

01-1258-CD
BRENDA L. RICE et al -vs- TALL TRAVEL, CO.

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

BRENDA L. RICE and JOHN : NO. 01 -1058- C.D.
OVERDORF and DONNA :
OVERDORF, husband and wife, : TYPE OF CASE: CIVIL
Plaintiffs :
VS. : TYPE OF PLEADING: COMPLAINT
TALL TRAVEL, CO., : FILED ON BEHALF OF: PLAINTIFFS
Defendant : COUNSEL OF RECORD:
: CHRISTOPHER E. MOHNEY, ESQUIRE
: SUPREME COURT NO.: 63494
: BLAKLEY, JONES & MOHNEY
: 90 BEAVER DRIVE, BOX 6
: DU BOIS, PA 15801
: (814) 371-2730

FILED
AUG 07 2001

William A. Shaw
Prothonotary

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

BRENDA L. RICE and JOHN	:	NO. 01 -	- C.D.
OVERDORF and DONNA	:		
OVERDORF, husband and wife,	:		
Plaintiffs	:		
	:		
VS.	:		
	:		
TALL TRAVEL, CO.,	:		
Defendant	:		

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint is 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 an order may be entered against you by the Court without further notice for any money claimed in the Complaint requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, Pennsylvania 16830
(814) 765-2641 Ext. 50-51

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

BRENDA L. RICE and JOHN	:	NO. 01 -	- C.D.
OVERDORF and DONNA	:		
OVERDORF, husband and wife,	:		
Plaintiffs	:		
	:		
VS.	:		
	:		
TALL TRAVEL, CO.,	:		
Defendant	:		

COMPLAINT

AND NOW, come the Plaintiffs **BRENDA L. RICE, JOHN OVERDORF and DONNA OVERDORF**, by their attorneys, **BLAKLEY, JONES & MOHNEY, ESQUIRES**, who file this Complaint against **TALL TRAVEL, CO.** upon a cause of action whereof the following is a statement:

1. Plaintiff **BRENDA L. RICE** is an adult individual with an address at 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania 15801.
2. Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** are adult individuals, and at all relevant times husband and wife, with an address at 742 Treasure Lake, Du Bois, Clearfield County, Pennsylvania 15801.
3. Defendant **TALL TRAVEL, CO.** is an incorporated travel agency located at 701 East Du Bois Avenue, Merchants Pointe, Du Bois, Clearfield County, Pennsylvania 15801.
4. Around the month of December, 2000, the Plaintiffs purchased a European ski vacation through Defendant **TALL TRAVEL, CO.**, specifically, travel agent Lisa Marchiori.

5. Lisa Marchiori is the manager of **TALL TRAVEL, CO.**,
6. The ski package sold Plaintiffs by Defendant was through a tour operator, namely, Central Holidays.
7. **TALL TRAVEL, CO.** had all contacts with Central Holidays regarding sale of the tour packages to Plaintiffs and **TALL TRAVEL** was to be compensated by commission for selling the trip.
8. Plaintiff **BRENDA L. RICE** paid the amount of \$4,764.00 for her and her two (2) step-sons' ski packages.
9. Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** paid \$3,318.00 for their ski packages.
10. **TALL TRAVEL, CO.** sold trip protection insurance of \$109.00 per person to the Plaintiffs, which premiums are included in the amounts paid by Plaintiffs for the trips, as stated in the paragraphs 8 and 9 of this Complaint.
11. **TALL TRAVEL, CO.** at no time reviewed with Plaintiff **BRENDA L. RICE** the terms and conditions of the trip insurance sold her.
12. Plaintiff **BRENDA L. RICE** at no time prior to her canceling the trip received a copy of the travel insurance policy so as to review its terms separate from the representations given her by **TALL TRAVEL, CO.**.
13. The trip was to occur from January 12, 2001 through January 20, 2001.
14. The Plaintiffs were traveling together, and this was known to Defendant, namely, Ms. Marchiori.
15. Sufficiently in advance of the trip departure date, Plaintiff **BRENDA L. RICE** contacted

TALL TRAVEL, CO., namely, Ms. Marchiori, desiring to cancel the trip due to their being poor snow at the ultimate destination and that one of her step-sons had educational responsibilities that conflicted with the ski trip.

16. Based upon assurances given Plaintiff **BRENDA L. RICE**, from **TALL TRAVEL, CO.**, namely, Ms. Marchiori, Plaintiff **BRENDA L. RICE** was caused to believe that the costs of the trip would be refunded by the insurance sold them, and Plaintiff **BRENDA L. RICE** canceled the ski trip for herself and her step-sons.

17. Based upon the assurances given Mrs. Rice as above pleaded, Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** canceled their ski trip.

18. All of Plaintiffs' claims to the travel insurance carrier were rejected because the stated reason in the claim of the educational conflicts of **BRENDA L. RICE'S** step-son was not a covered loss.

19. Plaintiff **BRENDA L. RICE** did receive a refund in the amount of \$1,700.00 from Central Holidays, while Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** received a refund of \$1,300.00.

COUNT I - PLAINTIFF BRENDA L. RICE VS.
TALL TRAVEL - FRAUDULENT MISREPRESENTATION

20. Paragraphs 1 through 19 above are incorporated herein and as if set forth at length.

21. Plaintiff **BRENDA L. RICE** at all times relied on the expertise of **TALL TRAVEL, CO.** in the purchasing and in the decision to cancel the ski trip.

22. Defendant **TALL TRAVEL, CO.** knew, or should have known, that the basis for the canceling of the trip would not be a covered claim pursuant to the travel insurance policy it sold all

Plaintiffs.

23. Defendant **TALL TRAVEL, CO.**, namely Ms. Marchiori, advised Plaintiff **BRENDA L. RICE** that she was not certain whether the insurance would cover a claim based upon lack of snow and Mrs. Rice's step-son's educational conflicts.

24. Defendant **TALL TRAVEL, CO.**, namely, Ms. Marchiori, advised Plaintiff **BRENDA L. RICE** to the effect that she dealt with the insurance company all the time giving Plaintiff **BRENDA L. RICE** further assurances and a justified belief that the canceled trip would be covered by the travel insurance sold.

25. Plaintiff **BRENDA L. RICE** relied upon the false statement of fact given her from **TALL TRAVEL, CO.** so as to base her decision to cancel the trip.

26. As a result of relying upon the misrepresentation of **TALL TRAVEL, CO.**, Plaintiff **BRENDA L. RICE** has lost the amount of \$3,064.00.

WHEREFORE, Plaintiff **BRENDA L. RICE** demands judgment in her favor against **TALL TRAVEL, CO.** for the amount of \$3,064.00, plus interest and costs as allowed under Pennsylvania law.

**COUNT II - PLAINTIFFS JOHN OVERDORF AND DONNA OVERDORF
VS. TALL TRAVEL - FRAUDULENT MISREPRESENTATION**

27. Paragraphs 1 through 26 above are incorporated herein and as if set forth at length.

28. Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** justifiably relied upon the misrepresentations of Defendant **TALL TRAVEL, CO.** given Plaintiff **BRENDA L. RICE** of insurance coverage when deciding to cancel their ski trip that was purchased contemporaneous with Plaintiff **BRENDA L. RICE'S** ski trip.

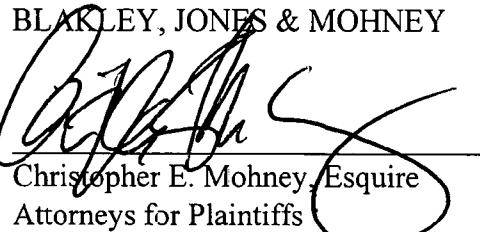
29. As a result of the factual misrepresentations given Plaintiff **BRENDA L. RICE** by Defendant, Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** have suffered money damages in the amount of \$2,018.00, that being the amount not refunded from the trip operator Central Holidays on the canceled trip.

WHEREFORE, Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** demand judgment in their favor and against **TALL TRAVEL, CO.** in the amount of \$2,018.00.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

BY:


Christopher E. Mohney, Esquire
Attorneys for Plaintiffs

VERIFICATION

I, **BRENDA L. RICE**, have read the foregoing Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 7/20/01

Brenda L. Rice
BRENDA L. RICE

VERIFICATION

We, **JOHN OVERDORF** and **DONNA OVERDORF**, have read the foregoing Complaint.

The statements therein are correct to the best of our personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C. S. Section 4904 relating to unsworn fabrication to authorities, which provides that if we make knowingly false averments we may be subject to criminal penalties.

Date: 7/31/01

John Overdorf
JOHN OVERDORF

Date: July 24, 2001

Donna Overdorf
DONNA OVERDORF

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW
NO. 01 - - C.D.

BRENDA L. RICE and JOHN
OVERDORF and DONNA
OVERDORF, husband and wife,
Plaintiffs

VS.

TALL TRAVEL, CO.,
Defendant

COMPLAINT

FILED

SC
AUG 02 2001
C 1.30 (1) *McMurry*
SC
William A. Shaw
Prothonotary

pd \$ 80.00

2ccathy McMurry

LAW OFFICES

BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11337

RICE, BRENDA L., JOHN & DONNA OVERDORF

01-1258-CD

VS.

TALL TRAVEL, CO.

COMPLAINT

SHERIFF RETURNS

**NOW AUGUST 8, 2001 AT 1:57 PM DST SERVED THE WITHIN COMPLAINT ON
TALL TRAVEL CO., DEFENDANT AT EMPLOYMENT, 701 EAST DUBOIS AVE.,
MERCHANTS POINTE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO JOYCE HETRICK, TRAVEL AGENT A TRUE AND ATTESTED COPY OF
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS
THEREOF.**

SERVED BY: NEVLING/RYEN

Return Costs

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

FILED

AUG 20 2001

010:44 am

William A. Shaw
Prothonotary

ED
ED

Sworn to Before Me This

20th Day Of August 2001
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

William A. Shaw
Chester A. Hawkins
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BRENDA L. RICE and JOHN Type of Case - CIVIL
OVERDORF and DONNA OVERDORF,
husband and wife, No. 01-1258 C.D.

TALL TRAVEL, File on Behalf of -
DEFENDANT

Defendant.

Filed by:
NICHOLAS GIANVITO, ESQ.
Pa. I.D. #67190

LORENZO & GIANVITO, P.C.
410 West Mahoning St.
P.O. Box 495
Punxsutawney, PA 15767
(814) 938-6390

FILED

AUG 21 2001

William A. Shaw
Fictionnotary

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

BRENDA L. RICE and JOHN
OVERDORF and DONNA OVERDORF,
husband and wife,

Plaintiffs

Vs.

No. 01-1258 C.D.

TALL TRAVEL,

Defendant.

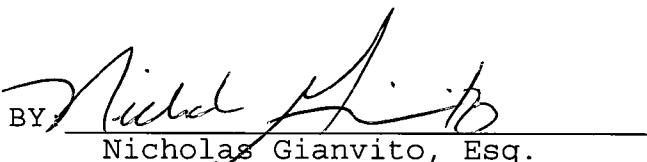
PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of defendant, TALL TRAVEL, in the above-captioned matter.

LORENZO & GIANVITO, P.C.

Date: 8/20/01

BY: 
Nicholas Gianvito, Esq.
Attorney for Defendant
410 W. Mahoning St.
P.O. Box 495
Punxsutawney, PA 15767
(814) 938-6390

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2001, a true and correct copy of the foregoing Praeclipe for Entry of Appearance was forwarded via first-class mail, postage prepaid, to the following:

Christopher E. Mohney, Esq.
Blakley, Jones & Mohney
90 Beaver Dr., Box 6
Dubois, PA 15801



Nicholas Gianvito, Esq.

FILED

AUG 21 2001

10/10/01
William A. Shaw
Prothonotary

REB

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

BRENDA L. RICE and JOHN : NO. 01 - 1258 - C.D.
OVERDORF and DONNA :
OVERDORF, husband and wife, : TYPE OF CASE: CIVIL
Plaintiffs :
VS. : TYPE OF PLEADING: AMENDED
: COMPLAINT
: FILED ON BEHALF OF: PLAINTIFFS
: COUNSEL OF RECORD:
: CHRISTOPHER E. MOHNEY, ESQUIRE
: SUPREME COURT NO.: 63494
: BLAKLEY, JONES & MOHNEY
: 90 BEAVER DRIVE, BOX 6
: DU BOIS, PA 15801
: (814) 371-2730

FILED

SEP 25 2001

**V. Ann A. Shaw
Prothonotary**

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

BRENDA L. RICE and JOHN	:	NO. 01 - 1258 - C.D.
OVERDORF and DONNA	:	
OVERDORF, husband and wife,	:	
Plaintiffs	:	
	:	
VS.	:	
	:	
TALL TRAVEL, CO.,	:	
Defendant	:	

NOTICE TO DEFEND

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

BRENDA L. RICE and JOHN	:	NO. 01 - 1258 - C.D.
OVERDORF and DONNA	:	
OVERDORF, husband and wife,	:	
Plaintiffs	:	
	:	
VS.	:	
	:	
TALL TRAVEL, CO.,	:	
Defendant	:	

AMENDED COMPLAINT

AND NOW, come the Plaintiffs **BRENDA L. RICE, JOHN OVERDORF and DONNA OVERDORF**, by their attorneys, **BLAKLEY, JONES & MOHNEY, ESQUIRES**, who file this Amended Complaint against **TALL TRAVEL, CO.** upon a cause of action whereof the following is a statement:

1. Plaintiff **BRENDA L. RICE** is an adult individual with an address at 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania 15801.
2. Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** are adult individuals, and at all relevant times husband and wife, with an address at 742 Treasure Lake, Du Bois, Clearfield County, Pennsylvania 15801.
3. Defendant **TALL TRAVEL, CO.** is an incorporated travel agency located at 701 East Du Bois Avenue, Merchants Pointe, Du Bois, Clearfield County, Pennsylvania 15801.
4. Around the month of December, 2000, the Plaintiffs purchased a European ski vacation through Defendant **TALL TRAVEL, CO.**, specifically, travel agent Lisa Marchiori.

5. Lisa Marchiori is the manager of **TALL TRAVEL, CO.**,
6. The ski package sold Plaintiffs by Defendant was through a tour operator, namely, Central Holidays.
7. **TALL TRAVEL, CO.** had all contacts with Central Holidays regarding sale of the tour packages to Plaintiffs and **TALL TRAVEL** was to be compensated by commission for selling the trip.
8. Plaintiff **BRENDA L. RICE** paid the amount of \$4,764.00 for her and her two (2) step-sons' ski packages.
9. Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** paid \$3,318.00 for their ski packages.
10. **TALL TRAVEL, CO.** sold trip protection insurance of \$109.00 per person to the Plaintiffs, which premiums are included in the amounts paid by Plaintiffs for the trips, as stated in the paragraphs 8 and 9 of this Complaint.
11. **TALL TRAVEL, CO.** at no time reviewed with Plaintiffs the terms and conditions of the trip insurance sold them.
12. Plaintiff **BRENDA L. RICE** at no time prior to her canceling the trip received a copy of the travel insurance policy so as to review its terms separate from the representations given her by **TALL TRAVEL, CO.**.
13. The trip was to occur from January 12, 2001 through January 20, 2001.
14. The Plaintiffs were traveling together, and this was known to Defendant, namely, Ms. Marchiori.
15. Sufficiently in advance of the trip departure date, Plaintiff **BRENDA L. RICE** contacted

TALL TRAVEL, CO., namely, Ms. Marchiori, desiring to cancel the trip due to their being poor snow at the ultimate destination and that one of her step-sons had educational responsibilities that conflicted with the ski trip.

16. Based upon assurances given Plaintiff **BRENDA L. RICE**, from **TALL TRAVEL, CO.**, namely, Ms. Marchiori, Plaintiff **BRENDA L. RICE** was caused to believe that the costs of the trip would be refunded by the insurance sold them, and Plaintiff **BRENDA L. RICE** canceled the ski trip for herself and her step-sons.

17. Based upon the assurances given Mrs. Rice as above pleaded, Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** canceled their ski trip.

18. All of Plaintiffs' claims to the travel insurance carrier were rejected because the stated reason in the claim of the educational conflicts of **BRENDA L. RICE'S** step-son was not a covered loss.

19. Plaintiff **BRENDA L. RICE** did receive a refund in the amount of \$1,700.00 from Central Holidays, while Plaintiffs **JOHN OVERDORF and DONNA OVERDORF** received a refund of \$1,300.00.

COUNT I - PLAINTIFF BRENDA L. RICE VS.
TALL TRAVEL - NEGLIGENT MISREPRESENTATION

20. Paragraphs 1 through 19 above are incorporated herein and as if set forth at length.

21. Plaintiff **BRENDA L. RICE** at all times relied on the expertise of **TALL TRAVEL, CO.** in the purchasing of not only the ski trip, but the travel insurance sold them by **TALL TRAVEL CO.**, in interpretation of the terms thereof.

22. Defendant **TALL TRAVEL, CO.** knew, or should have known, that the basis for the

canceling of the trip would not be a covered claim pursuant to the travel insurance policy it sold all Plaintiffs.

23. Defendant **TALL TRAVEL, CO.**, namely Ms. Marchiori, advised Plaintiff **BRENDA L. RICE** that she was not certain whether the insurance would cover a claim based upon lack of snow and Mrs. Rice's step-son's educational conflicts.

24. Defendant **TALL TRAVEL, CO.** failed to ascertain the truth as to whether claim for the reasons set forth to her by Mrs. Rice for canceling the trip would be covered by insurance.

25. Defendant **TALL TRAVEL, CO.**, namely, Ms. Marchiori, advised Plaintiff **BRENDA L. RICE** to the effect that she dealt with the insurance company all the time, consequently giving Plaintiff **BRENDA L. RICE** assurance and a justified belief that the canceled trip would be covered by the travel insurance sold.

26. Plaintiff **BRENDA L. RICE** relied upon the statements given her from **TALL TRAVEL, CO.**, and upon her justified reliance acted to cancel her trip and submit claim to the insurance company, anticipating coverage.

27. As a result of relying upon the misrepresentation of **TALL TRAVEL, CO.**, Plaintiff **BRENDA L. RICE** has lost the amount of \$3,064.00.

WHEREFORE, Plaintiff **BRENDA L. RICE** demands judgment in her favor against **TALL TRAVEL, CO.** for the amount of \$3,064.00, plus interest and costs as allowed under Pennsylvania law.

COUNT II - PLAINTIFFS JOHN OVERDORF AND DONNA OVERDORF
VS. TALL TRAVEL - NEGLIGENT MISREPRESENTATION

28. Paragraphs 1 through 27 above are incorporated herein and as if set forth at length.

29. Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** justifiably relied upon the misrepresentations of Defendant **TALL TRAVEL, CO.** given Plaintiff **BRENDA L. RICE** of insurance coverage when deciding to cancel their ski trip that was purchased contemporaneous with Plaintiff **BRENDA L. RICE'S** ski trip.

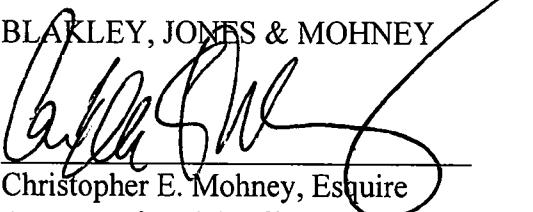
30. As a result of the misrepresentations given Plaintiff **BRENDA L. RICE** by Defendant, Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** have suffered money damages in the amount of \$2,018.00, that being the amount not refunded from the trip operator Central Holidays on the canceled trip.

WHEREFORE, Plaintiffs **JOHN OVERDORF** and **DONNA OVERDORF** demand judgment in their favor and against **TALL TRAVEL, CO.** in the amount of \$2,018.00.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

BY:


Christopher E. Mohney, Esquire
Attorneys for Plaintiffs

VERIFICATION

I, BRENDA L. RICE, have read the foregoing Amended Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 09/17/01

Brenda L. Rice
BRENDA L. RICE

VERIFICATION

We, **JOHN OVERDORF** and **DONNA OVERDORF**, have read the foregoing Amended Complaint. The statements therein are correct to the best of our personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C. S. Section 4904 relating to unsworn fabrication to authorities, which provides that if we make knowingly false averments we may be subject to criminal penalties.

Date: Sept 17, 2001

John Overdorf
JOHN OVERDORF

Date: Sept. 17, 2001

Donna L. Overdorf
DONNA OVERDORF

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

BRENDA L. RICE and JOHN	:	NO. 01 - 1258 - C.D.
OVERDORF and DONNA	:	
OVERDORF, husband and wife,	:	
Plaintiffs	:	
	:	
VS.	:	
	:	
TALL TRAVEL, CO.,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Amended Complaint has been served upon the following individual by regular United States mail, postage prepaid, on this 25th day of September, 2001:

Nicholas Gianvito, Esquire
Lorenzo & Gianvito, P.C.
410 West Mahoning Street
P.O. Box 495
Punxsutawney, PA 15767
Attorney for Defendant

BLAKLEY, JONES & MOHNEY

BY:

Christopher E. Mohney, Esquire
Attorney for Plaintiffs
90 Beaver Drive, Box 6
Du Bois, PA 15801
(814) 371-2730

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - AT LAW
NO. 01 - 1258 - C.D.

BRENDA L. RICE and JOHN
OVERDORF, and DONNA
OVERDORF, husband and wife,
Plaintiffs

vs.

TALL TRAVEL, CO.,
Defendant

AMENDED COMPLAINT

FILED

SEP 25 2001

W. J. DeCicato
William A. Shaw
Prothonotary

[Handwritten signature]

LAW OFFICES

BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BRENDA L. RICE and JOHN
OVERDORF and DONNA OVERDORF,
husband and wife,

Type of Case - CIVIL

No. 01-1258 C.D.

Plaintiffs
Vs.

Type of Pleading -
PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT

TALL TRAVEL,

Filed on Behalf of -
DEFENDANT

Defendant.

Filed by:
NICHOLAS GIANVITO, ESQ.
Pa. I.D. #67190

LORENZO & GIANVITO, P.C.
410 West Mahoning St.
P.O. Box 495
Punxsutawney, PA 15767
(814) 938-6390

FILED

AUG 24 2001

William A. Shaw
Prothonotary

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need this"

File

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infor...

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

**BRENDA L. RICE and JOHN
OVERDORF and DONNA OVERDORF,
husband and wife,**

Plaintiffs

Vs.

No. 01-1258 C.D.

TALL TRAVEL,

Defendant.

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, comes the defendant, TALL TRAVEL, by and through its attorneys, LORENZO & GIANVITO, P.C., pursuant to Pa.R.C.P. 1019(b), 1028(a)(3), and 1028(a)(4), and files the following Preliminary Objections:

1. Defendant, TALL TRAVEL, was served with a Complaint filed by plaintiffs, BRENDA L. RICE, JOHN OVERDORF, and DONNA OVERDORF, which sets forth two counts against defendant, both in the nature of "fraudulent misrepresentation". Count I avers fraudulent misrepresentation on behalf of plaintiff, BRENDA L. RICE, and Count II avers fraudulent misrepresentation on behalf of plaintiffs JOHN OVERDORF and DONNA OVERDORF.

2. In essence, plaintiffs have alleged that defendant, TALL TRAVEL, by and through its manager, Lisa Marchiori, committed fraud upon the plaintiffs by representing certain facts to plaintiff, BRENDA RICE, as to the applicability of certain vacation trip

protection insurance purchased by plaintiff.

3. Specifically, in their Complaint plaintiffs alleged that they desired to cancel a European ski trip, scheduled by plaintiffs through defendant, due to their being poor snow at the ultimate destination, and a scheduling problem concerning certain educational responsibilities of a stepson of one of the plaintiffs.

4. In their "specific" allegations of fraudulent misrepresentation, contained within Count I, paragraphs 20-26 of plaintiffs' Complaint, plaintiffs allege that "defendant Tall Travel, namely, Ms. Marchiori, advised plaintiff, Brenda L. Rice, **that she was not certain whether the insurance would cover a claim based upon lack of snow and Mrs. Rice's stepson's educational conflicts**". Plaintiffs' Complaint, Paragraph 23 (**emphasis added**).

5. In paragraph 24, plaintiff further averred that she was advised by Ms. Marchiori "to the effect that she (Ms. Marchiori) dealt with the insurance company all the time, giving plaintiff, Brenda L. Rice, further assurances and a justified belief that the canceled trip would be covered by the travel insurance sold".

6. Based upon these allegations, plaintiffs have attempted to state a claim against defendant for fraudulent misrepresentation.

Count I - Rule 1028(a)(4)-Preliminary Objection in the Nature of Legal Insufficiency of a Pleading (Demurrer)

7. Paragraphs one (1) through six (6) above are hereby incorporated by reference as though set forth fully at length.

8. Pursuant to Pa.R.C.P. 1019(b), "Averments of Fraud or Mistake Shall be Averred with Particularity". Averments of "fraud"

are meaningless epithets unless sufficient facts are set forth which will permit an inference that the claim is not without foundation. Dwyer v Rothman, 431 A2d 1035 at 1037 (Pa Super 1981).

The pleadings must adequately explain the nature of the claim so as to permit the opposing party to prepare a defense, and they must be sufficient to convince the court that the averments are not mere subterfuge. *Id.* Merely alleging fraud as a legal conclusion adds nothing if it is not based upon facts clearly and explicitly set forth as constituting such fraud. *Id.*

9. It is well settled that the elements of fraud are: (1) a misrepresentation; (2) a fraudulent utterance thereof; (3) an intention by the maker that the recipient will thereby be induced to act; (4) justifiable reliance by the recipient upon the misrepresentation; and (5) damage to the recipient as the proximate result. Bowman v Meadow Ridge, Inc, 615 A2d 755 (Pa Super, 1992). Clearly, plaintiffs have failed to set forth a legally cognizable claim against defendant in the nature of fraud.

10. Specifically, defendants have failed to set forth a "misrepresentation". Assuming the pleaded facts as true, namely, that Ms. Marchiori advised plaintiff "that she dealt with the insurance company all the time", this does not rise to the level of a "misrepresentation".

11. Moreover, plaintiff's claim that defendant advised her that "(defendant) was not certain whether the insurance would cover a claim based upon lack of snow and Mrs. Rice's stepson's educational conflicts". This averment further vitiates defendant's

misrepresentation claim. Clearly, if defendant advised plaintiff that she was uncertain as to whether the insurance would cover this type of claim, plaintiff cannot claim that she was defrauded into believing that the insurance company would, in fact, cover the claim. Such a disclaimer destroys the allegations of reliance pled in the Complaint. Bowman v Meadow Ridge, Inc, 615 A2d 755 at 758.

12. Furthermore, statements "to the effect that she dealt with the insurance company all the time" do not rise to the level of misrepresentation, as they did not represent to plaintiff that she would get the insurance company to cover the claim.

13. In addition, the above claims do not support a justifiable reliance by the plaintiff upon this "misrepresentation". Clearly, advising the plaintiff that they were not certain whether the insurance would cover the claim, and that they dealt with the insurance company all the time, does not support a claim of justifiable reliance by plaintiff on her decision to cancel the trip.

14. In reviewing preliminary objections, all well-pleaded, material and relevant facts will be considered true, together with such reasonable inferences as may be drawn from such facts. Mellon Bank v Fabinyi, 650 A2d 895 at 899 (Pa Super, 1994). However, preliminary objections in the nature of a demurrer require the court to resolve the issue solely on the basis of the pleadings; no testimony or other evidence outside the Complaint may be considered to dispose of the legal issues presented by a demurrer. *Id.* In order to sustain a demurrer, it is essential that the face of the

Complaint indicate that its claims may not be sustained and the law will not permit recovery. *Id.*

15. Clearly, a review of the facts set forth in the Complaint, together with all reasonable inferences that may be drawn from such facts, supports the grant of a demurrer, inasmuch as the claims may not be sustained as a matter of law.

WHEREFORE, for the above-stated reasons, defendant respectfully requests this Honorable Court dismiss the Complaint of plaintiffs, based on the legal insufficiency of plaintiffs' Complaint.

Count II - Rule 1028(a)(3) - Preliminary Objections
in the Nature of Insufficient Specificity of the Pleading

16. Paragraphs one (1) through fifteen (15) above are hereby incorporated by reference as though the same were set forth fully and at length.

17. In addition to and/or in lieu of defendant's demurrer, defendant respectfully requests this court grant their Preliminary Objections on the basis of defendant's failure to specifically plead the claims of misrepresentation against defendant.

18. Specifically, plaintiffs' claims of "misrepresentations" that defendant stated that she was "not certain whether the insurance would cover (this) claim" and that "she dealt with the insurance company all the time", are insufficiently specific to rise to the level of a "misrepresentation". Defendant is unable to formulate a defense based upon these unclear and non-specific allegations.

19. In addition, plaintiffs have failed to plead sufficient

facts to support a necessary element, justifiable reliance by the plaintiff, upon this "misrepresentations".

WHEREFORE, defendant respectfully requests this Honorable Court grant defendant's Preliminary Objections in the nature of insufficient specificity of plaintiffs' Complaint.

Respectfully submitted,

LORENZO & GIANVITO, P.C.

By: 
Nicholas Gianvito, Esq.
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2001, a true and correct copy of the foregoing Preliminary Objections was forwarded via first-class mail, postage prepaid, to the following:

Christopher E. Mohney, Esq.
Blakley, Jones & Mohney
90 Beaver Dr., Box 6
Dubois, PA 15801



Nicholas Gianvito, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

BRENDA L. RICE and JOHN :

OVERDORF and DONNA OVERDORF, :

husband and wife :

-vs- : No. 01 - 1258 - CD

TALL TRAVEL :

ORDER

NOW, this 19th day of November, 2001, upon consideration of Preliminary Objections in the nature of a Demurrer filed by Defendant above-named to Plaintiffs' Complaint, it is the ORDER of this Court that said Objections be and are hereby sustained and Plaintiffs' Amended Complaint dismissed. Opinion to be filed in the event of an appeal.

By the Court,

President Judge

FILED

NOV 20 2001

**William A. Shaw
Prothonotary**

FILED

NOV 20 2001

WILLIAM A. SHAW
Prothonotary

1cc Atty: Mohney
1cc Atty: Giannetto

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

**BRENDA L. RICE and JOHN
OVERDORF and DONNA OVERDORF,
husband and wife,**

Type of Case - CIVIL
No. 01-1258 C.D.

Plaintiffs

Type of Pleading -
**PRELIMINARY OBJECTIONS TO
PLAINTIFFS' AMENDED COMPLAINT**

Vs.

TALL TRAVEL,

Filed on Behalf of -
DEFENDANT

Defendant.

Filed by:
NICHOLAS GIANVITO, ESQ.
Pa. I.D. #67190

LORENZO & GIANVITO, P.C.
410 West Mahoning St.
P.O. Box 495
Punxsutawney, PA 15767
(814) 938-6390

FILED

OCT 03 2001

William A. Shaw
Prothonotary

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

**BRENDA L. RICE and JOHN
OVERDORF and DONNA OVERDORF,
husband and wife,**

Plaintiffs

Vs.

No. 01-1258 C.D.

TALL TRAVEL,

Defendant.

PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW, comes the defendant, TALL TRAVEL, by and through its attorneys, LORENZO & GIANVITO, P.C., pursuant to Pa.R.C.P. 1019(b), 1028(a)(3), and 1028(a)(4), and files the following Preliminary Objections:

1. Defendant, TALL TRAVEL, was served with an Amended Complaint filed by plaintiffs, BRENDA L. RICE, JOHN OVERDORF, and DONNA OVERDORF, which sets forth two counts against defendant, both in the nature of "negligent misrepresentation". Count I avers negligent misrepresentation on behalf of plaintiff, BRENDA L. RICE, and Count II avers negligent misrepresentation on behalf of plaintiffs JOHN OVERDORF and DONNA OVERDORF.

2. In essence, plaintiffs have alleged that defendant, TALL TRAVEL, by and through its manager, Lisa Marchiori, committed fraud upon the plaintiffs by representing certain facts to plaintiff, BRENDA RICE, as to the applicability of certain vacation trip

protection insurance purchased by plaintiff.

3. Specifically, in their Amended Complaint plaintiffs alleged that they desired to cancel a European ski trip, scheduled by plaintiffs through defendant, due to their being poor snow at the ultimate destination, and a scheduling problem concerning certain educational responsibilities of a stepson of one of the plaintiffs.

4. In their "specific" allegations of negligent misrepresentation, contained within Count I, paragraphs 20-27 of plaintiffs' Amended Complaint, plaintiffs allege that "defendant Tall Travel, namely, Ms. Marchiori, advised plaintiff, Brenda L. Rice, that she was not certain whether the insurance would cover a claim based upon lack of snow and Mrs. Rice's stepson's educational conflicts". Plaintiffs' Amended Complaint, Paragraph 23 (**emphasis added**).

5. In paragraph 24, plaintiff further averred that she was advised by Ms. Marchiori "to the effect that she (Ms. Marchiori) dealt with the insurance company all the time, giving plaintiff, Brenda L. Rice, further assurances and a justified belief that the canceled trip would be covered by the travel insurance sold".

6. Based upon these allegations, plaintiffs have attempted to state a claim against defendant for negligent misrepresentation.

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Mistake Shall be Averred with Particularity". Averments of "fraud" are meaningless epithets unless sufficient facts are set forth which will permit an inference that the claim is not without foundation. Dwyer v Rothman, 431 A2d 1035 at 1037 (Pa Super 1981).

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10. Specifically, defendants have failed to set forth a "misrepresentation". Assuming the pleaded facts as true, namely, that Ms. Marchiori advised plaintiff "that she dealt with the insurance company all the time", this does not rise to the level of a "misrepresentation".

11. Moreover, plaintiff's claim that defendant advised her that "(defendant) was not certain whether the insurance would cover a claim based upon lack of snow and Mrs. Rice's stepson's

educational conflicts". This averment further vitiates defendant's misrepresentation claim. Clearly, if defendant advised plaintiff that she was uncertain as to whether the insurance would cover this type of claim, plaintiff cannot claim that she was defrauded into believing that the insurance company would, in fact, cover the claim. Such a disclaimer destroys the allegations of reliance pled in the Complaint. Bowman v Meadow Ridge, Inc, 615 A2d 755 at 758.

12. Furthermore, statements "to the effect that she dealt with the insurance company all the time" do not rise to the level of misrepresentation, as they did not represent to plaintiff that she would get the insurance company to cover the claim.

13. In addition, the above claims do not support a justifiable reliance by the plaintiff upon this "misrepresentation". Clearly, advising the plaintiff that they were not certain whether the insurance would cover the claim, and that they dealt with the insurance company all the time, does not support a claim of justifiable reliance by plaintiff on her decision to cancel the trip.

14. In reviewing preliminary objections, all well-pleaded, material and relevant facts will be considered true, together with such reasonable inferences as may be drawn from such facts. Mellon Bank v Fabinyi, 650 A2d 895 at 899 (Pa Super, 1994). However, preliminary objections in the nature of a demurrer require the court to resolve the issue solely on the basis of the pleadings; no testimony or other evidence outside the Complaint may be considered to dispose of the legal issues presented by a demurrer. *Id.* In

order to sustain a demurrer, it is essential that the face of the Complaint indicate that its claims may not be sustained and the law will not permit recovery. *Id.*

15. Clearly, a review of the facts set forth in the Complaint, together with all reasonable inferences that may be drawn from such facts, supports the grant of a demurrer, inasmuch as the claims may not be sustained as a matter of law.

WHEREFORE, for the above-stated reasons, defendant respectfully requests this Honorable Court dismiss the Amended Complaint of plaintiffs, based on the legal insufficiency of plaintiffs' Amended Complaint.

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19. In addition, plaintiffs have failed to plead sufficient facts to support a necessary element, justifiable reliance by the plaintiff, upon this "misrepresentations".

WHEREFORE, defendant respectfully requests this Honorable Court grant defendant's Preliminary Objections in the nature of insufficient specificity of plaintiffs' Amended Complaint.

Respectfully submitted,

LORENZO & GIANVITO, P.C.

By: 
Nicholas Gianvito, Esq.
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2001, a true and correct copy of the foregoing Preliminary Objections was forwarded via first-class mail, postage prepaid, to the following:

Christopher E. Mohney, Esq.
Blakley, Jones & Mohney
90 Beaver Dr., Box 6
Dubois, PA 15801



Nicholas Gianvito, Esq.