaware of any information as requested relative to this person.

Amanda Condon Defendants are unaware of any information as requested relative to this person.

Becky Audrey Defendants are unaware of any information as requested relative to this person.

Dave Knepp Defendants are unaware of any information as requested relative to this person.

Brian McQuillan Defendants are unaware of any information as requested relative to this person.

Jessica Leigey Defendants are unaware of any information as requested relative to this person.

Scott Bloom The only information the Defendants are aware of relative to this person is that he lives in the Glen Richey, PA, area.

Tim Wisor Defendants are unaware of any information as requested relative to this person.

Shawn Wisor The only information the Defendants have relative to this person was that his last confirmed address was 518 South 2nd St., Apt. 3, Clearfield, PA, (814) 762-8624. This address was current as of 5/02 although Defendants believe he may have relocated to somewhere on Market Street in Clearfield, PA.

Brandon Marhsall Defendants are unaware of any information as requested relative to this person.

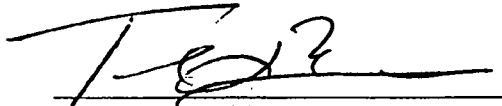
Misty Teets The only information the Defendants have relative to this person was that her last confirmed address was 518 South 2nd St., Apt. 3, Clearfield, PA, but Defendants now believe that she may have relocated to Lawrence Park Village in Clearfield, PA.

Wendy Reed The only information the Defendants have relative to this person is that her last confirmed address was R.R.1, Box 666, Glen Richey, PA (814) 236-7513. This address was current as of 5/02.

Scott Gormont The only information the Defendants have relative to this person is that his last confirmed address was 200 Reighand St., #3, Clearfield, PA (814) 752-8389. This address was current as of 5/02.

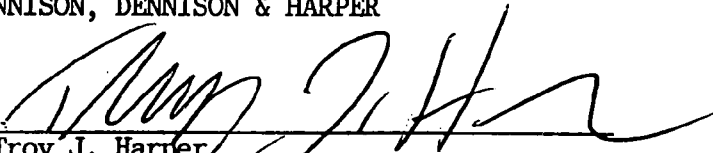
Tony English 507 South 4th Street, Clearfield, PA. (814) 765-7414. Address is current.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Pa. I.D.#: 55942  
301 East Pine Street  
Clearfield, PA 16830

DENNISON, DENNISON & HARPER

By 

Troy J. Harper  
Attorneys for Defendants  
I.D. #74753  
293 Main Street  
Brookville, PA 15825

**VERIFICATION**

I verify that the answers to the foregoing Interrogatories are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.

  
Wendy Owens



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

Consolidated at 2001 - 529 C.D.

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult individual,  
and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

) JOSHUA HESS, an adult individual,

) Plaintiff,

) vs.

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants.

) vs.

) BRIAN LEIGEY, an adult  
) individual; and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

**Type of Pleading: Certificate of Service**

Filed on behalf of: Defendants, Dean Robert Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens

Counsel of Record for this Party:

Troy J. Harper  
Supreme Court Number: 74753

John C. Dennison, II  
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER  
293 Main Street  
Brookville, Pennsylvania 15825  
(814) 849-8316

COURT OF COMMON PLEAS OF CRAWFORD COUNTY,  
PENNSYLVANIA

Consolidated at 2001 - 529 C.D.

No. 2001 - 529 C.D.

JOSHUA HESS, an adult individual,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, and adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants.

) No. 2001 - 1889 C.D.

) JOSHUA HESS, an adult individual,

) Plaintiff,

) vs.

) DEAN ROBERT OWENS, an adult  
) individual, CATHERINE J. OWENS,  
) an adult individual, CHRISTOPHER  
) SMITH, an adult individual, and  
) WENDY OWENS, an adult  
) individual,

) Defendants.

) vs.

) BRIAN LEIGEY, an adult  
) individual; and JUDY FUSCO, an  
) adult individual,

) Additional Defendants.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Defendants' Answers to Plaintiffs

Interrogatories was served on the 9<sup>th</sup> day of September, 2003, by

United States Mail, First Class, Postage Prepaid, addressed to the following:

Theron G. Noble, Esq.  
Ferraracio & Noble  
301 East Pine Street  
Clearfield, Pennsylvania 16830

Mary Lou Maierhofer, Esq.  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, Pennsylvania 16602

Dennis J. Stofko, Esq.  
969 Eisenhower Boulevard  
P.O. Box 5500  
Johnstown, Pennsylvania 15904

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper

Attorneys for Defendants, Dean  
Owens Catherine Owens, Christopher  
Smith, Wendy Owens

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the Answer to Plaintiff's Motion to Compel was served on the 9<sup>th</sup> day of September, 2003, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Theron G. Noble, Esq.  
Ferraracio & Noble  
301 East Pine Street  
Clearfield, Pennsylvania 16830

Mary Lou Maierhofer, Esq.  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Boulevard  
Altoona, Pennsylvania 16602

Dennis J. Stofko, Esq.  
969 Eisenhower Boulevard  
P.O. Box 5500  
Johnstown, Pennsylvania 15904

DENNISON, DENNISON & HARPER

By

  
Troy J. Harper

Attorneys for Defendants, Dean Owens  
Catherine Owens, Christopher Smith,  
Wendy Owens

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

JOSHUA HESS, an adult individual,  
Plaintiff

-vs-

Civil Action No. 01-529-CD

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual,

Defendants

JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Answers to Plaintiff's Interrogatories, on behalf of Defendant, Brian Scott Leigey, was served this **2<sup>nd</sup> day of April, 2003**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

Troy J. Harper, Esquire  
DENNISON, DENNISON & HARPER  
239 Main Street  
Brookville, PA 15825

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: 

**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**FILED**

APR 03 2003  
m 12:00 / 43  
William A. Shaw  
Prothonotary/Clerk of Courts

40 c/c E 42

41

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did propound on the below listed individuals, being all counsel of record, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's INTERROGATORIES (seeking location of possible witnesses), this 28th day of February, 2003:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar y Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

MAR 03 2003

William A. Shaw  
Prothonotary

#40

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

JOSHUA HESS, an adult individual

-VS-

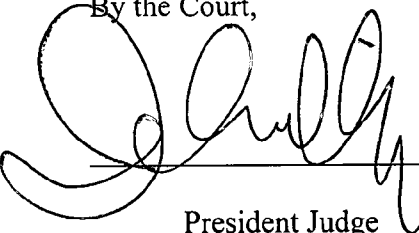
No. 01 – 529 – CD

BRIAN SCOTT LEIGEY, an adult  
individual, and JUDY FUSCO, an adult  
individual

**ORDER**

NOW, this 15<sup>th</sup> day of July, 2002, upon consideration of Motion to Compel filed on behalf of Plaintiff above-named, and hearing and briefs thereon, the Court being satisfied that Defendant Brian Scott Leigey has effectively waived any attorney/client privilege he enjoyed with Chris Pentz, Esquire, his counsel in the corresponding criminal prosecution, it is the ORDER of this Court that said Defendant be and is hereby ordered to respond to questions concerning the information provided to Plaintiff by Attorney Pentz. The Court is further satisfied that any future costs associated with this Order to include continued depositions of said Defendant shall be borne by the Plaintiff.

By the Court,



President Judge

FILED

JUL 15 2002

William A. Shaw  
Prothonotary

#39

FILED

~~01/31/01~~  
JUL 15 2002

William A. Shaw  
Prothonotary

*(Handwritten)*  
1cc Atty Noble  
1cc Atty Maierhofer  
1cc Atty Starks



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**REPLY TO PLAINTIFF'S BRIEF IN  
SUPPORT OF THE MOTION TO  
COMPEL**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

JUN 27 2002

m/2:03/no cc  
William A. Shaw  
Prothonotary

E  
KJW

38

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**REPLY TO PLAINTIFF'S BRIEF IN SUPPORT OF THE MOTION TO COMPEL**

NOW COMES the Defendant, Brian Scott Leigey, by and through his counsel, Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK, & ECK, PLLC, and files this Reply to Plaintiff's Brief in Support of the Motion to Compel, of which the following is a statement.

**Procedural Posture**

The Plaintiff was permitted to file a Brief in Support of its Motion to Compel which was received by this Defendant on June 25, 2002, thus giving this Defendant five (5) days to file a Responsive Brief.

**Statement of Facts/Argument**

While certain facts are accurate in the Plaintiff's Brief in Support of the Motion to Compel, the testimony provided by Attorney Pentz and Mr. Leigey speak for itself. Any attempt by Plaintiff's counsel to interpret or add his own spin to the same, is inappropriate. Attorney Pentz never stated that he talked to Mr. Leigey regarding civil

procedures. He only discussed with him the criminal matters. Further, Defendant, Brian Leigey only recalls one meeting with Attorney Pentz regarding assisting or cooperating with Attorney Noble to "soften" the criminal charges.

It should be further noted that Plaintiff's Exhibit "3" in no way reflects the fact that this Defendant received a copy of the same. Further, this Defendant never waived the attorney/client privilege by failing to object when the documentation was first provided.

Mr. Leigey was a 19 year old who had just been involved in a very serious accident that caused him personal injury as well as severely injured his best friend. There is no documentation that this Defendant ever knowingly waived the attorney/client privilege as Attorney Pentz never confirmed such in any writings to Mr. Leigey. While Mr. Leigey testified he could not remember meeting with Attorney Pentz or giving his permission, it is clear that Attorney Pentz never explained waiving the attorney/client privilege. Mr. Leigey, the client, was never properly informed of his rights, thereby "How could he waive the same?"

Counsel for the Plaintiff believes that the Court in order to find that Mr. Leigey did not make a waiver must find certain facts that include "Attorney Pentz directly lied in that he discussed with Leigey the civil ramifications to the disclosure." It is this counsel's recollection, however, the Court should rely upon transcript that Attorney Pentz testified he never had discussions with Mr. Leigey regarding civil ramifications. Further, while a client may provide information to his attorney, it does not mean that he anticipates that attorney will turn over the letter and/or information without the clients permission. Such was not done in the May letter as reflective in the fact that Attorney Pentz never copied Mr. Leigey.

### Conclusions

It is clear that Mr. Leigey never waived knowingly the attorney/client privilege. Further, this Court should deny the Plaintiff's Motion to Compel and deny that a deposition be reconvened. Further, if this Court should find the Plaintiff's Motion to Compel be granted, this Court should not permit Plaintiff's counsel to require Mr. Leigey to pay the Court Reporter's appearance fee. This Court should not sanction a party for raising his rights in a very serious matter that has clear merit. The only time a sanction should be applied is if a situation is not meritorious and clearly in this case, there is a real issue as to whether Mr. Leigey knowingly waived the attorney/client privilege as to the materials that his counsel in the criminal action provided to Plaintiff's counsel in the civil matter.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

Date: June 26, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Reply to Plaintiff's Brief in Support of the Motion to Compel, on behalf of Defendant, Brian Scott Leigey, was served this **26<sup>th</sup> day of June, 2002**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

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

JOSHUA HESS

:

VS.

: NO. 01-529-CD

BRIAN SCOTT LEIGEY and

:

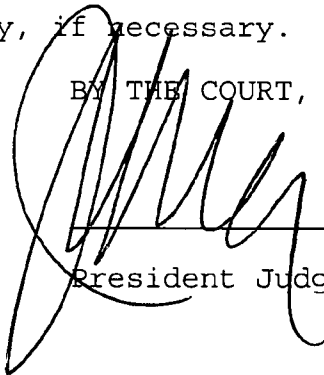
JUDY FUSCO

:

O R D E R

NOW, this 19th day of June, 2002, following the taking of testimony, it is the ORDER of this Court that counsel for Plaintiff have ten (10) days from this date in which to supply the Court with reply brief; and Defendant is given five (5) days thereafter for reply, if necessary.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

**FILED**

JUN 19 2002

William A. Shaw  
Prothonotary

#37


FILED

JUN 19 2002

01:351 Accatt, Noble

William A. Shaw  
Proprietary

See City Stgko



See City Marshage

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

JOSHUA HESS, an adult individual

-VS-

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO, an  
adult individual

No. 01 - 529 - CD

**ORDER**

NOW, this 7<sup>th</sup> day of May, 2002, this being the day and date set for argument into Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, upon agreement of the parties, it is the ORDER of this Court that said argument shall be and is hereby continued pending completion of discovery.

By the Court,

President Judge

**FILED**

MAY 07 2002

William A. Shaw  
Prothonotary

#36



FILED

012:34 ~~55~~  
MAY 07 2002

icc Aug Noble

Maischhofer

Stefro

William A. Shaw  
Prothonotary

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

JOSHUA HESS, an adult individual

-VS-

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO, an  
adult individual

No. 01 - 529 - CD

**ORDER**

NOW, this 7<sup>th</sup> day of May, 2002, upon consideration of Motion for Consolidation filed on behalf of Plaintiff, Joshua Hess, all parties being in agreement, it is the ORDER of this Court that trial in this matter shall be and is hereby consolidated with that proceeding filed to No. 01-1889-CD.

It is the further ORDER of this Court that all subsequent filings shall be made to No. 01-529-CD.

By the Court,

President Judge

**FILED**

MAY 07 2002

William A. Shaw  
Prothonotary

FILED

8/23/02  
MAY 07 2002

1 cc Atty Noble  
March 2002  
Stefko

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**OPPOSITION/RESPONSE TO THE  
MOTION TO COMPEL, MOTION FOR  
CONTINUANCE AND MOTION TO  
CONSOLIDATE**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

APR 10 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

ORDER OF COURT

NOW THIS \_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of the  
Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to  
Consolidate by Defendant, Brian Scott Leigey, and after hearing upon same, the Court  
does hereby Order, Direct and Decree that Plaintiff's Motion to Compel is denied and  
any and all information derived as a result of the attorney/client privilege by Attorney  
Pentz is sealed and not permitted to be used in this civil litigation on Case No. 2001-  
1889.

BY THE COURT:

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**OPPOSITION/RESPONSE TO THE MOTION TO COMPEL,  
MOTION FOR CONTINUANCE AND MOTION TO CONSOLIDATE**

NOW COMES the Defendant, Brian Scott Leigey, by and through his counsel,  
Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER,  
BEBENEK, & ECK, PLLC, and files this Opposition/Response to the Motion to Compel,  
Motion for Continuance and Motion to Consolidate of which the following is a statement:

1.-3. Admitted.

4. Denied as conclusions of law. By way of further response neither  
admitted nor denied in that said allegation is directed to a party other than this  
answering Defendant.

5.-6. Admitted.

7. It is admitted that Plaintiff initiated another lawsuit against Dean Robert  
Owens, et al under the case number filed at 01-1889-CD. The remaining allegations  
are denied as to this Defendant. This Defendant's deposition transcript speaks for itself  
in that this Defendant does not recall consuming any alcohol nor was he told by anyone  
that he consumed alcohol.

8. It is specifically denied that Defendant, Fusco was at the Owen's camp that evening but it is admitted that this Defendant was and subsequent to leaving the Owen's camp, a motor vehicle accident occurred with Plaintiff, Hess sustaining injury. All allegations of injuries are denied in that after reasonable investigation this Defendant lacks sufficient information to respond.

9. Admitted.

MOTION TO COMPEL (AS TO DEFENDANT, BRIAN SCOTT LEIGEY)

10. Said transcript speaks for itself.

11.-12. Admitted.

13. Denied as conclusions of law. By way of further response, it is averred this Defendant has never waived the attorney/client privilege. An attorney/client privilege can only be waived by the client and not the attorney. Said materials cannot be utilized and are subject to and should be sealed. Further, any information derived as a result of that information contained therein must be prohibited from any party using against this Defendant. (See Exhibit "1" attached hereto and incorporated as if fully set forth at length)

14. Denied in that after reasonable investigation this Defendant lacks information as to what Attorney Pentz will testify to regarding this matter. This Defendant never waived the attorney/client privilege and was never requested to do so.

WHEREFORE, Defendant, Brian Scott Leigey, prays that this Court deny the Plaintiff's Motion to Compel and seal any and all information derived as a result of the attorney/client privilege.

MOTION FOR CONTINUANCE (AS TO DEFENDANT, FUSCO'S  
MOTION FOR SUMMARY JUDGMENT)

15.-21. Neither admitted nor denied in that said allegations are directed to a party other than this answering Defendant.

MOTION TO CONSOLIDATE (AS TO CASE NUMBER 01-1889-CD)

22.-23. This Defendant does not oppose the consolidation of Case Number 01-529-CD and 01-1889-CD.

WHEREFORE, Defendant, Brian Scott Leigey, has no objection to the consolidation of the cases as set forth in Plaintiff's Motion.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

Date: April 8, 2002



**VERIFICATION**

I, **Brian Scott Leigey**, do hereby verify that I have read the foregoing  
OPPOSITION/RESPONSE TO THE MOTION TO COMPEL, MOTION FOR  
CONTINUANCE AND MOTION TO CONSOLIDATE. The statements therein are true  
and correct to the best of my knowledge as to part, and based upon information and  
belief as to the rest.

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

X Brian S Leigey  
Brian Scott Leigey

DATE: 4/5/02

## AFFIDAVIT

I, Brian Scott Leigey, an adult currently incarcerated in the Clearfield County Prison as a result of a guilty plea for charges related to a motor vehicle accident that occurred on December 5, 1999 in which Joshua Hess sustained injury, do hereby attest that this statement is being made subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities, which provides that if I knowingly make false averments, I may be subject to criminal penalties.

Chris A. Pentz, Esquire was representing me in the criminal matter involving my subsequent incarceration related to the December 5, 1999 motor vehicle accident. At no time did Attorney Pentz ever explain to me waiving the attorney/client privilege and any possible repercussions that could result in me waiving the attorney/client privilege. I was told by Attorney Pentz that if I cooperated with Attorney Noble things might be better for me, but there was no discussion on specifically waiving the attorney/client privilege to my knowledge.

I, Brian Scott Leigey, am not waiving the attorney/client privilege as related to the confidential information released by Attorney Pentz specifically the office notes summarizing our conversations and a handwritten note dated May 23, 2000 that I sent to Attorney Pentz.

Again, this statement is made subject to the penalties of 18 Pa.C.S.A. Section 4904.

4/5/02  
Date

Brian S. Leigey  
Brian Scott Leigey

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, on behalf of Defendant, Brian Scott Leigey, was served this **8<sup>th</sup> day of April, 2002**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

MEYER DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

\_\_\_\_\_  
MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

FILED NC  
cc

M 12:55 PM  
APR 10 2002

ss William A. Shaw  
Prothonotary

Original Not

In File

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**MOTION FOR CONTINUANCE**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

MAR 18 2002

MISS/ROCK  
William A. Shaw  
Prothonotary

132

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

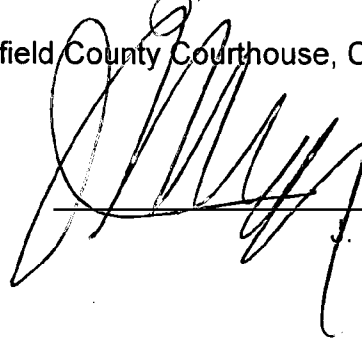
CIVIL DIVISION

No. 01-529-CD

**RULE**

NOW THIS 19<sup>th</sup> day of March, 2002, a Rule is hereby issued upon  
Plaintiff, Joshua Hess, to show cause, if any there should be, why the Motion for  
Continuance of Defendant, Brian Scott Leigey, should not be granted.

Said Rule Returnable the 7<sup>th</sup> day of June, 2002, at 2:00 o'clock,  
9 .m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.



**FILED**

**MAR 19 2002**

**William A. Shaw**  
Prothonotary

**FILED**

**MAR 19 2002**

**William A. Shaw**  
Prothonotary

#32

**FILED**

MAR 19 2002

03:40 P.M.  
William A. Shaw  
Prothonotary

ICC to Atty Maierhofer



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

ORDER OF COURT

NOW THIS \_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of the  
Motion for Continuance by Defendant, Brian Scott Leigey, the Court does hereby Order,  
Direct and Decree that this Motion for Continuance is GRANTED.

BY THE COURT:

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**MOTION FOR CONTINUANCE**

NOW COMES the Defendant, Brian Scott Leigey, by and through his counsel, Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK, & ECK, PLLC, and files this Motion for Continuance of which the following is a statement:

1. This Court has scheduled various arguments including a Motion to Compel filed by Plaintiff against this Defendant for Tuesday, May 7, 2002 at 1:30 p.m.
2. From May 7, 2002 to May 10, 2002 counsel for this Defendant will be on vacation.
3. The Motion to Compel is in response to Defendant refusing to answer questions during his deposition regarding certain documentation that was provided to Plaintiff's counsel from his Criminal Attorney.
4. This Defendant is claiming Attorney/Client privilege for those documents and it is anticipated that as part of the Opposition to the Motion to Compel, this

Defendant will be present to testify.

5. Due to the nature of the issues to be presented to the Court, counsel for the Defendant must be present in order to present the information to the Court as a result of being at the deposition of the Defendant as well as handling this litigation from the inception.

6. This Defendant is currently incarcerated as a result of the criminal proceedings resulting from the motor vehicle accident for which this civil action was filed.

7. Defense counsel has spoken to Plaintiff's counsel as well as counsel for the other Defendants who do not oppose the granting of this Continuance.

8. This Defendant does not object to having other Motions heard on May 7, 2002, it is only the Motion to Compel filed by Plaintiff against this Defendant that needs to be rescheduled.

WHEREFORE, Defendant, Brian Scott Leigey, prays this Honorable Court grant a Continuance and reschedule the argument currently to be held on Tuesday, May 7, 2002 on the Motion to Compel by the Plaintiff.

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAYERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

Date: \_March 15, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Motion for Continuance, on behalf of Defendant, Brian Scott Leigey, was served this **15<sup>th</sup> day of March, 2002**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

BY: 

MARY LOU MAIERHOFER, ESQUIRE  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that the Rule scheduling our Motion to Compel for June 7, 2002 at 2:00 p.m., Courtroom No. 1, on behalf of Defendant, Brian Scott Leigey, was served this **20<sup>th</sup> day of March, 2002**, by mailing original to Plaintiff's counsel and a true and correct copy of the same to Counsel first class United States mail, postage prepaid, addressed as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC

**FILED**

MAR 27 2002

MARY LOU MAIERHOFER

William A. Shaw

Notary Public

BY:



MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Brian Scott Leigey

120 Lakemont Park Boulevard

Altoona, PA 16602

Phone No.: (814) 941-4600

ID # 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

RULE

NOW THIS 19<sup>th</sup> day of March, 2002, a Rule is hereby issued upon  
Plaintiff, Joshua Hess, to show cause, if any there should be, why the Motion for  
Continuance of Defendant, Brian Scott Leigey, should not be granted.

Said Rule Returnable the 7<sup>th</sup> day of June, 2002, at 2:00 o'clock,  
P.m., Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

/s/JOHN K. REILLY, JR.

and attested copy of the original  
statement filed in this case.

MAR 19 2002

Attest.

William L. Shaw  
Prothonotary

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01-529-CD

**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I serve on the below listed individuals, being counsel of record for the various Defendant, via United States Mail, postage pre-paid, at the addresses therein indicated, the March 8th RULE RETURNABLE, as to Plaintiff's MOTION TO COMPEL, FOR CONTINUANCE AND TO CONSOLIDATE, this 13th day of March, 2002:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

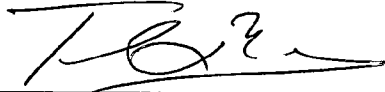
**FILED**

MAR 14 2002

William A. Shaw  
Prothonotary

#31

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. G. Noble', written over a horizontal line.

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942



FILED

MAR 11 2002

NO cc  
C. Webb

William A. Shaw  
Prothonotary

CP

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, AND JUDY FUSCO, AN  
ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

Type of Pleading:

MOTION TO COMPEL,  
MOTION FOR CONTINUANCE  
and MOTION TO CONSOLIDATE

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

MAR 01 2002

0/12:05/WS  
William A. Shaw  
Prothonotary

NO Cc. [Signature]

#23

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**FILED**

MAR 11 2002

019:40/KC atty noble  
William A. Shaw  
Prothonotary *WAS*

**RULE TO SHOW CAUSE**

Now, this 8<sup>th</sup> day of March, 2002, upon consideration of the attached Plaintiff's

MOTION TO COMPEL, FOR CONTINUANCE and TO CONSOLIDATE, a RULE is hereby  
issued upon all Defendants to SHOW CAUSE why the PETITION should not be granted. RULE  
RETURNABLE, for filing written response, is set for the 28 day of March, 2002 and  
argument on the Motions set for the 15<sup>th</sup> day of May, 2002, at 1:30 P.M.,  
in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

**NOTICE**

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE  
CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN  
APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR  
DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT  
IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED  
AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE  
PETITION. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

*[Handwritten signature]*

WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Second & Market Streets  
Clearfield, PA 16830  
(814)-765-2641

By The Court,

---

Judge

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,  
DEFENDANTS.

No. 01- 529 -CD

**PLAINTIFF'S MOTION TO COMPEL (AS TO DEFENDANT BRIAN  
SCOTT LEIGEY) MOTION FOR CONTINUANCE (AS TO DEFENDANT  
JUDY FUSCO'S MOTION FOR SUMMARY JUDGMENT) AND MOTION  
TO CONSOLIDATE CASES (AS TO 01-1889-02)**

**And now, comes Plaintiff Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his MOTIONS TO COMPEL, FOR CONTINUANCE, AND CONSOLIDATION, as follows:**

Background

1. This matter arises out of an alleged automobile accident which occurred on December 6, 1999.
2. Plaintiff Joshua Hess was a passenger in an automobile driven by Defendant Brian Scott Leigey, which left the roadway and struck a tree.
3. At the time of the accident, Joshua Hess was 17 years of age while Defendant Leigey was 18 years of age.
4. That Defendant Judy Fusco is named as a Defendant in that it is alleged that she recklessly or negligently provided alcohol to Hess and Leigey on the night of the accident.
5. That as a result of the incident, Leigey was criminally prosecuted and is currently incarcerated having just a short time ago entered a plea agreement.

6. That although discovery, including numerous depositions from many potential witnesses, has been on going since the time this suit was filed, Defendant Leigey's deposition was not held until February 7, 2002 in that his counsel of record for the civil suit would not permit his deposition while the criminal charges were pending.

7. That as a result of the previously referenced discovery, Plaintiff initiated another lawsuit against Dean Robert Owens, Catherine Owens, Christopher Smith, and Wendy Owens when testimony under oath that Hess and Leigey traveled from Fusco's home to the Owen's camp to attend another party at which alcohol was served and probably consumed by them. This case is filed at 01-1889-CD.

8. That the accident happened after Hess and Fusco left the Owen's camp, with Hess suffering a severe closed head injury, with residual and permanent consequences and incurring medical bills totaling approaching.

9. That all Defendants to each case have joined the other Defendants as additional defendants.

**Motion to Compel (as to Defendant Brian Scott Leigey)**

10. At his Deposition, Defendant Brian Scott Leigey testified that he could not recall whether he drank alcoholic beverages while at the Fusco residence on the night of the accident. (See pages 23 and 24 of Deposition Transcript attached hereto as Exhibit "A").

11. That Attorney Noble confronted Defendant Leigey with letters between himself and Christopher Pentz, Esquire, who represented Defendant Brian Leigey as to the criminal charges, as well as office notes provided by Attorney Pentz, all of which indicated that Brian Leigey had consumed alcohol (Budweiser beer) at the Fusco residence. See Exhibit B attached hereto.

12. When confronted with these materials, Leigey's civil attorney, Mary Lou Maierhofer, objected on the grounds of attorney client privilege and instructed Defendant Leigey not to answer.

13. That based upon the delivery of the materials from Attorney Pentz to Attorney Noble that said privilege has been waived.

14. Furthermore, if necessary, it is expected that Attorney Pentz will testify that said waiver was done with full knowledge and authorization of his client with an underlying strategic purpose as to the criminal case.

**WHEREFORE, it is requested as follows:**

- 1. That it be determined Defendant Leigey waived his attorney client privilege with Attorney Pentz;**
- 2. That Defendant Leigey be ordered to answer questions concerning the communications provided by Attorney Pentz at a continuation of his deposition; and**
- 3. That Defendant Leigey be ordered to pay for the Court Reporter's additional appearance fee for said re-scheduled deposition.**

**Motion For Continuance (As To Defendant Fusco's Motion for Summary Judgment)**

15. That Defendant Judy Fusco has presently filed a Motion for Summary Judgment essentially asserting the lack of direct evidence to support Hess's allegation of her providing and permitting the consumption of alcohol on her premises by Hess and Leigey.
16. That although counsel for Hess believes that Hess will be able to defeat said motion by the circumstantial evidence gathered to date, it appears that the information in the materials provided by Attorney Pentz provides direct evidence as to Defendant Fusco's liability in this matter.
17. As such, it is requested that Plaintiff's response to said motion be continued until at least the re-scheduled deposition of Defendant Leigey is held.
18. In addition, there are additional witnesses to be deposed who can further clarify the event of the night in question, or at least aid in the establishing of a timeline.
19. In that Defendant Leigey BAC was nearly .20 at the time of the accident (2:30 A.M.), if necessary, a timeline coupled with testimony from a toxicologist can greatly aid in the case against Fusco. However, prior to developing this evidence, given its cost, Plaintiff would rather determine whether he has direct evidence which Leigey might provide if Plaintiff is permitted to question Leigey as to the "Pentz materials".
20. Furthermore, in that the various Owens Defendants are not a party to this case, but have also filed against Leigey as an additional Defendant in the other case, they were not served with Defendant Fusco's Motion for Summary Judgment. Given the issues presented, it is likely that said defendants would also oppose said motion.
21. That counsel for Defendant Fusco, Dennis J. Stofko, Esquire, has indicated that he does not oppose the continuance while ruling on the Motion to Compel is pending.

**Wherefore, Plaintiff requests that:**

- 1. Briefing, Argument and ruling on Defendant Fusco's motion for summary judgment be continued until further order of the Court.**

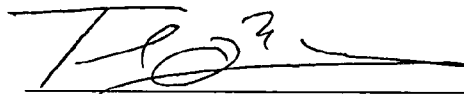
**Motion to Consolidate (as to case number 01-1889-CD)**

22. For the reasons herein provided, this case (01-529-CD) and the "Owens" case (01-1889-CD), should be consolidated and forever more be captioned to 01-529-CD as Hess v. Leigey, et.al..
23. That although not confirmed with opposing counsel, it is anticipated that such consolidation would not be opposed given the reduction in costs and logistical advantages.

**WHEREFORE, Plaintiff requests that:**

- 1. Cases 01-529-CD, styled as Hess v. Leigey and Fusco, and 01-1889-CD, styled as Hess v. Owens, Owens, Smith and Owens, be consolidated to 01-529-CD and captioned henceforth as Hess v. Leigey, et.al.**

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
Pa. I.D.#: 55942  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221



1 ATTORNEY STOFKO:

2 Well, Mr. Noble is  
3 asking what you remember.

4 A. What I remember.

5 ATTORNEY STOFKO:

6 Yes. And I think  
7 that's the purpose of this  
8 not what somebody may have  
9 told you later on. It's  
10 very important that you  
11 give us actually recall.  
12 If you don't recall ---.

13 A. Okay. Then I don't recall  
14 then.

15 BY ATTORNEY NOBLE:

16 Q. Do you recall other people  
17 besides yourself and Jessica at the  
18 Fusco residence?

19 A. No, sir, I don't. Just  
20 Ms. Fusco. I just remember  
21 picturing sitting at the end of her  
22 kitchen table and seeing her  
23 daughter, that's all I can remember  
24 picturing.

25 Q. Do you know whether or not

Exhibit "A"  
(5 pages)

1 Ms. Judy Fusco was home?

2 A. I can't --- I don't  
3 recall, sir.

4 Q. Do you remember what you  
5 did while you were at the Fusco  
6 residence?

7 A. No, I just remember  
8 sitting at her table.

9 Q. Do you know how long you  
10 were there?

11 A. Precisely I don't know how  
12 long we were there. The paper said  
13 about 2:30, but ---.

14 ATTORNEY MAIERHOFER:

15 You don't know. He's  
16 asking you, do you know.

17 A. No.

18 BY ATTORNEY NOBLE:

19 Q. Do you remember if there  
20 were alcoholic beverages at the  
21 Fusco residence?

22 A. I don't recall, sir.

23 Q. Do you recall if you  
24 consumed any alcoholic beverages  
25 while you were at the Fusco

1 residence?

2 A. No, I don't recall, sir.

3 Q. Brian, I'm going to show  
4 you a letter that I sent to Attorney  
5 Chris Pentz, who I believe  
6 represented you on the criminal  
7 charges, a letter I received in  
8 response from him as well as some  
9 notes he sent me as well as another  
10 letter he sent me and a letter  
11 purportedly signed by you. I'll  
12 first show them to your attorney and  
13 I believe they were each provided in  
14 discovery.

15 ATTORNEY MAIERHOFER:

16 I'm going to object  
17 to that documentation as  
18 being attorney/client  
19 privilege and instruct my  
20 client not to answer any  
21 questions. He never  
22 released or waived  
23 attorney/client privilege  
24 and Counsel who provided  
25 that to you did it

1                   improperly. The privilege  
2                   was never waived,  
3                   therefore, he will not be  
4                   answering any questions  
5                   specifically related to  
6                   those documents.

7                   ATTORNEY NOBLE:

8                   To both documents?

9                   ATTORNEY MAIERHOFER:

10                  Both documents.

11                  ATTORNEY NOBLE:

12                  Okay. I will accept  
13                  that your client's not  
14                  going to answer questions  
15                  and we'll take that before  
16                  a Judge at some point and  
17                  get a resolution on it.

18                  ATTORNEY MAIERHOFER:

19                  He's not going to  
20                  answer any questions  
21                  related to those two  
22                  documents. If you want to  
23                  ask him questions  
24                  independent of those  
25                  documents, you may do so.

1 But he will not answer any  
2 questions related those  
3 two documents because of  
4 the failure to obtain his  
5 permission to release  
6 those.

7 ATTORNEY NOBLE:

8 I would assume that  
9 the objection would also  
10 concerning any  
11 communications that he  
12 probably had with Attorney  
13 Pentz as well?

14 ATTORNEY MAIERHOFER:

15 Absolutely.

16 BY ATTORNEY NOBLE:

17 Q. Brian, when you say you  
18 don't remember things at the Fusco  
19 residence, do you have any reason as  
20 to whether that's because of  
21 intoxication, substance or just  
22 lapse of time?

23 A. It could be due to my  
24 accident.

25 Q. Can you tell me any reason

**FERRARACCIO & NOBLE**

301 East Pine Street  
Clearfield, PA 16830  
(814) 765-4990  
(814) 375-2221  
FAX: (814) 765-9377

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

April 18, 2000

Re: Joshua Hess

Dear Chris:

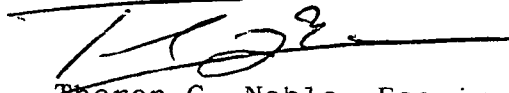
Thank you for your letter of April 14th and the materials therein enclosed.

I would appreciate a follow up letter, either from you or Mr. Leigey, as to why they went to Frenchville; were he and Mr. Hess stopped; whether they consumed any alcohol while there; and who provided the same.

I and Mr. Hess thank you and Mr. Leigey for your cooperation.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

Exhibit "B"  
(5 pages)

tn/TGN  
cc: Mr. Joshua Hess w.encl.

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

TELEPHONE  
(814) 765-4000

FAX  
(814) 765-8111

April 14, 2000

Attorney Theron Noble  
301 East Pine Street  
Clearfield PA 16830

Re: Joshua Hess

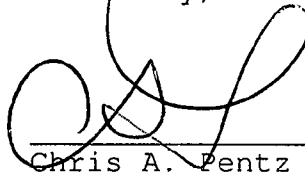
Dear Terry:

I am writing this letter in response to your letter of April 4, 2000. I have enclosed the following documents for your review:

1. Discovery provided by the Commonwealth
2. Office notes of April 10, 2000

I have reviewed with my client concerning your request about providing a statement. My client advises me that he will cooperate in any way possible. Please advise as to the procedure you wish to use in obtaining my client's sworn statement.

Sincerely,



Chris A. Pentz

CAP/jms  
Enclosures  
cc: Mr. Brian Leigey

April 10, 2000

Office Conference

12/04/99      9:00 P.M.      Client driving with Hess in vehicle  
going to Kerr Addition

                 9:30 P.M.      Arrived at Judy Fusco (Hanes) residence  
Good Street, Kerr Addition  
(White house)

                 Bud beer 12 oz cans - amount unknown

12/05/99      2:15 A.M.      Left. Went to Frenchville

                 2:50 A.M.      Returning from Frenchville - Accident

No beer after 2:15 A.M.

Not sure who provided beer; believes Judy Fusco

At Fusco residence:

- Judy Fisco
- Jessica hanes - daughter of Judy Fisco
- Joshua Hess
- Others - unknown/cannot remember



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

TELEPHONE  
314) 765-4000

FAX  
(814) 765-81

May 31, 2000

Attorney Theron Noble  
301 E. Pine Street  
Clearfield PA 16830

Re: Commonwealth vs Leigey

Dear Attorney Noble:

Enclosed is a copy of a letter dated May 23, 2000 which I received from my client. Please advise if you need anything further in this matter.

Sincerely,



---

Chris A. Pentz

CAP/jms  
Enclosure

CHRIS A. Pentz

5-23-2000

Referring to the letter that  
I recieved:

No, we were not at another  
place consuming alcohol.

We did not consume any  
other alcoholic beverages after  
leaving Kerra Addition.

Please contact me for  
further questions if needed.

Thank you,

Sincerely,

Brian Lervey

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**CERTIFICATE OF SERVICE**

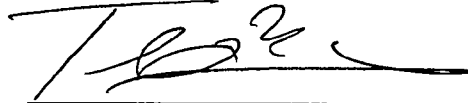
I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did serve on the below listed individuals, being all counsel of record, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's MOTION TO COMPEL, FOR CONTINUANCE and TO CONSOLIDATE, this 28th day of February, 2001:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Troy J. Harper, Esquire  
Dennison, Dennison & Harper  
293 Main Street  
Brookville, PA 15825

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', written over a horizontal line.

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,  
DEFENDANTS.

No. 01- 529 -CD

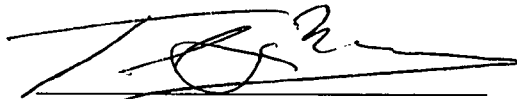
**NOTICE OF DEPOSITION**

To: Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Take notice that the deposition upon oral examination will be taken of Defendant Brian Scott Leigey, at the Clearfield County Jail, Clearfield, PA, on the 7th day of February, 2002 commencing at approximately 10:00 A.M, at which time you are invited to attend and participate.

The scope of said deposition will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Pa. I.D.#: 55942  
301 East Pine Street  
Clearfield, PA 16830

**FILED**

FEB 04 2002

William A. Shaw  
Prothonotary

cc: Dennis J. Stofko, Esquire  
Mr. Joshua Hess

22

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,  
PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,  
DEFENDANTS.

No. 01- 529 -CD

**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

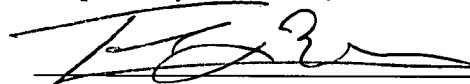
Date: February 1, 2002

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did propound on the below listed individuals, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's NOTICE OF DEPOSITION (concerning Defendant Brian Scott Leigey) this 1st day of February, 2002:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

11:00-811  
FEB 04 2002

NO cc  
KCP

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOSHUA HESS, an adult individual

Plaintiff

vs.

No. 01-529 CD

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO,  
an adult individual,

Defendants

MOTION FOR SUMMARY JUDGMENT  
Counsel of record for this party:  
Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

FILED

JAN 23 2002

William A. Shaw  
Prothonotary

15



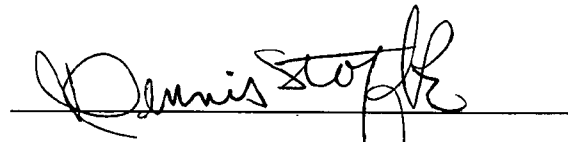
**MOTION FOR SUMMARY JUDGMENT**

AND NOW comes the defendant, Judy Fusco, by and through counsel, Dennis J. Stofko and pursuant to Pa.R.C.P. 1035.1 *et seq.*, moves this Honorable Court for the entry of Summary Judgment as follows:

1. On or about December 5, 1999, the plaintiff, Joshua Hess, was a guest passenger in a vehicle driven by Brian Leigey.
2. The Leigey vehicle left the traveled portion of State Route 879 resulting in a collision causing personal injuries to the plaintiff, Joshua Hess.
3. Hess has filed a complaint alleging that Leigey and Hess obtained alcohol at the home of the defendant, Judy Fusco. Both boys were under the age of twenty-one (21).
4. The plaintiff alleges that Fusco was negligent by providing alcohol to minors (COUNT III) and/or that Fusco was negligent in supervising her property (COUNT IV).
5. The pleadings are now closed and the parties have completed discovery.
6. The defendant Fusco avers that there is no evidence to support the allegation that Fusco purchased alcohol for use by the minors, nor any evidence that Fusco knew that the minors were consuming alcohol on the premises.

7. The defendant Fusco believes that she is entitled to judgment as a matter of law and that the plaintiff's complaint be dismissed.

WHEREFORE, the defendant, Allstate Insurance Company respectfully requests your Honorable Court to enter judgment in its favor and dismiss the plaintiff's complaint.

A handwritten signature in cursive script, reading "Dennis Stofko", is written over a horizontal line.

Dennis J. Stofko, Attorney for the  
defendant, Judy Fusco

FILED

JAN 23 2002

11/2:24 p.m.  
William A. Shaw  
Prothonotary

hd cc

ES  
KTB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**RESPONSE TO REQUEST FOR  
PRODUCTION OF DOCUMENTS  
DIRECTED TO ALL DEFENDANTS**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

DEC 11 2004

William A. Shaw  
Prothonotary

#14

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, was served this 10<sup>th</sup> day of **December, 2001**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

**BY:** 

**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**FILED**

DEC 11 2001

1771304112001  
William A. Shaw  
Prothonotary



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

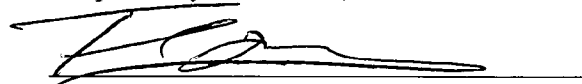
Date: November 5, 2001

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that I did propound on the below listed individuals, via United States Mail, postage pre-paid, at the addresses therein indicated, Plaintiff's FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, this 5th day of November, 2001:

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mar Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

**FILED**

NOV 06 2001

William A. Shaw  
Prothonotary

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01-\_\_529\_\_-CD

NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

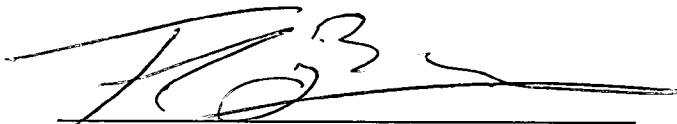
Date: August 22, 2001

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, counsel for Plaintiff, does hereby certify that I did issue a NOTICE OF DEPOSITION by depositing the same in the United States mail, first class, postage pre-paid, to the below listed individuals, being counsel for Defendants, at the below addresses, this 22nd day of August, 2001.

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221

**FILED**

**AUG 23 2001**

William A. Shaw  
Prothonotary



**FILED**

**AUG 23 2001**

*[Signature]*  
William A. Shaw  
Notary Public

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

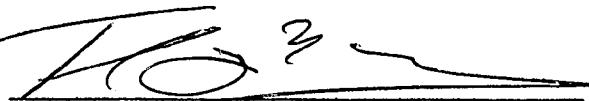
Date: May 23, 2001

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, counsel for Plaintiff, does hereby certify that I did issue a NOTICE OF DEPOSITION by depositing the same in the United States mail, first class, postage pre-paid, to the below listed individuals, being counsel for Defendants, at the below addresses, this 23rd day of May, 2001.

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221

**FILED**

MAY 25 2001

William A. Shaw  
Prothonotary

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

NOTICE OF DEPOSITION

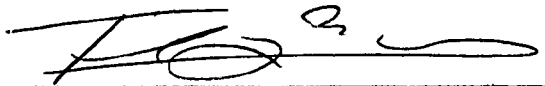
To: Dennis J. Stofco, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Date: May 23, 2001

Take notice that the depositions upon oral examination will be taken of Defendant Judy Fusco, and her daughter, Jessica Hanes at the Law Offices of Sobel, Collins and Knaresboro, located at 218 South Second Street, Clearfield, PA, on the 14th day of June, 2001 at commencing at approximately 10:00 A.M., with the deposition of Defendant Judy Fucso and at approximately 11:00 A.M. with the deposition of Jessica Hanes, at which time you are invited to attend and participate.

The scope of said deposition will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case. Ms. Fusco is requested to bring with her a copy of her home owner's insurance policy and all other documents or exhibits expected to be introduced at time of trial.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Pa. I.D.#: 55942  
301 East Pine Street  
Clearfield, PA 16830

cc: Mary Lou Maierhofer, Esquire  
Cathy Provost, Court Reporter

THE COURT OF COMMON PLEAS OF THE COUNTY OF BERKSHIRE

IN SENATE

1999

1999

IN SENATE

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY,  
AN ADULT INDIVIDUAL, and  
JUDY FUSCO, an adult  
individual,

DEFENDANTS.

CIVIL ACTION NO.

01- 529 -CD

TYPE OF PLEADING:  
PLAINTIFF'S REPLY TO NEW  
MATTER OF DEFENDANT LEIGEY

FILED BY:

PLAINTIFF

COUNSEL FOR THIS PARTY:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
814-375-2221  
PA I.D.#: 55942

**FILED**

MAY 23 2001

William A. Shaw  
Prothonotary

#10

44. The same is a conclusion of law for which no response is deemed necessary. To the extent a response is deemed necessary, it is specifically DENIED that Plaintiff was in any manner negligent and strict proof of the same is demanded at time of trial.

45. Plaintiff hereby incorporates his response as in averment 44 as if the same were again fully set forth at length.

46. The same is a conclusion of law for which no response is deemed necessary. To the extent a response is deemed necessary, it is specifically DENIED that Plaintiff in any manner assumed any risk or that such injuries were directly foreseeable and strict proof of the same is demanded at time of trial.

47. The same is a conclusion of law for which no response is deemed necessary.

48. The same is a conclusion of law for which no response is deemed necessary.

49. The same is a conclusion of law for which no response is deemed necessary. To the extent such a response might be deemed to be necessary, it is specifically DENIED that Plaintiff suffered from any pre-existing injuries and strict proof of the same is demanded at time of trial.

WHEREFORE, Plaintiff requests judgment as per his CIVIL COMPLAINT.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, counsel for Plaintiff, does hereby certify that I did mail a true and correct copy of Plaintiff's REPLY TO NEW MATTER OF DEFENDANT BRIAN LEIGEY by depositing the same in the United States mail, first class, postage pre-paid, to the below listed individuals, being counsel for Defendants, at the below addresses, this 22nd day of May, 2001.

Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221

THE STATE OF TEXAS, COUNTY OF DALLAS, ss. I, the undersigned, a Notary Public in and for said State, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of said County.

WITNESSES MY HAND AND SEAL OF OFFICE this 23rd day of May, 2001.

Notary Public

My Commission Expires: 05/23/2003

MAY 23 2001  
11:17 AM  
William A. Shaw  
Notary Public

FILED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, an adult individual

Plaintiff

vs.

No. 01-529 CD

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO,  
an adult individual,

Defendants

REPLY TO NEW MATTER UNDER 2252(d)  
Counsel of record for this party:  
Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

**FILED**

MAY 22 2001

William A. Shaw  
Prothonotary

REPLY TO NEW MATTER UNDER 2252(d)

NOW COMES the Defendant, Judy Fusco by and through counsel, Dennis J. Stofko and files the following Reply to New Matter under 2252(d).


31. Denied. See previous Answers.

32. Denied. Paragraph 32 contains a conclusion of law to which no responsive pleading is required.

33. Denied. Paragraph 33 contains a conclusion of law to which no responsive pleading is required.

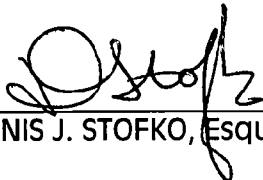
34. Denied. Paragraph 34 contains a conclusion of law to which no responsive pleading is required.

WHEREFORE, Defendant, Judy Fusco requests judgment on her behalf.

  
\_\_\_\_\_  
DENNIS J. STOFKO, Attorney for  
Defendant, Judy Fusco

I, Dennis J. Stofko, do hereby state that I am the attorney for Defendant and that as such, being authorized to do so, state that the facts set forth in the foregoing Reply to New Matter under 2252(d) are true and correct to the best of my knowledge, information and belief. This verification of counsel is being attached hereto in lieu of that of Defendant because of the inability to obtain a verification from Defendant in the time required to file this Answer. A verification of Defendant will be provided if requested.

This statement is made subject to the provisions of 18 Pa CSA 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
DENNIS J. STOFKO, Esquire

Dated: 21 May 01

**FILED**  
1:42  
MAY 22 2001

No cc  
ES

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**ANSWER, NEW MATTER AND NEW  
MATTER PURSUANT TO Pa.R.C.P.  
2252 (d)**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

MAY 17 2001

William A. Shaw  
Prothonotary

8

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**ANSWER, NEW MATTER AND  
NEW MATTER PURSUANT TO Pa.R.C.P. 2252 (d)**

NOW COMES the Defendant, Brian Scott Leigey, by and through his counsel,  
Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER,  
BEBENEK, & ECK, PLLC, and files this Answer, New Matter and New Matter Pursuant  
to Pa.R.C.P. 2252(d), of which the following is a statement:

**THE PARTIES**

1. The identity of the Plaintiff is admitted. The remaining allegations are  
denied in that after reasonable investigation this Defendant lacks information sufficient  
upon which to form an opinion in regard to the truth of the same. Strict proof of same is  
demanded at the time of trial.

2. Admitted.

3. The identity of the Defendant is admitted. The remaining allegations are  
denied in that after reasonable investigation this Defendant lacks information sufficient  
upon which to form an opinion in regard to the truth of the same. Strict proof of same is

demanded at the time of trial.

**BACKGROUND**

4. Denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion to regard to the truth of the same. Strict proof of same is demanded at the time of Trial.

5.-7. Admitted.

8. Denied as conclusions of law. By way of further response, this Defendant recalls consuming alcohol. The remaining allegations are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of the same. Strict proof of same is demanded at the time of Trial.

9. - 10. Denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of the same. Strict proof of same is demanded at the time of Trial.

11. Denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of the same. Strict proof of same is demanded at the time of trial.

12. Denied as stated. It is admitted that this Defendant's vehicle while traveling on State Route 879 collided with a utility pole.

**COUNT I: NEGLIGENCE  
(v. LEIGEY)**

13. Admitted or denied for reasons set forth above all of which are incorporated herein by reference thereto as if the same were set forth at length.

14. Denied as conclusions of law. Strict proof of same is demanded at the time of trial.

15. Denied as conclusions of law. Strict proof of same is demanded at the time of trial.

A.-E. Denied as conclusions of law. Strict proof of same is demanded at the time of trial. By way of further response denied for reasons set forth above and hereinafter.

16.-24. All allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to inform an opinion in regard to the truth of the same. Strict proof of same is demanded at the time of trial.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Plaintiff's Complaint be dismissed with prejudice.

**COUNT II: RECKLESSNESS  
(v. LEIGEY)**

25. Admitted or denied for reasons set forth above all of which are incorporated herein by reference thereto as if the same were set forth at length.

26. Denied as conclusions of law. Strict proof of same is demanded at the time of trial.

27. Allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of the same. It is specifically denied that the Plaintiff has set forth a claim for punitive damages under the facts and circumstances set forth in Plaintiff's



Complaint as alleged to this Defendant.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Plaintiff's Complaint be dismissed with prejudice.

**COUNT III: NEGLIGENCE  
(v. FUSCO)**

28.-32. Neither admitted or denied in that said allegations are directed to a party other than this answering Defendant.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Plaintiff's Complaint be dismissed with prejudice.

**COUNT IV: RECKLESSNESS AND INTENTIONS MISCONDUCT  
(v. FUSCO)**

33.-35. Neither admitted or denied in that said allegations are directed to a party other than this answering Defendant.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Plaintiff's Complaint be dismissed with prejudice.

**MISCELLANEOUS**

36.-37. Denied as conclusions of law. Strict proof of same is demanded at the time of trial.

38. Denied as conclusions of law. By way of further response, allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of the same. Strict proof of same is demanded at the time of trial.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Plaintiff's Complaint be

dismissed with prejudice.

**NEW MATTER**

39. Plaintiff's cause of action is controlled pursuant to the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. § 1701 et seq., as amended.

40. Defendant hereby affirmatively pleads all bars, limitations and rights pursuant to said Act.

41. Defendant affirmatively pleads:

- a) To the extent Plaintiff elected a Limited Tort Remedy pursuant to Auto Insurance Coverage applicable herein, any and all claims for pain and suffering are barred.
- b) To the extent Plaintiff elected a Limited Tort Remedy, it is specifically denied that the alleged injuries as a result of the said motor vehicle collision are Serious Injuries and any and all claims for pain and suffering are, therefore, barred.
- c) To the extent Plaintiff's medical bills as pled are covered pursuant to PIP Benefits applicable under Plaintiff's automobile insurance policy and/or any other insurance applicable hereto, Plaintiff's recovery of said medical damages are barred.
- d) To the extent any medical bills pled by the Plaintiff was recovered by any collateral source, Plaintiff is hereby barred from recovery and under the Case Law of this Commonwealth, is further barred from admission of same at time of trial.
- e) To the extent Plaintiff recovered wage loss under Plaintiff's PIP coverage and/or any collateral source, Plaintiff is barred from recovery of such sums.
- f) To the extent Plaintiff recovered wage loss under Plaintiff's PIP coverage and/or from any other collateral source, such amounts are barred from evidence at time of trial.
- g) Any medical damages which Plaintiff is entitled to recover

are limited pursuant to the said Act both in nature and amount. Defendants hereby affirmatively plead such limitations thereto.

42. Defendants aver that circumstances outside these Defendants' knowledge and/or control caused Plaintiff's injuries.

43. To the extent Plaintiff proves a right of recovery under any theory set forth in Plaintiff's Complaint, the liability of Defendant is denied in that such resulted in superseding, intervening circumstances and/or subsequent circumstances over which this Defendant had no knowledge or control.

44. Plaintiff's cause of action is barred under the Comparative Negligence Act in that Plaintiff's negligence was in excess to that, if any, of this Defendant.

45. Any and all damages alleged by the Plaintiff must be reduced in proportion to the amount of negligence directly attributable to Plaintiff, Joshua Hess.

46. Plaintiff's cause of action is barred under the Doctrine of the Assumption of the Risk in that the injuries suffered by the Plaintiff was directly foreseeable as a result of such knowledge.

47. Plaintiff's Complaint does not set forth a valid cause of action against these Defendants under the facts and circumstances set forth herein.

48. Plaintiff's claims are barred under the applicable statute of limitations.

49. Plaintiff's cause of action is barred in that Plaintiff suffered preexisting injuries for which Plaintiff now makes a claim.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Plaintiff's Complaint be dismissed with prejudice.

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

31. Defendant has denied any and all liability to the Plaintiff as a result of the allegations in Plaintiff's Amended Complaint.

32. If at the time of trial, however, Plaintiff proves a right of recovery, this Defendant hereby joins as an Additional Defendant, Judy Fusco, for liability over to the Plaintiff and to protect this Defendant's rights of sole liability, indemnification and/or contribution pursuant to the allegations set forth in Plaintiff's Amended Complaint.

33. The Additional Defendant, Judy Fusco's negligence and/or carelessness as set forth in Plaintiff's Complaint Counts III and IV are incorporated herein as if fully set forth at length.

34. Any and all liability to the Plaintiff, Joshua Hess, is solely the result of the negligence and/or carelessness of the actions and/or inactions of said Additional Defendant, Judy Fusco.

WHEREFORE, Defendant, Brian Scott Leighey, prays that judgment be entered against Additional Defendant, Judy Fusco, solely, jointly and to protect this Defendant's rights for sole liability, contribution and/or indemnification.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: 

**MARY LOU MAIERHOFER, ESQUIRE**

Counsel for Defendant, Brian Scott Leighey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d), on behalf of Defendant, Brian Scott Leigey, was served this **16<sup>th</sup> day of May, 2001**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: 

**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**VERIFICATION**

I, **Brian Scott Leigey**, do hereby verify that I have read the foregoing ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 2252(d). The statements therein are true and correct to the best of my knowledge as to part, and based upon information and belief as to the rest.

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

x Brian S. Leigey  
Brian Scott Leigey

DATE: 5/8/01

**FILED**

MAY 17 2001  
M1115/110CC  
William A. Shaw  
Prothonotary

*[Signature]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**REPLY TO DEFENDANT, JUDY  
FUSCO'S ANSWER, NEW MATTER  
AND NEW MATTER UNDER Pa.R.C.P.  
2252 (d)**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

**FILED**

MAY 17 2001

William A. Shaw  
Prothonotary





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**REPLY TO DEFENDANT, JUDY FUSCO'S ANSWER, NEW MATTER AND  
NEW MATTER UNDER Pa.R.C.P. 2252 (d)**

NOW COMES the Defendant, Brian Scott Leigey, by and through his counsel, Mary Lou Maierhofer, Esquire, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK, & ECK, PLLC, and files this Reply to Defendant, Judy Fusco's Answer, New Matter and New Matter under Pa.R.C.P. 2252(d), of which the following is a statement:

43. Denied as conclusions of law. Strict proof of same is demanded at the time of Trial.

44. Denied for reasons set forth in this Defendant's Answer, New Matter and New Matter Pursuant to 2252(d) all of which are incorporated herein by reference thereto as if the same were set forth at length.

45. Denied as conclusions of law. Allegations of injuries and/or damages are denied in that after reasonable investigation this Defendant lacks information sufficient upon which to form an opinion in regard to the truth of the same. Strict proof of same is demanded at the time of Trial.

WHEREFORE, Defendant, Brian Scott Leigey, prays that Original Defendant  
Judy Fusco's claim pursuant to Pa.R.C.P. 2252 (d) be dismissed with prejudice.

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: 

**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Reply to Defendant, Judy Fusco's Answer, New Matter and New Matter under Pa.R.C.P. 2252(d), on behalf of Defendant, Brian Scott Leigey, was served this **16<sup>th</sup> day of May, 2001**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

**BY:**

  
\_\_\_\_\_  
**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**VERIFICATION**

I, **Brian Scott Leigey**, do hereby verify that I have read the foregoing REPLY TO ANSWER, NEW MATTER AND NEW MATTER UNDER Pa.R.C.P. 2252(d). The statements therein are true and correct to the best of my knowledge as to part, and based upon information and belief as to the rest.

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

x Brian S Leigey  
Brian Scott Leigey

DATE: 5/8/01

**FILED**

MAY 17 2001

M 1:51 PM

William A. Shaw

Prothonotary



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY,  
AN ADULT INDIVIDUAL, and  
JUDY FUSCO, an adult  
individual,

DEFENDANTS.

CIVIL ACTION NO.

01- 529 -CD

TYPE OF PLEADING:  
PLAINTIFF'S REPLY TO NEW  
MATTER OF DEFENDANT FUSCO

FILED BY:

PLAINTIFF

COUNSEL FOR THIS PARTY:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
814-375-2221  
PA I.D.#: 55942

**FILED**

MAY 09 2001  
m/1:49 pm/ncc  
William A. Shaw  
Prothonotary

#16

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

PLAINTIFF'S REPLY TO NEW MATTER OF DEFENDANT JUDY FUSCO

AND NOW, comes the Plaintiff, Joshua Hess, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of Plaintiff's Reply to New Matter of Defendant Judy Fusco:

38. Denied. It is specifically DENIED that Plaintiff Joshua Hess was in any manner comparatively or contribuorily negligent. Strict proof of the same is demanded at time of trial.

39. See response to averment 38.

40. Denied. It is specifically DENIED that Plaintiff assumed any risk. Strict proof of the same is demanded at time of trial.

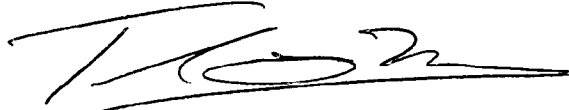
41. The same is a conclusion of law for which no response is deemed necessary.

42. The same is a conclusion of law for which no response is deemed necessary.

43 - 45. The same are directed at other parties and therefore no response is deemed necessary.

WHEREFORE, Plaintiff requests judgment as per his CIVIL COMPLAINT.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', written over a horizontal line.

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221



(CIVIL DIVISION)

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01- 529 -CD

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, counsel for Plaintiff, does hereby certify that I did mail a true and correct copy of Plaintiff's REPLY TO NEW MATTER OF DEFENDANT FUSCO by depositing the same in the United States mail, first class, postage pre-paid, to the below listed individuals, being counsel for Defendants, at the below addresses, this 7th day of MAY, 2001.

Dennis J. Stofco, Esquire  
P.O. Box 5500  
Johnstown, PA 15904

Mary Lou Maierhofer, Esquire  
Meyer Darragh  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, an adult individual

Plaintiff

vs.

No. 01-529 CD

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO,  
an adult individual,

Defendants

ANSWER, NEW MATTER and  
NEW MATTER UNDER 2252(d)  
Counsel of record for this party:  
Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

TO THE PARTIES:

You are hereby notified to reply  
to the enclosed New Matter and New  
Matter under 2252(d) within  
20 days from service thereof or a  
default judgment may be entered  
against you.

FILED

MAY 01 2001

William A. Shaw  
Prothonotary

5

ANSWER, NEW MATTER AND NEW MATTER UNDER 2252(d)

NOW COMES the defendant, Judy Fusco by and through counsel, Dennis J. Stofko and files the following Answer, New Matter and New Matter under 2252(d).

1. Admitted.

2. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

3. Admitted.

4. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

5. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

6. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

7. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

8. Denied. It is specifically denied that at any time material herein, Leigey and Hess in any way consumed alcoholic beverages at the residence of Defendant Fusco. To the contrary, at all times material herein Hess and Leigey arrived at the Fusco residence in a visibly intoxicated state and numerous attempts were made to discourage the boys to leave the premises in such a visibility intoxicated condition.

9. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

10. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

11. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

12. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

13. – 24. Paragraphs 13 through 24 are directed to parties other than this answering defendant and therefore no responsive pleading is necessary by this answering defendant.

25. – 27. Paragraphs 25 through 27 are directed to parties other than this answering defendant and therefore no responsive pleading is necessary by this answering defendant.

28. Denied. See previous Answers.

29. Denied. It is specifically denied that at any time material herein the Defendant Fusco provided or allowed to be provided any alcohol beverages to either Brian Scott Leigey or Joshua Hess. To the contrary, Hess and Leigey had become visibility intoxicated prior to the arrival at the Fusco residence and did not consume any alcohol at the Fusco residence.

30. Denied. It is specifically denied that at any time material herein the Defendant Fusco provided or allowed to be provided any alcohol beverages to either Brian Scott Leigey or Joshua Hess. To the contrary, Hess and Leigey had become visibility intoxicated prior to the arrival at the Fusco residence and did not consume any alcohol at the Fusco residence.

31. Denied. It is specifically denied that at any time material herein the Defendant Fusco provided or allowed to be provided any alcohol beverages to either Brian Scott Leigey or Joshua Hess. To the contrary, Hess and Leigey had become visibility intoxicated prior to the arrival at the Fusco residence and did not consume any alcohol at the Fusco residence.

32. Denied. After reasonable investigation Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

33. Denied. See previous Answers.

34. Denied. Paragraph 34 contains a conclusion of law to which no responsive pleading is required.

35. Denied. Paragraph 35 contains a conclusion of law to which no responsive pleading is required.

36. Admitted.

37. Admitted.

38. Denied. Paragraph 38 contains a conclusion of law to which no responsive pleading is required.

WHEREFORE, Defendant Fusco requests Plaintiff's Complaint be dismissed.

NEW MATTER

38. The Defendant is informed, believes and therefore avers that the Plaintiff is contributorily negligent and/or comparatively negligent and Plaintiff is thus barred from recovery of any damages under the terms of the Pennsylvania Comparative Negligence Act. Act No. July 9, 1976 Pl. 855 No. 152 and the Act of April 28, 1978, Pl. 202 No. 53 Section 10 (89), 42 Pa. CSA Section 7102A, effective as to the causes of action arising on or after December 5, 1999

as the Plaintiff's causal negligence is greater than the negligence, if any, of the Defendant.

39. In the alternative pursuant to the aforesaid provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. CSA Section 7102A any damage which the Plaintiff may have legally suffered and can prove at trial and which are not otherwise barred by any of the defenses asserted in this Answer and New Matter should be diminished in proportion to the amount of negligence attributed to the Plaintiff.

40. Plaintiff assumed the risk by becoming visibly intoxicated in the company of Brian Scott Leigey who was known by the plaintiff to be visibly intoxicated and permitted Brian Scott Leigey to operate the vehicle in a visibly intoxicated state.

41. The accident described in Plaintiff's complaint occurred on December 5, 1999 which date was subsequent to the effective date of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. CSA Chapter 17.

42. The Defendant pleads the said Motor Vehicle Financial Responsibility Law as a defense to the extent that said law limits and controls Plaintiff's right to recover damages in this action.

WHEREFORE, Defendant, Judy Fusco requests judgment on her behalf.


NEW MATTER UNDER 2252(d)

43. The Defendant, Judy Fusco joins Brian Scott Leigey as additional defendant pursuant to Pa. RCP 2252(d).

44. The Defendant, Brian Scott Leigey incorporates by reference the allegations of Plaintiff's Complaint as if the same were here set forth at length.

45. If it is determined at the trial of this action that Plaintiff have sustained any injury as a result of the alleged accident, said injuries or damages were the result of the negligence of Brian Scott Leigey and therefore he is liable to the Plaintiff jointly and severally.

WHEREFORE, the Defendant, Judy Fusco requests that Brian Scott Leigey be joined as additional defendant in the original suit because he is solely responsible for the damages alleged in the complaint or in the alternative so as to protect Defendant Fusco's right of contribution and/or indemnity, if on the trial of the action it should be found that the Plaintiff, original Defendants and Additional Defendant are jointly negligent in causing the accident which resulted in the damages alleged.

  
\_\_\_\_\_  
DENNIS J. STOFKO, Attorney for  
Defendant, Judy Fusco



I, Judy Fusco, do hereby swear or affirm that the facts set forth in the Answer, New Matter and New Matter under 2252(d) are correct to the best of my knowledge, information and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. CSA 4904 relating to unsworn falsification to authorities.

Judy Fusco  
Judy Fusco

Dated: 4-27-01

FILED

NOV 01 2001  
11:43 AM  
William A. Shaw  
Prothonotary  
829

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

Code No.

**PRAECIPE FOR ENTRY OF  
APPEARANCE**

Filed on Behalf of Defendant, Brian Scott  
Leigey

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE  
PA. I.D. #62175

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.  
Firm No. 198  
120 Lakemont Park Blvd.  
Altoona, PA 16602

Telephone No.: (814) 941-4600  
Fax No.: (814) 941-4605

FILED

APR 30 2001

William A. Shaw  
Prothonotary

MLM/ten-MOTOR-103088

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

Plaintiff,

vs.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO, AN  
ADULT INDIVIDUAL,

Defendants.

CIVIL DIVISION

No. 01-529-CD

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter the appearance of MARY LOU MAIERHOFER, ESQUIRE, of  
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC as Counsel of Record on  
behalf of Defendant, BRIAN SCOTT LEIGEY, in the above-captioned matter

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: 

**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

**CERTIFICATE OF SERVICE**

I, MARY LOU MAIERHOFER, ESQUIRE, of the law firm of MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC, hereby certify that a true and correct copy of the foregoing Praecipe for Entry of Appearance, on behalf of Defendant, Brian Scott Leigey, was served this **27<sup>th</sup> day of April, 2001**, by mailing same first class United States mail, postage prepaid, addressed to Counsel as follows:

Chris A. Pentz, Esquire  
211 ½ E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(Leigey's Personal Counsel)

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Plaintiff's Counsel)

Dennis J. Stofko, Esquire  
969 Eisenhower Blvd.  
P.O. Box 5500  
Johnstown, PA 15904  
(Defendant Fusco's Counsel)

**MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC**

BY: 

**MARY LOU MAIERHOFER, ESQUIRE**  
Counsel for Defendant, Brian Scott Leigey  
120 Lakemont Park Boulevard  
Altoona, PA 16602  
Phone No.: (814) 941-4600  
ID # 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSHUA HESS, an adult individual

Plaintiff

vs.

No. 01-529 CD

BRIAN SCOTT LEIGEY, an adult  
individual and JUDY FUSCO,  
an adult individual,

Defendants

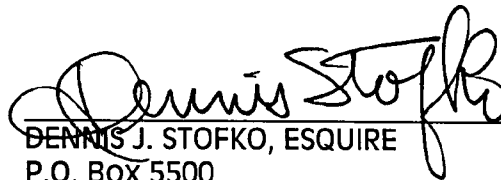
ENTRY OF APPEARANCE

Please enter my appearance for Defendant, Judy Fusco only, in the  
above matter. Papers may be served at the address listed below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as  
amended, a Jury Trial is demanded on all issues raised by the pleadings in this  
action.

I certify this Entry of Appearance and Demand for Jury Trial shall be  
served forthwith by ordinary mail upon all parties.

  
DENNIS J. STOFKO, ESQUIRE  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

FILED

APR 23 2001

William A. Shaw  
Prothonotary

#3

FILED

APR 23 2001

William A. Shaw,  
Prothonotary

Nb  
cc

*[Handwritten signature]*

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10890

HESS, JOSHUA

01-529-CD

VS.

LEIGEY, BRIAN SCOTT & JUDY FUSCO

COMPLAINT

SHERIFF RETURNS

NOW APRIL 16, 2001 AT 2:43 PM DST SERVED THE WITHIN COMPLAINT ON  
BRIAN SCOTT LEIGEY, DEFENDANT AT RESIDENCE, 813 PALMER ST., CLEARFIELD  
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BRIAN SCOTT LEIGEY  
A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN  
TO HIM THE CONTENTS THEREOF.  
SERVED BY: COUDRIET/RYEN

NOW APRIL 16, 2001 AT 2:48 PM DST SERVED THE WITHIN COMPLAINT ON  
JUDY FUSCO, DEFENDANT AT RESIDENCE, RD # 1, BOX 32, GOOD ST. (KERR  
ADDITION), CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO  
JUDY FUSCO A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND  
MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: COUDRIET/RYEN

Return Costs

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

FILED

APR 18 2001  
m/j.23  
William A. Shaw  
Prothonotary

*Keg*

Sworn to Before Me This

18th 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 Marilyn Harris*  
Chester A. Hawkins  
Sheriff

2



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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY,  
AN ADULT INDIVIDUAL, and  
JUDY FUSCO, an adult  
individual,

DEFENDANTS.

CIVIL ACTION NO.

01- 529 -CD

TYPE OF PLEADING:  
Civil Complaint

FILED BY:

PLAINTIFF

COUNSEL FOR THIS PARTY:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
814-375-2221  
PA I.D.#: 55942

**FILED**

APR 12 2001

William A. Shaw  
Prothonotary

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01-\_\_\_\_\_-CD

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claim 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 judgement may be entered against you by the Court without further notice for any claim in the Complaint or for any other claim or relief requested by the Plaintiffs. 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, PA 16830  
(814)-765-2641

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01-\_\_\_\_\_-CD

CIVIL COMPLAINT

NOW COMES, Joshua Hess, an adult individual, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as his CIVIL COMPLAINT:

The Parties

1. That Plaintiff is Joshua Hess, an adult individual, who at all material times, did and does reside at 1405 1/2 Daisy Street, Lawrence, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Hess".

2. First Defendant is Brian Leigey, an adult individual, who at all material times did, and upon information and belief, does reside at 813 Palmer Street, Clearfield, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Leigey".

3. Second Defendant is Judy Fusco, an adult individual who does, and at all material times, did reside at RD #1, Box 32, Lawrence Township, Clearfield County, Pennsylvania 16830, hereinafter referred to as "Fusco".

Background

4. That on, or about December 5, 1999, Leigey picked up Hess at Hess's residence.

5. That Leigey was driving, and at all material times did drive, a 1988 Chrysler sedan, with Pennsylvania registration number BNY-8055.

6. That at all material times, Hess was a passenger in said vehicle being operated by Leigey.

7. That Hess and Leigey proceeded to a residence, believed to be that of Judy Fusco, located at RD #1, Box 32, Clearfield, Clearfield County, Pennsylvania, where they remained for some currently undetermined length of time.

8. While at the Fusco residence, Leigey and Hess, as well as others, were provided alcoholic beverages by Fusco.

9. That after departing the Fusco residence, Leigey and Hess travelled to the Frenchville, Clearfield County, Pennsylvania area by vehicle.

10. That after some currently undetermined length of time, Leigey and Hess left the Frenchville area and were attempting to travel back to Clearfield, along State Route 879.

11. That Leigey, born on August 3, 1980, was nineteen years of age at the subject time.

12. That Leigey's vehicle did leave State Route 879 and did strike a utility pool.

Count I: Negligence  
(v. Leigey)

13. That the averments of paragraphs 1 - 12, inclusive, are hereby incorporated as if again fully set forth at length.

14. That Leigey did owe Hess a duty of care such that Leigey would at all times operate his vehicle in a safe and reasonably prudent manner.

15. That Leigey did breach the duty owed to Hess in that he did negligently operate his vehicle in the following manners:

A. Leigey did consume alcohol at an age it was unsafe for him to do so;

B. Leigey consumed alcohol to such an extent that he was intoxicated;

C. Leigey operated his vehicle at an excessive rate of speed;

D. Leigey failed to keep his vehicle under control; and/or

E. Leigey went to sleep while driving and/or did operate his vehicle at a time he was too tired to do so safely.

16. That as a direct and proximate result of Leigey's negligence, Hess was severely injured in the resulting accident, which injury includes, but is not limited to a severe closed head injury.

17. As a result of such injury, Hess required, still requires, and is expected to need additional medical services into the future, for proper medical treatment, in an amount to be determined at time of trial.

18. That Hess's medical treatment, currently exceeds one half million dollars in costs, to be more fully determined at time of trial, and has included medical services provided by Clearfield Hospital, Health South Rehabilitation, and Altoona Hospital as well as numerous physicians and therapists.

19. That Hess's condition is such that besides his current treatment, significant permanent complications are expected, such that he might be permanently disabled.

20. That as a result of such injuries, Hess has lost income, and is expected to lose additional income, all in an amount to be more fully determined at time of trial.

21. That Hess is permanently scarred from such injuries, such that he is embarrassed and subject to ridicule, and should be compensated in an amount to be determined at time of trial.

22. That Hess has lost the ability to enjoy life from such injuries in a manner to which he did prior to the injuries, and should be compensated in an amount to be determined at time of trial.

23. That as a result of such injuries, Hess suffers from emotional distress, in an amount to be determined at time of trial.

24. That as a result of such injuries, Hess suffered, still suffers and is expected to suffer extreme pain and suffering, in an amount to be determined at time of trial.

Count II: Recklessness  
(v. Leigey)

25. That the averments of paragraphs 1 - 24, inclusive, are hereby incorporated as if again fully set forth at length.

26. That Leigey was also reckless for the aforementioned reasons.

27. That in addition to the previously stated reasons for compensation of Hess's injuries, Leigey should also be required to pay punitive damages, in an amount to be determined at time of trial.

Count III: Negligence  
(v. Fusco)

28. That the averments of paragraphs 1 - 27, inclusive, are hereby incorporated as if again fully set forth at length.

29. That Fusco was negligent in providing alcoholic beverages to persons, including Leigey, known, or which should have been known, to be under the age of twenty-one years of age.

30. That Fusco was negligent in providing alcoholic beverages to persons, including Leigey, known, or which should have been known, to be operating a motor vehicle, especially when that person or persons are under the age of twenty-one years of age.

31. In the alternative, in the event that Fusco did not provide the alcoholic beverages, she was negligent in the manner in which she supervised the property such that alcoholic beverages were available and given to Leigey.

32. That as a direct and proximate result of the Fusco's negligence, Hess did suffer the aforementioned injuries and damages and should be compensated.

Count IV: Recklessness and Intentional Misconduct  
(v. Fusco)

33. That the averments of paragraphs 1 - 32, inclusive, are hereby incorporated as if again fully set forth at length.

34. That Fusco was also reckless and engages in intentional misconduct for the aforementioned reasons.

35. That in addition to the compensation requested by Hess for his injuries and damages, Fusco should also be required to pay punitive damages in an amount to be determined at time of trial.

Miscellaneous

36. That Venue is proper.

37. That Jurisdiction is proper.

38. That Defendants have joint and several liability as to the damages and injuries suffered by Hess.

WHEREFORE, Plaintiff respectfully requests that JUDGMENT be entered in his favor, and against Defendants, jointly and severally, together with costs and interest, in an amount in excess of Twenty-Five Thousand Dollars as herein requested.

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

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

JOSHUA HESS, AN ADULT  
INDIVIDUAL,

PLAINTIFF,

v.

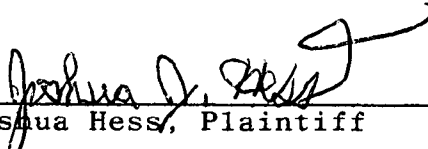
BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, and JUDY FUSCO,  
AN ADULT INDIVIDUAL,

DEFENDANTS.

No. 01-\_\_\_\_\_-CD

VERIFICATION

I, Joshua Hess, an adult individual, Plaintiff in the foregoing and attached CIVIL COMPLAINT, state that I have read the same and the information therein contained is true and accurate to the best of my knowledge, information and belief. I further understand that the same is made pursuant to 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Joshua Hess, Plaintiff

Made this 6 day of April, 2001.



STATE OF TEXAS  
COUNTY OF DALLAS

IN SENATE  
JANUARY 11, 1901

SENATE JOURNAL

REPORT OF THE  
COMMISSIONER OF THE  
LAND OFFICE

FOR THE YEAR 1900

RECEIVED

FILED  
APR 12 2001  
7:22

William A. Shaw  
Prothonotary

4CC  
Sly T Noble

**The Superior Court of Pennsylvania  
Sitting at Pittsburgh**

6<sup>th</sup> floor Grant Building  
Suite 600  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND  
under  
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

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

**Original Record, 26 Depositions, Superior Court Judgment Order and Opinion**

As remanded from said court in the following matter:

**Hess etc. v Leigey et al.  
No. 487 WDA 2005**

**Court of Common Pleas-Civil Division-Clearfield County  
01-529-CD**

**FILED**

**JUN 12 2007**

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

*COPY TO SUPERIOR COURT*

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded June 9, 2006

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

*Eleanor R. Valente*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: June 12, 2006

*William A. Shaw*  
(Signature & Title)

**WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PA**



Supreme Court of Pennsylvania

Western District

June 6, 2006

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

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

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

FILED

JUN 08 2006

RE: Joshua Hess, and Adult Individual, Petitioner  
v.

PITTSBURGH OFFICE OF  
SUPERIOR COURT

Brian Scott Leigey, an Adult Individual,  
Judy Fusco, an Adult Individual, Dean  
R. Owens, an Adult Individual, Catherine  
J. Owens, an Adult Individual, Christopher  
Smith an Adult Individual and Wendy Owens,  
an Adult Individual, Respondents  
Superior Docket Number - 487 WDA 2005

Trial Court/Agency Dkt. Number: 01-529-CD

No. 670 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 10, 2005

Disposition: Order Denying Petition for Allowance of Appeal

Date: March 29, 2006

Reargument/Reconsideration Disposition: Reconsideration/Reargument Denied

Reargument/Reconsideration

Disposition Date:

June 6, 2006

/kao

box

FILED

JUN 12 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

JOSHUA HESS,

Petitioner

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AND ADULT  
INDIVIDUAL, DEAN R. OWENS, AN  
ADULT INDIVIDUAL, CATHERINE J.  
OWENS, AND ADULT INDIVIDUAL,  
CHRISTOPHER SMITH AN ADULT  
INDIVIDUAL AND WENDY OWENS, AN  
ADULT INDIVIDUAL,

Respondents

: No. 670 WAL 2005

:  
: Petition for Allowance of Appeal from  
: the Order of the Superior Court

ORDER

**PER CURIAM**

**AND NOW**, this 29<sup>th</sup> day of March 2006, the Petition for Allowance of Appeal is  
hereby **DENIED**.

Madame Justice Baldwin did not participate in the consideration or decision of this  
matter.

A True Copy Patricia Nicola

As of: March 29, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

Supreme Court of Pennsylvania

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

JOSHUA HESS, AN ADULT INDIVIDUAL,  
Appellant

v.

BRIAN SCOTT LEIGEY, AN ADULT  
INDIVIDUAL, JUDY FUSCO, AN ADULT  
INDIVIDUAL, DEAN R. OWENS, AN ADULT  
INDIVIDUAL, CATHERINE J. OWENS, AN  
ADULT INDIVIDUAL, CHRISTOPHER SMITH,  
AN ADULT INDIVIDUAL AND WENDY  
OWENS, AN ADULT INDIVIDUAL,

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

**FILED**

JUN 12 2007  
m l w. oo (w)  
William A. Shaw  
Prothonotary/Clerk of Courts

No. 487 WDA 2005

Appeal from the Order March 1, 2005,  
In the Court of Common Pleas of Clearfield County,  
Civil Division at No. 01-529-CD.

BEFORE: ORIE MELVIN, McCAFFERY and POPOVICH, JJ.

MEMORANDUM:

FILED: November 10, 2005

Appellant Joshua Hess appeals from the summary judgment entered in favor of Appellees Dean R. and Catherine J. Owens, which was made final and appealable by the order entered on March 1, 2005, in the Court of Common Pleas, Clearfield County. Appellant then filed this timely appeal. Upon review, we affirm.

Appellant was a passenger in a vehicle driven by Brian Scott Leigey, a minor, when Leigey struck a utility pole on State Route 879 in Clearfield County. The accident occurred on December 5, 1999, at which time

Appellant was also a minor. As a result of the accident, Appellant suffered a closed head injury. He was in a coma for approximately one month and is now permanently disabled.

Before the accident, Appellant, Leigey, and two other minors were traveling to State College, at which time they smoked marijuana. When they returned to Clearfield, Appellant, Leigey, and a third minor went to a party. Next, they left the party and went to the house of Judy Fusco, an adult, where they consumed alcoholic beverages. Then, the three minors traveled to a camp in the Frenchville area owned by Appellees, where they again consumed alcoholic beverages at a party held by Appellee's daughter, Wendy Owens (Daughter) and another individual, Christopher Smith. The above mentioned accident occurred after Leigey and Appellant left the camp.

Appellant then filed suit against Leigey and Fusco and a separate suit against Appellees, Daughter, and Smith. The court consolidated these two proceedings on May 7, 2002. On April 19, 2004, after the proceedings had closed, a motion for summary judgment with respect to Appellees was filed. The trial court granted summary judgment in favor of Appellees, Daughter, and Smith on June 1, 2004. Appellant then filed a motion for reconsideration of the grant of summary judgment with the trial court on June 4, 2004, which was denied on June 21, 2004.

An initial appeal was then filed by Appellant on June 28, 2004, which was quashed pursuant to Pa.R.A.P. 1972(7). ***Hess v. Leigey, et al.,***

1110 WDA 2004 (Pa. Super. 2004) (per curiam). This appeal was premature because the case had not yet been resolved as to Leigey and Fusco.

Appellant then filed a petition for leave of court to discontinue action as to Leigey and Fusco. On March 1, 2005, the trial court granted Appellant's motion to discontinue action as to those defendants not previously granted summary judgment. Appellant then filed this timely appeal with regard to the entry of summary judgment in favor of Appellees.

On appeal, Appellant presents one issue:

Whether [Appellant] produced evidence sufficient to withstand a motion for summary judgment under the doctrine of social host liability?

Appellant's brief, at 6.

The Pennsylvania Rules of Civil Procedure govern motions for summary judgment. Rule 1035.2 provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law.

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.Civ.P. 1035.2



Our standard of review regarding summary judgment is as follows:

"Summary judgment is proper only where the pleadings, depositions, answers to interrogatories, admissions of record, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether to grant a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party and resolve all doubts against the moving party when determining if there is a genuine issue of material fact. On an appeal from a grant of summary judgment, a reviewing court must examine the record in a light most favorable to the nonmoving party, accepting as true all well-pleaded facts and giving that party the benefit of all reasonable inferences which can be drawn from those facts. The Superior Court will reverse a grant of summary judgment only when the trial court has committed an error of law or abused its discretion."

**Potter v. Herman**, 762 A.2d 1116, 1117-18 (Pa. Super. 2000) (citations omitted).

The trial court concluded that Appellant was unable to carry his burden of establishing his claim. It concluded that the claim of social host liability failed as a matter of law. In support of this determination, the trial court stated:

"In order for social host liability to exist, [Appellant] must show that [Appellees] 'knowingly' served alcohol to a minor." **Alumni Association v. Sullivan**, 572 A.2d 1209, 1213 (Pa. Super. 1990). "This requires more than a showing that a defendant facilitated underage alcohol consumption by owning the property on which the consumption took place; it requires a showing that the defendant was also involved in the planning of the event, serving, supplying or purchasing of the alcohol consumed." **Id.** at 1213.

Trial Court Opinion, 5/28/04, at 2-3.

After careful review, we agree there is no evidence in the record that Appellees were involved in the planning of the event, serving, supplying, or purchasing of the alcohol consumed. The record states that on the night in question, the party was hosted by Daughter, who was not living with Appellees at the time, and the beer was brought to the camp by individuals who were present that evening.

Additionally, the social host must have "intentionally and substantially aided and encouraged the consumption of alcohol by a minor guest...." ***Alumni Association v. Sullivan***, 572 A.2d 1209, 1212 (Pa. Super. 1990). The "knowingly furnished" standard requires actual knowledge on the part of the social host as opposed to imputed knowledge imposed as a result of the relationship. ***Id.***, 572 A.2d at 1212.

We agree with the trial court that although Appellees were aware of occasional underage alcohol consumption on their property, the record does not reflect any evidence that they were aware that minors were consuming alcohol on their property on the night of the accident. Therefore, their knowledge does not rise to the level of the "knowingly furnished" standard.

As Appellant did not present evidence sufficient to establish a *prima facie* case of social host liability, we find no error and affirm the trial court's grant of summary judgment in favor of Appellees.

Affirmed.

J. A31003/05

Judgment Entered:

Eleanor K. Valecko

Deputy Prothonotary

DATE: November 10, 2005

01-529-CD

: No. 670 WAL 2005

: Petition for Allowance of Appeal from  
: the Order of the Superior Court

•

—

•

**PER CURIAM**

Madame Justice Baldwin did not participate in the consideration or decision of this matter.

Supreme Court of Pennsylvania

FILED  
JUN 12 2006  
JUN 08 2006

William A. Shaw  
Prothonotary/Clerk of Courts

Supreme Court of Pennsylvania



# Supreme Court of Pennsylvania

Western District

June 6, 2006

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

801 City-County Building  
Pittsburgh, PA 15219  
412-565-2816  
[www.aopc.org](http://www.aopc.org)

Mr. William A. Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

RE: Joshua Hess, and Adult Individual, Petitioner  
v.  
Brian Scott Leigey, an Adult Individual,  
Judy Fusco, an Adult Individual, Dean  
R. Owens, an Adult Individual, Catherine  
J. Owens, an Adult Individual, Christopher  
Smith an Adult Individual and Wendy Owens,  
an Adult Individual, Respondents  
Superior Docket Number - 487 WDA 2005

Trial Court/Agency Dkt. Number: 01-529-CD

No. 670 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 10, 2005

Disposition: Order Denying Petition for Allowance of Appeal

Date: March 29, 2006

Reargument/Reconsideration Disposition: Reconsideration/Reargument Denied

Reargument/Reconsideration

Disposition Date: June 6, 2006

/kao

**Appeal Docket Sheet****Superior Court of Pennsylvania****Docket Number: 487 WDA 2005****Page 1 of 4****March 23, 2005**

Joshua Hess, and adult individual, Appellant

v.

Brian Scott Leifey, an adult individual,  
Judy fusco, and adult individual, Dean  
R. Owens, an adult individual, Catherine  
J Owens, and adult individual, Christopher  
Smith an adult individual and Wendy Owens,  
an adult individual

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: March 21, 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: April 6, 2005

Next Event Type: Original Record Received

Next Event Due Date: May 2, 2005

**FILED**  
MAR 28 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

(92)

**Appeal Docket Sheet****Docket Number: 487 WDA 2005****Page 2 of 4****March 23, 2005****Superior Court of Pennsylvania****COUNSEL INFORMATION****Appellant** Hess, Joshua**Pro Se:** Appoint Counsel Status:**IFP Status:** No**Appellant Attorney Information:****Attorney:** Noble, Theron G.**Bar No.:** 55942 **Law Firm:** Ferraraccio & Noble**Address:** 301 E Pine Street  
Clearfield, PA 16830**Phone No.:** (814)765-4990 **Fax No.:** (814)765-9377**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Smith, Christopher**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:****Attorney:** Harper, Troy Joseph**Bar No.:** 74753 **Law Firm:** Dennison, Dennison & Harper**Address:** 293 Main Street  
Brookville, PA 15825**Phone No.:** (814)849-8316 **Fax No.:** (814)849-4656**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Leigey, Brian Scott**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:****Attorney:** Maierhofer, Mary Lou**Bar No.:** 62175 **Law Firm:** Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C.**Address:** 120 Lakemont Pk Blvd  
Altoona, PA 16602**Phone No.:** (814)941-4600 **Fax No.:** (814)941-4605**Receive Mail:** Yes**E-Mail Address:****Receive E-Mail:** No**Appellee** Fusco, Judy**Pro Se:** Appoint Counsel Status:**IFP Status:****Appellee Attorney Information:**



## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 487 WDA 2005

Page 3 of 4

March 23, 2005



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Attorney: Stofko, Dennis John  
Bar No.: 27638 Law Firm:  
Address: 969 Eisenhower Blvd  
PO Box 5500  
Johnstown, PA 15904  
Phone No.: (814)262-0064 Fax No.: (814)262-0905  
Receive Mail: Yes  
E-Mail Address: stofkoesq@stofkolaw.com  
Receive E-Mail: No

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**Appellee** Owens, Dean R  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

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**Appellee** Owens, Catherine J  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

Attorney: Harper, Troy Joseph  
Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
Address: 293 Main Street  
Brookville, PA 15825  
Phone No.: (814)849-8316 Fax No.: (814)849-4656  
Receive Mail: No  
E-Mail Address:  
Receive E-Mail: No

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**Appellee** Owens, Wendy  
Pro Se: Appoint Counsel Status:  
IFP Status:

**Appellee Attorney Information:**

**Appeal Docket Sheet****Superior Court of Pennsylvania****Docket Number: 487 WDA 2005****Page 4 of 4****March 23, 2005**

Attorney: Harper, Troy Joseph  
 Bar No.: 74753 Law Firm: Dennison, Dennison & Harper  
 Address: 293 Main Street  
 Brookville, PA 15825  
 Phone No.: (814)849-8316 Fax No.: (814)849-4656  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
3/21/05	Notice of Appeal	60.00	60.00	2005SPRWD000350

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: March 1, 2005 Judicial District: 46  
 Date Documents Received: March 21, 2005 Date Notice of Appeal Filed: March 16, 2005  
 Order Type: Order OTN:  
 Judge: Ammerman, Fredric J. Lower Court Docket No.: 01-529-CD  
 President Judge

**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
March 21, 2005	Notice of Appeal Filed	Appellant	Hess, Joshua
March 23, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

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

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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:

**01-529-CD**

**Joshua Hess, an adult individual**

**VS.**

**Brian Scott Leigey, Judy Fusco, Dean R. Owens, Catherine J. Owens,  
Christopher Smith, and Wendy Owens**

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

The documents comprising the record have been numbered from **No. 1 to No. \_\_\_\_\_**, 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  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

Date: 04/20/2005

Time: 04:22 PM

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## Crawfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

## Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001	Praecipe for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brian Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.
	Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr.

Date: 04/20/2005

Time: 04:22 PM

Page 2 of 5

Chamfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed	John K. Reilly Jr.
	Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed.	John K. Reilly Jr.
	Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr.
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G.Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certificate of Service no cc	John K. Reilly Jr.

Date: 04/20/2005

Time: 04:22 PM

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Champaign County Court of Common Pleas

ROA Report

Case: 2001-00529-CD

User: BHUDSON

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
09/10/2003	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/16/2004	Deposition of Brian Leigey, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Diane Bunk, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Samuel Unch, February 9, 2004, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Kevin Fusco, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Brandon E. Marshall, February 9, 2004, filed.	Fredric Joseph Ammerman

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

## Civil Other

Date		Judge
04/16/2004	Deposition of Candace C. Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
	Deposition of Timothy Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Reaquest for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA, P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is herby denied.	Fredric Joseph Ammerman

Date: 04/20/2005

Time: 04:22 PM

Page 5 of 5

C. field County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date	Judge
06/28/2004	Fredric Joseph Ammerman
Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & Noble's check for \$60.00 to Superior Court	
07/06/2004	Fredric Joseph Ammerman
Motion for Reconsideration, filed by s/Dennis J. Stofko, Esq. No CC	
07/09/2004	Fredric Joseph Ammerman
Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	
08/03/2004	Fredric Joseph Ammerman
Letters and copies of index mailed to: Theron G. Noble, Mary Lou Maierhofer, Dennis J. Stofko, and Fredric J. Ammerman, P.J.	
	Fredric Joseph Ammerman
Certified Mail Receipt, filed Case records mailed to Superior Court.	
08/06/2004	Fredric Joseph Ammerman
Domestic Return Receipt, filed. Return from Superior Court	
09/30/2004	Fredric Joseph Ammerman
Certificate of Contents of Remanded Record and Notice of Remand Copy to Superior Ct.	
	Fredric Joseph Ammerman
Order AND NOW, this 18th day of Aug. 2004 upon consideration of the motion to quash appeal and all related papers, it is hereby ORDERED: that said motion is Granted. See Pa.R.A.P. 341: Keefer v. Keefer, Bonner v. Fayne, and Bell v. State Farm Mutual Automobile Ins. Co. Per Curiam" In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh PA this 27th day of Sept. 2004. S/Eleann r. Valecko, Deputy Prothonotary.	
01/18/2005	Fredric Joseph Ammerman
Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey & Fusco, filed by Atty. Noble no cert. copies.	
02/04/2005	Fredric Joseph Ammerman
Rule to Show Cause, filed. Now, this 4th day of Feb., argument set for the 1st day of March, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Noble	
02/09/2005	Fredric Joseph Ammerman
Notice of Service, the 8th day of Feb., 2005, Rule Returnable as to Plaintiff's Petition for leave of court to discontinue Action as To Defendants Leigey and Fusco: upon Dennis J. Stofko, Esquire; Mary Lou Maierhofer, Esquire; and Troy J. Harper, Esquire. No CC	
03/01/2005	Fredric Joseph Ammerman
Order, filed Cert. to Atty's Noble, Maierhofer, Stofko & Harper NOW, this 1st day of March, 2005, RE: Discontinue of Action. Court hereby declares the case is settled as to all defendants not previously dismissed by Motion for Summary Judgment.	
03/07/2005	Fredric Joseph Ammerman
Notice of Service, Order issued as to Plaintiff's Petition for Leave Of Court To Discontinue Action as to Defendants Leigey and Fusco: upon counsels of record on March 4, 2005. No CC	
03/16/2005	Fredric Joseph Ammerman
Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1897634 Dated: 03/16/2005 Amount: \$45.00 (Check)	
	Fredric Joseph Ammerman
Notice of Appeal, filed by s/ Theron G. Noble, Esquire. 1CC & ck for 60.00 to Superior Court	
03/28/2005	Fredric Joseph Ammerman
Appeal Docket Sheet, filed Number 487 WDA 2005	

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

APR 20 2005

Attest.

*William E. Shaw*  
Prothonotary/  
Clerk of Courts



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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
		APPEAL MAILED TO SUPERIOR COURT AUGUST 3, 2004	
83	08/03/04	Certified Mail Receipt	01
84	08/06/04	Domestic Return Receipt	01
85	09/30/04	Certificate of Contents of Remanded Record and Notice of Remand	01
86	09/30/04	Order, Re: Motion to Quash Appeal granted	01
87	01/18/05	Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey and Fusco with Rule filed February 4, 2005 scheduling argument	06
88	02/09/05	Notice of Service	01
89	03/01/05	Order, Re: Discontinuance as to certain Defendants	01
90	03/07/05	Notice of Service	01
91	03/16/05	Notice of Appeal to Superior Court	09
92	03/28/05	Appeal Docket Sheet, Superior Court Number 487 WDA 2005	04

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	04/12/01	Complaint	08
02	04/18/01	Sheriff Return	01
03	04/23/01	Entry of Appearance	01
04	04/30/01	Praecipe for Entry of Appearance	03
05	05/01/01	Answer, New Matter and New Matter Under 2252 (d)	08
06	05/09/01	Plaintiff's Reply to New Matter of Defendant Fusco	04
07	05/17/01	Reply to Defendant, Judy Fusco's Answer, New Matter, and New Matter Under 2252(d)	05
08	05/17/01	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d)	10
09	05/22/01	Reply to New Matter under 2252(d)	03
10	05/23/01	Plaintiff's Reply to New Matter of Defendant Leigey	04
11	05/25/01	Notice of Service, Notice of Deposition	02
12	08/23/01	Notice of Service, Notice of Deposition	01
13	11/06/01	Notice of Service, Plaintiff's First Request for Production of Documents	21
14	12/11/01	Certificate of Service, Response to Request for Production of Documents	02
15	01/23/02	Motion for Summary Judgment	03
16	01/23/02	Transcript of Judith A Fusco, Thursday June 14, 2001 at 9:10 a.m.	Separate Cover
17	01/23/02	Transcript of Kevin L Straw, July 2, 2001, at 9:30 a.m.	Separate Cover
18	01/23/02	Transcript of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
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21	01/23/02	Transcript of Jessica R Hanes, Thursday, June 14, 2001, at 10:24 a.m.	Separate Cover
22	02/04/02	Notice of Service, Re: Notice of Deposition concerning Brian Scott Leigey	02
23	03/01/02	Plaintiff's Motion to Compel (as to Defendant Brian Scott Leigey), Motion for Continuance (as to Defendant Judy Fusco's Motion for Summary Judgment) and Motion to Consolidate Cases (as to 01-1889-CD)	19
24	03/01/02	Deposition of Brian Scott Leigey, February 7, 2002, at 10:06 a.m.	Separate Cover
25	03/05/02	Deposition of Jessica R Hanes, Thursday, June 14, 2002, at 10:24 a.m.	Separate Cover
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30	03/05/02	Deposition of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
31	03/14/02	Notice of Service, March 8 <sup>th</sup> Rule Returnable as to Plaintiff's Motion to Compel, for Continuance and to Consolidate	02
32	03/18/02	Motion for Continuance with Rule filed March 19, 2002	08

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
33	03/27/02	Certificate of Service, Rule scheduling Motion to Compel (Original not in file)	---
34	04/10/02	Opposition/Response to the Motion to Compel, Motion for Continuance & Motion to Consolidate	08
35	05/07/02	Order, Re: trial consolidate with 01-1889-CD; all subsequent filings to 01-529-CD	01
36	05/07/02	Order, Re: Motion for Summary Judgment	01
37	06/19/02	Order, Re: Briefing schedule	01
38	02/27/02	Reply to Plaintiff's Brief in Support of the Motion to Compel	05
39	07/15/02	Order, Re: Motion to Compel	01
40	03/03/03	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer	01
41	04/03/03	Certificate of Service, Answers for Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper	01
42	09/10/03	Answer to Motion to Compel	11
43	09/10/03	Certificate of Service, Defendants' Answer to Plaintiffs Interrogatories	03
44	09/16/03	Motion for Partial Summary Judgment	67
45	10/08/02	Plaintiff's Reply to Defendant Leigey	09
46	11/21/03	Order, Re: Motion for Partial Summary Judgment filed on behalf of Defendant, Brian Scott Leigey	01
47	12/17/03	Order, Re: Argument on Atty. Stofko's Motion of Summary Judgment rescheduled	01
48	12/17/03	Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery	08
49	01/09/04	Order, Re: Briefing schedule	01
50	02/17/04	Plaintiff's Motion for Contempt and Sanctions As To Non-Party Jaime Lingle with Rule scheduling written response and argument filed February 19, 2004	05
51	02/24/04	Certificate of Service, Rule to Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle	01
52	03/10/04	Answer to Plaintiff's Motion For Contempt And Sanctions as to Non-Party Jamie Lingle	03
53	03/30/04	Notice of Service, Plaintiff's First Request for Admissions upon Dennis J Stofko	03
54	04/16/04	Deposition of Brian Leigey, February 9, 2004, at 11:25 a.m.	Separate Cover
55	04/16/04	Deposition of Diane Bunk, February 9, 2004, at 3:26 p.m.	Separate Cover
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60	04/16/04	Deposition of Timothy Wisor, February 9, 2004, at 9:35 a.m.	Separate Cover
61	04/19/04	Praeipce for Oral Argument	04
62	04/19/04	Motion for Summary Judgment	09
63	04/19/04	Certificate of Service filed by Atty. Maierhofer, Re: Answers to Plaintiff's First Request for Admissions	01
64	04/20/04	Order, Re: Argument on Attorney Harper's Motion for Summary Judgment	01

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey, Judy Fusco, Dean R. Owens,  
Catherine J. Owens, Christopher Smith, and Wendy Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
65	04/26/04	Defendant Judy Fusco's Answers To Plaintiff's First Request For Admissions	04
66	04/26/04	Certificate of Service, Re: Responses to Plaintiff's Request for Admissions	03
67	04/26/04	Certificate of Service, Two Orders of Court scheduling Oral Argument	03
68	05/10/04	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment (Original not in file)	---
69	05/10/04	Transcript of Wendy Owens, December 19, 2002	Separate Cover
70	05/10/04	Transcript of Natalie Kephart, December 19, 2002	Separate Cover
71	05/10/04	Transcript of Luke Marshall, December 19, 2002, at 9:00 a.m.	Separate Cover
72	05/10/04	Transcript of Dean Owens, December 19, 2002	Separate Cover
73	05/10/04	Transcript of Catherine Owens, December 19, 2002	Separate Cover
74	05/10/04	Transcript of Timothy Wisor, December 19, 2002, at 9:35 a.m.	Separate Cover
75	05/14/04	Order, Re: Oral Argument cancelled (Copy—Original filed to 01-1889-CD)	01
76	06/01/04	Order, Re: Motion for Summary Judgment	03
77	06/07/04	Plaintiff's Motion for Reconsideration as to Defendants Dean and Catherine Owens' Motion for Summary Judgment	04
78	06/15/04	Order, Re: Judy Fusco's Motion for Summary Judgment	01
79	06/23/04	Order, Re: Plaintiff's Motion for Reconsideration	01
80	06/28/04	Notice of Appeal to High Court	06
81	07/06/04	Motion for Reconsideration s/Dennis Stofko	07
82	07/09/04	Appeal Docket Sheet, Superior Court 1110 WDA 2004	04

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

**Joshua Hess**

VS.

**Brian Scott Leigey, Judy Fusco, Dean R. Owens, Catherine J. Owens,  
Christopher Smith, and Wendy Owens**

**01-529-CD**

So full and entire as the same remains of record before the said Court, at No. **01-529-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Prothonotary/Clerk of Courts

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

\_\_\_\_\_  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, 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 \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Prothonotary/Clerk of Courts

Date: 04/06/2005

Clearfield County Court of Common Pleas

User: SWALBORN

Time: 03:12 PM

ROA Report

Page 1 of 1

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date	Selected Items	Judge
07/09/2004	(82) Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	Fredric Joseph Ammerman
08/03/2004	X Letters and copies of index mailed to: Theron G. Noble, Mary Lou Maierhofer, Dennis J. Stofko, and Fredric J. Ammerman, P.J.	Fredric Joseph Ammerman
	(83) Certified Mail Receipt, filed Case records mailed to Superior Court.	Fredric Joseph Ammerman
08/06/2004	(84) Domestic Return Receipt, filed. Return from Superior Court	Fredric Joseph Ammerman
09/30/2004	(85) Certificate of Contents of Remanded Record and Notice of Remand Copy to Superior Ct.	Fredric Joseph Ammerman
	(86) Order: AND NOW this 18th day of Aug. 2004 upon consideration of the motion to quash appeal and all related papers, it is hereby ORDERED: that said motion is Granted. See Pa.R.A.P. 341: Keefer v. Keefer, Bonner v. Fayne, and Bell v. State Farm Mutual Automobile Ins. Co. Per Curiam" In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh PA this 27th day of Sept. 2004. S/Eleann r. Valecko, Deputy Prothonotary.	Fredric Joseph Ammerman
01/18/2005	(87) Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey & Fusco, filed by Atty. Noble no cert. copies.	Fredric Joseph Ammerman
02/04/2005	(87) Rule to Show Cause, filed. Now, this 4th day of Feb., argument set for the 1st day of March, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Noble	Fredric Joseph Ammerman
02/09/2005	(88) Notice of Service, the 8th day of Feb., 2005, Rule Returnable as to Plaintiff's Petition for leave of court to discontinue Action as To Defendants Leigey and Fusco: upon Dennis J. Stofko, Esquire; Mary Lou Maierhofer, Esquire; and Troy J. Harper, Esquire. No CC	Fredric Joseph Ammerman
03/01/2005	(89) Order, filed Cert. to Atty's Noble, Maierhofer, Stofko & Harper NOW, this 1st day of March, 2005, RE: Discontinue of Action. Court hereby declares the case is settled as to all defendants.	Fredric Joseph Ammerman
03/07/2005	(90) Notice of Service, Order issued as to Plaintiff's Petition for Leave Of Court To Discontinue Action as to Defendants Leigey and Fusco: upon counsels of record on March 4 2005. No CC	Fredric Joseph Ammerman
03/16/2005	(91) Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1897634 Dated: 03/16/2005 Amount: \$45.00 (Check)	Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ Theron G. Noble, Esquire. 1CC & ck for 60.00 to Superior Court	Fredric Joseph Ammerman
03/28/2005	(92) Appeal Docket Sheet, filed Number 487 WDA 2005	Fredric Joseph Ammerman

Date: 02/24/2005

Time: 09:15 AM

Page 5 of 6

**Clearfield County Court of Common Pleas**

ROA Report

User: BANDERSON

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA, P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble. Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is herby denied.	Fredric Joseph Ammerman
06/28/2004	Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & Noble's check for \$60.00 to Superior Court	Fredric Joseph Ammerman
07/06/2004	Motion for Reconsideration, filed by s/Dennis J. Stofko, Esq. No CC	Fredric Joseph Ammerman
07/09/2004	Appeal Docket Sheet, filed. Superior Court Number 1110 WDA 2004	Fredric Joseph Ammerman
08/03/2004	Letters and copies of index mailed to: Theron G. Noble, Mary Lou Maierhofer, Dennis J. Stofko, and Fredric J. Ammerman, P.J.	Fredric Joseph Ammerman
	Certified Mail Receipt, filed	Fredric Joseph Ammerman
	Case records mailed to Superior Court.	
08/06/2004	Domestic Return Receipt, filed.	Fredric Joseph Ammerman
	Return from Superior Court	
09/30/2004	Miscellaneous Filing	Fredric Joseph Ammerman
	Certificate of Contents of Remanded Record and Notice of Remand Copy to Superior Ct.	Fredric Joseph Ammerman
	Order AND NOW, this 18th day of Aug. 2004 upon consideration of the motion to quash appeal and all related papers, it is hereby ORDERED: that said motion is Granted. See Pa.R.A.P. 341: Keefer v. Keefer, Bonner v. Fayne, and Bell v. State Farm Mutual Automobile Ins. Co. Per Curiam" In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh PA this 27th day of Sept. 2004. S/Eleann r. Valecko, Deputy Prothonotary.	Fredric Joseph Ammerman
01/18/2005	Plaintiff's Petition for Leave of Court to Discontinue Action as to Defendants Leigey & Fusco, filed by Atty. Noble no cert. copies.	Fredric Joseph Ammerman ✓
02/04/2005	Rule to Show Cause, filed. Now, this 4th day of Feb., argument set for the 1st day of March, 2005 at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Noble	Fredric Joseph Ammerman ✓



21. 00-291-CD

Certified Builders Wholesale

David R. Thompson, Esq.

Vs.

David Scott Bonsell and Susan Bonsell,  
his wife i/a/t/d/b/a Cornerstone Builders  
and Supplies

Peter M. McManamon, Esq.

Appeal filed by Defendant

Last Filing: May 11, 2000. Answer

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22. 00-292-CD

Certified Builders Wholesale

Vs.

Cornerstone Builders and Supplies,  
David Scott Bonsell and Susan Bonsell  
Appeal filed by Defendant

Peter M. McManamon, Esq.

Peter M. McManamon, Esq.

Last Filing: March 15, 2000. DJ Transcript

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23. 00-374-CD

Treasure Lake Property Owners

Craig B. Sobel, Esq.

Vs.

Sharon Kestler

Richard J. Parks, Esq.

Appeal filed by Defendant

Last Filing: February 5, 2001. Plaintiff's Reply to New Matter

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24. 00-393-CD

James Yaworski, Jr.

Chris Pentz, Esq.

Vs.

Daniel Stiles t/d/b/a Hawk Logging

Sharon L. Smith, Esq.

Appeal filed by Defendant

Last Filing: October 6, 2000. Praecept to Withdraw Defendant's Preliminary Objections

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25. 00-427-CD

Treasure Lake Property Owners

Craig B. Sobel, Esq.

Vs.

Cosmo C. Amenta

Burton Fish, Esq.

Appeal filed by Defendant

Last Filing: May 12, 2000. Notice of Service of Appeal

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26. 00-576-CD

Swisher Concrete Products, Inc.

Vs.

Samuel David Richards

Appeal filed by Defendant

Last Filing: June 29, 2000. DJ Transcript



Date: 02/24/2005

**Clearfield County Court of Common Pleas**

User: BANDERSON

Time: 09:15 AM

ROA Report

Page 6 of 6

Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Scott Leigey, Judy Fusco

Civil Other

Date		Judge
02/09/2005	Notice of Service, the 8th day of Feb., 2005, Rule Returnable as to Plaintiff's Petition for leave of court to discontinue Action as To Defendants Leigey and Fusco: upon Dennis J. Stofko, Esquire; Mary Lou Maierhofer, Esquire; and Troy J. Harper, Esquire. No CC	Fredric Joseph Ammerman ✓

15. 00-94-CD

Mike Dixon and Loretta Dixon

David Thompson, Esq.

Vs.

Hill Auto Service

William A. Shaw, Jr., Esq.

Appeal filed by Defendant

Last Filing: March 15, 2000. Certificate of Service of Defendant's Answer

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16. 00-127-CD

Tracy Yarger

Vs.

Brian Yarger

John Ryan, Esq.

Appeal filed by Defendant

Last Filing: May 5, 2000. Complaint

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17. 00-146-CD

D & M Manufacturing Co., Inc.

Vs.

N K Graphics

Robert E. Chernicoff, Esq.

Appeal filed by Defendant

Last Filing: May 4, 2000. DJ Transcript

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18. 00-149-CD

Paris Uniform Rentals

Vs.

Huckelberry's Family Restaurant

Mehrdad Jahanshahi, Esq.

Appeal filed by Defendant

Last Filing: February 22, 2000. Notice of Service of Appeal

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19. 00-161-CD

Tana Cox

Vs.

Pam Kelly

Appeal filed by Defendant

Last Filing: February 25, 2000. DJ Transcript

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20. 00-187-CD

Glyn D. Powell

Vs.

Waterwise Pool Company

David C. Mason, Esq.

Appeal filed by Defendant

Last Filing: March 6, 2000. Affidavit of Service of Appeal

COPY

August 3, 2004

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

Re: Joshua Hess, an adult individual  
Vs.  
Brian Scott Leigey, an adult individual;  
Judy Fusco, an adult individual; Dean Robert  
Owens, an adult individual; Catherine Owens,  
an adult individual; Christopher Smith, an  
adult individual; and Wendy Owens, an  
adult individual  
No. 01-529-CD  
Superior Court No. 1110 WDA 2004

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed twenty-six transcripts and depositions under separate cover and listed on a separate cover index.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Joshua Hess, an adult individual

Vs.

Brian Scott Leigey, an adult individual, and  
Judy Fusco, an adult individual

Superior Court No. 1110 WDA 2004  
Lower Court No. 01-529-CD

Separate Cover Index

#16	January 23, 2002	Deposition of Judith A. Frusco, Thursday, June 14, 2001, at 9:10 a.m.
#17	January 23, 2002	Deposition of Kevin L. Straw, July 2, 2001, at 9:30 a.m.
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COPY

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

Theron G. Noble, Esq.  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

Mary Lou Maierhofer  
120 Lakemont Park Boulevard  
Altoona, PA 16602

Dennis J. Stofko  
PO Box 5500  
Johnstown, PA 15904

Joshua Hess, an adult individual

Vs.

Brian Scott Leigey, an adult individual;  
Judy Fusco, an adult individual; Dean Robert  
Owens, an adult individual; Catherine Owens,  
an adult individual; Christopher Smith, an  
adult individual; and Wendy Owens, an  
adult individual

Court No. 01-529-CD; Superior Court No. 1110 WDA 2004

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on August 3, 2004.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey and Judy Fusco**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	04/12/01	Complaint	08
02	04/18/01	Sheriff Return	01
03	04/23/01	Entry of Appearance	01
04	04/30/01	Praecipe for Entry of Appearance	03
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21	01/23/02	Transcript of Jessica R Hanes, Thursday, June 14, 2001, at 10:24 a.m.	Separate Cover
22	02/04/02	Notice of Service, Re: Notice of Deposition concerning Brian Scott Leigey	02
23	03/01/02	Plaintiff's Motion to Compel (as to Defendant Brian Scott Leigey), Motion for Continuance (as to Defendant Judy Fusco's Motion for Summary Judgment) and Motion to Consolidate Cases (as to 01-1889-CD)	19
24	03/01/02	Deposition of Brian Scott Leigey, February 7, 2002, at 10:06 a.m.	Separate Cover
25	03/05/02	Deposition of Jessica R Hanes, Thursday, June 14, 2002, at 10:24 a.m.	Separate Cover
26	03/05/02	Deposition of Judith A Fusco, Thursday, June 14, 2001, at 9:10 a.m.	Separate Cover
27	03/05/02	Deposition of Misty Jordon, July 2, 2001, at 11:45 a.m.	Separate Cover
28	03/05/02	Deposition of Kevin L Straw, July 2, 2001, at 9:30 a.m.	Separate Cover
29	03/05/02	Deposition of Peggy Sue Williams, September 10, 2001, at 4:10 p.m.	Separate Cover
30	03/05/02	Deposition of Alen Erskine, September 10, 2001, at 3:00 p.m.	Separate Cover
31	03/14/02	Notice of Service, March 8 <sup>th</sup> Rule Returnable as to Plaintiff's Motion to Compel, for Continuance and to Consolidate	02
32	03/18/02	Motion for Continuance with Rule filed March 19, 2002	08

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

**No. 01-529-CD  
Joshua Hess  
VS.  
Brian Leigey and Judy Fusco**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
33	03/27/02	Certificate of Service, Rule scheduling Motion to Compel (Original not in file)	---
34	04/10/02	Opposition/Response to the Motion to Compel, Motion for Continuance & Motion to Consolidate	08
35	05/07/02	Order, Re: trial consolidate with 01-1889-CD; all subsequent filings to 01-529-CD	01
36	05/07/02	Order, Re: Motion for Summary Judgment	01
37	06/19/02	Order, Re: Briefing schedule	01
38	02/27/02	Reply to Plaintiff's Brief in Support of the Motion to Compel	05
39	07/15/02	Order, Re: Motion to Compel	01
40	03/03/03	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer	01
41	04/03/03	Certificate of Service, Answers for Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper	01
42	09/10/03	Answer to Motion to Compel	11
43	09/10/03	Certificate of Service, Defendants' Answer to Plaintiffs Interrogatories	03
44	09/16/03	Motion for Partial Summary Judgment	67
45	10/08/02	Plaintiff's Reply to Defendant Leigey	09
46	11/21/03	Order, Re: Motion for Partial Summary Judgment filed on behalf of Defendant, Brian Scott Leigey	01
47	12/17/03	Order, Re: Argument on Atty. Stofko's Motion of Summary Judgment rescheduled	01
48	12/17/03	Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery	08
49	01/09/04	Order, Re: Briefing schedule	01
50	02/17/04	Plaintiff's Motion for Contempt and Sanctions As To Non-Party Jaime Lingle with Rule scheduling written response and argument filed February 19, 2004	05
51	02/24/04	Certificate of Service, Rule to Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle	01
52	03/10/04	Answer to Plaintiff's Motion For Contempt And Sanctions as to Non-Party Jamie Lingle	03
53	03/30/04	Notice of Service, Plaintiff's First Request for Admissions upon Dennis J Stofko	03
54	04/16/04	Deposition of Brian Leigey, February 9, 2004, at 11:25 a.m.	Separate Cover
55	04/16/04	Deposition of Diane Bunk, February 9, 2004, at 3:26 p.m.	Separate Cover
56	04/16/04	Deposition of Samuel Unch, February 9, 2004, at 10:25 a.m.	Separate Cover
57	04/16/04	Deposition of Kevin Fusco, February 9, 2004, at 3:26 a.m.	Separate Cover
58	04/16/04	Deposition of Brandon E Marshall, February 9, 2004, at 2:20 p.m.	Separate Cover
59	04/16/04	Deposition of Candace C Wisor, February 9, 2004, at 9:00a.m.	Separate Cover
60	04/16/04	Deposition of Timothy Wisor, February 9, 2004, at 9:35 a.m.	Separate Cover
61	04/19/04	Praecipe for Oral Argument	04
62	04/19/04	Motion for Summary Judgment	09
63	04/19/04	Certificate of Service filed by Atty. Maierhofer, Re: Answers to Plaintiff's First Request for Admissions	01
64	04/20/04	Order, Re: Argument on Attorney Harper's Motion for Summary Judgment	01

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

**No. 01-529-CD**

**Joshua Hess**

**VS.**

**Brian Leigey and Judy Fusco**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
65	04/26/04	Defendant Judy Fusco's Answers To Plaintiff's First Request For Admissions	04
66	04/26/04	Certificate of Service, Re: Responses to Plaintiff's Request for Admissions	03
67	04/26/04	Certificate of Service, Two Orders of Court scheduling Oral Argument	03
68	05/10/04	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment (Original not in file)	---
69	05/10/04	Transcript of Wendy Owens, December 19, 2002	Separate Cover
70	05/10/04	Transcript of Natalie Kephart, December 19, 2002	Separate Cover
71	05/10/04	Transcript of Luke Marshall, December 19, 2002, at 9:00 a.m.	Separate Cover
72	05/10/04	Transcript of Dean Owens, December 19, 2002	Separate Cover
73	05/10/04	Transcript of Catherine Owens, December 19, 2002	Separate Cover
74	05/10/04	Transcript of Timothy Wisor, December 19, 2002, at 9:35 a.m.	Separate Cover
75	05/14/04	Order, Re: Oral Argument cancelled (Copy—Original filed to 01-1889-CD)	01
76	06/01/04	Order, Re: Motion for Summary Judgment	03
77	06/07/04	Plaintiff's Motion for Reconsideration as to Defendants Dean and Catherine Owens' Motion for Summary Judgment	04
78	06/15/04	Order, Re: Judy Fusco's Motion for Summary Judgment	01
79	06/23/04	Order, Re: Plaintiff's Motion for Reconsideration	01
80	06/28/04	Notice of Appeal to High Court	06
81	07/06/04	Motion for Reconsideration s/Dennis Stofko	07
82	07/09/04	Appeal Docket Sheet, Superior Court 1110 WDA 2004	04



Date: 06/29/2004

## Clearfield County Court of Common Pleas

User: DAVEM

Time: 01:02 PM

ROA Report

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Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco

## Civil Other

Date		Judge
04/12/2001	Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge ✓
04/18/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
04/23/2001	Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge ✓
04/30/2001	Praecipe for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge ✓
05/01/2001	Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge ✓
05/09/2001	Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge ✓
05/17/2001	Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge ✓
	Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge ✓
05/22/2001	Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge ✓
05/23/2001	Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge ✓
05/25/2001	Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge ✓
07/11/2001	Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001	Notice of Service, Notice of Deosition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge ✓
11/06/2001	Notice of Service, Plaintiff's First Request For Production of Documents, upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge ✓
12/11/2001	Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge ✓
01/23/2002	Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge ✓
	Transcript, Deposition of JUDITH A. FUSCO. Filed	No Judge ✓
	Transcript, Deposition of KEVIN L. STRAW. Filed.	No Judge ✓
	Transcript, Deposition of ALEN ERSKINE. Filed.	No Judge ✓
	Transcript, Deposition of MISTY JORDAN. Filed	No Judge ✓
	Transcript, Deposition of SEAN QUICK. Filed.	No Judge ✓
	Transcript, Deposition of JESSICA R. HANES. Filed.	No Judge ✓
02/04/2002	Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge ✓

## Civil Other

Date		Judge
03/01/2002	Plaintiff's Motion to Compel (As To Defendant Brain Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc Deposition of Brian Scott Leigey, February 7, 2002. Filed	John K. Reilly Jr. ✓
03/05/2002	Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed. Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed. Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed. Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed. Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed.	John K. Reilly Jr. ✓ John K. Reilly Jr. ✓ John K. Reilly Jr. ✓ John K. Reilly Jr. ✓ John K. Reilly Jr. ✓
03/11/2002	RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr. ✓
03/14/2002	Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G. Noble, Esquire no cc	John K. Reilly Jr. ✓
03/18/2002	Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr. ✓
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr. ✓
03/27/2002	Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr. ✓
05/07/2002	ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr. ✓ John K. Reilly Jr. ✓
06/19/2002	ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr. ✓
06/27/2002	Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr. ✓

Joshua Hess vs. Brian Leigey, Judy Fusco

## Civil Other

Date		Judge
07/15/2002	ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr. ✓
03/03/2003	Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr. ✓
04/03/2003	Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr. ✓
09/10/2003	Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire Certificate of Service no cc	John K. Reilly Jr. ✓
	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr. ✓
09/16/2003	Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr. ✓
10/08/2003	Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC.	John K. Reilly Jr. ✓
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr. ✓
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman ✓
	Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery filed by Atty. Noble. No CC	Fredric Joseph Ammerman ✓
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman ✓
02/17/2004	Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman ✓
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman ✓

## Civil Other

Date		Judge
02/24/2004	Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman ✓
03/10/2004	Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman ✓
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman ✓
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman ✓
	* Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel.	Fredric Joseph Ammerman ✓
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc w/Rule Memo to Atty Harper	Fredric Joseph Ammerman ✓
04/26/2004	Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman ✓
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Request for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc	Fredric Joseph Ammerman ✓
	Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc	Fredric Joseph Ammerman ✓
05/10/2004	Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman ✓
	c Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	c Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman ✓
	Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	* Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed.	Fredric Joseph Ammerman ✓
05/14/2004	ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper	Fredric Joseph Ammerman ✓
06/01/2004	ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA,P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko	Fredric Joseph Ammerman ✓

Date: 06/29/2004

Clearfield County Court of Common Pleas

User: DAVEM

Time: 01:02 PM

ROA Report

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Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco

Civil Other

Date		Judge
06/07/2004	Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman ✓
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman ✓
06/23/2004	ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is hereby denied.	Fredric Joseph Ammerman ✓
06/28/2004	Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check)	Fredric Joseph Ammerman

Time: 01:59 PM

ROA Report

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Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco

Civil Other

Date	Judge
04/12/2001 ✓ ① Filing: Civil Complaint Paid by: T. Noble Receipt number: 1823595 8 Dated: 04/12/2001 Amount: \$80.00 (Check) Four CC Attorney Noble	No Judge
04/18/2001 ✓ ② Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
04/23/2001 ✓ ③ Entry of Appearance, on behalf of Judy Fusco. filed by s/Dennis J. Stofko, Esq. no cc	No Judge
04/30/2001 ✓ ④ Praecipe for Entry of Appearance, on behalf of Brian Scott Leigey, filed by s/Mary Lou Maierhofer, Esq. No CC Certificate of Service, filed.	No Judge
05/01/2001 ✓ ⑤ Answer, New Matter and New Matter Under 2252(d). Filed by s/Dennis J. Stofko, Esq. Verification, s/Judy Fusco no cc	No Judge
05/09/2001 ✓ ⑥ Plaintiff's Reply to New Matter of Defendant Fusco. filed by s/Theron G. Noble, Esq. Cert of Svc no cc	No Judge
05/17/2001 ✓ ⑦ Reply To Defendant, Judy Fusco's Answer, New Matter and New Matter Under Pa.R.C.P. 2252(d). filed by s/Mary Lou Maierhofer, Esq. Cert of Svc. Verification, s/Brian Scott Leigey no cc	No Judge
✓ ⑧ Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) filed by s/Mary Lou Maierhofer, Esq. Cert of Svc Verification, s/Brian Scott Leigey	No Judge
05/22/2001 ✓ ⑨ Reply to New Matter Under 2252(d) filed by s/Dennis J. Stofko, Esq. Verification, s/Dennis J. Stofko, Esq. no cc	No Judge
05/23/2001 ✓ ⑩ Plaintiff's Reply to New Matter of Defendant Leigey. filed by s/Theron G. Noble, Esq. Cert of Service no cc	No Judge
05/25/2001 ✓ ⑪ Notice of Service, Notice of Deposition upon Counsel for Defendants. s/Theron G. Noble, Esq. no cc	No Judge
07/11/2001 X Filing: Subpoena Paid by: Stofko, Dennis J. (attorney for Fusco, Judy) Receipt number: 1828238 Dated: 07/11/2001 Amount: \$6.00 (Check)	No Judge
08/23/2001 ✓ ⑫ Notice of Service, Notice of Deposition upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq., filed by s/Theron G. Noble, Esq. No CC	No Judge
11/06/2001 ✓ ⑬ Notice of Service, Plaintiff's First Request For Production of Documents upon Dennis J. Stofko, Esq. and Mary Lou Maierhofer, Esq. Filed by s/Theron G. Noble, Esq. no cc	No Judge
12/11/2001 ✓ ⑭ Certificate of Service, Response to Request for Production of Documents Directed to all Defendants, on behalf of Defendant, Brian Scott Leigey, upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	No Judge
01/23/2002 ✓ ⑮ Motion for Summary Judgment. Filed by s/Dennis J. Stofko, Esq. no cc	No Judge
✓ ⑯ Transcript, Deposition of JUDITH A. FUSCO. Filed s/c	No Judge
✓ ⑰ Transcript, Deposition of KEVIN L. STRAW. Filed s/c	No Judge
✓ ⑱ Transcript, Deposition of ALEN ERSKINE. Filed s/c	No Judge
✓ ⑲ Transcript, Deposition of MISTY JORDAN. Filed s/c	No Judge
✓ ⑳ Transcript, Deposition of SEAN QUICK. Filed s/c	No Judge
✓ ㉑ Transcript, Deposition of JESSICA R. HANES. Filed s/c	No Judge
02/04/2002 ✓ ㉒ Notice of Service, Notice of Deposition (concerning Defendant Brian Scott Leigey) upon attorneys of record. s/Theron G. Noble, Esq. no cc	No Judge
03/01/2002 ✓ ㉓ Plaintiff's Motion to Compel (As To Defendant Brian Scott Leigey) Motion For Continuance (As To Defendant Judy Fusco's Motion For Summary Judgment) and Motion to Consolidate Cases (As to 01-1889-02). Filed by s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
03/01/2002	(24) Deposition of Brian Scott Leigey, February 7, 2002. Filed <i>sk</i>	John K. Reilly Jr.
03/05/2002	(25) Transcript of Deposition of JESSICA R. HANES, June 14, 2001. Filed <i>sk</i>	John K. Reilly Jr.
	(26) Transcript of Deposition of JUDITH A. FUSCO, June 14, 2001. Filed <i>sk</i>	John K. Reilly Jr.
	(27) Transcript of Deposition of MISTY JORDAN, July 2, 2001. Filed <i>sk</i>	John K. Reilly Jr.
	(28) Transcript of Deposition of KEVIN L. STRAW, July 2, 2001. Filed <i>sk</i>	John K. Reilly Jr.
	(29) Transcript of Deposition of PEGGY SUE WILLIAMS, September 10, 2001. Filed <i>sk</i>	John K. Reilly Jr.
	(30) Transcript of Deposition of ALEN ERSKINE, September 10, 2001. Filed <i>sk</i>	John K. Reilly Jr.
03/11/2002	WJ# 23 RULE TO SHOW CAUSE, Now this 8th day of March, 2002, re: Issued upon all Defendants, Rule Returnable, for filing Written Respons, is set for the 28th day of March, 2002 and argument on the Motions set for the 1st day of May, 2002, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
03/14/2002	(31) Notice of Service, March 8th Rule Returnable, as to Plaintiff's Motion To Compel, For Continuance and to Consolidate, upon Attorneys of Record. s/Theron G. Noble, Esquire no cc	John K. Reilly Jr.
03/18/2002	(32) Motion for Continuance, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
03/19/2002	Rule, NOW THIS, 19th day of March, 2002, Rule issued upon Joshua Hess to show cause why Motion for Continuance of Brian Scott Leigey should not be granted. Said Rule Returnable the 7th day of June, 2002, at 2:00 p.m. in Courtroom No. 1, BY THE COURT: /s/John K. Reilly, Jr., P.J. One CC Attorney Maierhofer	John K. Reilly Jr.
03/27/2002	* 33 Certificate of Service, Rule scheduling Motion to Compel for June 7, 2002, at 2:00 p.m., served upon counsel of record. s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.
04/10/2002	(34) Opposition/Response to the Motion to Compel, Motion for Continuance and Motion to Consolidate, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
05/07/2002	(35) ORDER, NOW, this 7th day of May, 2002, re: Trial in this matter shall be and is hereby consolidated with that proceeding filed to 01-1889-CD. All subsequent filings shall be made to 01-529-CD. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
	(36) ORDER, NOW, this 7th day of May, 2002, re: Motion for Summary Judgment, argument shall be and is hereby continued pending completion of discovery. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Maierhofer, and Stofko	John K. Reilly Jr.
06/19/2002	(37) ORDER, NOW, this 19th day of June, 2002, re: Counsel for Plaintiff have 10 days from this date in which to supply the Court with reply brief; and Defendant is given 5 days thereafter for reply, if necessary. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble, Stofko, and Maierhofer	John K. Reilly Jr.
06/27/2002	(38) Reply to Plaintiff's Brief in Support of the Motion to Compel. Filed by s/Mary Lou Maierhofer, Esq. Certificate of Service no cc	John K. Reilly Jr.
07/15/2002	(39) ORDER, filed Cert. to Atty's Noble, Maierhofer & Stofko NOW, this 15th day of July, 2002, RE: Motion to Compel, ORDER of this Court that Brian Scott Leigey, Defendant is hereby ordered to respond to questions concerning the information provided to Plaintiff by Atty. Pentz. } Further Order that any future costs associated with this Order shall be borne by the Plaintiff.	John K. Reilly Jr.
03/03/2003	(40) Certificate of Service, Plaintiff's Interrogatories upon Atty Stofko, Harper, and Maierhofer. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr.
04/03/2003	(41) Certificate of Service, Answers to Plaintiff's Interrogatories upon Atty Pentz, Stofko, Noble and Harper s/Mary Lou Maierhofer, Esq. no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
09/10/2003	✓ (42) Answer To Motion To Compel. filed by s/Troy J. Harper, Esquire    Certificate of Service no cc	John K. Reilly Jr.
	Certificate of Service, Defendants' Answers to Plaintiffs Interrogatories was served on the 9th day of September, 2003 upon: Theron G. Noble, Esq., 3 ✓ (43) Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esq. filed by s/Troy J. Harper, Esq. no cc	John K. Reilly Jr.
09/16/2003	✓ (44) Motion for Partial Summary Judgment, filed by s/Mary Lou Maierhofer, Esq. No CC	John K. Reilly Jr.
10/08/2003	✓ (45) Plaintiff's reply to Defendant Leigey s Motion for Partial Summary Judgment filed by Atty. Noble. No CC. 7	John K. Reilly Jr.
11/21/2003	ORDER, NOW, this 21st day of November, 2003, re: Motion For Partial Summary Judgment filed on behalf of Defendant Brian Scott Leigy, and argument and Briefs thereon, it is the ORDER of this Court that said Motion be and is hereby GRANTED and Plaintiff's claim for punitive damages   ✓ (46) DISMISSED. by the Court, s/JKR,JR.,P.J. 1 cc to Atty Noble, Maierhofer	John K. Reilly Jr.
12/17/2003	ORDER: AND NOW, this 17th day of Dec. 2003, it is the ORDER of the Court that argument on Atty. Stofko's Motion for Summary Judgment in the ✓ (47) above matter has been rescheduled from Dec. 29, 2003, to Jan. 6, 2004 at 10:00 AM before Judge Ammerman in Courtroom 1. 1 CC Atty. Noble, 1 CC Atty. Maierhofer, 1 CC Atty. Stofko, 1 CC Atty. Harper.	Fredric Joseph Ammerman
	✓ (48) Filing: Plaintiff's Request to Continue Argument on Defendant Fusco's Motion for Summary Judgment or in the Alternative, to file a Supplemental Brief Pending Completion of Discovery, filed by Atty. Noble. No CC	Fredric Joseph Ammerman
01/09/2004	ORDER, NOW, this 6th day of January, 2004, re: Counsel for Plaintiff shall submit further Brief to the Court arguing any further issues in opposition to ✓ (49) the Motion for Summary Judgment which he believes may arise as a result of the additional discovery. Brief to be provided by no later than March 5, 2004. Defense counsel is at liberty, should they wish to do so, to do so, to provide supplemental Brief to the Court within the same deadline. by the Court, s/FJA, P.J. 1 cc: Atty Noble, Harper, Maierhofer, and Stofko	Fredric Joseph Ammerman
02/17/2004	✓ (50) Plaintiff's Motion For Contempt and Sanctions As To Non-Party Jaime Lingle. filed by, s/Theron G. Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
02/19/2004	RULE TO SHOW CAUSE, Now this 18th day of February, 2004, issued upon non-party Lingle. RULE RETURNABLE for filing written response, is set for the 9th day of March, 2004, and Argument on the Petition set for the 10th day of March, 2004, at 1:30 p.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble	Fredric Joseph Ammerman
02/24/2004	✓ (61) Certificate of Service, Rule To Show Cause issued upon Plaintiff's Motion For Contempt or Sanctions as to Non-Party Jaime Lingle upon, Dennis J. Stofko, Esq., Troy J. Harper, Esq., Mary Lou Maierhofer, Esq., and Jaime Lingle. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
03/10/2004	✓ (62) Answer To Plaintiff's Motion For Contempt And Sanctions As To Non-Party Jamie Lingle. filed by, s/James A. Naddeo, Esquire 2 cc to Atty Naddeo	Fredric Joseph Ammerman
03/30/2004	✓ (63) Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/19/2004	Praecipe for Oral Argument, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman
	Motion for Summary Judgment, filed by s/Troy J. Harper No CC	Fredric Joseph Ammerman



## Civil Other

Date	Selected Items	Judge
03/30/2004	Notice of Service, Plaintiff's FIRST REQUEST FOR ADMISSIONS (directed to all Defendants) upon Dennis J. Stofko, Esq, Mary Lou Maierhofer, Esq, and Troy J. Harper, Esq. filed by, s/Theron G. Noble, Esquire no cc	Fredric Joseph Ammerman
04/16/2004	(54) Deposition of Brian Leigey, February 9, 2004, filed. <i>SLC</i>	Fredric Joseph Ammerman
	(55) Deposition of Diane Bunk, February 9, 2004, filed.	Fredric Joseph Ammerman
	(56) Deposition of Samuel Unch, February 9, 2004, February 9, 2004, filed.	Fredric Joseph Ammerman
	(57) Deposition of Kevin Fusco, February 9, 2004, filed.	Fredric Joseph Ammerman
	(58) Deposition of Brandon E. Marshall, February 9, 2004, filed.	Fredric Joseph Ammerman
	(59) Deposition of Candace C. Wisor, February 9, 2004, filed.	Fredric Joseph Ammerman
	(60) Deposition of Timothy Wisor, February 9, 2004, filed. <i>SLC</i>	Fredric Joseph Ammerman
04/19/2004	(61) Praecipe for Oral Argument, filed by s/Troy J. Harper No CC <i>4</i>	Fredric Joseph Ammerman
	(62) Motion for Summary Judgment, filed by s/Troy J. Harper No CC <i>100009</i>	Fredric Joseph Ammerman
	(63) Certificate of Service filed by Atty. Maierhofer Served copy of Answers to Plaintiff's First Request for Admissions. upon counsel. <i>1</i>	Fredric Joseph Ammerman
04/20/2004	ORDER, NOW, this 20th day of April, 2004, re: Argument on Attorney Harper's Motion for Summary Judgment scheduled for the 14th day of May, 2004, at 2:00 p.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 6 cc	Fredric Joseph Ammerman
	w/Rule Memo to Atty Harper	
04/26/2004	(64) Defendant Judy Fusco's Answers To Plaintiff's First Requests For Admissions. filed by, s/Dennis J. Stofko, Esquire no cc <i>4</i>	Fredric Joseph Ammerman
	Certificate of Service, Defendants, Dean Robert Owens, Catherine J. Owens, Christopher Smith and Wendy Owens, Responses to Plaintiff's Reaquest for Admissions upon Theron G. Noble, Esquire, Mary Lou Maierhofer, Esquire, and Dennis J. Stofko, Esquire filed by, s/Troy J. Harper, Esquire no cc <i>3</i>	Fredric Joseph Ammerman
	(67) Certificate of Service, Two Orders of Court scheduling Oral Argument dated April 20, 2004, upon Theron G. Noble, Esq., Mary Lou Maierhofer, Esq., and Dennis J. Stofko, Esquire no cc <i>3</i>	Fredric Joseph Ammerman
05/10/2004	* (68) Plaintiff's Reply In Opposition To Defendants Dean, Catherine and Wendy Owens and Christopher Smith's Motion For Summary Judgment. filed by, s/Theron G. Noble, Esquire Notice of Service no cc	Fredric Joseph Ammerman
	(69) Transcript of Deposition of Wendy Owens, Dec. 19, 2002. filed. <i>SLC</i>	Fredric Joseph Ammerman
	(70) Transcript of Deposition of Natalie Kephart, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	(71) Transcript of Deposition of Luke Marshall, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	(72) Transcript of Deposition of Dean Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	(73) Transcript of Deposition of Catherine Owens, Dec. 19, 2002. filed.	Fredric Joseph Ammerman
	(74) Transcript of Deposition of Timothy Wisor, Feb. 9, 2004. filed. <i>L</i>	Fredric Joseph Ammerman
05/14/2004	(75) ORDER, NOW, this 14th day of May, 2004, re: Oral Argument scheduled for 2:00 p.m. today be and is hereby CANCELLED. This Court shall issue its decision forthwith. by the Court, s/FJA, P.J. 1 cc Atty Noble, Stofko, Maierhofer, and Harper <i>Dr. J. to 01-1889</i>	Fredric Joseph Ammerman
06/01/2004	(76) ORDER, NOW, this 28th day of May, 2004, re: Motion For Summary Judgment, filed on behalf of Defendants, Dean R. Ownes, Catherine J. Owens, Christopher Smith, and Wendy Owens. by the Court, s/FJA, P.J. 1 cc Atty Noble, Harper, Maierhofer and Stofko <i>3</i>	Fredric Joseph Ammerman

Date: 06/29/2004

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 03:45 PM

ROA Report

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Case: 2001-00529-CD

Current Judge: Fredric Joseph Ammerman

Joshua Hess vs. Brian Leigey, Judy Fusco

Civil Other

Date	Selected Items	Judge
06/07/2004	(77) Plaintiff's Motion For Reconsideration As To Defendants Dean And Catherine Owens Motion For Summary Judgment. filed by, s/Theron G Noble, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
06/15/2004	ORDER, filed. AND NOW THIS 14th day of June, 2004, following oral argument and submission of briefs on the Motion for Summary Judgment filed on behalf of Defendant Judy Fusco, and after considering the record as a whole, the Court DENIES Defendant Judy Fusco's Motion for Summary Judgment. S/FJA 2 CC to Atty. Maierhofer (6-25-04 faxed copy to Atty Stofko & sent Cert. copies to Atty's Stofko, Noble & Troy)	Fredric Joseph Ammerman
06/23/2004	(78) ORDER, filed. Cert. to Atty. Noble, Harper, Maierhofer, Stofko NOW< this 21st day of June, 2004, RE: Plaintiff's Motion for Reconsideration be and is hereby denied.	Fredric Joseph Ammerman
06/28/2004	(79) Filing: Appeal to High Court Paid by: Noble, Theron G. (attorney for Hess, Joshua) Receipt number: 1881711 Dated: 06/28/2004 Amount: \$45.00 (Check) One CC & check to Superior Court for \$40.00	Fredric Joseph Ammerman

7/16/04 (81) Motion for Reconsideration

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