01-1299-CD
JAMES A. HOOVER -vs- LAWRENCE TOWNSHIP

Clearfield County Court of Common Pleas User: BANDERSON

ROA Report

Case: 2001-01299-CD

Current Judge: Fredric Joseph Ammerman

James A. Hoover vs. Lawrence Township, Bureau of Forestry

Civil Other

		Judge
	Filing: Civil Complaint Paid by: Colavecchi, Paul (attorney for Hoover, James A.) Receipt number: 1829833 Dated: 08/13/2001 Amount: $80.00 (Check) Three CC Attorney	No Judge
001	Sheriff Returns, Complaint on Lawrence Township, So Answers Chester A. Hawkins by s/Marilyn Hamm $30.34 pd by Attorney	No Judge
/2001	Praecipe For Appearance on behalf of the Defendant. Filed by s/John O. Dodick, Esq. Cert of Svc 1 cc to Atty	No Judge
7/2001	Answer and New Matter. Filed by s/John O. Dodick, Esq. Verification. s/Barbara Shaffner Cert of Svc no cc	No Judge
9/20/2001	Answer to New Matter. Filed by s/Paul Colavecchi, Esq. no cc	No Judge
09/25/2001	Motion For Leave to Amend Complaint, filed by Atty. Colavecchi 3 Cert. to Atty.	No Judge
	ORDER, AND NOW, this 25th day of Sept. 2001, re: Rule is issued upon Defendant, returnable 15th day of Oct., 2001, for filing a written response. by the Court, S/JKR,JR.,P.J. 3 cc Atty Colavecchi	John K. Reilly Jr.
11/27/2001	First Amended Complaint. Filed by s/Paul Colavecchi, Esquire Verification. s/James A. Hoover 3 cc Atty Colavecchi	John K. Reilly Jr.
12/24/2001	Praecipe For Appearance on behalf of Bureau of Forestry filed by s/James F. Petraglia, Esq. Certificate of Service no cc	John K. Reilly Jr.
01/02/2002	Answer To Amended Compalint. Filed by s/James A. Hoover, Esq. Verification s/John O. Dodick Cert of Svc no cc	John K. Reilly Jr.
01/09/2002	Answer To Amended Complaint and New Matter. Filed by s/Paul Colavecchi, Esq. no cc	John K. Reilly Jr.
01/16/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	John K. Reilly Jr.
03/25/2002	Answer and New Matter to Plaintiff's First Amended Complaint. Filed by s/Robert T. McDermott, Esq. Affidavit s/Robert T. McDermott Certificate of Service no cc	John K. Reilly Jr.
03/27/2002	Reply to New Matter, filed on behalf of Plaintiff by Paul Colavecchi, Esquir 4cc to Atty Colavecchi	John K. Reilly Jr.
05/03/2002	Substitution of Counsel. Atty Petraglia, Sr. is substituted with Robert T. McDermott, Sr., on behalf of the Bureau of Forestry. s/Robert T. McDermott, Dep. AG no cc Copy to CA	John K. Reilly Jr.
	Verification to Answer and New Matter to Plaintiff's First Amended Complaint. s/ROBERT G. MERRILL, J. Certificate of Service no cc	John K. Reilly Jr.
05/10/2002	Filing: Notice of Servce of Answers to Plaintiff's First Set of Interrogatories and Responses to Request for Production of Documents filed by Robert McDermott, Sr., no cc.	John K. Reilly Jr.
06/11/2002	Consent to Dismissal, filed 6 cert. to Atty. Colavecchi. AND NOW, come the parties, Paul A. Hoover, Lawrence Township and Bureau of Forestry, by and through their counsel, and hereby consent to plaintiff's discontinuance of the defendant, Lawrence Township, ONLY, in accordance with Rule 229(b) of the Pennsylvania Rules of Civil Procedures. By The Court s/JKR, Jr., P.J.	John K. Reilly Jr.
11/12/2002	Filing: Certificate of Readiness, Paid by: Colavecchi, Paul (attorney for Hoover, James A.) Receipt number: 1851231 Dated: 11/12/2002 Amount: $20.00 (Check)	John K. Reilly Jr.

Current Judge: Fredric Joseph Ammerman

James A. Hoover vs. Lawrence Township, Bureau of Forestry

Civil Other

Date		Judge
12/06/2002	Praecipe to Discontinue with prejudice against Lawrence Township. 1 CC to Atty. Stmt. of Disc. to Atty.	John K. Reilly Jr.
06/04/2003	Deposition of Robert G. Merrill, Jr. filed by Atty. for Plff.	John K. Reilly Jr.
06/09/2003	June 9, 2003, Oath or Affirmation of Arbitrators, filed. Award of Arbitrators Judgment in favor of the Plaintiff, Jams A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars. s/ J. Richard Mattern, II, Esq., Andrew P. Gate, Esq., and Blaise Ferraraccio, Esq. Entry of Award, Witness My Hand and the Seal of The Court William A. Shaw, Prothonotary	John K. Reilly Jr.
07/03/2003	Filing: Arbitration Appeal Paid by: Commonwealth of PA, Office of A.G. Receipt number: 1862617 Dated: 07/03/2003 Amount: $900.00 (Check) Copy to C/A	John K. Reilly Jr.
08/14/2003	Motion for Summary Judgment, filed by s/Robert T. McDermott One CC Attorney McDermott	Fredric Joseph Ammerman
08/15/2003	ORDER: NOW, this 15th day of Aug. 2003 Counsel for the Plaintiff shall submit Brief in opposition to the Defendant's Motion for Summary Judgment within no more than twenty days. Case is hereby removed from the Civil Trial Lis and CA shall cause the matter to be listed for the winter term of Court. s/FJA. 2 CC to Atty. Colavecchi 2 CC to Atty. McDermott.	Fredric Joseph Ammerman
08/18/2003	Certificate of Service, Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment upon: ROBERT T. MC DERMOTT. filed by, s/Paul Colavecchi, Esq. no cc	Fredric Joseph Ammerman
09/10/2003	Opinion. by the Court, s/FJA,J. 2 cc Atty P. Colavecchi, R. McDermott, 2 copies to Judge Ammerman, 1 copy to CA, Law Library and Atty D. Mikesell	Fredric Joseph Ammerman
	ORDER, NOW, this 8th day of September, 2003, re: Motion for Summary Judgment filed on behalf of the Defendant, Bureau of Forestry, be and is hereby GRANTED. The Plaintiff's Complaint is DISMISSED. by the Court, s/FJA,J. 2 cc Atty P. Colavecchi, Atty R. McDermott, 2 copies Judge Ammerman, 1 copy to CA, 1 copy to Don Mikesell, Esq. and 1 copy to Law Library	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,
Plaintiff

Vs.

LAWRENCE TOWNSHIP,
Defendant

CIVIL DIVISION

No. 01 - 1299 - CD

COMPLAINT

Filed on Behalf of:

Plaintiff, JAMES A. HOOVER

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - - CD
	:	
Vs.	:	JURY TRIAL DEMANDED
	:	
LAWRENCE TOWNSHIP,	:	
Defendant	:	

NOTICE

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

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

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

Telephone: 814/765-2641 Ext. 5982

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - - CD
Vs.	:	
LAWRENCE TOWNSHIP,	:	
Defendant	:	

COMPLAINT

1. Plaintiff is James A. Hoover an individual having a mailing address of P.O. Box 172, Laurel Run Road, Penfield, Pennsylvania 15849.

2. Defendant is Lawrence Township, having a mailing address of P.O. Box 508, George Street, Clearfield, Pennsylvania, 16830.

3. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described as bridge, and it was the duty of Defendant to keep and maintain said bridge in a reasonably safe condition for those persons lawfully thereon.

4. Notwithstanding its duty, Defendant did on May 9, 2001, carelessly, recklessly and negligently allowed to permit and remain on said bridge, a dangerous condition; to wit, a deteriorated wooden plank support on the bridge and left it in such a state as to create a dangerous condition.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

5. On or about May 9, 2001, at approximately 4:00 p.m., Plaintiff was walking on a bridge located on Little Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

6. A deteriorating wooden support plank existed on the floor of the bridge on which Plaintiff stepped on, causing Plaintiff's foot to break through the wooden plank and fall sideways, resulting in Plaintiff falling off the bridge.

7. At the time of the incident, Defendant did or should have had both notice and knowledge of the aforesaid dangerous condition, being the deteriorated wooden plank on the floor of the bridge which made it easy for someone lawfully on the premises to put their foot through the plank and fall off the bridge.

8. The injuries and damages hereinafter set forth were caused solely by and were he direct and proximate result of the negligence of the Defendant in any or all of the following respects:

a. In failing to keep the bridge in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the existence of reasonable care should have known of the danger involved;

c. In failing to warn Plaintiff of the dangerous condition created by the above described hazard;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

d. In failing to cover, blockade or otherwise remove the dangerous of which Defendant knew, or in the exercise of reasonable care should have known;

e. Permitting persons, in particular the Plaintiff, to traverse the bridge when the Defendant knew, or in the existence of reasonable care, should have known it was dangerous to do so and involved reascnable risk of harm for persons so doing;

f. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

g. Maintaining the premises in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using the bridge with a safe area to traverse; and,

i. In failing to inspect the bridge to discovery the dangerous condition.

9. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head which may be of a permanent nature.

10. As a result of the aforesaid injuries, Plaintiff has sustained the following damages;

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and loss of the enjoyment of life;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and,

c. Plaintiff's general health, strength and vitality have been impaired.

WHEREFORE, Plaintiff brings this action against Defendant to recovery damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand Dollars ($20,000.00).

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

JAMES A. HOOVER

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 01 - - CD

JAMES A. HOOVER,
Plaintiff

vs.

LAWRENCE TOWNSHIP,
Defendant

C O M P L A I N T

NOTICE TO DEFENDANT:
YOU are hereby notified that you are required to file an Answer to the within Complaint within twenty (20) days after service upon you or judgment may be entered against you.

Paul Colavecchi
PAUL COLAVECCHI, ESQUIRE
ATTORNEY FOR PLAINTIFF

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11362

HOOVER, JAMES A.

01-1299-CD

VS.

LAWRENCE TOWNSHIP

COMPLAINT

SHERIFF RETURNS

NOW AUGUST 15, 2001 AT 9:20 AM DST SERVED THE WITHIN COMPLAINT ON LAWRENCE TOWNSHIP, DEFENDANT AT EMPLOYMENT, GEORGE ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MEL SMITH, CHAIRMAN 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
20.34	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

23rd **Day Of** August **2001**

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

So Answers,

by Marly Hawkins

Chester A. Hawkins
Sheriff

FILED
01 10:43 BL
AUG 23 2001
William A. Shaw
Prothonotary

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS OF
	)	
Plaintiff	)	CLEARFIELD COUNTY, PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	
	)	
Defendant	)	No. 01-1299-CD

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of defendant, Lawrence Township, in the above-referenced matter.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL
& SENNETT, P.C.

BY: _____

John O. Dodick, Esq.
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

Attorneys for Defendant,
Lawrence Township

JURY TRIAL OF TWELVE DEMANDED

392539
afk

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS OF
	)	
Plaintiff	)	CLEARFIELD COUNTY, PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	
	)	
Defendant	)	No. 01-1299-CD

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 29 day of August, 2001, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

John O. Dodick

392539
afc

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS
	)	
Plaintiff	)	OF CLEARFIELD CO., PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	No. 01-1299-CD
	)	
Defendant	)	Type of Pleading: Answer and New Matter
	)	
	)	Filed on behalf of Defendant,
	)	Lawrence Township
	)	
	)	Counsel of Record for this Party:
	)	John O. Dodick, Esq.
	)	PA I.D. No. 41517
	)	KNOX McLAUGHLIN GORNALL
	)	& SENNETT, P.C.
	)	120 West Tenth Street
	)	Erie, PA 16501
	)	(814) 453-2800

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS
	)	
Plaintiff	)	OF CLEARFIELD CO., PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	No. 01-1299-CD
	)	
Defendant	)	

NOTICE TO PLEAD

TO THE PLAINTIFF:

You are hereby notified to file a written response to the enclosed new matter within twenty (20) days from service hereof or a judgment may be entered against you.

KNOX McLAUGHLIN GORNALL & SENNETT, P.C.

BY: _____

John O. Dodick, Esq.
Attorneys for Defendant,
Lawrence Township
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS
	)	
Plaintiff	)	OF CLEARFIELD CO., PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	No. 01-1299-CD
	)	
Defendant	)	

ANSWER AND NEW MATTER

AND NOW, comes the defendant, Lawrence Township, by and through its counsel, Knox McLaughlin Gornall & Sennett, P.C., and files its Answer and New Matter setting forth in support thereof as follows:

1. Admitted.

2. Admitted.

3. Denied. It is specifically denied that the defendant, Lawrence Township, was in exclusive custody, possession and control of a bridge located on Little Medix Run Road in Lawrence Township, Clearfield County, Pennsylvania. It is further denied that Lawrence Township had a duty to keep and maintain the bridge in a safe condition. By way of further answer, the bridge in question is owned, controlled and maintained by the Bureau of Forestry. The defendant, Lawrence Township, denies any duty to the plaintiff and any liability with respect to the bridge in question.

4. Denied. It is specifically denied that the defendant, Lawrence Township, had any duty to keep and maintain the bridge in a safe condition. It is further denied that Lawrence Township was careless, reckless or negligent in allowing the bridge to create a dangerous condition. As to the allegation that a dangerous condition existed on May 9, 2001, as alleged in the plaintiff's Complaint, after reasonable investigation, the defendant is without sufficient knowledge or information with which to set forth a responsive pleading as to the allegations set forth and the same is, therefore, denied.

5. After reasonable investigation, the defendant is without sufficient knowledge or information with which to set forth a responsive pleading to the allegations set forth in paragraph 5 of the plaintiff's Complaint and the same are, therefore, denied.

6. After reasonable investigation, the defendant is without sufficient knowledge or information with which to set forth a responsive pleading to the allegations set forth in paragraph 6 of the plaintiff's Complaint and the same are, therefore, denied. By way of further answer, it is specifically denied that the defendant, Lawrence Township, had any duty to the plaintiff in maintaining a wooden support plank on the bridge in question.

7. Denied. It is specifically denied that the defendant knew or should have known of a dangerous condition on the bridge or that a dangerous condition existed as alleged by the plaintiff. By way of further answer, the defendant, Lawrence Township, did not have any duty to maintain the bridge in question and did not have control over the bridge, and would have no way of knowing that any condition existed on the bridge which may have resulted in a dangerous condition.

8. It is denied that any injuries or damages sustained by the plaintiff were the direct and proximate result of any negligence on the part of the defendant. The defendant, Lawrence Township, denies all allegations of negligence in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. More specifically:

(a) Denied. It is denied that the defendant, Lawrence Township, failed to keep the bridge in a safe condition. By way of further answer, the bridge in question was not in the care, custody or control of Lawrence Township and Lawrence Township had no duty to the plaintiff to keep the bridge in a safe condition.

(b) Denied. It is denied that Lawrence Township permitted a dangerous condition to remain on the premises and it is further

denied that the defendant knew or should have known of such danger. By way of further answer, the defendant, Lawrence Township, was not the owner or in possession or control of the bridge in question and did not have a duty to the plaintiff to correct any dangerous condition as alleged.

(c) Denied. It is denied that the defendant, Lawrence Township, was negligent for failing to warn the plaintiff of a dangerous condition. By way of further answer, Lawrence Township was not the owner or in possession or control of the bridge in question and had no duty to the plaintiff to provide a warning.

(d) Denied. It is denied that the defendant, Lawrence Township, was negligent for failing to cover, blockade or otherwise remove the dangerous condition alleged in the plaintiff's Complaint. By way of further answer, Lawrence Township was not the owner or in possession of the bridge in question and had no duty to the plaintiff to cover, blockade or otherwise remove any dangerous condition.

(e) Denied. It is specifically denied that the defendant, Lawrence Township, was negligent in permitting persons, and the plaintiff, to traverse the bridge and it is further denied that the defendant knew or should have known of any dangerous condition since it was not the owner or in possession or control of the bridge in question.

(f) Denied. It is specifically denied that the defendant was negligent for failing to notify or warn the plaintiff of any dangerous condition or hazard as alleged in the plaintiff's Complaint. By way of further answer, the defendant, Lawrence Township, was not the

owner or in possession or control of the bridge in question and had no duty to the plaintiff to warn of any condition.

(g) Denied. It is specifically denied that the defendant, Lawrence Township, maintained the premises in such a manner as to constitute a danger. By way of further answer, Lawrence Township, did not own or maintain the bridge in question and had no duty to the plaintiff.

(h) Denied. It is specifically denied that the defendant was negligent for failing to provide the plaintiff with a safe area to traverse. By way of further answer, the defendant, Lawrence Township, was not the owner or in possession or control of the bridge in question and had no duty to the plaintiff to provide a safe area for him to traverse.

(i) Denied. It is denied that the defendant, Lawrence Township, was negligent for failing to inspect the bridge and discover the dangerous condition as alleged in the plaintiff's Complaint. By way of further answer, the defendant was not the owner or in possession or control of the bridge in question and had no duty to inspect the bridge.

9. Denied. It is denied, that as a result of any negligence on the part of the defendant, Lawrence Township, the plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head.

10. After reasonable investigation, the defendant, Lawrence Township, is without sufficient knowledge or information with which to set forth a responsive pleading to the

allegations set forth in paragraphs 10(a)-(c) of the plaintiff's Complaint and the same is, therefore, denied.

WHEREFORE, the defendant, Lawrence Township, demands judgment against the plaintiff, James A. Hoover, on all allegations and claims set forth in his Complaint.

NEW MATTER PURSUANT TO Pa.R.C.P. Rule 1030

11. The allegations set forth in the plaintiff's Complaint fail to set forth a cause of action against the defendant upon which relief can be granted.

12. The defendant, Lawrence Township, as a local agency, is provided with immunity pursuant to the provisions of the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541.

13. The plaintiff's Complaint fails to set forth any exception to the immunity provided to Lawrence Township pursuant to the provisions of the Pennsylvania Political Subdivision Tort Claims Act.

WHEREFORE, the defendant, Lawrence Township, demands judgment against the plaintiff on all causes of action and claims set forth in his Complaint.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL & SENNETT, P.C.

BY: _____

John O. Dodick
120 West Tenth Street
Erie, PA 16501
(814) 459-2800

Attorneys for defendant,
Lawrence Township

392639
ka

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS
	)	
Plaintiff	)	OF CLEARFIELD CO., PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	No. 01-1299-CD
	)	
Defendant	)	

VERIFICATION

On this, the 7th day of September, 2001, Barbara Shaffner, the undersigned, deposes and states that she is the Secretary of the Defendant, Lawrence Township, and that as such she is authorized to execute this verification on behalf of the Township, and that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of her knowledge, information and belief, subject to the penalties of 18 Pa.C.S. §4904 relating to the unsworn falsification to authorities.

LAWRENCE TOWNSHIP

Barbara S. Shaffner

Barbara Shaffner

392639
ka

JAMES A. HOOVER,	)	IN THE COURT OF COMMON PLEAS
	)	
Plaintiff	)	OF CLEARFIELD CO., PENNSYLVANIA
	)	
vs.	)	Civil Action – Law
	)	
LAWRENCE TOWNSHIP,	)	No. 01-1299-CD
	)	
Defendant	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of September, 2001, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

John O. Dodick

392639
ka

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,	CIVIL ACTION
Plaintiff	No. 01 - 1299 - CD
vs.	ANSWER TO NEW MATTER
LAWRENCE TOWNSHIP,	Filed on behalf of:
Defendant	Plaintiff, JAMES A. HOOVER

Counsel of Record for
Said Party:

PAUL COLAVECCHI, ESQUIRE
PA I.D. 83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER, Plaintiff	:	
vs.	:	No. 01 - 1299 - CD
LAWRENCE TOWNSHIP, Defendant	:	

ANSWER TO NEW MATTER

James A. Hoover, through his Attorney, Paul Colavecchi, Esquire, files his Answer to the New Matter of Defendant, Lawrence Township, and respectfully avers as follows:

11. Denied.

12. Admitted in part and denied in part. While it is true that 42 Pa. C.S.A. §8541 grants local agency immunity, Defendant is liable to Plaintiff under 42 Pa. C.S.A. §8542(b)(5) which sets forth an exception to governmental immunity in the cases of dangerous conditions of the facilities of streams, sewer, water, gas or electric systems owned by the local agency and located within its rights of way.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

13. It is admitted that Plaintiff's Complaint did not specifically cite the applicable exception to the immunity provided to Lawrence Township, the proper exception being within 42 Pa. C.S.A. §8542(b)(5).

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 01 - 1299 - CD

JAMES A. HOOVER,
Plaintiff

vs.

LAWRENCE TOWNSHIP,
Defendant

ANSWER TO NEW MATTER

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,
Plaintiff

Vs.

LAWRENCE TOWNSHIP,
Defendant

CIVIL DIVISION

No. 01 - 1299 - CD

MOTION FOR LEAVE TO AMEND COMPLAINT

Filed on Behalf of:

Plaintiff, JAMES A. HOOVER

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER, :
Plaintiff : No. 01 - 1299 - CD
:
vs. :
:
LAWRENCE TOWNSHIP, :
Defendant :

FILED
SEP 25 2001
William A. Shaw
Prothonotary

ORDER

AND NOW, this 25th day of September, 2001, upon consideration of the attached Motion, a rule is hereby issued upon Defendant to show cause why the Motion should not be granted. Rule returnable the 15th day of October, 2001 for filing a written response.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION FOR SPECIAL RELIEF 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 BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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 OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

814/765-2641, Ext. 50-51

BY THE COURT:

JUDGE

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - 1299 - CD
	:	
Vs.	:	
	:	
LAWRENCE TOWNSHIP,	:	
Defendant	:	

MOTION FOR LEAVE TO AMEND COMPLAINT

The above-named Plaintiff respectfully applies to this Court for leave to file an amendment to the original Complaint and alleges:

1. Plaintiff filed the original Complaint in this Court against Defendant, Lawrence Township, on August 13, 2001, to which Defendant Lawrence Township has accepted on the grounds that the Bureau of Forestry is a necessary party Defendant.

2. To cure the defect of parties excepted to, Plaintiff proposes to amend the Complaint as follows:

a. To add a separate Count naming the Bureau of Forestry with a mailing address of R.R. #1, Box 184, Penfield, Pennsylvania 15849, as an Additional Defendant, jointly and severally liable to the Plaintiff;

b. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described as bridge, and it was the duty of Defendant to keep and

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

maintain said bridge in a reasonably safe condition for those persons lawfully thereon.

Notwithstanding its duty, Defendant did on May 9, 2001, carelessly, recklessly and negligently allowed to permit and remain on said bridge, a dangerous condition; to wit, a deteriorated wooden plank support on the bridge and left it in such a state as to create a dangerous condition.

On or about May 9, 2001, at approximately 4:00 p.m., Plaintiff was walking on a bridge located on Little Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

A deteriorating wooden support plank existed on the floor of the bridge on which Plaintiff stepped on, causing Plaintiff's foot to break through the wooden plank and fall sideways, resulting in Plaintiff falling off the bridge.

At the time of the incident, Defendant did or should have had both notice and knowledge of the aforesaid dangerous condition, being the deteriorated wooden plank on the floor of the bridge which made it easy for someone lawfully on the premises to put their foot through the plank and fall off the bridge.

Defendant is liable to Plaintiff for his injuries pursuant to 42 Pa. C.S.A. 8522(b)(4) setting forth an exception to sovereign immunity in the case when a dangerous condition exists on real property in the possession of the Commonwealth.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

The injuries and damages hereinafter set forth were caused solely by and were he direct and proximate result of the negligence of the Defendant in any or all of the following respects:

1. In failing to keep the bridge in a safe condition for persons lawfully using the same;

2. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the existence of reasonable care should have known of the danger involved;

3. In failing to warn Plaintiff of the dangerous condition created by the above described hazard;

4. In failing to cover, blockade or otherwise remove the dangerous of which Defendant knew, or in the exercise of reasonable care should have known;

5. Permitting persons, in particular the Plaintiff, to traverse the bridge when the Defendant knew, or in the existence of reasonable care, should have known it was dangerous to do so and involved reasonable risk of harm for persons so doing;

6. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

7. Maintaining the premises in such a manner as to constitute a danger to persons lawfully thereon;

LAW OFFICES OF
CO_AVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

8. In failing to provide persons lawfully using the bridge with a safe area to traverse; and,

9. In failing to inspect the bridge to discovery the dangerous condition.

Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head which may be of a permanent nature.

As a result of the aforesaid injuries, Plaintiff has sustained the following damages;

1. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and loss of the enjoyment of life;

2. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and,

3. Plaintiff's general health, strength and vitality have been impaired.

3. If the amendment requested is allowed, the caption in this action should be changed to the following: James A. Hoover, Plaintiff vs. Lawrence Township and Bureau of Forestry, Defendants. Plaintiff respectfully requests that the caption of this action be so amended on the allowance of the requested amendment to this Complaint.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

WHEREFORE, Plaintiff request leave to amend the original Complaint by adding the Bureau of Forestry as a Defendant with proper allegations to charge Defendant, and to amend the caption to include the Bureau of Forestry as a Defendant.

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

9-21-01

DATE

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 01 - 1299 - CD

JAMES A. HOOVER,
Plaintiff

vs.

LAWRENCE TOWNSHIP,
Defendant

MOTION FOR LEAVE TO AMEND
COMPLAINT

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,
Plaintiff

Vs.

LAWRENCE TOWNSHIP,
Defendant

Vs.

BUREAU OF FORESTRY,
Additional Defendant

CIVIL DIVISION

No. 01 - 1299 - CD

FIRST AMENDED COMPLAINT

Filed on Behalf of:

Plaintiff, JAMES A. HOOVER

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

NOV 27 2001

William A. Shaw
Prothonotary

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - 1299 - CD
Vs.	:	
LAWRENCE TOWNSHIP,	:	
Defendant	:	
Vs.	:	
BUREAU OF FORESTRY,	:	
Additional Defendant	:	

NOTICE

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
814/765-2641 Ext. 5982

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER, Plaintiff	:	No. 01 - 1299 - CD
Vs.	:	
LAWRENCE TOWNSHIP, Defendant	:	
vs.	:	
BUREAU OF FCRESTRY, Additional Defendant	:	

FIRST AMENDED COMPLAINT

1. Plaintiff is James A. Hoover an individual having a mailing address of P.O. Box 172, Laurel Run Road, Penfield, Pennsylvania 15849.

2. Defendants are:

a. Lawrence Township having a mailing address of P.O. Box 508, George Street, Clearfield, Pennsylvania 16830; and,

b. The Bureau of Forestry, having a mailing address of R.R. #1, P.O. Box 184, Penfield, Pennsylvania 15849.

COUNT I
JAMES A. HOOVER VS. LAWRENCE TOWNSHIP

3. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

as bridge, and it was the duty of Defendant to keep and maintain said bridge in a reasonably safe condition for those persons lawfully thereon.

4. Notwithstanding its duty, Defendant did on May 9, 2001, carelessly, recklessly and negligently allowed to permit and remain on said bridge, a dangerous condition; to wit, a deteriorated wooden plank support on the bridge and left it in such a state as to create a dangerous condition.

5. On or about May 9, 2001, at approximately 4:00 p.m., Plaintiff was walking on a bridge located on Little Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

6. A deteriorating wooden support plank existed on the floor of the bridge on which Plaintiff stepped on, causing Plaintiff's foot to break through the wooden plank and fall sideways, resulting in Plaintiff falling off the bridge.

7. At the time of the incident, Defendant did or should have had both notice and knowledge of the aforesaid dangerous condition, being the deteriorated wooden plank on the floor of the bridge which made it easy for someone lawfully on the premises to put their foot through the plank and fall off the bridge.

8. Defendant is liable to Plaintiff for his injuries pursuant to 42 Pa. C.S.A. 8522(b)(4) setting forth an exception to sovereign

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

immunity in the case when a dangerous condition exists on real property in the possession of the Commonwealth.

9. The injuries and damages hereinafter set forth were caused solely by and were he direct and proximate result of the negligence of the Defendant in any or all of the following respects:

a. In failing to keep the bridge in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the existence of reasonable care should have known of the danger involved;

c. In failing to warn Plaintiff of the dangerous condition created by the above described hazard;

d. In failing to cover, blockade or otherwise remove the dangerous of which Defendant knew, or in the exercise of reasonable care should have known;

e. Permitting persons, in particular the Plaintiff, to traverse the bridge when the Defendant knew, or in the existence of reasonable care, should have known it was dangerous to do so and involved reasonable risk of harm for persons so doing;

f. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

g. Maintaining the premises in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using the bridge with a safe area to traverse; and,

i. In failing to inspect the bridge to discovery the dangerous condition.

10. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head which may be of a permanent nature.

11. As a result of the aforesaid injuries, Plaintiff has sustained the following damages;

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and loss of the enjoyment of life;

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and,

c. Plaintiff's general health, strength and vitality have been impaired.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

WHEREFORE, Plaintiff brings this action against Lawrence Township to recovery damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand Dollars ($20,000.00).

COUNT II
JAMES A. HOOVER VS. BUREAU OF FORESTRY

Paragraphs 3 through 11 are incorporated herein as by reference thereto.

12. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described as bridge, and it was the duty of Defendant to keep and maintain said bridge in a reasonably safe condition for those persons lawfully thereon.

13. Notwithstanding its duty, Defendant did on May 9, 2001, carelessly, recklessly and negligently allowed to permit and remain on said bridge, a dangerous condition; to wit, a deteriorated wooden plank support on the bridge and left it in such a state as to create a dangerous condition.

14. On or about May 9, 2001, at approximately 4:00 p.m., Plaintiff was walking on a bridge located on Little Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

15. A deteriorating wooden support plank existed on the floor of the bridge on which Plaintiff stepped on, causing Plaintiff's

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

foot to break through the wooden plank and fall sideways, resulting in Plaintiff falling off the bridge.

16. At the time of the incident, Defendant did or should have had both notice and knowledge of the aforesaid dangerous condition, being the deteriorated wooden plank on the floor of the bridge which made it easy for someone lawfully on the premises to put their foot through the plank and fall off the bridge.

17. Defendant is liable to Plaintiff for his injuries pursuant to 42 Pa. C.S.A. 8522(b)(4) setting forth an exception to sovereign immunity in the case when a dangerous condition exists on real property in the possession of the Commonwealth.

18. The injuries and damages hereinafter set forth were caused solely by and were he direct and proximate result of the negligence of the Defendant in any or all of the following respects:

a. In failing to keep the bridge in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the existence of reasonable care should have known of the danger involved;

c. In failing to warn Plaintiff of the dangerous condition created by the above described hazard;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

d. In failing to cover, blockade or otherwise remove the dangerous of which Defendant knew, or in the exercise of reasonable care should have known;

e. Permitting persons, in particular the Plaintiff, to traverse the bridge when the Defendant knew, or in the existence of reasonable care, should have known it was dangerous to do so and involved reasonable risk of harm for persons so doing;

f. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

g. Maintaining the premises in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using the bridge with a safe area to traverse; and,

i. In failing to inspect the bridge to discovery the dangerous condition.

19. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head which may be of a permanent nature.

20. As a result of the aforesaid injuries, Plaintiff has sustained the following damages;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and loss of the enjoyment of life;

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and,

c. Plaintiff's general health, strength and vitality have been impaired.

WHEREFORE, Plaintiff brings this action against the Bureau of Forestry tc recovery damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand Dollars ($20,000.00).

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

JAMES A. HOOVER

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 01 - 1299 - CD

JAMES A. HOOVER,
Plaintiff

vs.

LAWRENCE TOWNSHIP,
Defendant

vs.

BUREAU OF FORESTRY,
Additional Defendant

FIRST AMENDED COMPLAINT

NOTICE TO DEFENDANT:

YOU are hereby notified that you are required to file an Answer to the within First Amended Complaint within twenty (20) days after service upon or judgment may be entered against you.

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

LAWRENCE TOWNSHIP,

Defendant,

vs.

BUREAU OF FORESTRY,

Additional Defendant.

CIVIL ACTION

No. 01-1299 CD

PRAECIPE FOR APPEARANCE

Filed on behalf of
Additional Defendant:

Bureau of Forestry

Counsel of Record for This
Party:

James F. Petraglia
Sr. Deputy Attorney General
Pa. I.D. #53540

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

(412) 565-2569

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above-referenced case on behalf of the additional defendant, Bureau of Forestry. The additional defendant, Bureau of Forestry, hereby demands a trial by a jury of twelve.

D. MICHAEL FISHER
Attorney General

BY: _____

JAMES F. PETRAGLIA
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE was served upon the following counsel of record, via first-class mail, postage pre-paid on December 20, 2001:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

Lawrence Township
Legal Department
P. O. Box 508
George Street
Clearfield, PA 16830

D. MICHAEL FISHER
Attorney General

BY: _____
JAMES F. PETRAGLIA
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LAWRENCE TOWNSHIP,

Plaintiff

v.

JAMES A. HOOVER,

Defendant

No. 1299 - 2001

ANSWER TO AMENDED COMPLAINT

Filed on behalf of defendant,
James A. Hoover

Counsel of record:
John O. Dodick, Esquire
Pa. I.D. No. 41517

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
120 West Tenth Street
Erie, PA 16501
(814) 459-2800

LAWRENCE TOWNSHIP,	)	IN THE COURT OF COMMON PLEAS OF
	)	
Plaintiff	)	CLEARFIELD COUNTY, PENNSYLVANIA
	)	
v.	)	
	)	Civil Action - Law
JAMES A. HOOVER,	)	
	)	
Defendant	)	No. 1299-2001

ANSWER TO AMENDED COMPLAINT

AND NOW, comes the defendant, James A. Hoover, through his counsel, Knox McLaughlin Gornall & Sennett, P.C. and files this Answer to the plaintiff's amended complaint, setting forth in support thereof as follows:

1. Admitted.

2(a). Admitted.

2(b). The allegations set forth in paragraph 2(b) of the plaintiff's complaint is directed to a party other than the defendant, Lawrence Township, and requires no responsive pleading from this party.

3-7. The defendant, Lawrence Township, hereby incorporates the responses in paragraphs 3 through 7 of its original answer to the plaintiff's complaint herein by reference as if fully set forth at length.

8. The allegation set forth in paragraph of the plaintiff's complaint institutes a conclusion of law to which no response is required. To the extent a response is required, the same is denied.

9. See response to paragraph 8 of the defendant's answer and new matter which is incorporated herein by reference as if fully set forth at length.

10. See response to paragraph 9 of the defendant's answer and new matter which is incorporated herein by reference as if fully set forth at length.

11. See response to paragraph 10 of the defendant's answer and new matter which is incorporated herein by reference as if fully set forth at length.

12-20. The allegations set forth in paragraphs 12 through 20 of the plaintiff's amended complaint are directed to a party other than defendant, Lawrence Township, and require no responsive pleading.

NEW MATTER

21-23. The defendant hereby incorporates the new matter set forth in paragraphs 11 through 13 of its answer and new matter herein by reference as if fully set forth at length.

WHEREFORE, the defendant, James A. Hoover, demands judgment against the plaintiff, from the causes of action set forth in his complaint.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL & SENNETT, P.C.

BY: _____

John O. Dodick
120 West Tenth Street
Erie, PA 16501
(814) 459-2800

Attorneys for Defendant,
James A. Hoover

LAWRENCE TOWNSHIP,	)	IN THE COURT OF COMMON PLEAS OF
	)	
Plaintiff	)	CLEARFIELD COUNTY, PENNSYLVANIA
	)	
v.	)	
	)	Civil Action - Law
JAMES A. HOOVER,	)	
	)	
Defendant	)	No. 1299-2001

VERIFICATION

On this, the 31st day of December, 2001, the undersigned, states that he is the attorney for the defendant, James A. Hoover, that he is authorized to make this verification on behalf of the defendant, that the facts set forth in the foregoing Answer to Amended Complaint are true and correct, not of his own knowledge, but from information supplied to him by the defendant, that the purpose of this verification is to expedite the litigation, that a verification of the defendant will be supplied if demanded, all subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

John O. Dodick

407461
afk

LAWRENCE TOWNSHIP,	)	IN THE COURT OF COMMON PLEAS OF
	)	
Plaintiff	)	CLEARFIELD COUNTY, PENNSYLVANIA
	)	
v.	)	
	)	Civil Action - Law
JAMES A. HOOVER,	)	
	)	
Defendant	)	No. 1299-2001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of December, 2001, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

John O. Dodick

407461
afk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,	CIVIL ACTION
Plaintiff	No. 01 - 1299 - CD
vs.	ANSWER TO AMENDED COMPLAINT NEW MATTER
LAWRENCE TOWNSHIP,	Filed on behalf of:
Defendant	Plaintiff, JAMES A. HOOVER
	Counsel of Record for Said Party:
	PAUL COLAVECCHI, ESQUIRE PA I.D. 83274
	COLAVECCHI RYAN & COLAVECCHI 221 East Market Street P.O. Box 131 Clearfield, PA 16830
	814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER, Plaintiff	:	
vs.	:	No. 01 - 1299 - CD
LAWRENCE TOWNSHIP, Defendant	:	

ANSWER TO AMENDED COMPLAINT NEW MATTER

James A. Hoover, through his Attorney, Paul Colavecchi, Esquire, files this Answer to Amended Complaint New Matter of Defendant, Lawrence Township, and respectfully avers as follows:

21. Denied.

22. Admitted in part and denied in part. While it is true that 42 Pa. C.S.A. §8541 grants local agency immunity, Defendant is liable to Plaintiff under 42 Pa. C.S.A. §8542(b)(5) which sets forth an exception to governmental immunity in the cases of dangerous conditions of the facilities of streams, sewer, water, gas or electric systems owned by the local agency and located within its rights of way.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

23. Denied. Plaintiff set forth that a dangerous condition; to wit, a deteriorated wooden plank support on the bridge was left in such a state to create a dangerous condition and caused injuries to the Plaintiff.

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 01 - 1299 - CD

JAMES A. HOOVER,
Plaintiff

vs.

LAWRENCE TOWNSHIP,
Defendant

ANSWER TO AMENDED COMPLAINT
NEW MATTER

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11799

HOOVER, JAMES A. 01-1299-CD

VS.

LAWRENCE TOWNSHIP -vs- BUREAU OF FORESTRY

FIRST AMENDED COMPLAINT

SHERIFF RETURNS

NOW, DECEMBER 06, 2001 AT 1:11 P.M. EST SERVED THE WITHIN FIRST AMENDED COMPLAINT ON BUREAU OF FORESTRY, DEFENDANT AT EMPLOYMENT, RR#1 BOX 184, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO NANCY FETTERS, CLERK TYPIST, RECPT. A TRUE AND ATTESTED COPY OF THE ORIGINAL FIRST AMENDED COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET

Return Costs

Cost	Description
28.74	SHERIFF HAWKINS, PAID BY ATTY.
10.00	SURCHARGE, PAID BY ATTY.

FILED
0/2:10
JAN 16 2002

William A. Shaw
Prothonotary

Sworn to Before Me This

16 **Day Of** Jan. **2002**

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

So Answers,

Chester A. Hawkins by Marilyn Hamp

Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

LAWRENCE TOWNSHIP,

Defendant,

vs.

BUREAU OF FORESTRY,

Additional Defendant.

CIVIL ACTION

No. 01-1299 CD

ANSWER AND NEW MATTER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Filed on behalf of Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

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

Robert T. McDermott
Attorney for Bureau of Forestry

FILED

MAR 25 2002

m 11.29 nocc

William A. Shaw
Prothonotary

ANSWER AND NEW MATTER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

AND NOW, comes the Additional Defendant, Bureau of Forestry, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Answer and New Matter to Plaintiff's First Amended Complaint, averring in support thereof, as follows:

1. In response to the averments contained in paragraph 1 of Plaintiff's First Amended Complaint, the Additional Defendant, Bureau of Forestry, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

2. The averments contained in paragraph 2 of Plaintiff's First Amended Complaint are admitted.

Count I

3-11. The averments contained in paragraphs 3 through 11 of Plaintiff's First Amended Complaint are directed to another party and require, therefore, no response from this Additional Defendant.

Count II

The Additional Defendant Bureau of Forestry's responses to paragraphs 3 through 11 of Plaintiff's First Amended Complaint are incorporated as though fully set forth herein at length.

12. In response to the averments contained in paragraph 12 of Plaintiff's First Amended Complaint, the Additional Defendant, Bureau of Forestry, admits that it had jurisdiction of the bridge in question only to the extent of the Additional Defendant Bureau of Forestry's responsibilities pursuant to statutes of the Commonwealth of Pennsylvania and regulations of the Bureau of Forestry and Department of Conservation and Natural Resources. To the extent to which the averments contained in Plaintiff's First Amended Complaint
exceed the Additional Defendant Bureau of Forestry's respcnsibilities pursuant to applicable statutes and regulations, jurisdiction over said bridge is denied and strict proof, thereof, is demanded at trial. The remaining averments contained in paragraph 12 of Plaintiff's First Amended Complaint set forth legal conclusions to which no response is required by this Additional Defendant.

13. The averments contained in paragraph 13 of Plaintiff's First Amended Complaint are denied.

14. In response to the averments contained in paragraph 14

of Plaintiff's First Amended Complaint, the Additional Defendant, Bureau of Forestry, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

15. In response to the averments contained in paragraph 15 of Plaintiff's First Amended Complaint, the Additional Defendant, Bureau of Forestry, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

16. The averments contained in paragraph 16 of Plaintiff's First Amended Complaint are denied.

17. The averments contained in paragraph 17 of Plaintiff's First Amended Complaint are denied.

18. The averments contained in paragraph 18 of Plaintiff's First Amended Complaint are denied.

19. The averments contained in paragraph 19 of Plaintiff's First Amended Complaint are denied.

20. In response to the averments contained in paragraph 20 of Plaintiff's First Amended Complaint, the Additional Defendant,

Bureau of Forestry, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

New Matter

By way of further and more complete answer to Plaintiff's First Amended Complaint, the Additional Defendant, Bureau of Forestry, sets forth the following New Matter:

21. The cause of action against the Additional Defendant, Bureau of Forestry, is barred by the Doctrine of Sovereign Immunity.

22. By way of further defense, it is averred that the cause of action against the Additional Defendant, Bureau of Forestry, does not fall within one of the nine (9) categories enumerated by §8522 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8522.

23. By way of further defense, it is averred that the cause of action against the Additional Defendant, Bureau of Forestry, fails as a result of the failure of this Additional Defendant to receive actual written notice pursuant to §8555 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §5522.

24. By way of further defense, it is averred that in the

event that damages are awarded in this case, said damages are limited to the amounts and for the losses as set forth in §8528 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8528.

25. The rights of the Plaintiff in this action are diminished or fully barred by Plaintiff's contributory negligence in accordance with the provisions of the Pennsylvania Comparative Negligence Law, 42 Pa. C.S.A. §7102.

26. The injuries, losses, damages or occurrences alleged in the Plaintiff's First Amended Complaint were the result of an independent and intervening cause or causes over which the Additional Defendant, Bureau of Forestry, had no control or in any way participated.

27. The injuries, losses, damages or occurrences alleged in the Plaintiff's First Amended Complaint were the result of the assumption of the risk of such injuries, losses or damages by the Plaintiff.

28. All rights which might otherwise exist against this party are barred in whole or in part by the applicable statutes of limitations, other similar statutes, contractual provisions and/or other fundamental provisions, including waiver, estoppel and laches.

29. By way of further defense, it is averred that the

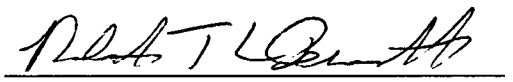
Additional Defendant, Bureau of Forestry, is protected by the defense that it was acting pursuant to a duty required by statute or statutorily authorized regulation at all times relevant to the events at issue herein, and therefore, said acts were within the discretion granted to it by statute or statutorily authorized regulation and said defenses are articulated at 42 Pa. C.S.A. §8524.

30. Plaintiff's cause of action is barred by the provisions of the Recreation Use of Land and Water Act as set forth at 68 P.S. §471-1, et. seq.

WHEREFORE, the Additional Defendant, Bureau of Forestry, prays this Honorable Court to dismiss the Plaintiff's First Amended Complaint, with costs assessed against the Plaintiff.

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

Robert T. McDermott, being duly sworn according to law, deposes and says that he is the attorney for the Additional Defendant, **Bureau of Forestry,** that he makes this Affidavit to expedite the litigation; that an Affidavit by this Defendant will be provided the Court should the Court so desire; and that the facts set forth in the foregoing **Answer and New Matter to Plaintiff's First Amended Complaint** are true and correct to the best of his knowledge, information and belief.

Robert T. McDermott
Sr. Deputy Attorney General

Sworn to and subscribed
before me this 22nd day
of March, 2002.

Notary Public

Notarial Seal
Carol Kubeldzis, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires May 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer and New Matter to Plaintiff's First Amended Complaint was served upon the following counsel of record, via first-class mail, postage pre-paid on March 22, 2002:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

John O. Dodick, Esq.
KNOX, McLAUGHLIN,
GORNALL & SENNETT
120 W. Tenth St.
Erie, PA 16501-1461
(Counsel for Lawrence Township)

D. MICHAEL FISHER
Attorney General

BY: _____
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,
Plaintiff

Vs.

LAWRENCE TOWNSHIP,
Defendant

Vs.

BUREAU OF FORESTRY,
Additional Defendant

CIVIL DIVISION

No. 01 - 1299 - CD

REPLY TO NEW MATTER

Filed on Behalf of:

Plaintiff, JAMES A. HOOVER

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER, Plaintiff	:	No. 01 - 1299 - CD
Vs.	:	
LAWRENCE TOWNSHIP, Defendant	:	
Vs.	:	
BUREAU OF FORESTRY, Additional Defendant	:	

REPLY TO NEW MATTER

NOW COMES, Plaintiff, James A. Hoover, and by his attorney, Paul Colavecchi, Esquire, files his Reply to the New Matter of the Additional Defendant and respectfully avers as follows:

21. Denied. The cause of action against the Additional Defendant falls within an exception to Sovereign Immunity.

22. Denied. The cause of action against the Additional Defendant falls within one of the exceptions to Sovereign Immunity pursuant to 42 Pa.C.S.A. 8522, specifically it falls within 42 Pa.C.S.A. 8522(b)(4).

23. Denied. The cause of action against the Additional Defendant, Bureau of Forestry, does not fail due to the fact that the governmental unit in this case had actual or constructive notice of the incident or condition given rise to the claim pursuant to 42 Pa.C.S.A. 5522(a)(3)(iii).

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

24. Admitted.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Admitted in part and denied in part. It is admitted that 42 Pa.C.S.A. 2524 affords commonlaw defenses to officials and employees of the Commonwealth. It is denied that the Commonwealth or any employees of the Commonwealth are protected by any such defenses raised in the New Matter.

30. Denied. The Statute cited by the Additional Defendant was repealed and replaced by 42 Pa.C.S.A. 1722(a)(1). It is further denied that Plaintiff's cause of action is barred by any provision of this Statute.

WHEREFORE, Plaintiff prays your Honorable Court to dismiss the New Matter of the Additional Defendant and enter judgment in favor of Plaintiff and against the Additional Defendant, together with costs.

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 01 - 1299 - CD

JAMES A. HOOVER,
Plaintiff

vs.

LAWRENCE TOWNSHIP,
Defendant

vs.

BUREAU OF FORESTRY,
Additional Defendant

REPLY TO NEW MATTER

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

LAWRENCE TOWNSHIP,

Defendant,

vs.

BUREAU OF FORESTRY,

Additional Defendant.

CIVIL ACTION

No. 01-1299 CD

SUBSTITUTION OF COUNSEL

Filed on behalf of Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

SUBSTITUTION OF COUNSEL

TO THE PROTHONOTARY:

Please withdraw the appearance of James F. Petraglia, Sr. Deputy Attorney General, and substitute Robert T. McDermott, Sr. Deputy Attorney General, on behalf of the Bureau of Forestry, in the above-captioned case.

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: _____
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Substitution of Counsel was served upon the following counsel of record, via first-class mail, postage pre-paid on May 1, 2002:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

John O. Dodick, Esq.
KNOX, McLAUGHLIN,
GORNALL & SENNETT
120 W. Tenth St.
Erie, PA 16501-1461
(Counsel for Lawrence Township)

D. MICHAEL FISHER
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

FILED

MAY 0 3 2002

m/1:32/no cc

William A. Shaw
Prothonotary

Copy to CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

LAWRENCE TOWNSHIP,

Defendant,

vs.

BUREAU OF FORESTRY,

Additional Defendant.

CIVIL ACTION

No. 01-1299 CD

VERIFICATION TO ANSWER AND NEW MATTER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Filed on behalf of Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

RTM

Hoover v. Forestry

VERIFICATION

I, ROBERT G. MERRILL JR, have read the foregoing Answer and New Matter to Plaintiff's First 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.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Robert G. Merrill Jr

DATE: 4-18-02

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Verification to Answer and New Matter to Plaintiff's First Amended Complaint was served upon the following counsel of record, via first-class mail, postage pre-paid on May 1, 2002:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

John O. Dodick, Esq.
KNOX, McLAUGHLIN,
GORNALL & SENNETT
120 W. Tenth St.
Erie, PA 16501-1461
(Counsel for Lawrence Township)

D. MICHAEL FISHER
Attorney General

BY: _____
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

FILED

MAY 0 3 2002

M/1:33/noc

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

LAWRENCE TOWNSHIP,

Defendant,

vs.

BUREAU OF FORESTRY,

Additional Defendant.

CIVIL ACTION

No. 01-1299 CD

NOTICE OF SERVICE OF ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

Filed on behalf of Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

NOTICE OF SERVICE

Please take note that the undersigned has answered Plaintiff's First Set of Interrogatories and Request for Production of Documents and copies sent to all counsel of record, on behalf of the Bureau of Forestry in the above-referenced case.

D. MICHAEL FISHER
Attorney General

BY: _____
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents was served upon the following counsel of record, via first-class mail, postage pre-paid on May 8, 2002:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

John O. Dodick, Esq.
KNOX, McLAUGHLIN,
GORNALL & SENNETT
120 W. Tenth St.
Erie, PA 16501-1461
(Counsel for Lawrence Township)

D. MICHAEL FISHER
Attorney General

BY: _____
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CA

JAMES A. HOOVER, Plaintiff	)	IN THE COURT OF COMMON PLEAS
	)	OF CLEARFIELD, PENNSYLVANIA
vs.	)	
	)	Civil Action – Law
LAWRENCE TOWNSHIP, Defendant	)	No. 01-1299-CD
vs.	)	
BUREAU OF FORESTRY, Additional Defendant	)	

CONSENT TO DISMISSAL

AND NOW, come the parties, Paul A. Hoover, Lawrence Township and Bureau of Forestry, by and through their counsel, and hereby consent to plaintiff's discontinuance of the defendant, Lawrence Township, only, in accordance with Rule 229(b) of the Pennsylvania Rules of Civil Procedure.

6/10/02

Paul Colavecchi

Paul Colavecchi, Esq.
221 East Market Street
P.O. Box 131
Clearfield, PA 16930
Counsel for Plaintiff

FILED

JUN 11 2002

0/9:07/6cc Atty Colavecchi
William A. Shaw
Prothonotary

5-24-02

John O. Dodick, Esq.
120 West Tenth Street
Erie, PA 16501
Counsel for Defendant

5/31/02

Robert McDermott, Esq.
Office of Attorney General
Tort Litigation Unit, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Counsel for Additional Defendant

BY THE COURT:

President Judge

JAMES A. HOOVER, Plaintiff	)	IN THE COURT OF COMMON PLEAS
	)	
vs.	)	OF CLEARFIELD, PENNSYLVANIA
	)	
LAWRENCE TOWNSHIP, Defendant	)	Civil Action – Law
	)	
vs.	)	No. 01-1299-CD
	)	
BUREAU OF FORESTRY, Additional Defendant	)	

PRAECIPE AND POWER OF ATTORNEY FOR SATISFACTION AND/OR TERMINATION

TO THE PROTHONOTARY:

You are hereby authorized, empowered, and directed to enter, as indicated, the following on the records thereof:

A.1. ____ The within suit is Settled, Discontinued, Ended and costs paid.

2. ____ The within suit is Settled, Discontinued, Ended WITH Prejudice and costs paid.

3. ____ The within suit is Settled, Discontinued, Ended WITHOUT Prejudice and costs paid.

B.1. ____ Satisfaction of the Award in the within suit is acknowledged.

2. ____ Satisfaction of Judgment, with interest and costs, in the within matter is acknowledged.

C. x Other: Discontinue the action filed against the defendant, Lawrence Township with prejudice. The Plaintiff, James Hoover, continues to maintain an action against the Additional Defendant, Bureau of Forestry. The Bureau of Forestry

____ is not being dismissed by way of this praecipe.

DATE: 6/10/02 _____ Paul Colavecchi

Witness (if signer is other than a registered attorney): Signature of authorizing party

_____ Paul Colavecchi, Esq.

Attorney or Notary Type or print name of above signer

COST PAYMENT VERIFICATION

I UNDERSTAND THAT THE ABOVE ACTION CANNOT BE FILED AND DOCKETED UNTIL ALL COSTS HAVE BEEN PAID, INCLUDING SHERIFF'S COSTS; AND HEREBY VERIFY THAT ALL COSTS HAVE BEEN PAID. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 Pa.C.S. SEC. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

_____

Signature

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS TO THE PROTHONOTARY

CASE NUMBER	TYPE TRIAL REQUESTED	DATE PRESENTED / ESTIMATED TRIAL TIME
01-1299-CD	( ) Jury ( ) Non-Jury	Hours
Date Complaint Filed: August 13, 2001	(X) Arbitration	2 ~~Days~~

PLAINTIFF(S)

JAMES A. HOOVER, ( )

DEFENDANT(S)

BUREAU OF FORESTRY, ( )

ADDITIONAL DEFENDANT(S)

( )

Check Block if a Minor is a Party to the Case

JURY DEMAND FILED BY:	DATE JURY DEMAND FILED:
Plaintiff JAMES A. HOOVER	8/13/01

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
less ~~more~~ than $ 25,000.00	( ) yes (X) no	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE

FILED

NOV 12 2002

William A. Shaw
Prothonotary

FOR THE PLAINTIFF PAUL COLAVECCHI, ESQUIRE P.O. Box 131, Clearfield, PA 16830	TELEPHONE NUMBER 814/765-1566
FOR THE DEFENDANT ROBERT McDERMOTT, ESQUIRE 564 Forbes Avenue, Pittsburgh, PA 15219	TELEPHONE NUMBER 412/565-2574
FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER

JAMES A. HOOVER, Plaintiff	)	IN THE COURT OF COMMON PLEAS
	)	
vs.	)	OF CLEARFIELD, PENNSYLVANIA
	)	
LAWRENCE TOWNSHIP, Defendant	)	Civil Action – Law
	)	
vs.	)	No. 01-1299-CD
	)	
BUREAU OF FORESTRY, Additional Defendant	)	

PRAECIPE AND POWER OF ATTORNEY FOR SATISFACTION AND/OR TERMINATION

TO THE PROTHONOTARY:

You are hereby authorized, empowered, and directed to enter, as indicated, the following on the records thereof:

A.1. ____ The within suit is Settled, Discontinued, Ended and costs paid.

2. ____ The within suit is Settled, Discontinued, Ended WITH Prejudice and costs paid.

3. ____ The within suit is Settled, Discontinued, Ended WITHOUT Prejudice and costs paid.

B.1. ____ Satisfaction of the Award in the within suit is acknowledged.

2. ____ Satisfaction of Judgment, with interest and costs, in the within matter is acknowledged.

C. x Other: Discontinue the action filed against the defendant, Lawrence Township with prejudice. The Plaintiff, Paul Hoover, continues to maintain an action against the Additional Defendant, Bureau of Forestry. The Bureau of Forestry

____ is not being dismissed by way of this praecipe.

FILED
DEC 05 2002
William A. Shaw
Prothonotary

DATE: _____

Witness (if signer is other than a registered attorney):

Paul Colavecchi
Attorney or Notary

Paul Colavecchi
Signature of authorizing party

Paul Colavecchi, Esq.
Type or print name of above signer

COST PAYMENT VERIFICATION

I UNDERSTAND THAT THE ABOVE ACTION CANNOT BE FILED AND DOCKETED UNTIL ALL COSTS HAVE BEEN PAID, INCLUDING SHERIFF'S COSTS; AND HEREBY VERIFY THAT ALL COSTS HAVE BEEN PAID. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 Pa.C.S. SEC. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

_____
Signature

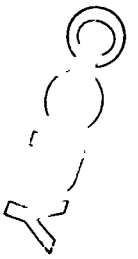
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

James A. Hoover

Vs.
Lawrence Township
Bureau of Forestry

No. 2001-01299-CD



CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 5, 2002 marked:

Discontinued, Settled, and Ended.

Record costs in the sum of $169.08 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of December A.D. 2002.

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

James A. Hoover

Vs.
Lawrence Township
Bureau of Forestry

No. 2001-01299-CD

AMENDED CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on December 5, 2002 marked:

Discontinued, Settled and Ended as to Lawrence Township ONLY with prejudice.

Record costs in the sum of $169.08 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 10th day of December A.D. 2002.

William A. Shaw, Prothonotary

Arb 6-9-03

Law Offices
COLAVECCHI & COLAVECCHI
221 East Market Street
(across from Courthouse)
P.O. Box 131
Clearfield, Pennsylvania 16830
(814) 765-1566

Joseph Colavecchi
Paul Colavecchi

FAX
(814) 765-4570

May 15, 2003

Marcy Kelley
Deputy Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

In Re: James A. Hoover vs. Bureau of Forestry
No. 01-1299-CD

Dear Marcy:

I am enclosing the Pre-trial Statement being submitted on behalf of the plaintiff in the above-captioned action.

Copies of being sent to the arbitrators and to opposing counsel.

Thank you for your consideration.

Sincerely yours,

Paul Colavecchi

Paul Colavecchi

PC:llh
Enclosure

cc: J. Richard Mattern, II, Attorney at Law
Andrew P. Gates, Attorney at Law
Blaise Ferraraccio, Attorney at Law
Robert T. McDermott, Sr. Deputy Attorney General
James Hoover

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - 1299 - CD
Vs.	:	
BUREAU OF FORESTRY,	:	
Defendant	:	

PRE-TRIAL STATEMENT

BRIEF STATEMENT OF FACTS:

Plaintiff was fishing on May 9, 2001, in Medix Run in an area within the jurisdiction of the Bureau of Forestry. Plaintiff was accompanied that day by his friend, James Tepsic. When they couldn't find any fish, Plaintiff walked onto a small wooden bridge located in Lawrence Township, on Medix Grade Road. When Plaintiff was walking across the bridge, one of the planks on the bridge broke causing Plaintiff's leg to go through the bridge and further causing him to fall sideways off the bridge. Plaintiff landed on a rock in the creek causing injuries to his shoulders, arms, ribs, fingers and head.

The plank on which Plaintiff had stepped on and broke, causing him to fall off the bridge resulting in injuries to him was in a detoriorated condition.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

ISSUE:

Whether the Bureau of Forestry is liable to Plaintiff for allowing a dangerous condition to exist on property within their jurisdication.

Answer: Affirmative

NAMES AND ADDRESSES OF WITNESSES:

James Hoover
P.O. Box 172
Laurel Run Road
Penfield, PA 15849

James Tepsic
417 Plum Run Road
Burgettstown, PA 15021

Robert G. Merrill, Sr. - cross-examination
Bureau of Forestry
R.R. #1, Box 184
Penfield, PA 15849

DAMAGES CLAIMED:

Prothonotary of Elk County - Complaint:	$ 82.50
Sheriff of Elk County - Service:	$ 48.36
William Shaw, Prothonotary - Complaint:	$ 80.00
Chester Hawkins, Sheriff - Service:	$ 69.08
Walmart - Photos:	$ 4.74
Sargent's Court Reporting Service - Transcript:	$120.00
ASAP Court Reporting - Deposition:	$ 76.30
William Shaw, Prothonotary - Arbitration Listing:	$ 20.00

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

William Shaw, Prothonotary - Subpoena:	$ 3.00
James Tepsic - Witness Fee:	$ 75.00
Clearfield Hospital - Medial Records:	$ 38.41
TOTAL:	$617.39

Such award for pain and suffering as the Board of Arbitrators decides is just and proper.

EXTRAORDINARY EVIDENTIARY PROBLEMS:

None are anticipated.

SPECIAL POINTS FOR CHARGES:

42 Pa.C.S.A. 8522(b)(4), exceptions to sovereign immunity/Commonwealth real estate, highways and sidewalks.

ESTIMATED TIME FOR TRIAL:

2 Hours.

Respectfully submitted,

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

TYPE OF BILL	DATE OF BILL	DATE OF PREV. BILL
CYCLE OUTP.	05/22/01	

A

CLEARFIELD HOSPITAL
P.O. BOX 992
CLEARFIELD, PA. 16830-0992
814 765-5341
FEI # 250979346

PAGE NO. 1

HOSP NO. 0066

M E PATIENT NAME	PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE	DAYS	
HOOVER ,JAMES ANDREW	48402432	M		05/17/01			

GUARANTOR NAME AND ADDRESS	C.O.B.	INSURANCE COMPANY NAME	GROUP NUMBER	POLICY NUMBER
JAMES A HOOVER JR PO BOX 172 PENFIELD PA 15849		1 MED PART B OP N25 2 O.P. M.A./SSA A04		177265353BR 0016798142
		DESANTIS JAMES P		

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

AMOUNT OF PAYMENT	$

DATE OF SERVICE	DESCRIPTION OF HOSPITAL SERVICES	SERVICE CODE	TOTAL CHARGES	EST. COVERAGE INS. CO. NO. 1	EST. COVERAGE INS. CO. NO. 2	EST. COVERAGE INS. CO. NO. 3	EST. COVERAGE INS. CO. NO. 4	PATIENT AMOUNT
DETAIL OF CURRENT CHARGES, PAYMENTS AND ADJUSTMENTS								
05/17	001TOPROL XL 50M	43112127	1.68	1.68				
05/17	002PERCOCET TABL	43122001	5.04	5.04				
05/17	001EKG W/TRACING	41200015	48.50	48.50				
05/17	002SYRINGE 10 CC	37510393	6.00	6.00				
05/17	001JELCO IV	37510864	3.00	3.00				
05/17	001ADAPTER MALE	37510880	3.00	3.00				
05/17	002SPONGE 2 X 2	37515426	6.00	6.00				
05/17	001LEVEL 4 ROOM	37810025	296.00	296.00				
05/17	001LEVEL 4 EXAM	47910039	99.00	99.00				
05/17	001VENI/CAP SPEC	40281362	8.00	8.00				
05/17	001MAGNESIUM	40212169	30.00	30.00				
05/17	001TSH HIGH SENS	40212433	66.00	66.00				
05/17	001BASIC METABOL	40212565	24.00	24.00				
05/17	001CBC W/DIFF	40221160	25.00	25.00				
05/17	004TRANDATE VIAL	43110436	21.24	21.24				
05/17	004TRANDATE VIAL	43110436	21.24	21.24				
05/17	001CHEST TWO VIE	42010314	106.00	106.00				
BALANCE FORWARD			0.00					
SUMMARY OF CURRENT CHARGES								
	E/R FEE		296.00	296.00				
	E/R PHYSICIAN FEE		99.00	99.00				
	PHARMACY		6.72	6.72				
	RADIOLOGY		106.00	106.00				
	LABORATORY		153.00	153.00				
	MED & SURG SUPPLY		18.00	18.00				
	E.K.G.		48.50	48.50				
	RX INJECTION		42.48	42.48				
SUB-TOTAL OF CURR. CHARGES			769.70	769.70				
T O T A L S			769.70	769.70				

PATIENT NUMBER	PLEASE REFER TO PATIENT NUMBER ON ALL INQUIRIES AND CORRESPONDENCE
48402432	

ADDITIONAL PATIENT BILLING MAY BE NECESSARY FOR ANY CHARGES NOT POSTED WHEN THIS BILL WAS PREPARED, OR IF INSURANCE CARRIERS DO NOT PAY ANY PART OF THE AMOUNTS SHOWN UNDER ESTIMATED INSURANCE COVERAGE.

PAY THIS AMOUNT	0.00

CLEARFIELD HOSPITAL
CLEARFIELD, PA.

U5A

MEDICAL RECORD/CHART

NAME AND ADDRESS

HOOVER , JAMES MAIDEN
PO BOX 172
PENFIELD PA 15849 PAT.PH. NO. 814-762-8305
RES. CODE 033150 S.S. NO. 178-20-6290 TWP HUSTON TWP CLFD CO

REGISTRATION NUMBER: 48402432

REGISTRATION DATE/TIME: 05/17/2001 16:59

AGE	BIRTHDATE	F.C.	RACE	SEX	MAR.	REG. BY
74	04/04/1927	M	1	M	D	CLH

REGISTERING DOCTOR NAME: DESANTIS JAMES P NO. 021683
FAMILY DOCTOR NAME: LUGUE AMADO B NO. 012559
MED. REC. NO. 090662

TIME SEEN: O/A After X-ray C.C. RECORD DICTATED: ☒ YES ☐ NO

MODE ARR: EMS Auto | Additional Hx. from: FAMILY EMS NURSING HOME PRIOR RECORD OF

HPI:

PMH: NONE ASTHMA COPD CAD MI CHF ↑ BP, LAST STRESS TEST DIABETES 1 2 CVA / TIA CANCER

PSH: NONE APP. CHOLY. TUBAL LIG. HYST CABG PTCA CATARACTS

MEDS: ☐ None Allergy: ☐ None Immunizations Current: Y N

SOCIAL /OCCUP. Hx: FAMILY Hx:

ROS:

PHY. EX.:

ORDERS

ABG O_2 Sat PF Td Foley Ng BP ↑→ NPO MD/PF Instr. Home Hlth R

ALBUTEROL mg X 1 2 3 4 CONT: mg./hr. ATRV 250 / 500 ug x 1 2 3

PROTOCOLS: ☐ NTG ☐ TPA MI ☐ RETAVASE ☐ GI BLEED ☐ RAPID TRANSFUSION ☐ STROKE TRANSFER ☐ TPA STROKE

1. IV locks
2. Zebeta tab 20 mg IV
3. Zebeta tab 20 mg IV
4. Toprol XL 25 mg po & 25 mg PM q
5.
6. Percet 5 mg 2 tabs po q 6° prn pain

RESULTS

180/94

RESPONSE

EVENTS &

PROCEDURES

SERVICES: Crit Care Med Command Independent visualization of ☐ x-rays ☐ EKG ☐ Discussion of imaging tests with Radiologist

DIAGNOSIS

GI bleed - request for plan with GI
HTN uncontrolled

Admit Dr. ☐ reg. ☐ 23 hr.
TIME: Room #: ☐ ICU ☐ Telm
Discharge Cond: ☐ Improved ☐ Stable ☐ Eloped
Transfer to: ☐ AMA
☐ DOA: ☐ Exp ED ☐ LWBS
Discussed with Dr. at

Referred to: VETERANS VA.

ORDER TAKEN OFF		CIRCLE REQUESTED TESTS	
	Card. PRT.	X	EKG
	Amylase		PT, PTT
	CBC DIF		TR 1 2
	Chem 7/12+CO_2		UA Mic
	Hepatic Panel		U C&S
	CK MB		Cath UA
	Troponin I		Gc-Chl Probe
	Digoxin		Blood C
	Theo		1 2
	Dilantin		Strep
	HCG Qual		Sputum
	HCG Quan		
	Urine Tox		
	Abd Ser/Kub		Hand
	Chest P. C.		Wrist
	Ribs		4 Arm
	Face / Nose		Elbow
	Orbit/mand.		Humerus
	C. Sp. P. C.		Shoulder
	Clavicle		Scapula
			Th. sp.
			LS sp.
			Pelvis
SPECIAL			Hip
	CT Head		Femur
	CT Neck		Knee
	CT Chest		Tib-Fib
	CT Abd		Ankle
	CT Pelvis		Heel
	IVP		Foot
	V/Q		
	US Abdomen		
	US Arterial		
	US Cardiac		
	US Pelvic OB		US Scrotum
	US Retrop Renal		US Venous

Instruction sheets: Temp Lacerations V & D URI Head Inj. Concussion Flu Mononucleosis Croup Nosebleed Eye Injury
Conjunctivitis Kidney Stone Tick Bite Back Pain Cast Sprain/Fracture Ectopic Threatened AB

DA 719.4V
DF 719.41
786.52
401.9
V15.5

☐ If your symptoms progress, worsen, or if you develop new symptoms, return to the emergency department.
☐ Follow instruction sheet[s] given.
☐ New Medication list: Take Toprol XL (½ tab) in AM when awake
☐ Follow up with ☐ your Doctor ☐ Other:
☐ Special instructions: Rx Percocet for pain. To Dr Veterans office by 1030 AM 18 May 01 for Blood pressure check.
☐ OFF WORK / SCHOOL / GYM FOR ☐ WORK RESTRICTIONS GIVEN

I HEREBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THESE DISCHARGE INSTRUCTION

L Daniels 1903
NURSE SIGNATURE TIME
☐ NON-EMERGENCY

PHYSICIAN ASSISTANT SIGNATURE

James A Hoover
PATIENT SIGNATURE
05/17/01 16:59

HOOVER , JAMES
PHYSICIAN SIGNATURE

EMERGENCY DEPARTMENT RECORD

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

PATIENT: HOOVER, JAMES **MR#:** 090662
DATE OF SERVICE: 05/17/2001
PHYSICIAN: James P. DeSantis, D.O.

TIME DICTATED: 05/18/2001 15:37:52
TIME TRANSCRIBED: 05/19/2001 08:42:08

CHIEF COMPLAINT/HISTORY OF PRESENT ILLNESS: This 74-year-old white male presents here requesting pain medication. The patient was seen on the 9th of May here in the department after a fall in which he had a dislocation of his glenohumeral joint on the left side and some bumps and bruises, chest wall and hand. The patient had his shoulder reduced. He was given instructions for supportive care and discharged with pain medication, Oxycodone. The patient ran out of the medication on the morning of the 17th and showed up around 17:00 hours for more pain medication. The patient's medical chart was reviewed and I talked to the patient about his symptoms. He was not having any significant dysfunction but the pain was bothering him in his chest wall and on the top of his shoulder. The patient pointed to his left lateral rib cage area as the area of pain, away from the abdomen, and no other significant symptoms. The patient did have a significant injury, was opting to give him a few more pain pills when I reviewed his chart and nurses notes and noticed an elevated blood pressure. At that time, the patient had a temperature of 97, a pulse of 77, respirations 22, and blood pressure of 230/107. The patient's shoulder was stable. He had mild tenderness at the trapezius muscle near the distal aspect of the clavicle and no other area of tenderness in the shoulder and he had some mild tenderness along the left lateral chest wall. The patient denied head, neck, chest, abdominal, or other musculoskeletal complaints. The patient has had no fever or chills or sweats, no visual disturbance, paresthesias or localized weakness. He denied abdominal pain, nausea or vomiting, diarrhea and his review of systems was essentially unremarkable. The patient is not followed by any physician. He has no significant past medical history outside of having open heart surgery two years ago in Pittsburgh. The patient in January 1999 was evaluated and referred to Pittsburgh where he had an aortic valve replacement for severe aortic stenosis, and the patient is on no medication and has no followed up with a physician since that surgery. The patient was asymptomatic with his elevated blood pressure. I discussed the patient with Dr. Vetrano and Dr. Vetrano will follow this patient first thing in the morning. I then proceeded with an examination and appropriate laboratory work and studies.

PHYSICAL EXAMINATION:
HEART: Regular rate and rhythm without murmurs or extra sounds.
LUNGS: Clear. Aerating well bilaterally with no retractions or increased respiratory effort.
HEENT: Eyes are clear. Oropharynx is clear.
NECK: Supple and nontender with no masses.
ABDOMEN: Soft and nontender with no bruits and no pulsatile masses.
NEUROLOGICAL: Cranial nerves II through XII are intact. No lateralizing signs. Gait and balance are normal.

PATIENT: HOOVER, JAMES **MR#:** 090662

ANCILLARY STUDIES: Electrocardiogram - The patient had normal sinus rhythm at 85 beats a minute, some nonspecific ST changes. I have no comparison 12-lead at this time. Laboratory studies - Chemistries were all normal. Complete blood count was all normal. The TSH is normal. Chest x-ray showed no acute disease and status post aortic valve replacement and open heart surgery.

EMERGENCY ROOM TREATMENT: The patient had an IV lock placed. He was given Labetalol 20 mg IV times two and then Toprol XL 25 mg PO and 25 more to take in the morning, and he will see Dr. Vetrano in the morning for re-evaluation and follow-up.

DIAGNOSIS(ES): Status post fall, request for pain medications, and hypertension, uncontrolled.

After the second dose of Labetalol, the patient's pressure was noted to be 180/94. At that time, I discontinued our monitoring and gave the patient an oral dose of Toprol 25 mg PO and discharged him.

DATE: _____ PHYSICIAN: _____
James P. DeSantis, D.O.

JPD/sas DD: 05/18/2001 DT: 05/19/2001 08:42:08
81501

48402432 090
HOOVER, JAMES ANDREW
04/24/1927 17
SANTIS JAMES
5/17/91

James

CATEGORY: I, II, (III), IV

TRANSPORT: ~~Ambulatory~~, Ambulance, BLS/ALS, Carried, Other

No access to PCP (Primary Care Physician)

Clearfield Hospital

EMERGENCY DEPARTMENT NURSING FLOW SHEET

Time: 1648. Chief Complaint: was seen here 5/9 - fell through bridge - continues to have pain - needs more pain meds

Current Medicines / Prescriptions / Over the Counter

Oxycodone T 2-4 prn - ran out this AM

ASA - once in a while

Vital Signs

Time	1648		
Temp	98.8		
Pulse	77		
Resp	22		
B/P	(L) 230/107	(R) 223/106	
O2 Sat			
Tilts			
B/P			
Pulse			

Tetanus

L.M.P. Weight

Allergies none

Latex Allergy ❑ Yes ☒ No

Visual Acuity

OD

OS

OU

❑ Blind ❑ Uncorrected ❑ Corrected ❑ Pinhole ❑ Glasses ❑ Contacts

Growth & Development
❑ Appropriate For Age
❑ Inappropriate For Age

Peds Immunizations Current ❑ Yes ❑ No

Prevnar ❑ Yes ❑ No

PAIN SCALES

VAS (0-10) 6-7

WONG-BAKER (0-5)

Location

Onset

Triage Nurse Signature

Time to Rm. 1654

Room # T3

Signature

ASSESSMENT: CHECK ALL APPROPRIATE AREAS. N/A = NOT APPLICABLE.

NEUROLOGICAL

☒ Alert ❑ Uncooperative
☒ Confused ❑ Combative
❑ Lethargic ❑ Baby
❑ Unresponsive ☒ Oriented

Patient States:
LOC ❑ Yes ❑ No
❑ Witnessed ❑ Unwitnessed

Dizzy	❑ Yes	❑ No
Vomiting	❑ Yes	❑ No
Visual Disturbances	❑ Yes	❑ No
Blurred Vision	❑ Yes	❑ No
Double Vision	❑ Yes	❑ No
Headache	❑ Yes	❑ No

Pupils ❑ N/A
❑ Equal
❑ Unequal R L
❑ Reactive R L
❑ Non-reactive R L
❑ Dilated & Fixed R L

COMA SCALE

Eyes Open	Spontaneous	=4
	To Voice	=3
	To Pain	=2
	None	=1
Best Verbal Response	Oriented	=5
	Confused	=4
	Inapprop. Words	=3
	Incomprehen. Sounds	=2
	None	=1
Best Motor Response	Obeys Commands	=6
	Localizes to Pain	=5
	Normal Flexion	=4
	Abn. Flex-decorticate	=3
	Abn. Ext.-decerebrate	=2
	No Response	=1

GCS Total

Extremity Movement ❑ Yes ❑ No
Deficit ❑ Where:
Handgrasp ❑ Equal ❑ Unequal
Describe:
Gait ❑ Steady ❑ Unsteady

EENT ☒ N/A

Eye: ❑ N/A
❑ Drainage ❑ Reddened ❑ Teary
❑ Foreign Body ❑ Pain ❑ Swollen
Comments

Ear ❑ N/A
Pain ❑ Yes ❑ No; If Yes ❑ R ❑ L
Other

Hearing Acuity ❑ Normal ❑ Abnormal
❑ Audioscope

Nose ❑ Deformity ❑ Bleeding ❑ N/A
❑ Congestion ❑ Other

Oral ❑ N/A
Sore Throat ❑ Yes ❑ No
Dysphagia ❑ Yes ❑ No
Drooling ❑ Yes ❑ No
Other

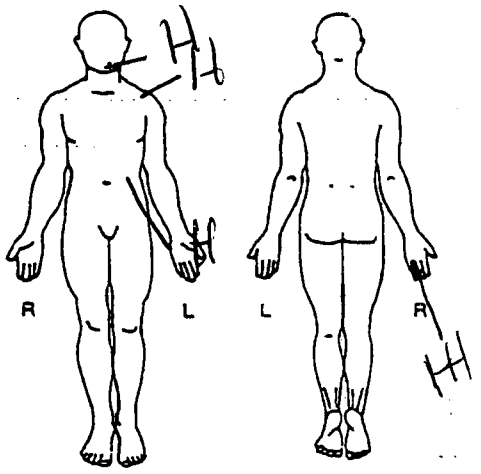
INTEGUMENTARY

Color ☒ Pink ❑ Pale ❑ Mottled
❑ Cyanotic ❑ Flushed
❑ Rash Describe
❑ Burn Describe
❑ Insect Bite
❑ Other

Consolidated

MUSCULOSKELETAL INJURY WOUNDS ☐ N/A

A - ABRASIONS
B - BRUISE
C - BURNS
D - FOREIGN BODY
E - LACERATION
F - PUNCTURE
G - POSSIBLE FX
H - C/O PAIN
I - REDDENED
J - HEMATOMA
K - AVULSION
L - OTHER _____
M - SWELLING
N - AMPUTATION



Pulses Present ☑ Yes ☐ No
Capillary Refill ☐ Over 2 sec. ☐ Under 2 sec.
Wound Visualized ☑ Yes ☐ No
Bleeding Controlled ☐ Yes ☐ No
Interventions ☐ Splint ☐ Elevation ☐ Sterile Dressing ☐ Ice Bag ☐ Fully Immobilized

CARDIOPULMONARY ☐ N/A

Chest Pain ☐ Yes ☒ No
Location: _____
Radiation: _____
Onset & Duration: _____
☐ Pain Scale _____ 0 - 10
Character: _____
Nausea & Vomiting ☐ Yes ☐ No
Dyspnea ☐ Yes ☐ No
Cough ☐ Yes ☐ No
☐ Productive ☐ Non-productive
☐ Smoker
Syncope ☐ Yes ☐ No
Diaphoresis ☐ Yes ☐ No

Breath Sounds

	R	L
☐ Retraction	☐ Clear	☐
☐ Shallow	☐ Rales	☐
☐ Nasal Flaring	☐ Rhonchi/Weezing	☐
	☐ Diminished	☐

☐ O2 ☐ Non Rebreather
☐ Cannula ☐ Simple Face
_____ L/Min./Time _____

Monitor ☐ Yes ☐ No
Rhythm _____
Pacemaker ☐ Yes ☐ No
Edema ☐ Yes ☐ No
Location: _____
Signature _____

GASTROINTESTINAL ☐ N/A

Last Oral Intake _____
Nausea ☐ No ☐ Yes
Vomiting ☐ No ☐ Yes X's _____
Color _____
Last BM _____
Diarrhea ☐ No ☐ Yes X's _____
Color _____
Hemoccult heme+ heme – Control _____
Pain ☐ No ☐ Yes
Where _____
Abdomen ☐ Distended/Firm
☐ Soft ☐ Nontender ☐ Tender ☐ N/A
Bowel Sounds ☐ Present ☐ Absent ☐ N/A

GENITOURINARY ☐ N/A

Frequency	☐	Retention	☐
Burning	☐	Urgency	☐
Pain	☐	Foley #	☐
Bleeding	☐	Penile Discharge	☐
Incontinent	☐	Decreased Output	☐

GYNECOLOGICAL ☐ N/A

Pregnant ☐ Yes ☐ No
Due Date _____
Fetal Tones _____ ☐ N/A
Fetal Movement ☐ Yes ☐ No
Gravida _____ Para _____ AB _____
Vaginal Bleeding or Discharge _____
Pads Per Hr. _____
Birth Control ☐ Yes ☐ No
Method _____

Therapeutics

GASTROINTESTINAL

NGT # _____ Time _____ Performed By _____
☐ Heme + ☐ Heme – Control _____
Contents _____
Returns ☐ Clear ☐ Pink ☐ Gross Blood
Enema _____
Type _____
Results _____ Time _____ Result

WOUND CARE

	Time	Performed By
Cleansing c		
Sutured		
Steri Strips		
Dressing		

☐ Polysporin ☐ Neosporin
☐ Bactitracin ☐ Silvadene

GENITOURINARY

	Time	Performed By
Foley ☐ #		
St. Cath ☐ (Fem. Cath)		

Color _____
☐ Heme + ☐ Heme –

MUSKULOSKELETAL

	Time	Performed By		Time	Performed By
Splinting			Sling		
Type _____ App. By _____			Crutch		
Ace			C. Collar		
Immobilizer			To P.T. For Training ☐		

INTAKE

Oral 60
IV 8
Irrigant _____
Total 68

OUTPUT

Urine _____
Emesis _____
NG _____
Total 0

Time	Solution & Amount	Gauge	Site	Init.
1814	IVL	#20	Rhand	KS

Time	Medication & Dosage	Route	Site	Init.
	dT 0.5 cc			
1822	Lubetalol 20mg	IV slow push over 2 min		KS
1828	NS flush	IV		KS
1850	NS flush	IV		KS
1850	Lubetalol 20mg	IV slow push 2 1/2 min		KS
1853	NS flush	IV		KS
1903	Toprol XL 25mg	PO		KS

NURSES SIGNATURE _____

DATE: 5/17/01

NURSES NOTES

VITAL SIGNS

TIME	TEMP	PULSE	RESP	BP	SAT / FLOW	PAIN
1710						
1755						
1809		91		(R) 232/134 (L) 261/126	94% RA	
1829				187/102		
1839				196/105		
1846				214/118		
1850						
1854				183/94		
1903						

NURSES SIGNATURE

COMMENTS — INITIALS

Exam by Dr. DeSantis to EKG and labs drawn. Pt ambulatory to imaging. Pt expresses concern regarding last ED visit when "that bitch lied to me and if I see her, I'm going to tell her." Unsure as to what pt was talking about. K

From imaging to Dr DeSantis re-examining. Orders received. Medicated per order. Pt continues to voice concerns about previous surgery and doctors and states his heart surgery was done wrong because he saw it on tv. K

Dr. DeSantis checking on pt. K

Dr. DeSantis notified and order received. Medicated per order. K

IV d/c Catheter intact. Site unremarkable. Script for Percocet to pt. Pt instructed twice to see Dr. Vitrano @ 1030 am 5/18/01 for check of BP. Blue d/c sheet to pt & Dr and time, date circled. Pt verbalized understanding. Pt ambulatory. K Denicker

DISPOSITION

☐ Discharged 1903 Time Performed By K Denicker

☑ Inst. Reviewed With: ☐ Pt. ☐ Parent ☐ Other

☐ Transfer To: _____ ☐ Admit

☐ Air ☐ Ground ☐ LWBS / AMA

Clothing/Valuables: ☐ With Patient ☐ To Police ☐ Given to _____ ☐ Disposed

☐ Safe ☐ Envelope # _____ ☐ Funeral Dir. Sheet

Notification Of: ☐ Family ☐ Police ☐ Clergy ☐ Poison Control ☐ MH /MR ☐ Home Health ☐ Patient/Family Services

☐ Discharge Planning ☐ Funeral Home ☐ Coroner Name: _____ Time: _____

☐ Nursing Home

Signature K Denicker

Final

HOOVER, JAMES ANDREW
Patient MRN: 90662 Orgz: EMR Race: 1
Patient ID: 48402432 Loc: EMR Sex: M
Age: 74 Years Svc: EMERGENCY DEPARTMENT
DESANTIS, DR. JAMES P
Diagnosis:
Report for: EMR

CLEARFIELD HOSPITAL
809 Turnpike Ave
PO Box 992
Clearfield, Pa 16830
Michael F. Reed, M.D.
(814) 768-2280

CHEMISTRY
GENERAL CHEMISTRY

TESTS	05/17/2001 17:40	REFERENCE RANGES	UNITS OF MEASURE
SODIUM	137	133-143	MMOL/L
POTASSIUM	4.3	3.3-4.8	MMOL/L
CHLORIDE	104	103-112	MMOL/L
TOTAL CO2	25.8	22-35	MMOL/L
GLUCOSE	99	70-115	MG/DL
BUN	20	5-25	MG/DL
CREATININE	1.3	0.5-1.4	MG/DL
CALCIUM	9.3	8.5-10.4	MG/DL
MAGNESIUM	2.0	1.8-2.4	MG/DL
BUN/CRE RATIO	15		
OSMO (CALC)	276		
ANION GAP	7.2		

THYROID FUNCTION

TESTS	05/17/2001 17:40	REFERENCE RANGES	UNITS OF MEASURE
UTSH	4.19	0.27-4.20	MIU/ML

HEMATOLOGY
AUTOMATED HEMATOLOGY

TESTS	05/17/2001 17:40	REFERENCE RANGES	UNITS OF MEASURE
WBC	7.23	4.80-10.80	X 10E3/uL
RBC	5.81	4.70-6.10	X 10E6/uL
HGB	16.9	14.0-18.0	G/DL
HCT	49.6	42.0-52.0	%
MCV	85.5	80.0-94.0	FL
MCH	29.1	27.0-31.0	PG
MCHC	34.0	33.0-37.0	%
RDW	13.8	11.5-14.5	%
PLATELETS	225	130-400	X 10E3/uL
SEG NEUTROPHILS	53.9	40-74	%
LYMPHOCYTES	34.0	19-48	%
MONOCYTES	7.09	3.4-9.0	%
EOSINOPHILS	4.36	0-7	%
BASOPHILS	.702	0.0-1.5	%
ABS NEUTROPHILS	3.90	1.90-8.00	X 10E3/uL
ABS LYMPHOCYTES	2.46	0.90-5.20	X 10E3/uL
ABS MONOCYTES	.513	0.16-1.00	X 10E3/uL
ABS EOSINOPHILS	.316	0.00-0.80	X 10E3/uL
ABS BASOPHILS	.051	0.00-0.20	X 10E3/uL

Key: H: High L: Low AB: Abnormal UN: Unknown HA: AttnHigh LA: AttnLow A: Attn
UA: Unknown H*: Critical High L*: Critical Low *: Critical UP: Unknown []: New Result

CLEARFIEL HOSPITAL
IMAGING DEPARTMENT
(814) 768 - 2275

PATIENT:	**HOOVER, JAMES ANDREW**	MR #:	**090662**
AGE:	74 SEX: M	ADM#:	48402432 EMR
DOB:	04/04/1927	ROOM/BED:	
ORD DR:	DESANTIS, JAMES P	PT CLASS:	ED
ATT DR:	DESANTIS, JAMES P	PT TYPE:	E FC: M
ALT DR:	LUGUE, AMADO B	HOSP SVC:	E/D ORDER #: 90004

REFERRING DIAGNOSIS: CONTINUED PAIN, FALL
T3 CXR

CONTRAST DOCUMENTATION:
BRAND: AMT: BY:

HISTORY/ COMMENTS: CHEST PAIN X 1 WEEK, PRIOR CHEST SURGERY @1808

IS PATIENT PREGNANT? NA LMP:
SHIELDED: NO. OF FILMS: 2 FLUORO TIME:
ORDER #: 90004

05/17/2001 CHEST TWO VIEW FRONTAL/LATERAL 71020

PROCEDURE ENDED: 05/17/2001 18:11 Initials: JHA

Wire sternal sutures and prosthetic valve are again seen. The heart remains top normal. The lungs are clear.

IMPRESSION: Stable appearance.
Status post aortic valve replacement.
No acute change when compared to the previous study of 5/9/01.

READING DOCTOR: DAVID L. OBLEY, M.D.
ELECTRONICALLY SIGNED: **DAVID L. OBLEY, M.D.**
TRANSCRIBED BY: MAP 05/18/2001 09:25AM

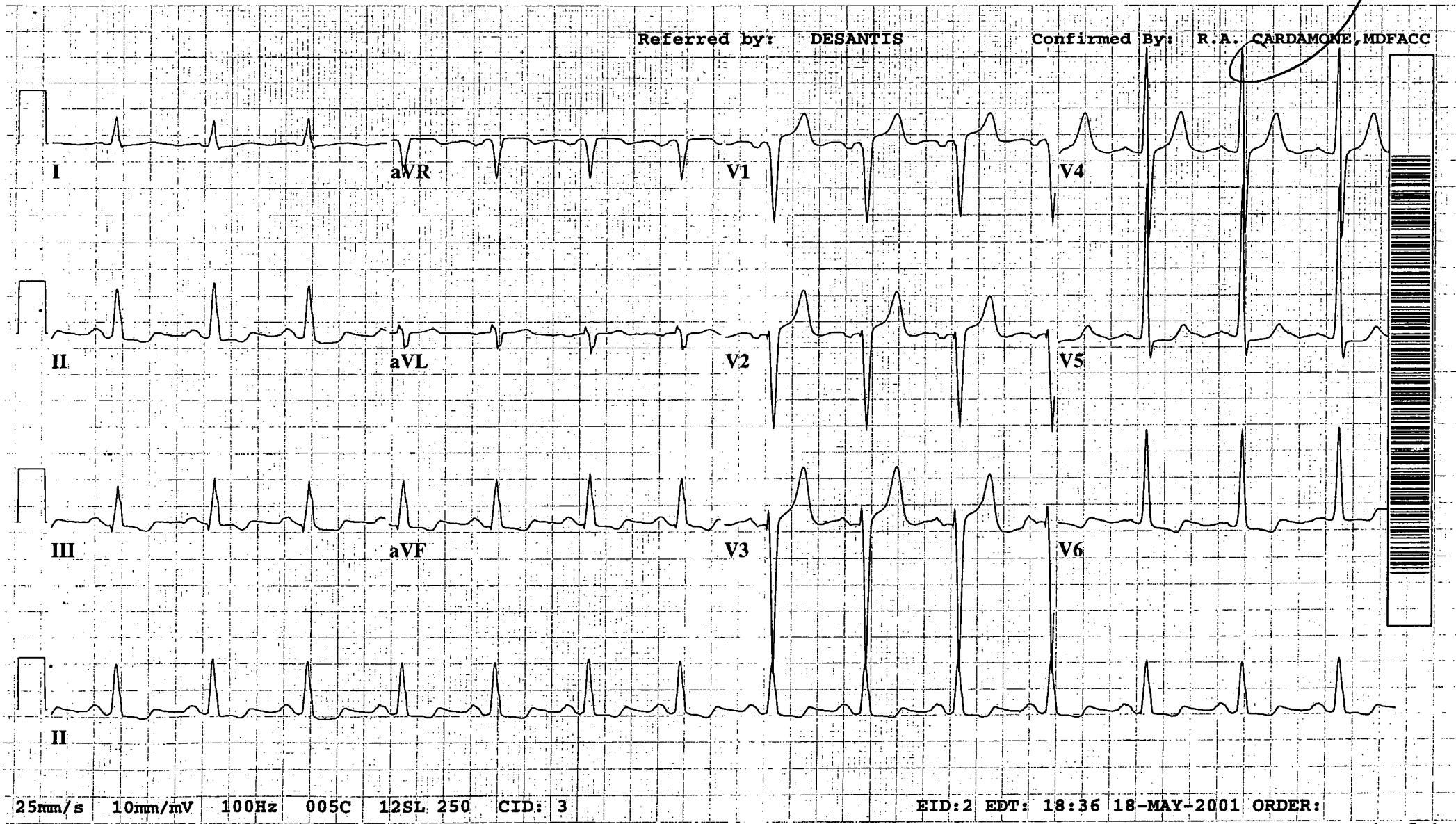
HOOVER, JAMES A. ID:000090662 17-MAY-2001 17:48:00 CLEARFIELD HOSPITAL-ER ROUTINE RECORD

04-APR-1927 (74 yr)	Vent. rate	85	BPM
Male Caucasian	PR interval	154	ms
	QRS duration	104	ms
Room:T3	QT/QTc	378/449	ms
Loc:6	P-R-T axes	75 69	-4

NORMAL SINUS RHYTHM
LEFT VENTRICULAR HYPERTROPHY
INFEROLATERAL ST-T WAVE DEPRESSION CONSIDER ISCHEMIA
ST-T WAVE ABNORMALITIES PERSIST COMPARED TO THE PREVIOUS TRACING
OF 15-JAN-1999

Technician:RON MCCOY

Referred by: DESANTIS Confirmed By: R.A. CARDAMONE,MDFACC



25mm/s 10mm/mV 100Hz 005C 12SL 250 CID: 3 EID:2 EDT: 18:36 18-MAY-2001 ORDER:

TYPE OF BILL	DATE OF BILL	DATE OF PREV. BILL
A		
CYCLE	05/14/01	
OUTP.		

CLEARFIELD HOSPITAL
P.O. BOX 992
CLEARFIELD, PA. 16830-0992
814 765-5341
FEI # 250979346

PAGE NO. 1

HOSP NO. 0066

M E PATIENT NAME	PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE	DAYS	
HOOVER ,JAMES ANDREW	48376529	M		05/09/01			

GUARANTOR NAME AND ADDRESS	C.O.B.	INSURANCE COMPANY NAME	GROUP NUMBER	POLICY NUMBER
JAMES A HOOVER JR PO BOX 172 PENFIELD PA 15849		1 MED PART B OP N25 2 O.P. M.A./SSA A04		178206290A 0016798142
		SHAW MARK R		

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

AMOUNT OF PAYMENT	$

DATE OF SERVICE	DESCRIPTION OF HOSPITAL SERVICES	SERVICE CODE	TOTAL CHARGES	EST. COVERAGE INS. CO. NO. 1	EST. COVERAGE INS. CO. NO. 2	EST. COVERAGE INS. CO. NO. 3	EST. COVERAGE INS. CO. NO. 4	PATIENT AMOUNT
DETAIL OF CURRENT CHARGES, PAYMENTS AND ADJUSTMENTS								
05/09	001PERCOCET TABL	43122001	2.52	2.52				
05/09	001SPINE CERV CO	42010462	208.00	208.00				
05/09	001SHOULDER COMP	42010702	112.00	112.00				
05/09	001HAND COMPLETE	42013086	80.00	80.00				
05/09	001FINGER(S) RIG	42013342	63.00	63.00				
05/09	001FINGER(S) RIG	42013342	63.00	63.00				
05/09	001ICE BAG SINGL	37510096	10.00	10.00				
05/09	001LEVEL 3 ROOM	37810058	216.00	216.00				
05/09	001RELOC FING IP	37811023	44.00	44.00				
05/09	001LEVEL 3 EXAM	47910021	64.00	64.00				
05/09	001RELOC FING IP	47950423	179.00	179.00				
05/09	001CHEST TWO VIE	42010314	106.00	106.00				
05/09	001CT HEAD/BRAIN	42200089	615.00	615.00				
BALANCE FORWARD			0.00					
SUMMARY OF CURRENT CHARGES								
	E/R FEE		260.00	260.00				
	E/R PHYSICIAN FEE		243.00	243.00				
	PHARMACY		2.52	2.52				
	RADIOLOGY		632.00	632.00				
	MED & SURG SUPPLY		10.00	10.00				
	CT SCAN HEAD		615.00	615.00				
SUB-TOTAL OF CURR. CHARGES			1762.52	1762.52				
DIAGNOSIS:		834.02	CLSD DISLOC IP , HAND					
		959.4	HAND INJURY NOS					
PROCEDURE: 26770		05/09/01	TREAT FINGER DISLOCATION					
T O T A L S			1762.52	1762.52				

PATIENT NUMBER	PLEASE REFER TO PATIENT NUMBER ON ALL INQUIRIES AND CORRESPONDENCE
48376529	

ADDITIONAL PATIENT BILLING MAY BE NECESSARY FOR ANY CHARGES NOT POSTED WHEN THIS BILL WAS PREPARED, OR IF INSURANCE CARRIERS DO NOT PAY ANY PART OF THE AMOUNTS SHOWN UNDER ESTIMATED INSURANCE COVERAGE.

PAY THIS AMOUNT	0.00

CLEARFIELD HOSPITAL
CLEARFIELD, PA.

U5A

KDB

MEDICAL RECORD/CHART

NAME AND ADDRESS

HOOVER , JAMES MAIDEN
PO BOX 172
PENFIELD PA 15849 PAT.PH. NO. 814-762-8305
RES. CODE 033150 S.S. NO. 178-20-6290 TWP HUSTON TWP CLFD CO

REGISTRATION DATE/TIME 05/09/2001 15:48

REGISTRATION NUMBER 48376529

AGE	BIRTHDATE	F.C.	RACE	SEX	MAR.	REG. BY
74	04/04/1927	M	1	M	D	JGL

REGISTERING DOCTOR NAME SHAW MARK R NO. 021725 FAMILY DOCTOR NAME LUGUE AMADO B NO. 012559 MED. REC. NO. 090662

TIME SEEN: O/A After X-ray C.C. RECORD DICTATED: ☒ YES ☐ NO

MODE ARR: EMS Auto | Additional Hx. from: FAMILY EMS NURSING HOME PRIOR RECORD OF

HPI:

PMH: NONE ASTHMA COPD CAD MI CHF ↑ BP, LAST STRESS TEST DIABETES 1 2 CVA / TIA CANCER

PSH: NONE APP. CHOLY. TUBAL LIG. HYST CABG PTCA CATARACTS

MEDS: ☐ None Allergy: ☐ None Immunizations Current: Y N

SOCIAL /OCCUP. Hx: FAMILY Hx:

ROS:

PHY. EX.:

ORDERS

ABG O$_2$ Sat PF Td Foley Ng BP ↑→ NPO MDI/PF Instr. Home Hlth R

ALBUTEROL mg X 1 2 3 4 CONT: mg./hr. ATRV 250 / 500 ug x 1 2 3

PROTOCOLS: ☐ NTG ☐ TPA MI ☐ RETAVASE ☐ GI BLEED ☐ RAPID TRANSFUSION ☐ STROKE TRANSFER ☐ TPA STROKE

1. Percocet T po
2. Splint
3.
4.
5.
6.

RESULTS

Xray ⊕ dislocation 4th Dig. PIP. Pre - Percocet #20

RESPONSE EVENTS & PROCEDURES

SERVICES: Crit Care Med Command Independent visualization of ☐ x-rays ☐ EKG ☐ Discussion of imaging tests with Radiologist

DIAGNOSIS

Dislocation (R) Hand 4th Digit
Contusion (L) Shoulder
Blunt Head Trauma
s LOC

Admit Dr. ☐ reg. ☐ 23 hr.
TIME: Room #: ☐ ICU ☐ Telm
Discharge Cond: ☒ Improved ☒ Stable ☐ Eloped
Transfer to: ☐ AMA
☐ DOA: ☐ Exp ED ☐ LWBS
Referred to: Discussed with Dr. at

REQUESTED TESTS — CIRCLE

✓	ORDER TAKEN OFF		
	Card. PRT.		EKG
	Amylase		PT, PTT
	CBC DIF		TR 1 2
	Chem 7,12+CO$_2$		UA Mic
	Hepatic Panel		U C&S
	CK MB		Cath UA
	Troponin I		Gc-Chl Probe
	Digoxin		Blood C
	Theo		1 2
	Dilantin		Strep
	HCG Qual		Sputum
	HCG Quan		
	Urine Tox		
	Abd. Ser/Kub	4V (R)	Hand
1V	Chest P (C)		Wrist
	Ribs		4 Arm
	Face / Nose		Elbow
	Orbit/mand.		Humerus
5V	C. Sp P (C)	(L)	Shoulder
	Clavicle		Scapula
			Th. sp.
			LS sp.
			Pelvis
	SPECIAL		Hip
5	CT Head		Femur
	CT Neck		Knee
	CT Chest		Tib-Fib
	CT Abd		Ankle
	CT Pelvis		Heel
	IVP		Foot
	V/Q		
	US Abdomen		
	US Arterial		
	US Cardiac		
	US Pelvic OB		US Scrotum
	US Retrop Renal		US Venous

Instruction sheets: Temp Lacerations V & D URI (Head Inj.) (Concussion) Flu Mononucleosis Croup Nosebleed Eye Injury
Conjunctivitis Kidney Stone Tick Bite Back Pain Cast Sprain/Fracture Ectopic Threatened AB

DA 959.4
DF 834.02
923.00
959.01
E 882
E 849.8
P 26770-F8,54
3-57

☒ If your symptoms progress, worsen, or if you develop new symptoms, return to the emergency department.
☐ Follow instruction sheet[s] given.
☐ New Medication list:
☒ Follow up with ☐ your Doctor ☒ Other: DR Polintan / 10am tomorrow
☐ Special instructions:
Rest, ICE ON/OFF
Take pain medication as needed.
☐ OFF WORK / SCHOOL / GYM FOR ☐ WORK RESTRICTIONS GIVEN

I HEREBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THESE DISCHARGE INSTRUCTIONS

[signature] 1955
NURSE SIGNATURE TIME PHYSICIAN ASSISTANT SIGNATURE

James A Hoover
PATIENT SIGNATURE

☐ NON-EMERGENCY
[signature]
PHYSICIAN SIGNATURE

HOOVER , JAMES 05/09/01 15:48

Clearfield Hospital **EMERGENCY DEPARTMENT RECORD**

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

PATIENT: HOOVER, JAMES **MR#:** 090662
DATE OF SERVICE: 05/09/2001
PHYSICIAN: Mark Shaw, D.O.

TIME DICTATED: 05/09/2001 17:51:09
TIME TRANSCRIBED: 05/10/2001 08:30:18

CHIEF COMPLAINT: Pain right hand and left shoulder.

HISTORY OF PRESENT ILLNESS: The patient states that he was fishing, standing on a bridge approximately 15 feet high and a plank broke and he fell through, landing on mud embankment and into the water. The patient states that he did hit his head but there was no loss of consciousness. He denies any neck or back pain. He denies any numbness or weakness. The patient denies any vomiting or visual complaints. The patient complains of pain in the right hand where he is unable to move his fourth digit. The patient denies any numbness in the hand or finger. The patient also complains of pain in the left shoulder area. The patient has been able to move the arm and again denies any numbness or weakness in that area. The patient says he has some slight chest discomfort in the outer aspect of the left side, but no difficulty breathing. The patient denies any anterior chest pain. The patient denies any abdominal pain.

PAST MEDICAL HISTORY: None.

MEDICATIONS: None.

ALLERGIES: To Penicillin.

SOCIAL HISTORY: The patient lives alone. That any use of alcohol or drugs.

REVIEW OF SYSTEMS: All of the review of systems are unremarkable, except for those noted in the History of Present Illness. The patient does state, though, that he has had the pain continuously since this occurrence approximately two hours ago, and has taken no medication at this time for this.

PHYSICAL EXAMINATION
GENERAL: The patient is lying in bed in no acute distress. Alert and cooperative.
VITAL SIGNS: Stable. Blood pressure is elevated at 230/113.
SKIN: Pink and dry.
HEENT: Pupils are equal and reactive. Sclerae clear. Extraocular muscles are intact. Pharynx is not injected, without exudates or edema. Palpation of the skull reveals no palpable deformity, ecchymosis or crepitus.
NECK: Supple. There is no pain to palpation of posterior cervical spine. Range of motion is intact.

CHEST: Clear to auscultation in all fields.
HEART: Regular rate and rhythm without murmurs, S3, S4, thrills, rubs or heaves.
ABDOMEN: Soft and non-distended. There is no mass or organomegaly. There is no pain to palpation all quadrants. Bowel sounds are equal and reactive in all quadrants. Negative pelvic rock. Negative Lloyd's sign bilaterally.
EXTREMITIES: Reveal the presence of pain to palpation in the left anterolateral shoulder area and in the axilla area. There is no swelling, ecchymosis or deformity. Range of motion is intact. Distal neurovascular bundle is intact. The right hand reveals the presence of a deformity of the PIP fourth digit. Range of motion is restricted due to this deformity. Distal neurovascular bundle is intact.
NEUROLOGICAL: The patient is alert and oriented times three. GCS is 15. There are no focal deficits noted.

PLAN: X-rays of the right hand revealed the presence of a dislocation at the fourth digit PIP. Chest, C-spine, left shoulder, and CT of the head were all unremarkable. The patient's dislocation was managed with a closed reduction without difficulty. Repeat x-rays showed realignment to be present with a questionable chip fracture noted. The patient was placed in a splint, given a prescription for Percocet, #20 tablets one q4h PRN pain.

DISCHARGE INSTRUCTIONS: The patient will be given head trauma instruction sheet. The patient was given instructions to rest, ice on and off, take pain medication as needed. The patient will follow-up with Dr. Polintan tomorrow at 1 PM.

FINAL DIAGNOSIS:
(1) Dislocation of the right hand, fourth digit.
(2) Contusion, left shoulder.
(3) Blunt head trauma without loss of consciousness.

The patient was discharged in stable and improved condition.

DATE: 5/10/01 PHYSICIAN: Mark Shaw
Mark Shaw, D.O.

MS/skz DD: 05/09/2001 DT: 05/10/2001 08:30:18
77767

48376529 090662
HOOLEY, JAMES ALLEN
DOB: 09/07/27 17A
CLEARFIELD
James 73

CATEGORY: I, (II), III, IV
TRANSPORT: (Ambulatory), Ambulance, BLS/ALS, Carried, Other

No access to PCP (Primary Care Physician)

Clearfield Hospital

EMERGENCY DEPARTMENT NURSING FLOW SHEET

Time: 1538 Chief Complaint: pt fell 15-18' feet through bridge. Pt injured (R)hand, (L)shoulder, (L)eb, hit head & LOC

Current Medicines / Prescriptions / Over the Counter

ASA 1x this am

Vital Signs

Time	1538		
Temp	96.2		
Pulse	97		
Resp	24	@1320	
B/P	137/79	113	
O2 Sat	97% RA		
Tilts	supine		
B/P			
Pulse			

Tetanus unknown

L.M.P. Weight

Allergies PCN

Latex Allergy ❑ Yes ☒ No

Visual Acuity

OD

OS

OU

❑ Blind ❑ Uncorrected ❑ Corrected ❑ Pinhole ❑ Glasses ❑ Contacts

Growth & Development
❑ Appropriate For Age
❑ Inappropriate For Age

Peds Immunizations Current
❑ Yes ❑ No

Prevnar ❑ Yes ❑ No

PAIN SCALES
VAS (0-10) 10
WONG-BAKER (0-5)
Location
Onset

Triage Nurse Signature B Pearson RN

Time to Rm. 1550

Room # 7

Signature

ASSESSMENT: CHECK ALL APPROPRIATE AREAS. N/A = NOT APPLICABLE.

NEUROLOGICAL

☒ Alert ❑ Uncooperative
❑ Confused ❑ Combative
❑ Lethargic ❑ Baby
❑ Unresponsive ☒ Oriented

Patient States:
LOC ❑ Yes ☒ No
☒ Witnessed ❑ Unwitnessed

Dizzy pt was	❑ Yes	☒ No
Vomiting dizziness	❑ Yes	☒ No
Visual Disturbances	❑ Yes	☒ No
Blurred Vision	❑ Yes	☒ No
Double Vision	❑ Yes	☒ No
Headache	☒ Yes	❑ No

Pupils ❑ N/A
☒ Equal
❑ Unequal R L
☒ Reactive (R) (L)
❑ Non-reactive R L
❑ Dilated & Fixed R L

COMA SCALE

Eyes Open	Spontaneous	=4	4
	To Voice	=3	
	To Pain	=2	
	None	=1	
Best Verbal Response	Oriented	=5	5
	Confused	=4	
	Inapprop. Words	=3	
	Incomprehen. Sounds	=2	
	None	=1	
Best Motor Response	Obeys Commands	=6	6
	Localizes to Pain	=5	
	Normal Flexion	=4	
	Abn. Flex-decorticate	=3	
	Abn. Ext.-decerebrate	=2	
	No Response	=1	
GCS Total			15

Extremity Movement ☒ Yes ❑ No
Deficit ❑ Where:
Handgrasp ☒ Equal ❑ Unequal
Describe:
Gait ☒ Steady ❑ Unsteady

EENT ❑ N/A

Eye: ❑ N/A
❑ Drainage ☒ Reddened ❑ Teary
❑ Foreign Body ❑ Pain ❑ Swollen
Comments

Ear ☒ N/A
Pain ❑ Yes ❑ No; If Yes ❑ R ❑ L
Other

Hearing Acuity ❑ Normal ❑ Abnormal ❑ Audioscope

Nose ❑ Deformity ❑ Bleeding ☒ N/A ❑ Congestion ❑ Other

Oral ☒ N/A
Sore Throat ❑ Yes ❑ No
Dysphagia ❑ Yes ❑ No
Drooling ❑ Yes ❑ No
Other

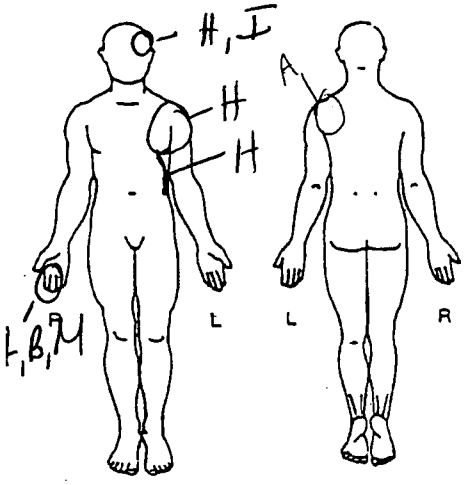
INTEGUMENTARY

Color ☒ Pink ❑ Pale ❑ Mottled ❑ Cyanotic ❑ Flushed

❑ Rash Describe
❑ Burn Describe
❑ Insect Bite
❑ Other

MUSCULOSKELETAL INJURY WOUNDS ☐ N/A

A - ABRASIONS
B - BRUISE
C - BURNS
D - FOREIGN BODY
E - LACERATION
F - PUNCTURE
G - POSSIBLE FX
H - C/O PAIN
I - REDDENED
J - HEMATOMA
K - AVULSION
L - OTHER _____
M - SWELLING
N - AMPUTATION



Pulses Present ☑ Yes ☐ No
Capillary Refill ☐ Over 2 sec. ☑ Under 2 sec.
Wound Visualized ☐ Yes ☐ No
Bleeding Controlled ☐ Yes ☐ No
Interventions ☐ Splint ☐ Elevation ☐ Sterile Dressing ☐ Ice Bag ☐ Fully Immobilized

CARDIOPULMONARY ☐ N/A

Chest Pain ☐ Yes ☑ No
Location: _____
Radiation: _____
Onset & Duration: _____
☐ Pain Scale _____ 0 - 10
Character: _____
Nausea & Vomiting ☐ Yes ☑ No
Dyspnea ☐ Yes ☑ No
Cough ☐ Yes ☑ No
☐ Productive ☐ Non-productive
☐ Smoker
Syncope ☐ Yes ☑ No
Diaphoresis ☐ Yes ☑ No

Breath Sounds

	R	L
☐ Retraction	☐ Clear	☐
☐ Shallow	☐ Rales	☐
☐ Nasal Flaring	☐ Rhonchi/Weezing	☐
	☐ Diminished	☐

☐ O2 ☐ Non Rebreather
☐ Cannula ☐ Simple Face
_____ L/Min./Time_____

Monitor ☐ Yes ☐ No
Rhythm _____
Pacemaker ☐ Yes ☐ No
Edema ☐ Yes ☐ No
Location:

Signature RJ Jackson

GASTROINTESTINAL ☐ N/A

Last Oral Intake _____
Nausea ☐ No ☐ Yes
Vomiting ☐ No ☐ Yes X's_____
Color _____
Last BM _____
Diarrhea ☐ No ☐ Yes X's_____
Color _____
Hemoccult heme+ heme – Control_____
Pain ☐ No ☐ Yes
Where _____
Abdomen ☐ Distended/Firm
☐ Soft ☐ Nontender ☐ Tender ☐ N/A
Bowel Sounds ☐ Present ☐ Absent ☐ N/A

GENITOURINARY ☐ N/A

Frequency	☐	Retention	☐
Burning	☐	Urgency	☐
Pain	☐	Foley #	☐
Bleeding	☐	Penile Discharge	☐
Incontinent	☐	Decreased Output	☐

GYNECOLOGICAL ☐ N/A

Pregnant ☐ Yes ☐ No
Due Date _____
Fetal Tones _____ ☐ N/A
Fetal Movement ☐ Yes ☐ No
Gravida _____ Para _____ AB _____
Vaginal Bleeding or Discharge _____
Pads Per Hr. _____
Birth Control ☐ Yes ☐ No
Method _____

Therapeutics

GASTROINTESTINAL

	Time	Performed By
NGT # _____		

☐ Heme + ☐ Heme – Control _____
Contents _____
Returns ☐ Clear ☐ Pink ☐ Gross Blood
Enema _____
Type _____
Results _____ Time Result

WOUND CARE

	Time	Performed By
Cleansing c		
Sutured		
Steri Strips		
Dressing		

☐ Polysporin ☐ Neosporin
☐ Bactitracin ☐ Silvadene

GENITOURINARY

	Time	Performed By
Foley ☐ # _____		

St. Cath ☐ (Fem. Cath)
Color _____
☐ Heme + ☐ Heme –

MUSKULOSKELETAL

	Time	Performed By		Time	Performed By
Splinting			Sling		
Type Aluminum finger splint	App. By	TCN	Crutch		
Ace			C. Collar		
Immobilizer			To P.T. For Training ☐		

INTAKE

Oral 0
IV _____
Irrigant 0
Total _____

OUTPUT

Urine 0
Emesis _____
NG 0
Total _____

Time	Solution & Amount	Gauge	Site	Init.

Time	Medication & Dosage	Route	Site	Init.
	dT 0.5 cc			
1215	Benicar 1 tab	po		TCN

NURSES SIGNATURE TCN

DATE: 5-9-01

NURSES NOTES

VITAL SIGNS

TIME	TEMP	PULSE	RESP	BP	SAT / FLOW	PAIN
1605						
1615						
1710				211/116		
1725						
1720			Late Entry			
730						
1742				209/111		2
1755						

COMMENTS	INITIALS
by Shaw examing pt.	
pt to Z magery wa ked.	
pt returns from Z magery.	
Medicated as per orders.	
4th digit (L) hand dislocated put back in place by Dr. Shaw	
pt to Z magery again was ked.	
returns to T-4	TCC
pt to W/A	TCC

NURSES SIGNATURE

DISPOSITION

Discharged Time 1755 Performed By TCC

Inst. Reviewed With: ☒ Pt. ☐ Parent ☐ Other

☐ Transfer To: _____ ☐ Admit

☐ Air ☐ Ground ☐ LWBS / AMA

Clothing/Valuables: ☐ With Patient ☐ To Police ☐ Given to _____ ☐ Disposed

☐ Safe ☐ Envelope # _____ ☐ Funeral Dir. Sheet

Notification Of: ☐ Family ☐ Police ☐ Clergy ☐ Poison Control ☐ MH /MR ☐ Home Health ☐ Patient/Family Services

Discharge Planning ☐ Funeral Home ☐ Coroner Name: _____ Time: _____

Nursing Home

Signature _____

CLEARFIE HOSPITAL
IMAGING DEPARTMENT
(814) 768 - 2275

PATIENT:	**HOOVER, JAMES ANDREW**	MR #:	**090662**
AGE:	74 SEX: M	ADM#:	48376529 EMR
DOB:	04/04/1927	ROOM/BED:	
ORD DR:	SHAW, MARK R	PT CLASS:	ED
ATT DR:	SHAW, MARK R	PT TYPE:	E FC: M
ALT DR:	LUGUE, AMADO B	HOSP SVC:	E/D ORDER #: 90001

05/09/2001 HAND COMPLETE RIGHT 73130
PROCEDURE ENDED: 05/09/2001 17:06 Initials: JP

The carpal bones and metacarpal bones appear intact. There is a dislocation at the proximal interphalangeal joint of the fourth finger.

IMPRESSION: No acute fracture.
Dislocation at the fourth finger proximal interphalangeal joint.

05/09/2001 FINGER(S) RIGHT 73140
PROCEDURE ENDED: 05/09/2001 17:06 Initials: JP

There is complete dorsal dislocation of the fourth finger at the proximal interphalangeal joint. No associated fracture is seen.

READING DOCTOR: RICHARD G. WILLIAMS, M.D.
ELECTRONICALLY SIGNED: **RICHARD G. WILLIAMS, M.D.**
TRANSCRIBED BY: PAR 05/10/2001 08:09AM

CLEARFIE HOSPITAL
IMAGING DEPARTMENT
(814) 768 - 2275

PATIENT:	**HOOVER, JAMES ANDREW**	MR #:	**090662**
AGE:	74 SEX: M	ADM#:	48376529 EMR
DOB:	04/04/1927	ROOM/BED:	
ORD DR:	SHAW, MARK R	PT CLASS:	ED
ATT DR:	SHAW, MARK R	PT TYPE:	E FC: M
ALT DR:	LUGUE, AMADO B	HOSP SVC:	E/D ORDER #: 90003

REFERRING DIAGNOSIS: POST REDUCTION R 4TH DIGIT T4
CONTRAST DOCUMENTATION:
BRAND: AMT: BY:

HISTORY/ COMMENTS: POST REDUCTION. @1740
IS PATIENT PREGNANT? LMP:
SHIELDED: NO. OF FILMS: FLUORO TIME:
ORDER #: 90003

05/09/2001 FINGER(S) RIGHT 73140
PROCEDURE ENDED: 05/09/2001 17:43 Initials: JP

Examination is limited to the fourth finger. Post reduction views show re-articulation through the proximal interphalangeal joint. There is persistent soft tissue swelling. Tiny chip avulsion fragment is seen adjacent to the head of the proximal phalanx.

READING DOCTOR: DAVID L. OBLEY, M.D.
ELECTRONICALLY SIGNED: **DAVID L. OBLEY, M.D.**
TRANSCRIBED BY: PAR 05/10/2001 09:09AM

CLEARFIE HOSPITAL
IMAGING DEPARTMENT
(814) 768 - 2275

PATIENT:	**HOOVER, JAMES ANDREW**	MR #:	**090662**
AGE:	74 SEX: M	ADM#:	48376529 EMR
DOB:	04/04/1927	ROOM/BED:	
ORD DR:	SHAW, MARK R	PT CLASS:	ED
ATT DR:	SHAW, MARK R	PT TYPE:	E FC: M
ALT DR:	LUGUE, AMADO B	HOSP SVC:	E/D ORDER #: 90001

REFERRING DIAGNOSIS: T4 FELL THROUGH BRIDGE

CONTRAST DOCUMENTATION:
BRAND: AMT: BY:

HISTORY/ COMMENTS: DEFORMITY RT FOURTH FINGER. PAIN LT AC UNABLE TO RAISE ARM TENDER LT CHEST @1705

IS PATIENT PREGNANT? LMP:
SHIELDED: NO. OF FILMS: 16 FLUORO TIME:
ORDER #: 90001

05/09/2001 CHEST TWO VIEW FRONTAL/LATERAL 71020
PROCEDURE ENDED: 05/09/2001 17:06 Initials: JP

The patient has had an aortic valve replacement. There is no evidence of failure or effusion. No pneumothorax is seen. No displaced rib fractures are identified at this time.

IMPRESSION: No acute disease.

05/09/2001 SHOULDER COMPLETE LEFT 73030
PROCEDURE ENDED: 05/09/2001 17:06 Initials: JP

No shoulder dislocation is suspected at this time. No fracture is seen. The AC joint shows no definite evidence of separation.

Weight bearing views may yield additional information if symptoms of AC joint separation are present.

IMPRESSION: No definite fracture.
No definite AC joint separation.
Weight bearing views may be required, however.

05/09/2001 SPINE CERVICAL COMP OBL&FLEX/EXT 72052
PROCEDURE ENDED: 05/09/2001 17:06 Initials: JP

No malalignment of the vertebral bodies is present. There is no prevertebral swelling. The odontoid process remains in a normal relation with the anterior arch of C1.

IMPRESSION: No suspicious bony abnormalities suspected.

CLEARFIE HOSPITAL
IMAGING DEPARTMENT
(814) 768 - 2275

PATIENT:	**HOOVER, JAMES ANDREW**	MR #:	**090662**
AGE:	74 SEX: M	ADM#:	48376529 EMR
DOB:	04/04/1927	ROOM/BED:	
ORD DR:	SHAW, MARK R	PT CLASS:	ED
ATT DR:	SHAW, MARK R	PT TYPE:	E FC: M
ALT DR:	LUGUE, AMADO B	HOSP SVC:	E/D ORDER #: 90002

REFERRING DIAGNOSIS: T4 FELL THROUGH BRIDGE

CONTRAST DOCUMENTATION:
BRAND: AMT: BY:

HISTORY/ COMMENTS:
IS PATIENT PREGNANT? NA LMP:
SHIELDED: NO. OF FILMS: FLUORO TIME:
ORDER #: 90002

05/09/2001 CT HEAD/BRAIN W/O CONTRAST 70450
PROCEDURE ENDED: 05/09/2001 16:50 Initials: JCS

No hemorrhage is seen. There is no midline shift or mass effect. The fourth ventricle is not displaced. Bony calvarium appears intact. There is a left sided temporal scalp lesion which is consistent with a lipoma. This is an incidental finding.

IMPRESSION: No intracranial abnormality or hemorrhage seen.
No fracture of the bony calvarium.
Scalp lipoma.

READING DOCTOR: RICHARD G. WILLIAMS, M.D.
ELECTRONICALLY SIGNED: **RICHARD G. WILLIAMS, M.D.**
TRANSCRIBED BY: PAR 05/10/2001 08:04AM

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 01 - 1299 - CD

JAMES A. HOOVER,
Plaintiff

vs.

BUREAU OF FORESTRY,
Defendant

PRE-TRIAL STATEMENT

COLAVECCHI
RYAN & COLAVECCHI
ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
BUREAU OF FACILITY DESIGN AND CONSTRUCTION

BRIDGE INSPECTION REPORT

Little Medix Road over Medix Run

Structure Identification No. 17 7935 5109 0012

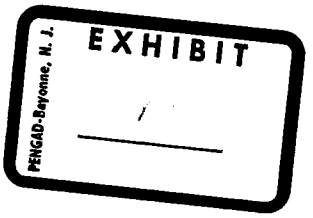
MOSHANNON STATE FOREST
Forest District 9

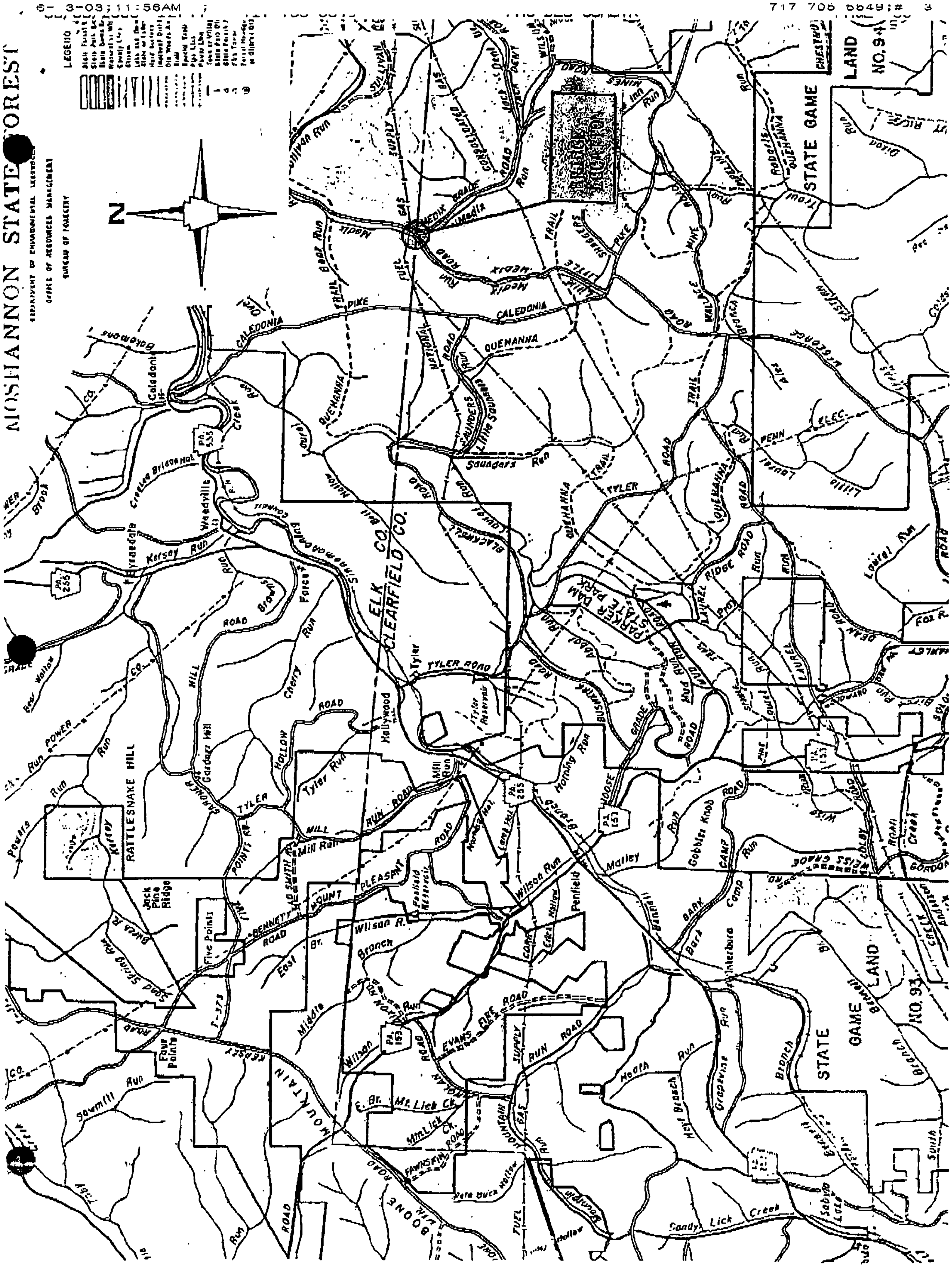
Lawrence Township, Clearfield County

Inspected by: John W. Smith
Lee Warren

Date Inspected: 06/08/98

Date Submitted: 08/06/98

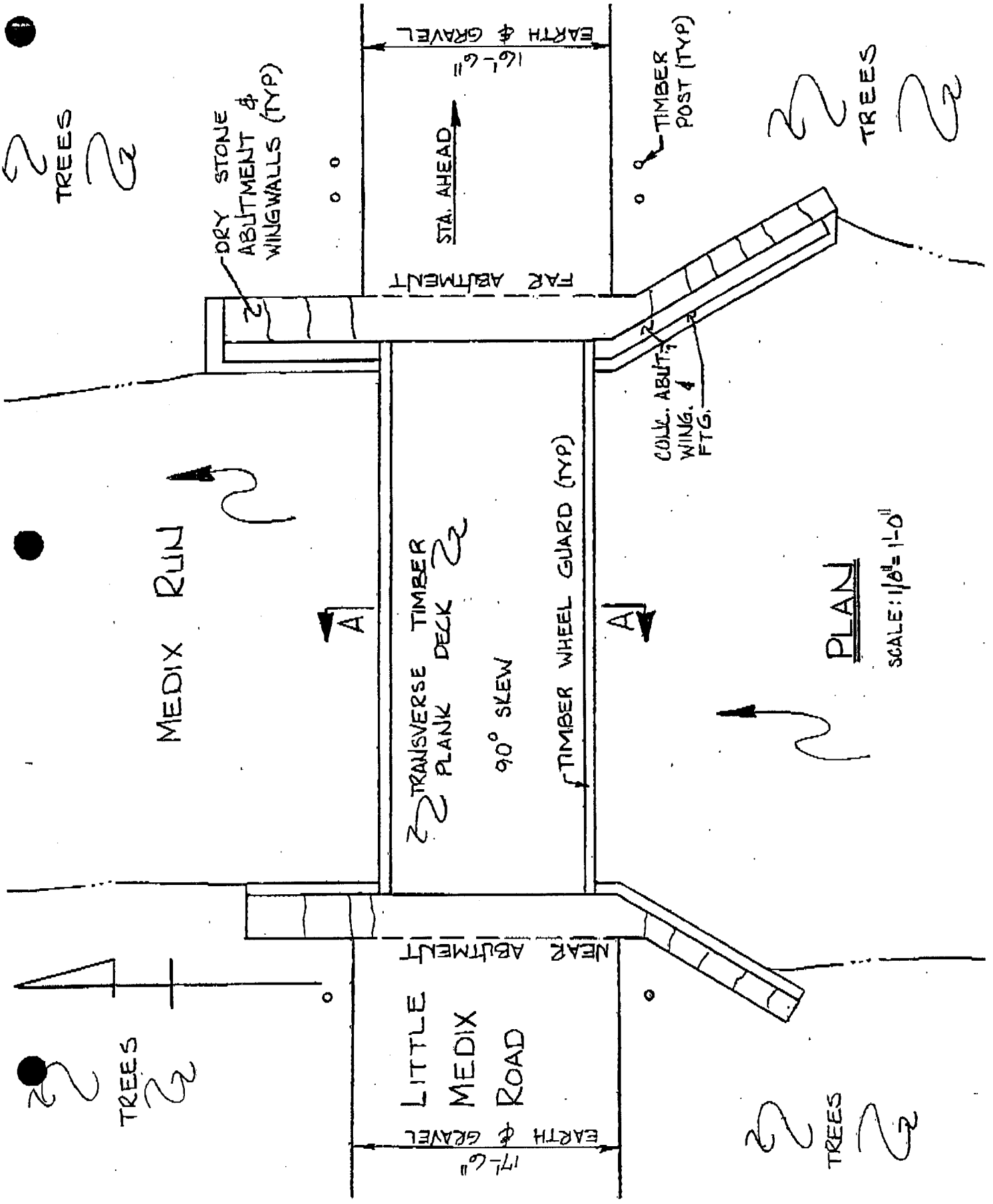



MOSHANNON STATE FOREST
N
ELK CO.
CLEARFIELD CO.
PARKER DAM STATE PARK
STATE GAME LAND NO. 94
STATE GAME LAND NO. 93
RATTLESNAKE HILL

P. JOSEPH LEHMAN, INC.
CONSULTING ENGINEERS
1301 ALLEGHENY STREET
HOLLIDAYSBURG, PENNSYLVANIA 16648

SUBJECT FOREST DIST. #9
BR. 12R
BY _____ DATE 12/10/86

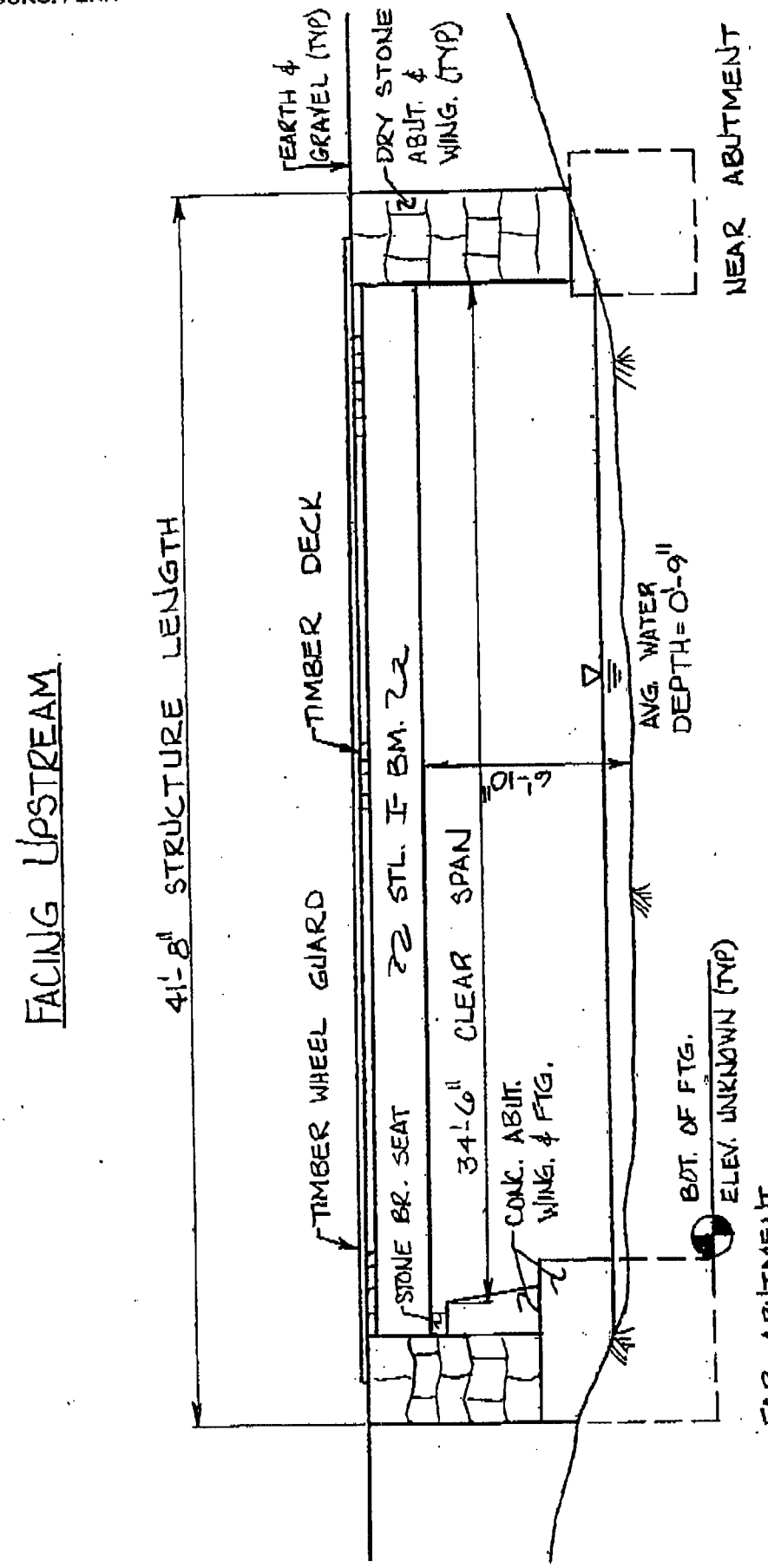
SHEET NO. 1 OF 3
PROJECT NO. 3067.410
CHKD. BY LWS



P. JOSEPH LEHMAN, INC.
CONSULTING ENGINEERS
1301 ALLEGHENY STREET
OLLIDAYSBURG, PENNSYLVANIA 16648

SUBJECT FOREST DIST. # 9
BR 12 R
BY _____ DATE 12/16/86

SHEET NO. 2 OF 3
PROJECT NO. 3067.410
CHKD. BY LWS



FACING UPSTREAM

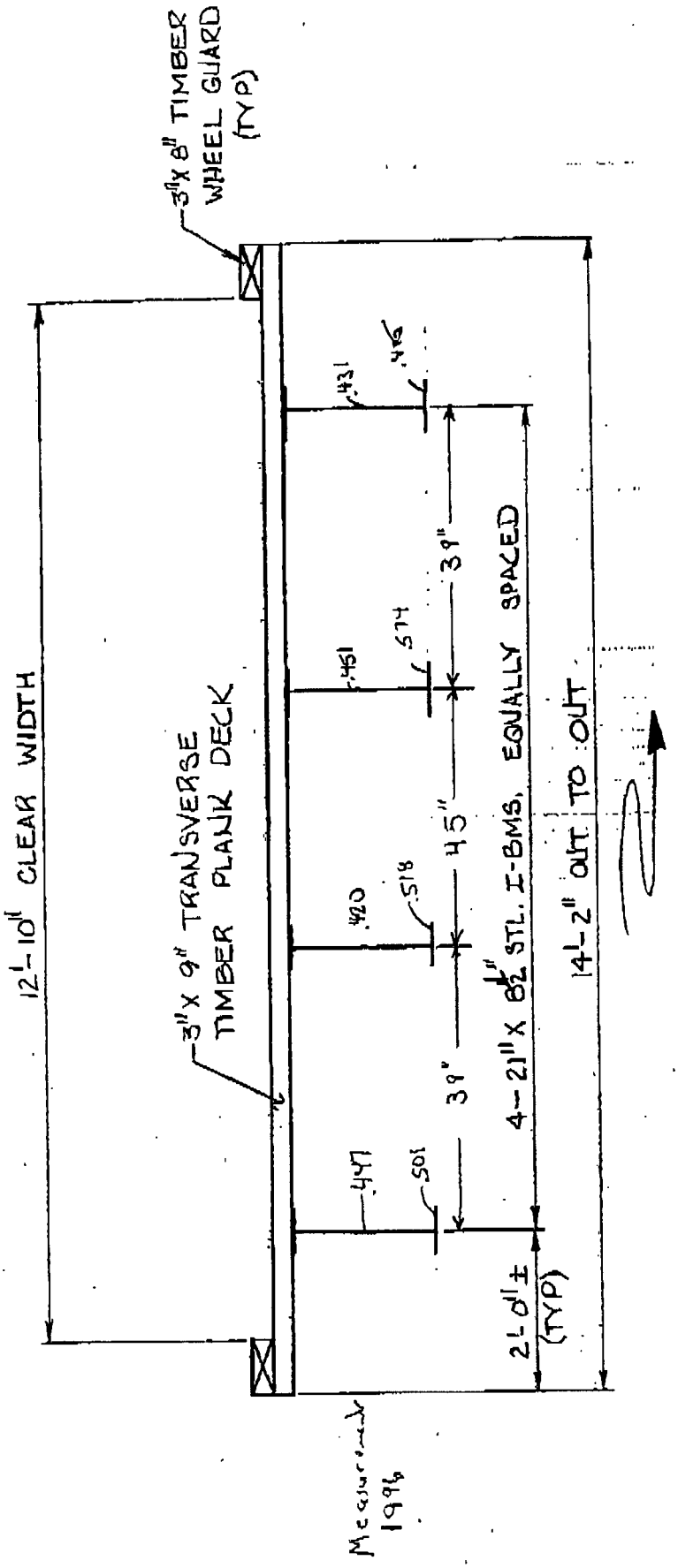
ELEVATION

SCALE: 3/16" = 1'-0"

P. JOSEPH LEHMAN, INC.
CONSULTING ENGINEERS
1301 ALLEGHENY STREET
HOLLIDAYSBURG, PENNSYLVANIA 16648

SUBJECT FOREST DIST #9
BR. 12 R
BY _____ DATE 12/16/86

SHEET NO. 3 OF 5
PROJECT NO. 306 7.410
CHKD. BY LWS



SECTION "A-A"
SCALE: 1/2" = 1'-0"

J.W.J

Measured 1996

17 7935 5109 0012

RECOMMENDATIONS

DECK

Fair condition. Hole 3-8 inches wide at end of Near Approach. This condition should be corrected by extending deck. (PR-1)

SUPERSTRUCTURE

Fair condition.

SUBSTRUCTURE

Poor Condition. Far Abutment, which is jacketed in concrete, has 6 inches of scour and approximately 4 inches of undermining at upstream (right) wingwall. Near abutment is loose stone masonry with a deteriorated backwall. Place riprap or native stone in front of scour to allow deposition to occur. (PR-1) If scour is not repaired, monitor after future high waters.

TRAFFIC SAFETY FEATURES AND SIGNS

Wood posts with white and yellow paint delineate corners and approaches to corners. In addition, the four corners of the structure should be delineated with hazard clearance markers. (PR-1)

The One Lane Bridge and 3 Ton Weight Limit sign on Far Approach should be reset. (PR-1)

WEIGHT LIMIT

Keep posting of 3 Tons based on condition of deck. With a new laminated deck replacement and using Load Factor Analysis Operating Ratings would allow bridge to be posted for 11 Tons. The installation of diaphragms would increase posting. This office could run analysis with diaphragms, if Forest District needs this information. The distribution factor for moment was also slightly higher ,.313 than the .300 that I calculated. The 1996 Inspection Report did not indicate which AISC Manual was used for steel beam parameters. (1933 Bethlehem Steel Structural shapes seems a good match for existing beams.) These items will not adversely affect calculated ratings.

PRIORITY CODE
(PR-)

0 - PROMPT ACTION REQUIRED

1 - HIGH PRIORITY, As soon as work can be scheduled

2 - PRIORITY, Review work Adjust schedule if needed

3 - ADD TO SCHEDULED WORK

4 - ROUTINE STRUCTURAL, Can be delayed until funds are available

5 - ROUTINE NON-STRUCTURAL, Can be delayed until programmed

Arb-6-9-03

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

May 30, 2003

MIKE FISHER
ATTORNEY GENERAL

Tort Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 565-2574

Office of Court Administrator
Clearfield County Courthouse
Suite 228, 230 East Market St.
Clearfield, PA 16830

RE: Hoover v. Lawrence Twp. v. Forestry
No. 01-1299

Dear Sir or Madam:

Enclosed please find Pretrial Statement, on behalf of the Bureau of Forestry, in the above-captioned case.

Very truly yours,

Robert T. McDermott
Sr. Deputy Attorney General

RTM/ck

Enclosure

cc: Paul Colavecchi, Esq.
J. Richard Mattern, II, Esq.
Andrew P. Gates, Esq.
Blaise Ferraraccio, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

BUREAU CF FORESTRY,

Defendant.

CIVIL ACTION

No. 01-1299 CD

PRETRIAL STATEMENT

Filed on behalf of
Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

PRETRIAL STATEMENT

AND NOW, comes the defendant, Bureau of Forestry, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Pretrial Statement, averring in support thereof, as follows:

STATEMENT OF THE CASE

The instant case involves a pedestrian accident which occurred in Moshannon State Forest on a wooden bridge located on Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania. On May 9, 2001, plaintiff, James A. Hoover, and a friend, James Tepsic, entered the state forest to go fishing. At approximately 4:00 p.m.,Hoover, who was walking or standing on the wooden bridge, allegedly stepped on a rotted plank which broke off causing plaintiff to fall sideways off the bridge and down into the creek. As a result of the fall, plaintiff is alleged to have sustained various personal injuries.

Plaintiff sued the Bureau of Forestry for, in essence, a dangerous condition of Commonwealth property.

MEMORANDUM OF LAW

The Bureau of Forestry avers that Moshannon State Forest is a recreational area open to the public free of charge and, therefore, comes under the Recreational Use of Land and Water Act (RULWA) which bars plaintiff's cause of action. Yanno v. Consolidated Rail Corporation, 744 A.2d 279 (Pa. Super. 1999).

The Bureau of Forestry also avers that plaintiff has failed

pursuant to statute to provide actual or constructive notice of a dangerous condition and has therefore failed to state a cause of action upon which relief can be granted. Commonwealth Department of Transportation v. Patton, 546 Pa. 686 A.2d 1302 (1997).

In addition, the Pennsylvania Supreme Court has held that whether a government entity acts maliciously or negligently, the government entity is immune without exception for injuries occurring on government owned recreational land. If the government unit acts willfully or maliciously the government unit may be held liable under the RULWA, but will be immune under the Sovereign Immunity Act. If, on the other hand the government unit acts negligently, the government unit may be held liable under sovereign immunity, but will be immune under the RULWA. Lory v. City of Philadelphia, 674 A.2d 673 (Pa. 1996), cert. denied 519 U.S. 870, 117 S. Ct. 184, 136 L. Ed. 2.d 123 (1996); Wilkinson v. Conoy Township, 677 A.2d 876 (Pa. Cmwlth. 1996).

I. OVERVIEW OF THE LAW OF SOVEREIGN IMMUNITY

On July 14, 1978, the Supreme Court of Pennsylvania abolished the Doctrine of Sovereign Immunity previously applicable to agencies and employees of the Commonwealth of Pennsylvania. Mayle v. Pa. Dept. of Highways, 479 Pa. 384, 388 A.2d 709 (1978), application for re-argument denied, 479 Pa. 411, 390 A.2d 181 (1978). On September 28, 1978, the Legislature of the Commonwealth of Pennsylvania promulgated a more limited statutory waiver of sovereign immunity. Act of September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. Section 8521, et seq.

The Sovereign Immunity Act at 42 Pa. C.S.A. Section 8522 sets forth nine (9) areas in which liability for negligent acts by a Commonwealth agency or employee may be imposed. A review of this section indicates that liability may be imposed in the following areas: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody and control of animals; (7) liquor store sales, (8) National Guard activities; and (9) toxoids and vaccines.

Plaintiff is bringing forth his action under exception four of the Sovereign Immunity Act which provides as follows:

> (4) Commonwealth real estate, highways and sidewalks.--A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, lease holds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph 5.

II. PLAINTIFF HAS FAILED TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED

A. PLAINTIFF'S CAUSE OF ACTION IS BARRED BY THE RULWA

RULWA is applicable to the Commonwealth and extends immunity to the Commonwealth with respect to recreational areas open to the public free of charge. Commonwealth Department of Environmental Resources v. Auresto, 511 A.2d 815 (Pa. 1986).

The Pennsylvania Legislature enacted the Recreation Act to encourage:

> "owners of land to make land and water available to the public for recreational purposes by limiting their liability towards persons entering thereon for such purposes." 68 P.S. §477-1.

Specifically, under Section Three, landowners are shielded from liability as follows:

1. An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of the dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. (477-1)

2. "Land" means land, roads, water, water courses, private ways and <u>building structures</u> and machinery or equipment when attached to realty... (477-2) (Emphasis added)

3. "Recreational Purpose" includes, but is not limited to any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archaeological, scenic, or scientific sites. (477-3)

The RULWA applies to land that is largely unimproved in character and where no admission fee is charged. <u>Lory v. City of Philadelphia</u>, 674 A.2d 673 (Pa. 1996), cert. denied 519 U.S. 870, 117 S. Ct. 184, 136 L. Ed. 2.d 123 (1996).

In the present case, Robert Merrill, the District Forest Manager for Moshannon State Forest, testified in his deposition that the forest encompasses approximately one hundred ninety thousand acres of undeveloped forest area, which is open to the public for recreational activities free of charge. (Merrill depo, p. 31-32)

Plaintiff has admitted in his Complaint and his Pre-Trial Statement that he entered the forest to fish. Fishing is a recreational purpose as listed above in the statute. (68 P.S. §477-2-3)

Based on the above, Moshannon State Forest clearly comes under the protection of the RULWA.

The fact that plaintiff was injured while walking/standing on a bridge which may be considered an alteration of the natural landscape does not waive immunity. Case law has established that "an improvement on the property does not, on its own, automatically remove the property from the protection of RULWA, even where plaintiff is injured as a result of that improvement. Yanno v. Consolidated Rail Corporation, 744 A.2d 279 (Pa. Super. 1999).

In Yanno, the Court held that RULWA immunized the defendant railroad from suit for injuries suffered by a pedestrian when he fell from a railroad trestle on railroad property that was no longer used for business purposes but was located in a rural wooded area of Armstrong County. 744 A.2d at 280.

The Superior Court, in reaching its decision, declined to focus solely on whether there was an improvement to the land. The Court set forth five factors to be considered when deciding whether a landowner receives immunity under the RULWA:

1. Use (property opened exclusively for recreational use is more likely to receive protection under the RULWA than property also used for business purposes);

2. Size (the larger the property, the more

likely that it receives protection under the RULWA);

3. Location (the more remote and rural the property, the more likely that it will receive protection under the RULWA);

4. Openness (open property is more likely to receive protection than property that is enclosed); and

5. Extent of the Improvement (the more highly developed the property, the less likely it is to receive RULWA protection). 744 A.2d at 282-283.

The Court applied the five factor test as follows:

1. The sole use of the property in Yanno was recreational;

2. The size of the property was 9.6 miles long;

3. It was located in a wooded rural area;

4. The Court held that the bridge trestle was an open structure uncovered and completely outdoors;

5. The 9.9 mile strip of land was undeveloped because other than the bridge itself the property was largely wooded and undeveloped. 744 A.2d at 283.

Based on the above, the Superior Court held that even though the trestle could be considered to be a substantial improvement, the other factors, all of which favor immunity under the RULWA, controlled. Therefore, regardless of the status of the trestle as an improvement, the defendant Conrail was granted immunity under the RULWA and the summary judgment of the lower court was upheld. 744 A.2d at 284.

Applying the five factor test of Yanno to the present case produces a more significant result in favor of immunity under the

RULWA as fcllows:

1. The primary use of Moshannon State Forest is for recreation.

2. The size of the property is 190,000 acres of forest.

3. The location is wooded and rural.

4. The bridge itself is a single lane wooden plank bridge with an open structure, uncovered and completely outdoors; and

5. The 190,000 acres of forest is largely wooded and undeveloped.

In short, as opposed to the 9.9 miles of wooden undeveloped rural land in Yanno, the existing case has 190,000 acres of wooded undeveloped rural land. The trestle in Yanno was made of wood, steel and concrete and was large enough to bear a Conrail train, as opposed to a single lane wooded plank bridge small enough to permit the crossing of a single vehicle. Therefore, here as in Yanno, the RULWA applies and the defendant, Bureau of Forestry, is entitled to total immunity warranting the dismissal of the case against it.

B. PLAINTIFF'S CAUSE OF ACTION IS BARRED BY THE IMMUNITIES GRANTED BY THE INTERACTION OF THE RULWA AND THE SOVEREIGN IMMUNITY ACT

As argued above, the RULWA limits a land owners duty of care as follows:

> Except as specifically recognized by or provided in Section VI of this Act, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. 68 P.S. §477-3.

It also provides, in pertinent part:

> Except as specifically recognized by or provided in Section VI of this Act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
>
> 1. Extend any assurance that the premises are safe for any purpose,
>
> 2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed. 68 P.S. §477-4.

Thus, the land owner has no duty of care other than what is specified by Section VI of the Act. Section VI provides:

> Nothing in this Act limits in any way liability which otherwise exists...for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. 68 P.S. §477-6. (Lory v. City of Philadelphia, 674 A.2d at 673.)

Based on the above citations, a defendant could only be liable to users of its undeveloped park land for "willful or malicious" failure to guard or warn against dangers.

In Lory, a teenage boy drowned while swimming in a natural pond located in a remote and undeveloped portion of a park owned by the city. At trial, the city was found liable. The issue on appeal was whether a judgment n.o.v. should have been granted to the city on the grounds that it was immune under the provisions of the RULWA. 674 A.2d at 673.

The Pennsylvania Supreme Court held the city had complete immunity through the interaction of the provisions in RULWA and the Political Subdivisions Tort Claims Act. Under the RULWA, the city can only be held liable "for willful or malicious failure to

guard or warn against a dangerous condition, use, structure, or activity. 68 P.S. §477-6(1). Therefore, the city would only be deprived of immunity under the statute if the city had acted willfully or maliciously.[1] However, the Tort Claims Act immunizes the city from willful and malicious conduct; liability can only be found with respect to negligent acts and specifically states negligent acts do not include willful or malicious conduct". 674 A.2d at 675. Therefore, due to the interaction of both statutes the city was found not liable.

In short, if the government unit acts willfully or maliciously, the government unit may be held liable under the RULWA, but will be immune under the Tort Claims Act. If on the other hand, the government unit acts negligently it will be immune under the RULWA. Wilkinson v. Conoy Township, 677 A.2d 876 (Pa. Cmwlth. 1996). Therefore, the interaction of the immunity provisions of both statutes provides complete immunity.

Case law holds that the Political Tort Claims Act and the Sovereign Immunity Act should be interpreted consistently as they deal with the same subject matter. Jones v. SEPTA, 772 A.2d 435 (Pa. 2001). Therefore, here as in Lory and Wilkinson, the Bureau of Forestry is not liable to plaintiff based on the interaction of the immunity provisions of the RULWA and the Sovereign Immunity Act.

---

[1]"Willful" in this context means "an act done voluntarily or intentionally or knowingly." Jones v. Cheltenham Twp., 543 A.2d 1258 at 1260 (Pa. Cmwlth. 1988)

C. PLAINTIFF'S CAUSE OF ACTION IS BARRED BY FAILURE TO PROVIDE ACTUAL OR CONSTRUCTIVE NOTICE OF A DANGEROUS CONDITION

The Supreme Court of Pennsylvania has held that:

> The Commonwealth must have actual or constructive knowledge of the defect to be liable in negligence actions brought under the statute providing exceptions to sovereign immunity for dangerous conditions on Commonwealth real estate. 42 Pa. C.S.A. §8522(b)(4). Commonwealth Department of Transportation v. Patton, 546 Pa. 562, 686 A.2d 1302 (1997).

In Colston v. Septa, 679 A.2d 299 (Pa. Cmwlth. 1996), the trial court granted a compulsory nonsuit where the plaintiff was unable to prove either actual or constructive notice of a dangerous condition. In Colston, a pedestrian brought a negligence action to recover damages for injuries she sustained when she stepped onto a broken storm sewer grate. The Commonwealth Court held where the plaintiff failed to present any evidence of constructive notice, mere ownership of the property was not sufficient to presume notice.

The Court in Colston cited to Miranda v. City of Philadelphia, 166 Pa. Cmwlth. 181, 646 A.2d 71 (1994), for the proposition that even where an allegedly dangerous condition, i.e., a snow covered opening in a PennDOT excavation into which the plaintiff stepped and injured herself, existed for thirteen days, this period of time was not sufficient to provide actual or constructive notice by simple ownership of the area alone. The Miranda case stated:

> To hold the Commonwealth to a higher standard than a private land owner, in such circumstances, would be contrary to the Legislature's express intention to generally insulate Commonwealth parties from liability. 646 A.2d at 74.

Indeed, in Mascaro v. Youth Study Center, 514 Pa. 351, 523 A.2d 1118 (1987), the Court indicated that the real estate exception to immunity does not expose governmental bodies to liability coextensive with the liability imposed on private land owners; more protection is afforded to the governmental body than that provided to the private land owner. 523 A.2d at 123-124. In Kiley v. City of Philadelphia, 537 Pa. 502, 645 A.2d 184 (1994), the Court held that the clear intention of the statute is to insulate government from exposure to tort liability from any of its acts. Although Kiley and Mascaro, address municipal entities under the Political Subdivision Tort Claims Act, the rule of narrow construction has been similarly applied to Commonwealth entities under the sovereign immunity statute. See, Snyder v. Harmon, 522 Pa. 424, 433, 562 A.2d 307, 311 (1989).

The requirement that a plaintiff must establish that a governmental agency had notice of a defect applies even if the governmental agency created the dangerous condition causing the injuries. In Miller v. Lykens Borough Authority, 712 A.2d 800 (Pa. Cmwlth. 1998), the Commonwealth Court rejected plaintiff's contention that where the defendant's conduct causes a dangerous condition, the plaintiff need not establish either actual or constructive notice.

The Commonwealth Court in Miller relied upon its decision in

Kennedy v. City of Philadelphia, 160 Pa. Cmwlth. 558, 635 A.2d 1105 (1993), in which it held that under the traffic control exception, PennDOT could not be deemed to have notice as a matter of law because it was the one that actually created the dangerous condition. The plaintiff still needed to prove by specific evidence either actual or constructive notice on the part of PennDOT even though it was the agency's negligence that caused a dangerous condition. The Commonwealth Court reversed the trial court stating:

> We conclude that there simply was no evidence from which the jury could have concluded that the city had actual or constructive notice of the specific dangerous condition arising out of the absence of a pedestrian lane. 635 A.2d at 1110.

The Court in Kennedy distinguished the type of notice required to private property owners as opposed to governmental agencies having governmental immunity. The Court in Kennedy distinguished notice of a dangerous condition which was self-evident, i.e., slippery floors due to coats of wax or oil, with latent dangerous conditions or those which were more sophisticated as evidenced by expert testimony, which required plaintiffs to present precise and specific evidence to satisfy the detailed notice requirement to a governmental entity. 635 A.2d at 1110.

Plaintiff, who was walking on the bridge failed to observe that the plank was rotted. Therefore, it was not an open or obvious condition that was readily apparent and constructive

notice cannot be assumed. Plaintiff has failed to present any evidence that the Commonwealth Defendant had actual or constructive notice of the rotted plank. Based on the holding of Miranda. plaintiff cannot state that having an existing condition on land owned by the Commonwealth establishes actual or constructive notice by mere ownership alone.

Finally, under the Sovereign Immunity Act, Plaintiff is under an affirmative duty to provide evidence of constructive notice in order to provide a prima facia case of negligence against the Commonwealth defendant. Plaintiff has failed to provide a witness or any other evidence to establish constructive or actual notice, therefore, Plaintiff has failed to state a cause of action upon which relief may be granted and a dismissal of the case is appropriate.

CONCLUSION

Based on the above statutory and case law, the Bureau of Forestry cannot be held liable under the RULWA or the Sovereign Immunity Act and plaintiff's case should be dismissed.

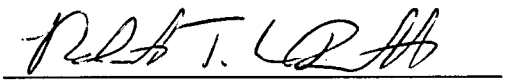
WITNESSES

Robert Merrill
Bureau of Forestry
RR #1, Box 184
Penfield, PA 15849

Wade Dixon
Bureau of Forestry
RR #1, Box 184
Penfield, PA 15849

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

744 A.2d 279
1999 PA Super 338
(Cite as: 744 A.2d 279)

Superior Court of Pennsylvania.

George YANNO, Appellant,
v.
CONSOLIDATED RAIL CORPORATION,
Appellee.

Argued Sept. 30, 1999.
Filed Dec. 29, 1999.

Pedestrian brought personal injury suit against railroad for injuries he sustained when he fell from a railroad trestle located on property that railroad owned but no longer used for business purposes. The Court of Common Pleas, Armstrong County, Civil Division, No. 1992-0669, Kenneth Valasek, J., granted summary judgment for railroad, and pedestrian appealed. The Superior Court, No. 421 WDA 1999, Johnson, J., held that railroad enjoyed immunity from suit under the Recreational Use of Land and Water Act (RULWA).

Affirmed.

Musmanno, J., filed a dissenting opinion.

West Headnotes

[1] Negligence ⚿1194
272k1194 Most Cited Cases

An improvement to property does not, on its own, automatically remove the property from the protection of the Recreational Use of Land and Water Act (RULWA) for injuries that occur on the property. 68 P.S. §§ 477-1 to 477-8.

[2] Negligence ⚿1194
272k1194 Most Cited Cases

A trial court may consider the following factors when deciding whether a landowner receives immunity from suit for injuries that occur on his property under the Recreational Use of Land and Water Act (RULWA): (1) use; (2) size; (3) location; (4) openness; and (5) extent of improvement. 68 P.S. §§ 477-1 to 477-8.

[3] Railroads ⚿273.5
320k273.5 Most Cited Cases

Railroad enjoyed immunity under the Recreational Use of Land and Water Act (RULWA) from personal injury suit brought by pedestrian who fell from a train trestle located on property that railroad owned but no longer used for business purposes, even if the trestle was a substantial improvement to the land, where the strip of property was 9.6 miles long, the property was located in a remote and rural location, the property and surrounding wooded area were entirely open, and the trestle was uncovered and completely outdoors. 68 P.S. §§ 477-1 to 477-8
.

***279** Edwin H. Beachler, Pittsburgh, for appellant.

James M. Girman, Pittsburgh, for appellee.

Before JOHNSON, MUSMANNO and HESTER, JJ.

JOHNSON, J.:

¶ 1 The issue on this appeal is whether the Recreational Use of Land and Water Act (RULWA), 68 P.S. §§ 477-1 to 477-8, provides the Consolidated Rail Corporation (Conrail) immunity from suit for injuries that occurred when George Yanno (Yanno) fell from a railroad trestle located on Conrail's property. The trial court granted summary judgment for Conrail, and Yanno appeals. We write to resolve an apparent conflict of authority and to harmonize the law surrounding this issue by reviewing and clarifying the pertinent cases. After study, we conclude that Conrail' s property falls within the scope of the RULWA. Therefore, we conclude that Conrail is immune from suit for Yanno's injuries and affirm the judgment of the trial court.

I. Facts and Procedural History

¶ 2 The case at bar concerns a railroad trestle once used by Conrail to carry trains over a depression. The trestle is a braced ***280** framework of timbers, piles, concrete, and steel located along a 9.6 mile strip of property in a wooded area of Armstrong County. The trestle spans a private road, which is approximately

seventeen feet below the trestle. At the time of Yanno's injury, the rails had been removed from the trestle and wooden planks placed over the railroad ties.

¶ 3 On May 27, 1990, Yanno left a party at a cottage in the vicinity of the trestle to go walking. On his walk, Yanno fell from the trestle to the ground below. At the time of the incident, Conrail owned the property on which the trestle was located, but Conrail had abandoned the property for business purposes in 1984.

¶ 4 Yanno filed a complaint in negligence against Conrail. On August 3, 1998, Conrail moved for summary judgment pursuant to the immunity provisions of the RULWA. On February 9, 1999, the Honorable Kenneth Valasek granted Conrail's motion for summary judgment stating that "[a]lthough Conrail's land was altered by the addition of a rail line, it contains absolutely no recreational improvements that the [Pennsylvania] Supreme Court has found to take land outside the protection of the RULWA." Trial Court Opinion, 2/9/99, at 6. Yanno filed this appeal.

II. Issues Presented

¶ 5 Yanno raises one question for our review.

> WHETHER THE RECREATIONAL USE OF LAND AND WATER ACT BARS RECOVERY WHEN THE PROPERTY IN QUESTION, WHICH WAS AVAILABLE FOR USE BY THE PUBLIC FOR RECREATIONAL PURPOSES, HAD BEEN ALTERED FROM ITS NATURAL STATE AND CONTAINED IMPROVEMENTS INCLUDING A SMOOTH, FLAT PATHWAY, TRESTLES, AND BRIDGES?

Brief of Appellant at 3.

We construe Yanno's question to advance one central argument. Yanno argues that the RULWA does not afford Conrail immunity for the incident that occurred on Conrail's property because the trestle constitutes an improvement that places the property outside the scope of RULWA's protection.

¶ 6 Our standard of review for appeals from orders granting summary judgment is as follows:

> In reviewing a grant of summary judgment, an appellate court may disturb the order of the trial court only where there has been an error of law or a clear or manifest abuse of discretion. Nevertheless, the scope of review is plenary; the appellate court shall apply the same standard for judgment as the trial court. Granting of summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The record is to be viewed in the light most favorable to the nonmoving party, and all doubts as to the presence of a genuine issue of material fact must be resolved against the moving party.

Albright v. Abington Mem'l Hosp., 548 Pa. 268, 279-80, 696 A.2d 1159, 1165 (1997) (citations omitted). Although an adverse party does not have to put forward his entire case in opposing summary judgment, he "cannot rest upon mere allegations in the pleadings but must present depositions, affidavits, or other acceptable documents which show there is a genuine issue of material fact to submit to the factfinder and the moving party is not entitled to judgment as a matter of law." *Brecher v. Cutler*, 396 Pa.Super. 211, 578 A.2d 481, 483 (1990); Pa.R.C.P. 1035.3.

III. Recreational Use of Land and Water Act

¶ 7 Under the RULWA:

> [A]n owner of land who either directly or indirectly invites or permits without ***281** charge any person to use such property for recreational purposes does not thereby: 1) [e]xtend any assurance that the premises are safe for any purpose[;] 2) [c]onfer upon such person the legal status of an invitee or licensee to whom a duty of care is owed[;] 3) [a]ssume responsibility for or incur liability for any injury to persons or property caused by an act of omission of such persons.

68 P.S. § 477-4. The RULWA defines "land" as "land, roads, water, watercourses, private ways and buildings, structures and machinery or equipment when attached to the realty." 68 P.S. § 477-2. The primary source of controversy in the application of the RULWA derives from an uncertainty as to what type of land the Legislature meant to afford protection under the RULWA. We

take this opportunity to clarify the law on this point.

¶ 8 The seminal case concerning this point of law is *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 510 Pa. 1, 507 A.2d 1 (1986). In *Rivera*, a seminary sought immunity under the RULWA for a drowning incident that occurred in the seminary's indoor swimming pool. In deciding which types of buildings and structures the enacting Legislature meant to protect, our Supreme Court drew a distinction between "ancillary structures attached to open space lands" and "enclosed recreational facilities in urban regions," with the former category receiving protection under the RULWA and with the latter category receiving none. *Id.* at 15, 507 A.2d at 8. Based on this interpretation of the RULWA, the Court held that the seminary was not immune from tort liability.

¶ 9 The Court's statement in *Rivera* that the Legislature intended to limit the protection of the RULWA to "outdoor recreation on largely unimproved land" has spawned ambivalence in ensuing decisions. *Id.* at 16, 507 A.2d at 8. Rather than look at factors such as use, size, location, and openness as the *Rivera* court did, later court decisions mistakenly focus only on whether there has been an improvement on the land. The plain language of the RULWA does not assign or withhold immunity based on the extent of improvement on the land. In fact, the RULWA's definition of land, which includes buildings and structures, allows for the possibility of some improvements to fall within the scope of the RULWA. Thus, while an improvement to the land may be considered as a factor along with use, size, location, and openness, an improvement may not properly be the sole criterion.

¶ 10 Our Supreme Court again considered this issue in *Walsh v. City of Philadelphia*, 526 Pa. 227, 585 A.2d 445 (1991). In *Walsh*, the City of Philadelphia sought immunity for injuries caused by a hole in some blacktop located between a basketball court and a boccie ball court at one of the City's recreational centers. In deciding the case, the Supreme Court dedicated a large portion of its Opinion to the question of improvement. *Id.* at 238, 585 A.2d at 450. The relative length of this discussion does not mean, however, that the Court relied on the improvement factor alone. Rather, the Court also took into consideration the use, size, location, and openness of the property in question as evidenced by the Court's discussion of the physical layout and the purpose of the center. *See id.* ("The Guerin Recreation Center, owned by the City, is a cement recreational facility, located between Sixteenth, Jackson and Wolf Streets. It is approximately a half city block long and one block wide. It contains two full and two half basketball courts, as well as boccie courts and benches.") Thus, *Walsh* continues the multi- factor approach set forth in *Rivera*, and only a misreading of this case could lead to the conclusion that the Court in *Walsh* relied solely on the improvement factor in deciding that the City was not immune.

¶ 11 Our Supreme Court revisited the RULWA in *Mills v. Commonwealth of Pennsylvania*, 534 Pa. 519, 633 A.2d 1115 (1993). In *Mills*, the Commonwealth ***282** sought immunity for injuries sustained at Penn's Landing, Philadelphia, a thirty-seven acre, urban waterfront site, encompassing a museum, restaurants, an amphitheater and a marina but also encompassing grassy and wooded areas. The Supreme Court, in reaching its conclusion that Penn's Landing was not immune under the RULWA, discusses all five factors, namely the use, size, location, and openness of the property and the extent of the improvements on the property. *See id.* Even though the Court in *Mills* provided more discussion on the improvement factor than on the others, the Court did not overlook the other factors. Ostensibly, a lengthier discussion was provided on the improvement factor because it warranted a more detailed treatment and greater explanation.

[1] ¶ 12 The most recent Supreme Court decision on this issue is *Lory v. City of Philadelphia*, 544 Pa. 38, 674 A.2d 673 (1996). In *Lory*, the City of Philadelphia claimed immunity under the RULWA for a drowning death that occurred at a natural pond in a remote and undeveloped portion of one of the City's parks. The Court provided almost no reasoning for its conclusion that the City was immune under the RULWA. The Court stated that the RULWA "applies only to lands that are largely unimproved in character" and cited *Mills* for the proposition. *Id.* at 41, 674 A.2d at 674. The absence of an explicit written exposition on the other four factors does not mean that the Court did not consider them. *Lory* does nothing to alter

existing decisional law nor does *Lory* replace the multi-factor test with a new test. In his concurring opinion, Chief Justice Nix reinforces the applicability of the multi-factor test by stating that "there is nothing in the [RULWA] that would suggest that it excludes improved land." *Id.* at 46, 674 A.2d at 677 (Nix, C.J., concurring). We agree that an improvement on property does not, on its own, automatically remove the property from the protection of the RULWA.

¶ 13 Recently our Court has addressed this issue. *See York Haven Power Co. v. Stone*, 715 A.2d 1164 (Pa.Super.1998), *appeal granted,* 1999 Pa. Lexis 763 (Pa. Mar. 23, 1999); *Redinger v. Clapper's Tree Serv. Inc.*, 419 Pa.Super. 487, 615 A.2d 743 (1992); *Gallo v. Yamaha Motor Corp., U.S.A.*, 363 Pa.Super. 308, 526 A.2d 359 (1987). In *Gallo*, this Court discussed the five factors, use, size, location, openness and improvement, as established by the Pennsylvania Supreme Court in *Rivera*. *See Gallo*, 526 A.2d at 364. In *Redinger*, this Court reasoned that the *Walsh* Court's singling out of the improvement factor for discussion in its opinion reflected a broadening of the other four factors not an elimination of them. *See Redinger*, 615 A.2d at 750. In *York Haven*, this Court appeared to concentrate the discussion in its Opinion on the improvement factor. *See York Haven*. In short, a factor analysis remains the approach used under Pennsylvania law.

IV. Review of Trial Court's Application of Law and Exercise of Discretion

[2] ¶ 14 As stated above, it is proper for a trial court to consider the following factors when deciding whether a landowner receives immunity under the RULWA: (1) use; (2) size; (3) location; (4) openness; and (5) extent of improvement. First, where the owner of the property has opened the property exclusively for recreational use, the property is more likely to receive protection under the RULWA than if the owner continues to use the property for business purposes. Second, the larger the property, the less likely that it allows for reasonable maintenance by the owner and the more likely that the property receives protection under the RULWA. Third, the more remote and rural the property, the more likely that it will receive protection under the RULWA because the property is more difficult and expensive for the owner to monitor and maintain and because it is less likely for a recreational user to reasonably expect the ***283** property to be monitored and maintained. Fourth, property that is open is more likely to receive protection than property that is enclosed. Finally, the more highly-developed the property, the less likely it is to receive protection because a user may more reasonably expect that the landowner of a developed property monitors and maintains it.

¶ 15 Whether the application of these factors involves the entire piece of property owned by the defendant landowner or only the section of the property upon which the plaintiff sustained the alleged injury, cannot be fixed indelibly for every case. To date, our courts have made this determination on a case by case basis. For example, in one instance this Court afforded protection to a landowner under the RULWA based on the fact that the injury occurred on "a part of ... [the] land which remained unimproved." *Redinger*, 615 A.2d at 750. However, in another instance, the Pennsylvania Supreme Court denied protection under the RULWA for injuries that occurred on the grassy area of a property that was otherwise highly developed. *See Mills*. Thus, where the parties can make reasonable arguments for viewing the factors either in terms of the entire property or in terms of only the section where the injury occurred, a court should look to the intended purpose of the RULWA to guide its determination of the matter on a case by case basis. *See id.* at 526, 633 A.2d at 1119.

[3] ¶ 16 Turning to the case at bar, we consider first the use to which the Conrail property was put at the time of Yanno's injury to see whether this factor reveals an error of law or abuse of discretion on the part of the trial court. In 1984, Conrail abandoned the property for business purposes. The only use of the property at the time of Yanno's injury, which occurred in 1990, was recreational. Thus, we conclude that this factor does not belie the trial court's granting of summary judgment.

¶ 17 Second, we look at whether the trial court's grant of summary judgment was an abuse of discretion or an error of law in light of the size of the property in question. Conrail's strip of property was 9.6 miles long. This is certainly greater in size than a swimming pool or an inner-city playground. This is an extended tract of land, which would require considerable resources and energy to

monitor and maintain. Therefore, based on the size of Conrail's property, we cannot conclude that the trial court committed an error of law or an abuse of discretion.

¶ 18 Third, we look at the judgment of the trial court in light of the location of the Conrail property. Conrail's property is located in a wooded area in Armstrong County. Yanno offers no evidence that puts into question the remote and rural setting of Conrail's property. Consequently, after examining the property's location, we conclude that it in no way points to an abuse of discretion or an error of law by the trial court.

¶ 19 Fourth, we look at the openness of the property with the purpose of determining whether the trial court erred or abused its discretion. The trestle, as seen in photographs provided in the record, is an open structure, uncovered and completely outdoors. Reproduced Record at 134a-36a. Likewise, the surrounding wooded area is entirely open. As a result, we conclude that the openness of the property in no way demonstrates that the trial court erred or abused its discretion.

¶ 20 Fifth, we evaluate the judgment of the trial court in light of whether the property was improved. If we were to look at the entire property, we would have to conclude that the 9.6 mile strip is, in general, undeveloped because with the exception of the extinct rail line and the several trestles, which support it, the property is largely wooded. A determination that the property is undeveloped would support a conclusion that Conrail is immune. On the other hand, if we were to look at the trestle alone, which is a mass of wood, steel and concrete, we would conclude ***284** that such a structure is a substantial improvement to the natural condition of the land. As stated above, the presence of a structure does not, on its own, automatically remove property from the ambit of the RULWA. Rather, the structure should be viewed in light of the other factors. Even if we were to decide that the trestle is a substantial improvement, the other factors, all of which favor immunity for Conrail, would lead us to conclude that Conrail should receive protection under the RULWA. Thus, on the record before us, we must conclude that regardless of the status of the trestle as an improvement, Conrail must be accorded immunity under the RULWA as a matter of law. Consequently, the trial court's order granting summary judgment is not subject to reversal.

V. Conclusion

¶ 21 After giving careful consideration to each of the five factors, we conclude that Conrail's property falls within the protection of the RULWA and that, accordingly, Conrail receives immunity under the RULWA. Therefore, we further conclude that the trial judge did not commit a manifest abuse of discretion or an error of law in finding that there was no genuine issue of material fact and that Conrail was entitled to a judgment as a matter of law. Therefore, we affirm the judgment.

¶ 22 Judgment **AFFIRMED**.

¶ 23 Judge MUSMANNO files a Dissenting Opinion.

MUSMANNO, J., dissenting:

¶ 1 I respectfully disagree with the majority's holding that Conrail's property falls within the scope of the Recreational Use of Land and Water Act ("RULWA"), *see* 68 P.S. §§ 477-1 to 477-8, and that Conrail is therefore immune from liability in the present case.

¶ 2 The RULWA is "designed to encourage the opening up of large private land holdings for outdoor recreational use." *Rivera v. Philadelphia Theological Seminary*, 510 Pa. 1, 16, 507 A.2d 1, 8 (1986). The types of land areas that are protected by the RULWA, and by similar legislation in other jurisdictions, are those that are natural, unimproved, and undeveloped. *See Redinger v. Clapper's Tree Service, Inc.*, 419 Pa.Super. 487, 615 A.2d 743, 749 (1992) (citation omitted). Such land, however, may lose its immunity status if the land is substantially improved and such improvement causes injury. *Id.; see also Mills v. Commonwealth*, 534 Pa. 519, 633 A.2d 1115 (1993) (stating that the beneficiaries of the RULWA include landowners of large unimproved tracts of land, which are amenable, without alteration, to the enumerated recreational purposes of the RULWA); *Brezinski v. County of Allegheny*, 694 A.2d 388

(Pa.Cmwlth.1997) (stating that only owners of unimproved land are protected from liability under the RULWA). In my opinion, a railroad trestle that is seventeen feet high, and is constructed of wooden planks, steel beams, and large concrete blocks, is clearly a substantial improvement to the land. My honorable colleagues in the majority agree. *See* Majority Opinion, at 283.

¶ 3 A tract of land may be partially developed in one segment and unimproved in another section. *See Redinger*, 615 A.2d at 750. In those circumstances, the owner of the land would not be liable, under the RULWA, for injuries that occurred on the unimproved part of the land, but would be liable for injuries occurring on the developed portion. *See id.* In the present case, the land on which the trestle is located is the site of two former railroad lines and two trestles, including the one at issue. Thus, the portion of the land on which the trestle stands is developed, or improved, land. Consequently, that portion of the land is not covered by the RULWA and, accordingly, the trial court erred in granting summary judgment in Conrail's favor.

¶ 4 Therefore, I would reverse the trial court's Order granting summary judgment ***285** and remand the case for further proceedings.

744 A.2d 279, 1999 PA Super 338

END OF DOCUMENT

674 A.2d 673
(Cite as: 544 Pa. 38, 674 A.2d 673)

Supreme Court of Pennsylvania.

Linda LORY, Administratrix of the Estate of Margaret Barr, Deceased, Administratrix of the Estate of David Barr, Deceased, a minor, and Linda Lory, Administratrix of the Estate of Margaret Barr, Deceased, Appellee,
v.
CITY OF PHILADELPHIA, Appellant.

Argued Dec. 6, 1995.
Decided April 17, 1996.

Wrongful death and survival action was brought against city arising from drowning at natural pond in city park. The Court of Common Pleas, Philadelphia County, No. 2001 June Term, 1985, Alfred J. DiBona, J., entered judgment on jury verdict for plaintiffs. City appealed. The Commonwealth Court, 901 C.D. 1993, 653 A.2d 1374, reversed and remanded, but rejected city's argument that judgment notwithstanding verdict (JNOV) should have been granted. City appealed. The Supreme Court, Appeal No. 52 E.D. Appeal Docket 1995, Flaherty, J., held that even if city's alleged failure to guard or warn against dangers posed by pond could be deemed willful or malicious, liability would nonetheless be precluded by Tort Claims Act, which waives governmental immunity only with respect to "negligent acts," and specifically declares that negligent acts do not include willful or malicious conduct.

Commonwealth Court's judgment reversed.

Nix, C.J. and Cappy, J., filed concurring opinions.

West Headnotes

[1] Negligence ⚿1194
272k1194 Most Cited Cases
(Formerly 272k37)

Recreational Use of Land and Water Act applies only to lands that are largely unimproved in character, and where no admission fee is charged. 68 P.S. § 477-1.

[2] Municipal Corporations ⚿847
268k847 Most Cited Cases

[2] Negligence ⚿1194
272k1194 Most Cited Cases
(Formerly 272k37)

Both publicly owned and privately owned lands are covered by Recreational Use of Land and Water Act. 68 P.S. § 477-1.

[3] Municipal Corporations ⚿847
268k847 Most Cited Cases

Under Recreational Use of Land and Water Act, city's only liability to users of its undeveloped public land was for "willful or malicious" failure to guard or warn against dangers. 68 P.S. § 477-6.

[4] Municipal Corporations ⚿851
268k851 Most Cited Cases

Even if city's alleged failure to guard or warn against dangers posed by pond in undeveloped portion of city park in which plaintiff's son drowned were willful and malicious, and could thus render city liable under Recreational Use of Land and Water Act, city would nonetheless be immune from liability under Tort Claims Act, which waives governmental immunity only with respect to "negligent acts," and specifically declares that negligent acts do not include willful or malicious conduct. 42 Pa.C.S.A. § 8542(a); 68 P.S. § 477-6.

[5] Municipal Corporations ⚿723
268k723 Most Cited Cases

Exceptions to rule of absolute governmental immunity must be narrowly interpreted, given express legislative intent to insulate political subdivisions from tort liability.

****674 *40** Alan C. Ostrow, Philadelphia, for City of Phila.

Philip J. Berg, Lafayette, for Linda Lory.

Before NIX, C.J., and FLAHERTY, ZAPPALA, CAPPY and CASTILLE, JJ.

OPINION OF THE COURT

FLAHERTY, Justice.

This is an appeal by allowance from a decision of the Commonwealth Court which reversed an order of the Court of Common Pleas of Philadelphia County and granted a new trial in a wrongful death and survival action.

In 1983, a teenage boy, David Barr, drowned when he consumed alcohol and went swimming in Devil's Pool, a natural pond located in a remote and undeveloped portion of a park owned by the City of Philadelphia. On numerous occasions signs had been posted at the pond to prohibit swimming. Vandals promptly removed the signs each time. On the day when Barr drowned, the signs were missing. The present action alleged that the city failed to take adequate measures to warn or guard against swimming in the pond. At trial, the city was found liable.

The Commonwealth Court reversed and remanded for a new trial on the basis that evidence of unrelated drownings in other ponds owned by the city had been erroneously admitted into evidence. The court rejected the argument, however, that a motion by the city for judgment n.o.v. should have been granted. At issue in the present appeal is whether the city was entitled to such a judgment on the ground that it was immune from liability under provisions of the Recreation Use of Land and Water Act (Recreation Act), 68 P.S. § 477-1 et seq., and the Political Subdivision Tort Claims Act (Tort Claims Act), 42 Pa.C.S. § 8541 et seq.

[1][2] The Recreation Act was adopted "to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes." ***41**68 P.S. § 477-1. The act applies only to lands that are largely unimproved in character, and where no admission fee is charged. *Mills v. Commonwealth,* 534 Pa. 519, 524-26, 633 A.2d 1115, 1117-19 (1993); 68 P.S. § 477-6(2). Both publicly owned and privately owned lands are covered by the act. *Walsh v. City of Philadelphia,* 526 Pa. 227, 236-37, 585 A.2d 445, 449- 50 (1991).

[3] Limiting a landowner's duty of care, the Recreation Act provides:

> Except as specifically recognized or provided in section 6 of this act, an owner of land *owes no duty of care to keep the premises safe* for entry or use by others for recreational purposes, *or to give any warning* of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

****675** 68 P.S. § 477-3 (emphasis added) (footnote omitted). It also provides, in pertinent part:

> Except as specifically recognized by or provided in section 6 of this act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
> (1) Extend any assurance that the premises are safe for any purpose.
> (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

68 P.S. § 477-4 (footnote omitted). Thus, the landowner has no duty of care other than what is specified by section 6 of the act. Section 6 provides: "Nothing in this act limits in any way any liability which otherwise exists ... [f]or *wilful or malicious* failure to guard or warn against a dangerous condition, use, structure, or activity." 68 P.S. § 477-6 (emphasis added). Therefore, the city's only liability to users of its undeveloped parkland was for "wilful or malicious" failure to guard or warn against dangers.

[4] Although the city repeatedly placed signs to warn against swimming in the pond where Barr drowned, and the ***42** signs were each time removed by vandals, the city would nevertheless be liable under the Recreation Act if it acted willfully or maliciously in failing to guard or warn against dangers posed by the pond.

The Tort Claims Act, however, renders the city immune from claims based on willful or malicious conduct. It waives governmental immunity only with respect to "negligent acts," and specifically declares that negligent acts do not include willful or malicious conduct:

> A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):[[FN1]]

> FN1. Subsection (b), 42 Pa.C.S. § 8542(b), sets forth various acts for which liability can be imposed. The care, custody, and

> control of real property are, within limits specified in the statute, acts which can incur liability. 42 Pa.C.S. § 8542(b)(3). In view of our disposition of this appeal on the primary issue presented, we do not reach the city's alternate contention that Barr was an undiscovered trespasser for whom immunity was not waived under 42 Pa.C.S. § 8542(b)(3) which states that "the local agency shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of the local agency."
>
> (1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense [of immunity] ...; and
> (2) The *injury was caused by the negligent acts* of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). *As used in this paragraph, "negligent acts" shall not include acts or conduct which constitutes* a crime, actual fraud, *actual malice or willful misconduct.*

42 Pa.C.S. § 8542(a) (emphasis added).

[5] A willful or malicious failure by the city to maintain signs warning of the danger of swimming in the pond cannot, therefore, be deemed a "negligent act" under the Tort Claims ***43** Act. [FN2] To hold otherwise would be to ignore the plain language of the statute. In addition, it is well established that exceptions to the rule of absolute governmental immunity "must be narrowly interpreted given the expressed legislative intent to insulate political subdivisions from tort liability." *Mascaro v. Youth Study Center,* 514 Pa. 351, 361, 523 A.2d 1118, 1123 (1987). See also *Kiley v. City of Philadelphia,* 537 Pa. 502, 506, 645 A.2d 184, 185-86 (1994) (exceptions to governmental ****676** immunity must be "strictly construed.") Hence, the "negligent acts" for which immunity is waived cannot be deemed to include acts of malice and willful misconduct. The Commonwealth Court, in holding to the contrary, erred.

> FN2. The distinction that the Tort Claims Act draws between acts of negligence and acts of malice or willful misconduct parallels established case law which treats these as separate and distinct grounds of liability. See *Evans v. Philadelphia Transportation Company,* 418 Pa. 567, 571-79, 212 A.2d 440, 442-46 (1965) (negligence differs from willful or wanton misconduct); *Geelen v. Pennsylvania Railroad Co.,* 400 Pa. 240, 248, 161 A.2d 595, 599-600 (1960); *Turek v. Pennsylvania Railroad Co.,* 369 Pa. 341, 344-46, 85 A.2d 845, 847-48 (1952) (negligence distinguished from willful and wanton misconduct), cert. denied, 343 U.S. 928, 72 S.Ct. 762, 96 L.Ed. 1339 (1952).

The order of the Commonwealth Court remanding for a new trial, and affirming the denial of the city's motion for judgment n.o.v., is reversed.

NIX, C.J., files a concurring opinion.

CAPPY, J., files a concurring opinion.

NIX, Chief Justice, concurring.

Although I join the result reached by the majority, I must disassociate myself from the majority's reaffirmance of the proposition that the Recreation Use of Land and Water Act, 68 P.S. §§ 477-1 to 477-8 ("RUA"), "applies only to lands that are largely unimproved in character...." Maj. op. at 41. I continue to adhere to the view that there is nothing in the language of the RUA that would suggest that it excludes improved land. *See Walsh v. City of Philadelphia,* 526 Pa. 227, 244, 585 A.2d 445, 453 (1991) (Nix, C.J., dissenting); ***44***Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.,* 510 Pa. 1, 27, 507 A.2d 1, 14 (1986) (Nix, C.J., dissenting).

CAPPY, Justice, concurring.

I am constrained to join in the result reached by the Majority, as I believe that it is required by the application of the Recreation Use of Land and Water Act (Recreation Act), 68 P.S. § 477-1 et seq.,

and the Political Subdivision Tort Claims Act (Tort Claims Act), 42 Pa.C.S.A. § 8541 et seq., to this case. However, I write separately to express my disdain for such a result and to point out the harm and injustice that will follow from this decision.

The Majority correctly concludes that Appellee Lory's claim is barred by the immunity granted to Appellant City pursuant to the Recreation Act when read in *pari materia* with the Tort Claims Act. [FN1] Specifically, the Majority reasons that even if Appellant City is not deemed to be immune from suit under the Recreation Act because of Appellant City's willful or malicious failure to guard or warn against a dangerous condition, it is nonetheless immune under the Tort Claims Act. The Majority concludes that the Tort Claims Act's immunity for acts of willful misconduct [FN2] immunizes Appellant City against the Appellee's claim of a willful failure to guard or warn. [FN3]

FN1. The Recreation Act grants immunity from tort actions to landowners permitting their property to be used for recreational purposes. However, immunity is not granted for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity. 68 P.S. § 477-6. The Tort Claims Act imposes liability for, *inter alia,* negligent acts. However, for purposes of the Tort Claims Act, expressly excluded from the term negligent acts are acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct. 42 Pa.C.S.A. § 8542(a)(2).

FN2. I assume that where the Majority states on pages 41-42 and 42-43 of the Majority Opinion, that the Tort Claims Act renders the City immune from claims based on "willful or malicious conduct" it means the exceptions from the definition of negligent acts, e.g., acts or conduct which constitutes a crime, actual fraud, actual malice or willful misconduct.

FN3. Thus, the Majority, without explicitly stating so, rejects the Commonwealth Court's distinction between a willful failure to guard or warn under the Recreation Act and willful misconduct under the Tort Claims Act. Indeed, the Majority implicitly states that willful misconduct includes a willful failure to guard or warn.

***45** I am compelled to agree that this is a proper reading of the Recreation Act and the Tort Claims Act. However, I am troubled by this application of the Recreation Act and the Tort Claims Act as it leads to the incredible result that even when it is aware of a dangerous and life threatening condition existing on its land, Appellant City is totally insulated from suit and owes no duty to citizens who enter lands covered by the Recreation Act.

When this Court held that the Recreation Act was applicable to the Commonwealth in *Pennsylvania Department of Environmental Resources v. Auresto,* 511 Pa. 73, 511 A.2d 815 (1986), we did so because it was clear that the Commonwealth's exposure to suit should, at least, be the same as that of a ****677** private citizen. [FN4] Thus, because a private citizen was protected from a suit like that in *Auresto,* the Commonwealth was properly and justly afforded the same immunity. After the decision in the case *sub judice* however, the Commonwealth will enjoy an immunity greater than that of a private citizen and in fact will enjoy *absolute* immunity from suit with respect to lands subject to the Recreation Act.

FN4. Our *Auresto* decision dealt with the Sovereign Immunity Act, 42 Pa.C.S.A. § 8501 et seq., as opposed to the Tort Claims Act. However, for present purposes, the difference between the Acts is inconsequential.

The bizarre and unjust outcome of this reading of the Recreation Act and the Tort Claims Act is that Appellant City may be fully aware of, in essence, a death trap on City property which is subject to the Recreation Act, fail or refuse to remove the deadly condition, fail or refuse to guard the deadly condition, or fail or refuse to warn of the deadly condition, and yet remain absolutely immune from any action filed by an innocent victim of this condition.

The absurdity of this result is evidenced by the contorted reasoning employed by the Commonwealth Court to reach a just outcome. Although I cannot adopt the Commonwealth Court's reasoning, I certainly understand the Commonwealth ***46** Court's ingenious attempt to inject a sense of fairness into the case. While I ultimately conclude that the distinction between a willful failure to guard or warn and willful misconduct is insupportable, the absolute immunity of Appellant City with respect to lands covered by the Recreation Act is simply unconscionable and not in accord with modern trends of liability.

674 A.2d 673, 544 Pa. 38

END OF DOCUMENT

677 A.2d 876
(Cite as: 677 A.2d 876)

Commonwealth Court of Pennsylvania.

Theresa L. WILKINSON and Randy Wilkinson, w/h, Appellants,
v.
CONOY TOWNSHIP.

Argued April 19, 1996.
Decided June 6, 1996.

Pedestrian brought action against township for injuries sustained when she fell in hole caused by removed tree trunk in park. The Court of Common Pleas, Lancaster, County, No. 5372 of 1993, Allison, J., granted summary judgment for township. Pedestrian appealed. The Commonwealth Court, No. 2799 C.D. 1995, Friedman, J., held that township was absolutely immune, without exception, under either the Tort Claims Act or the Recreational Use of Land and Water Act (RULWA).

Affirmed.

West Headnotes

[1] Appeal and Error ⚿863
30k863 Most Cited Cases

[1] Appeal and Error ⚿949
30k949 Most Cited Cases

When reviewing order granting summary judgment, Commonwealth Court's scope of review is limited to determination of whether trial court committed error of law or abused its discretion.

[2] Municipal Corporations ⚿851
268k851 Most Cited Cases

Whether it acts maliciously or negligently, municipality or other governmental unit is absolutely immune, without exception, under either Tort Claims Act or Recreational Use of Land and Water Act (RULWA), for injuries occurring on municipally owned recreational land; if municipality acts willfully or maliciously, it may be held liable under RULWA, but will be immune under Tort Claims Act, and if municipality acts negligently, governmental unit may be held liable under Tort Claims Act, but will be immune under RULWA. 42 Pa.C.S.A. § 8542(a); 68 P.S. § 477-6.

[3] Municipal Corporations ⚿851
268k851 Most Cited Cases

Township was immune from liability, under either Tort Claims Act or Recreational Use of Land and Water Act (RULWA), for injuries pedestrian sustained when she fell in hole caused by removed tree stump in park; if township had acted willfully in failing to warn against dangers posed by hole so as to deprive it of immunity under RULWA, township would, nonetheless, be immunized from liability Tort Claims Act. 42 Pa.C.S.A. § 8542(a); 68 P.S. § 477-6.

***876** Thomas P. Lang, for Appellants.

Audrey J. Copeland, for Appellee.

Before SMITH and FRIEDMAN, JJ., and LORD, Senior Judge.

FRIEDMAN, Judge.

Theresa and Randy Wilkinson (Wilkinsons) appeal from an order of the Lancaster County Court of Common Pleas (trial court) granting summary judgment for Conoy Township (Township). We affirm.

On November 30, 1993, the Wilkinsons filed a complaint against the Township, claiming that, while walking across the grounds of Conoy Township Park on June 9, 1993, Theresa Wilkinson sustained personal injuries, including three fractures in her lower right leg, when she fell into a hole caused ***877** by a removed tree trunk. [FN1] (Complaint at 4a, 6a.) In the complaint, the Wilkinsons alleged that Mrs. Wilkinson's injuries resulted from the Township's negligence and recklessness, and, more specifically, that the Township created a hazardous condition on its property by permitting a hole to exist which the Township knew or should have known posed an unreasonable risk of danger to Mrs. Wilkinson. (Complaint at 5a.) The Wilkinsons further alleged that the Township failed to adequately warn Mrs. Wilkinson of the hazardous condition, which was undiscoverable through the exercise of reasonable

care. [FN2] (Complaint at 5a-6a.)

FN1. Mrs. Wilkinson was present in the park on that day to pick up pizzas from a fundraiser and to allow her daughter to participate in softball practice. (Trial court op. at 2.)

FN2. In fact, the Wilkinsons claimed that the Township "permitted the hole to become obscured by high grass," and otherwise failed to inspect and correct the hazardous condition created by the hole. (Complaint at 5a-6a.)

On August 8, 1994, the Township filed a timely answer and new matter, denying the material allegations of the Wilkinsons' complaint and asserting that the Wilkinsons' claims are barred by the act commonly referred to as the Recreational Use of Land and Water Act (RULWA). [FN3] (R.R. at 11a-17a.)

FN3. Act of February 2, 1966, P.L. (1965) 1860, 68 P.S. §§ 477- 1--477-8.

Subsequently, on July 7, 1995, the Township filed a Motion for Summary Judgment and submitted a brief in support of that motion. In its brief, the Township argued that it is immune from liability in this case, both under RULWA and the act commonly referred to as the Political Subdivision Tort Claims Act (Tort Claims Act), 42 Pa.C.S. §§ 8541-8542. The Wilkinsons submitted a brief in opposition, disputing the Township's alleged immunity.

By order dated October 20, 1995, the trial court, without opinion, granted the Township's Motion for Summary Judgment. After the Wilkinsons filed a timely notice of appeal to this court, however, the trial court issued a memorandum opinion, dated November 17, 1995, affirming its earlier decision.

[1] In its opinion, the trial court held that the Township was immune from suit under both RULWA and the Tort Claims Act. First, the trial court found that the Township was immune under RULWA because "municipalities are entitled to immunity ... from suit for injuries sustained by members of the public during use of municipal parks for recreational purposes." (Trial court op. at 1-2.) Because Mrs. Wilkinson was using Conoy Township Park for recreational purposes on the day she was injured, the trial court concluded that the Township was immune from liability for such injury. [FN4] Second, the trial court found that the Township was immune under the Tort Claims Act because there was no evidence in any of the depositions or pleadings that the Township acted negligently or that an *artificial* defect or condition of the property caused Mrs. Wilkinson's accident. [FN5] Consequently, the trial court held that there were no genuine issues of material fact and that summary judgment for the Township, therefore, was proper. It is from this order that the Wilkinsons now appeal. [FN6]

FN4. Although there are two limited exceptions to the general rule of non-liability under RULWA, the trial court found that neither applied here. (*See* trial court op. at 2-4.)

FN5. The trial court found that a depression in the ground resulting from the rotting roots of a tree is a naturally occurring condition, rather than an artificial condition or defect of the property, as required by the real property exception to governmental immunity, 42 Pa.C.S. § 8542(b). (Trial court op. at 4-5.)

FN6. When reviewing an order granting summary judgment, our scope of review is limited to a determination of whether the trial court committed an error of law or abused its discretion. *Mason & Dixon Lines, Inc. v. Mognet,* 166 Pa.Cmwlth. 1, 645 A.2d 1370 (1994).

On appeal, we are again faced with the issue of whether, in light of the immunity granted to governmental entities by RULWA and the Tort Claims Act, a municipality may be held liable for personal injuries occurring on municipally- owned recreational land. Pursuant to the Pennsylvania

Supreme ***878** Court's recent decision in *Lory v. City of Philadelphia,* 544 Pa. 38, 674 A.2d 673 (1996), we are constrained to hold that it may not.

In *Lory,* the supreme court read RULWA and the Tort Claims Act in conjunction with one another to essentially insulate governmental units from liability. As here, the issue before the supreme court on appeal in *Lory* was whether the City was immune under RULWA and the Tort Claims Act and was, thus, entitled to judgment as a matter of law. [FN7] The supreme court began its analysis with an overview of RULWA, noting that the act, which applies to both publicly and privately owned lands, was adopted to encourage owners of land to make land and water areas available to the public for recreational purposes. *See* 68 P.S. § 477-1. To this end, section 3 of RULWA limits landowner liability for injuries sustained by persons entering their land by providing that "an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes." [FN8] 68 P.S. § 477-3.

FN7. In *Lory,* a teenage boy drowned when he consumed alcohol and went swimming in Devil's Pool, a natural pond located in a remote and undeveloped portion of a park owned by the City of Philadelphia. *Id.* On numerous occasions, signs had been posted at the pond to prohibit swimming; however, no signs were posted on the day in question, apparently because vandals promptly removed them each time they were hung up. *Id.* Accordingly, the administratrix of the deceased boy's estate filed an action against the City, alleging that the City failed to take adequate measures to warn, or guard, against swimming in the pond. After a jury found the City liable, the City filed a motion for judgment n.o.v., which the trial court denied. Although reversing on other grounds, this court agreed that a judgment n.o.v. for the City based on immunity from liability under RULWA and the Tort Claims Act was inappropriate. *Id.* The supreme court reversed, holding that the City was absolutely immune from liability. Thus, in *Lory,* the City filed a motion for judgment n.o.v., whereas, here, the Township filed a motion for summary judgment. In either case, however, a municipality would be absolved of legal liability for injuries sustained on municipally-owned recreational land were the court, on appeal, to grant or affirm the motions.

FN8. Moreover, the supreme court noted that section 4 of RULWA states that an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:
(1) Extend any assurance that the premises are safe for any purpose.
(2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
(3) Assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of such persons.
68 P.S. § 477-4.

Thus, under RULWA, the supreme court recognized that a landowner owes no duty of care to a person whom the landowner invites or permits, without charge, to use his or her property for recreational purposes unless the action of the landowner falls within the exception to RULWA's general rule of immunity contained in section 6 of that act. *Lory.* Section 6 of RULWA provides that a landowner will be liable "[f]or wilful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity." 68 P.S. § 477- 6(1). The supreme court noted, therefore, that the City would be deprived of an immunity defense under RULWA if, and only if, the City had, in fact, acted willfully or maliciously in failing to guard or warn against the dangers posed by the pond.

Nevertheless, continuing its analysis, the supreme court held that the Tort Claims Act would immunize the City even from claims based on willful or malicious conduct, finding that section 8542(a) of the Tort Claims Act waives governmental immunity only with respect to "negligent acts" and specifically states that negligent acts do not include

willful or malicious conduct. [FN9] *Lory.* Accordingly, ***879** the supreme court held in *Lory* that "[a] willful or malicious failure by the city to maintain signs warning of the danger of swimming in the pond cannot ... be deemed a 'negligent act' under the Tort Claims Act." [FN10] *Id.* 674 A.2d at 675. "To hold otherwise," according to the court, "would be to ignore the plain language of the statute." *Id.*

FN9. Section 8542(a) of the Tort Claims Act provides as follows:
(a) Liability imposed.--A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):
(1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense [of immunity] ...; and
(2) The injury was caused by the *negligent acts* of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b). As used in this paragraph, *"negligent acts" shall not include acts or conduct which constitutes* a crime, actual fraud, *actual malice or willful misconduct.*
42 Pa.C.S. § 8542(a) (emphasis added).

FN10. Justice Cappy points out in his concurrence that, by so holding, the supreme court implicitly rejects the distinction this court drew between a willful failure to guard or warn under RULWA and willful misconduct under the Tort Claims Act; indeed, it appears that the majority in *Lory* implicitly finds that "willful misconduct" under the Tort Claims Act *includes* a willful failure to guard or warn. *See Lory,* 674 A.2d at 676 (Cappy, J., concurring).

[2] Thus, *Lory* 's interpretation of RULWA and the Tort Claims Act makes it clear that, whether it acts maliciously or negligently, the municipality or other governmental unit is absolutely immune, without exception, for injuries occurring on municipally-owned recreational land. If the governmental unit acts willfully or maliciously, the governmental unit may be held liable under RULWA, but will be immune under the Tort Claims Act. If, on the other hand, the governmental unit acts negligently, the governmental unit may be held liable under the Tort Claims Act, but will be immune under RULWA.

[3] Applying *Lory* to the present case, we are forced to conclude here that the Township is immune from liability for any injuries Mrs. Wilkinson sustained when she fell in a hole caused by a removed tree stump in Conoy Township Park. As in *Lory,* even if the Township had, in fact, acted willfully or maliciously in failing to guard or warn against dangers posed by the tree stump so as to deprive it of immunity under RULWA, the Township would, nonetheless, be immunized from liability for Mrs. Wilkinson's injuries by the Tort Claims Act.

Accordingly, we affirm the trial court's grant of summary judgment for the Township.

ORDER

AND NOW, this 6th day of June, 1996, the order of the Lancaster County Court of Common Pleas, dated November 17, 1995, is affirmed.

677 A.2d 876

END OF DOCUMENT

686 A.2d 1302
(Cite as: 546 Pa. 562, 686 A.2d 1302)

Supreme Court of Pennsylvania.

COMMONWEALTH of Pennsylvania, DEPARTMENT OF TRANSPORTATION, Appellant,
v.
W. Donald PATTON, Administrator of the Estate of Brenda L. Patton, Deceased, Appellee.

Argued Oct. 16, 1996.
Decided Jan. 14, 1997.

Administrator of estate of motorist who was killed when tree branch which overhung Commonwealth roadway fell and struck automobile sued Department of Transportation (DOT). The Court of Common Pleas, Chester County, No. 89- 06702, Carroll, J., entered judgment for administrator, and denied DOT's motion for posttrial relief. DOT appealed. The Commonwealth Court, 669 A.2d 1090, affirmed. DOT appealed. The Supreme Court, No. 34 E.D. 1996, Flaherty, C.J., held that: (1) trial court should have required administrator to prove that DOT had actual or constructive notice of defect, and (2) whether DOT had such notice was question for jury, such that new trial was warranted.

Reversed and new trial granted.

West Headnotes

[1] States ⚿112.2(2)
360k112.2(2) Most Cited Cases

Commonwealth must have actual or constructive knowledge of defect to be liable in negligence action brought under statute providing exception to sovereign immunity for dangerous condition on Commonwealth real estate. 42 Pa.C.S.A. § 8522(b)(4).

[2] Municipal Corporations ⚿788
268k788 Most Cited Cases

[2] Municipal Corporations ⚿791(1)
268k791(1) Most Cited Cases

Common-law action against municipality for injury caused by defect in highway requires that municipality had notice of defect; constructive notice requires that dangerous condition be apparent upon reasonable inspection.

[3] Appeal and Error ⚿977(5)
30k977(5) Most Cited Cases

In reviewing propriety of refusal of new trial, appellate court's inquiry is whether court below abused its discretion or committed error of law which controlled outcome of case.

[4] New Trial ⚿39(1)
275k39(1) Most Cited Cases

When charge is generally accurate, but misleads jurors on critical issue, new trial should be granted.

[5] New Trial ⚿39(6)
275k39(6) Most Cited Cases

In tort action against Commonwealth arising from fall of tree limb onto Commonwealth roadway, trial court's error in refusing instruction that Commonwealth must have actual or constructive knowledge of defect to be liable under statute providing exception to sovereign immunity for dangerous condition on Commonwealth real estate required new trial, such that Commonwealth Court erred in reviewing record for sufficiency of evidence to support determination that Commonwealth had constructive notice. 42 Pa.C.S.A. § 8522(b)(4).

[6] Negligence ⚿1706
272k1706 Most Cited Cases
(Formerly 272k136(16), 272k136(10))

Question of whether landowner had constructive notice of dangerous condition and thus should have known of defect, that is, that defect was apparent upon reasonable inspection, is question of fact for jury, and may be decided by court only when reasonable minds could not differ as to conclusion; if there is any dispute created by evidence, court is not permitted to decide issue.

[7] Appeal and Error ⚿994(2)
30k994(2) Most Cited Cases

[7] Appeal and Error ⚿999(1)
30k999(1) Most Cited Cases

Appellate court should not substitute its judgment for that of jury on issue of fact; such determination is solely within province of jury which had exclusive opportunity to weigh expert and lay testimony, observe witnesses, and to form opinions on credibility.

****1303 *564** John M. Abel, Norristown, for Appellant.

William Haggerty, James C. Haggerty, Scott J. Tredwell, Philadelphia, for Appellee.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY , CASTILLE and NIGRO, JJ.

OPINION OF THE COURT

FLAHERTY, Chief Justice.

This case involves a tort claim against the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), appellant, due to alleged negligence in maintaining the right-of-way on a public road. The sole issue pertains to the jury instructions, in which the trial court refused to give PennDOT's requested instruction pertaining to notice of the dangerous condition.

On June 1, 1988, Brenda Patton, appellee's decedent, was driving on a state road in an urban area of Chester County, when a large limb fell from a tree within the Commonwealth right-of-way onto her car, killing her. The tree had been topped more than twenty years earlier by persons unknown, and the branch had been growing at a forty-five degree angle over the roadway.

At trial, appellee presented expert testimony that the artificial topping of the tree allowed the tree to decay from the top down, weakening the socket of the large branch, causing the limb to fall. The expert witness opined that a topped tree should raise a "red flag" to a well trained tree inspector. PennDOT's inspector disputed that opinion, stating that the ***565** tree was sound, and that there was no evidence the topping was clearly visible from the ground. Other witnesses who saw the tree before the accident testified that they saw nothing wrong with the tree.

****1304** [1] The trial court gave a general charge on negligence from the Pennsylvania Suggested Standard Civil Jury Instructions, but refused to give the following instruction requested by PennDOT:

> If you find that the alleged dangerous condition existed on June 1, 1988, and that it was caused by artificial conditions, then in determining whether or not the Commonwealth of Pennsylvania, Department of Transportation acted reasonably under all the circumstances here, you must determine whether or not the Commonwealth had actual or constructive notice[, prior to June 1, 1988,] of the allegedly dangerous condition of the highway where plaintiff's accident occurred.... 42 Pa.C.S. § 8522(b)(4). Unless you are so convinced by a preponderance of the evidence, you must return a verdict in favor of the Commonwealth of Pennsylvania, Department of Transportation.

Rejecting this point for charge, the trial court held that no notice, actual or constructive, is necessary to activate the Commonwealth's liability under 42 Pa.C.S. § 8522(b)(4). The jury returned a verdict in favor of appellee against appellant PennDOT.

On appeal to the Commonwealth Court, appellant argued the trial court erred in its ruling that no notice was required to hold the Commonwealth liable under 42 Pa.C.S. § 8522(b)(4). The Commonwealth Court agreed, holding that "the liability of [PennDOT], as a possessor of land, arises only when [PennDOT] has either had actual or constructive notice of the risk of unreasonable harm. Before [PennDOT] can be charged with constructive notice of a dangerous condition, that condition must have been apparent upon a reasonable inspection." 669 A.2d at 1094 (citations omitted).

[2] This holding is correct. As the Commonwealth Court stated, "the notice that is required under the real estate ***566** exception [42 Pa.C.S. § 8522(b)(4)] is co-extensive with that required under a common law cause of action in negligence." 669 A.2d at 1097. Under 42 Pa.C.S. § 8522(a), the legislature waived sovereign immunity in the instances specified in § 8522(b), provided that damages would have been recoverable at common law if the injury were caused by a person not having available the defense of sovereign immunity. *See Snyder v. Harmon,* 522 Pa. 424, 432, 562 A.2d 307, 310-11 (1989); *see also Mascaro v. Youth Study Center,* 514 Pa. 351, 356-57, 523 A.2d 1118, 1120-21

(1987). A common law action against a municipality for injury caused by a defect in a highway requires that the municipality had notice of the defect. *Good v. City of Philadelphia,* 335 Pa. 13, 16, 6 A.2d 101, 102 (1939). Constructive notice requires that the dangerous condition be apparent upon reasonable inspection. *Id.*

Appellee argues, however, that under Restatement (Second) of Torts § 363(2), the trial court's refusal to instruct the jury on notice was correct. Section 363(2) states: "A possessor of land in an urban area is subject to liability to persons using a public highway for physical harm resulting from his failure to exercise reasonable care to prevent an unreasonable risk of harm arising from the condition of trees on the land near the highway." Despite appellee's assertion to the contrary, § 363(2) of the Restatement (Second) of Torts has never been adopted in Pennsylvania. The cases cited by appellee are inapposite, citing the section in reference to different issues than the one presented here. *See McCarthy v. Ference,* 358 Pa. 485, 58 A.2d 49 (1948); *Harvey v. Hansen,* 299 Pa.Super. 474, 445 A.2d 1228 (1982); *Green v. Borough of Freeport,* 218 Pa.Super. 334, 280 A.2d 412 (1971); *Fuller v. Pennsylvania Railroad Co.,* 169 Pa.Super. 523, 83 A.2d 405 (1951); *McGarr v. United States,* 736 F.2d 912 (3d Cir.1984). *Fuller,* in fact, makes the opposite point: "Whether the information which the defendant had *was sufficient to put it on notice* of the dilapidation of the hillside and the consequent unreasonable risk of harm involved therein *was a question for the jury.*" *Fuller,* 169 Pa.Super. at 528, 83 A.2d at 407 (emphasis added).

***567** Section 363(2) of the Restatement, in any event, is not inconsistent with the requirement of notice. To require a possessor of land to "exercise reasonable care" to prevent harm from the condition of trees is consistent with the necessity that he have actual or constructive notice of a dangerous condition before he may be held liable. ****1305** Restatement (Second) of Torts § 343 may likewise apply in the circumstances of this case. It states: "A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition...." In other words, liability is premised on actual or constructive notice.

This requirement of notice is well established in the common law of this Commonwealth and, if any relevant section of the Restatement (Second) of Torts does not incorporate the requirement, we will interpret it as requiring notice, if possible, or we must conclude that it does not comport with Pennsylvania law. It is evident, therefore, that the trial court was incorrect in concluding that no notice was required to PennDOT and in failing to charge the jury on notice.

[3][4] When a challenge is made to the jury instructions, the appellate court must look at the charge in its entirety, against the background of evidence in the case, to determine whether an error of law was committed and whether prejudice resulted. In reviewing the propriety of the refusal of a new trial, the appellate court's inquiry is whether the court below abused its discretion or committed an error of law which controlled the outcome of the case. When a charge is generally accurate, but misleads the jurors on a critical issue, a new trial should be granted. *Stewart v. Motts,* 539 Pa. 596, 606, 654 A.2d 535, 540 (1995); *Gouse v. Cassel,* 532 Pa. 197, 205, 615 A.2d 331, 335 (1992) ; *Hamil v. Bashline,* 481 Pa. 256, 275, 392 A.2d 1280, 1289-90 (1978); *Wood v. Smith,* 343 Pa.Super. 547, 550, 495 A.2d 601, 603 (1985).

[5] Notwithstanding its recognition of the trial court's erroneous belief that no notice was required, the Commonwealth Court affirmed the trial court. It stated: "Based on ***568** our review of the record, we conclude, therefore, that sufficient competent evidence supports a determination that [PennDOT] knew or should have known of the potential hazard created by the tree and negligently failed to correct the dangerous condition." 669 A.2d at 1095.

Instead of applying the standard for assessing erroneous jury instructions, the Commonwealth Court reviewed the record for sufficiency of the evidence. This was error. It would have been appropriate only if the jury had been instructed to decide if PennDOT had constructive notice and then had decided that question in the affirmative. We would agree that the record contains sufficient evidence to support such a finding if the jury had made such a finding. But the record also contains sufficient evidence to support the opposite finding--that PennDOT did not have constructive notice because the defect was not apparent on reasonable inspection. The fundamental error is

that the jury never considered this critical question due to the trial court's failure to instruct it to decide whether or not PennDOT had notice of the dangerous condition.

[6][7] The question whether a landowner had constructive notice of a dangerous condition and thus should have known of the defect, i.e., the defect was apparent upon reasonable inspection, is a question of fact. As such, it is a question for the jury, and may be decided by the court only when reasonable minds could not differ as to the conclusion. *Carrender v. Fitterer,* 503 Pa. 178, 185, 469 A.2d 120, 124 (1983). If there is any dispute created by the evidence, the court is not permitted to decide the issue. The appellate court had no more authority to decide the issue of constructive notice than the trial court did. It is axiomatic that an appellate court should not substitute its judgment for that of the jury on an issue of fact; such a determination is solely within the province of the jury which had the exclusive opportunity to weigh the expert and lay testimony, observe the witnesses, and to form opinions on credibility. *Melzer v. Witsberger,* 505 Pa. 462, 476 n. 9, 480 A.2d 991, 998 n. 9 (1984), citing *Kay v. Kay,* 460 Pa. 680, 683, 334 A.2d 585, 586 (1975); ***569***Ludmer v. Nernberg,* 433 Pa.Super. 316, 326, 640 A.2d 939, 944 (1994); *Standard Pipeline Coating Co. v. Solomon & Teslovich, Inc.,* 344 Pa.Super. 367, 377-78, 496 A.2d 840, 845 (1985).

The question of constructive notice was a major issue in this case, and there was substantial conflicting evidence on the issue. It ****1306** was therefore not a question to be decided by the court, but should have been submitted to the jury. The failure to submit the issue to the jury as requested by appellant could very well have controlled the outcome of the case, as the jury might have been misled to believe that PennDOT need not have actual or constructive notice of the dangerous condition in order to be held liable.

Accordingly, it is necessary to order a new trial with directions to give proper and complete instructions on the issue of notice.

The order of the Commonwealth Court is reversed and a new trial is granted.

NEWMAN, J., did not participate in the consideration or decision of this matter.

686 A.2d 1302, 546 Pa. 562

END OF DOCUMENT

679 A.2d 299
(Cite as: 679 A.2d 299)

Commonwealth Court of Pennsylvania.

Linda COLSTON, Appellant,
v.
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY; and Upper Chichester
Township; and Commonwealth of Pennsylvania, Department of Transportation.

Argued June 10, 1996.
Decided July 15, 1996.

Pedestrian brought negligence action against Commonwealth Department of Transportation to recover damages for injuries she suffered when she stepped on allegedly defective sewer grate. The Court of Common Pleas, Delaware County, No. 92-3168, Semeraro, J., granted Department's motion for compulsory nonsuit. Pedestrian appealed. The Commonwealth Court, No. 2009 C.D. 1995, Doyle, J., held that: (1) pedestrian did not establish that Department had constructive knowledge of defect in grate prior to accident, such that trial court's error in concluding that pedestrian was required to establish that Department had actual knowledge of defect in grate to maintain action was harmless, and (2) expert's testimony as to availability of tests that measure age of defects in metal structures was not relevant as to whether Department had knowledge of defect in grate prior to accident.

Affirmed.

Flaherty, J., concurs in the result only.

West Headnotes

[1] Negligence ⚿202
272k202 Most Cited Cases
(Formerly 272k1)

To maintain negligence cause of action, plaintiff must establish duty recognized by law, requiring actor to conform to certain standard of conduct, failure of actor to conform to that standard, causal connection between conduct and resulting injury, and actual loss or damages to interests of plaintiff.

[2] Negligence ⚿1089
272k1089 Most Cited Cases
(Formerly 272k48)

Possessor of land's knowledge of defect on land need not be actual for possessor to be liable for harm to invitee from defect, but may also be constructive. Restatement (Second) of Torts § 342.

[3] Highways ⚿216
200k216 Most Cited Cases

Trial court's error in concluding that pedestrian was required to establish that Commonwealth Department of Transportation had actual knowledge of defect in storm sewer grate on state highway to maintain action against Department for injuries she suffered when she stepped on grate was harmless, since pedestrian failed to establish constructive preaccident notice to the Department; although Department failed to preserve grate and records relating to grate, such that pedestrian could not discover records to establish constructive knowledge, Department was not on notice that litigation regarding grate was pending at time it destroyed records. 42 Pa.C.S.A. § 5522; Rules Civ.Proc., Rule 4003.2, 42 Pa.C.S.A.

[4] Evidence ⚿519
157k519 Most Cited Cases

Expert's testimony as to availability of tests which measure age of defects in metal structures, such as sewer grate on which pedestrian stepped and incurred injury, was not relevant as to whether Commonwealth Department of Transportation had knowledge of defect in grate prior to pedestrian's accident, and so expert was not entitled to testify in pedestrian's negligence action against Department.

[5] Evidence ⚿508
157k508 Most Cited Cases

[5] Evidence ⚿546
157k546 Most Cited Cases

Admissibility and scope of expert's testimony is within discretion of trial court; in making admissibility determination, crucial issue is whether testimony will assist trier of fact.
***299** Michael B. Tolcott, for Appellant.

John P. Capuzzi, Deputy Attorney General, for Appellee.

Before DOYLE and FLAHERTY, JJ., and KELTON, Senior Judge.

DOYLE, Judge.

Linda Colston appeals from a final judgment entered by the Court of Common Pleas of Delaware County which granted the Department ***300** of Transportation's motion for compulsory nonsuit on the grounds that the Department lacked pre-accident notice of a dangerous condition which caused Colston to sustain injuries.

The essential facts are as follows. On June 1, 1990, Colston was injured when she exited a Southeastern Pennsylvania Transportation Authority (SEPTA) bus and stepped onto a broken storm sewer grate on Chichester Road, a state-designated highway. The next day, June 2, 1990, Colston reported her accident to the Upper Chichester Police Department, which in turn, notified Robert Bansept, an assistant maintenance manager of the Department, stating that there was a damaged sewer grate on Chichester Road. Mr. Bansept immediately dispatched Ken Shuss, a maintenance foreman of the Department, who removed the broken storm grate that day and disposed of it in a metal recycling bin at the Department's Bordendale yard.

Thereafter, Colston sent the Tort Claims Division of the Attorney General's Office a letter dated June 6, 1990 reciting the above facts for the purpose of notifying the Attorney General of the defective condition of the storm grate. **Colston did not send written notice of the alleged defect to the Department.**

Sometime in the end of 1990, all prior inspection records of the site surrounding the subject grate were purged pursuant to established Department policy.

As a result of her accident, Colston filed suit against the Department [FN1] alleging that the Department was negligent in failing to repair, maintain, inspect or warn Colston of the dangerous condition of the broken grate and thereby caused her injuries.

FN1. Colston's complaint was initially filed in the Court of Common Pleas of Philadelphia County and named SEPTA, Upper Chichester Township and the Department as defendants. By order dated October 30, 1991, the matter was transferred to Delaware County; Upper Chichester Township and SEPTA were dismissed by orders not relevant in the instant appeal.

A jury trial was held on February 22nd and 23rd of 1995 during which, at the close of Colston's evidence, the Department moved for compulsory nonsuit. Because the trial court concluded that our decision in *Miranda v. City of Philadelphia,* 166 Pa.Cmwlth. 181, 646 A.2d 71 (1994), requires that the Department be given *actual* pre-accident notice of the alleged dangerous condition, the trial court granted the Department's motion. Thereafter, Colston filed a motion for post-trial relief which was denied by order dated May 18, 1995. Final judgment was entered against Colston on July 11, 1995. The instant appeal followed.

On appeal, Colston argues that the trial court erred in concluding that she was required to establish that the Department had actual pre-accident notice of the defective sewer grate because constructive notice is sufficient under *Miranda.* Colston, however, did not present any evidence of constructive pre-accident notice to the Department of the defective grate, but rather contends that because the Department destroyed evidence *i.e.,* disposed of the grate, constructive notice should have been presumed or, alternatively, the Department should have been estopped from contesting the pre-accident notice issue. She also argues that the trial court abused its discretion in excluding the testimony of Colston's expert witness, Dr. Deegan, whom Colston offered to establish the availability of tests to determine the age of defects in metals such as the subject grate.

Under the Judicial Code, in order to maintain an action against a Commonwealth agency, a plaintiff must show: (1) that the damages sought would be recoverable under the common law or under a statute creating a common law cause of action against one not afforded an immunity defense; and (2) that the injury falls within one of the exceptions to sovereign immunity found at Sections 521-8522

of the Judicial Code, 42 Pa.C.S. §§ 8521-8522. In the instant case, Colston alleged that the Department was negligent by failing to properly maintain the sewer grate and/or failing to warn of the grate's defective condition.

[1] It is beyond question that the elements of a basic negligence cause of action ***301** are: "(1) a duty recognized by law, requiring the actor to conform to a certain standard of conduct; (2) a failure of the actor to conform to that standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damages to the interests of another." *Miranda,* 646 A.2d at 74.

[2] The court below granted the Department's motion for nonsuit on the basis that Colston failed to meet her burden with regard to the first element of her *prima facie* case, *i.e.,* that she failed to establish that the Department owed her a duty because the Department did not have pre-accident notice of the defective condition. In *Miranda,* 646 A.2d at 74, we specifically explained the scope of a possessor of land's duty to licensees [FN2], quoting the Restatement (Second) of Torts § 342 (1965):

> FN2. A licensee is "a person who is privileged to enter or remain on land only by virtue of the possessor's consent." *Palange v. City of Philadelphia, Law Department,* 433 Pa. Superior Ct. 373, 378, 640 A.2d 1305, 1308 (1994)(quoting Restatement (Second) of Torts § 330 (1965)), *petition for allowance of appeal denied sub nom., Palange v. Priori's Bar and Restaurant,* 542 Pa. 649, 666 A.2d 1057 (1995).

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land, if, but only if,
> (a) *the possessor knows or has reason to know of the condition* and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
> (c) the licensees do not know of or have reason to know of the condition and the risk involved. (Emphasis added.)

The trial court in the instant case construed the language, "the possessor knows or has reason to know of the condition," to mean that the Department would only be liable if it had *actual* pre-injury notice of the defective condition and, accordingly, constructive notice would not be sufficient to establish the Department's duty to Colston.

We must respectfully disagree. First, the plain meaning of the phrase "the possessor knows or *has reason to know of the condition* " is that a possessor of land is liable for defects of which he or she has *constructive* knowledge as well as those of which he or she has *actual* knowledge. Second, the *Miranda* Court, in relying on Section 342 of the Restatement to dismiss the complaint, did not reject the concept of constructive notice, but rather, held only that the sole evidence presented in that case, *viz.* the Department's ownership of the defective property, did not, by itself, establish constructive notice of the defect.

[3] Accordingly, we hold that the trial court erred in concluding that *Miranda* required Colston to establish *actual* pre-injury notice to meet her burden in establishing the first element of a negligence cause of action against the Department. However, because we further hold that Colston failed, as a matter of law, to establish constructive pre-accident notice to the Department, for the reasons hereinafter discussed, we affirm the trial court's decision.

Colston argues that she would have presented evidence to establish constructive pre-accident notice to the Department, *viz.* written records of third party complaints regarding the grate and expert testimony regarding the cause and age of the defects in the sewer grate, but was prevented from doing so by the Department which destroyed this crucial evidence. Therefore, Colston argues, pre-accident constructive notice should be presumed, or, alternatively, the Department should be estopped from contesting the pre- accident notice issue.

In support of her position, Colston relies upon *Roselli v. General Electric Company,* 410 Pa. Superior Ct. 223, 599 A.2d 685, (1991), *petition for allowance of appeal granted,* 530 Pa. 645, 607 A.2d 255 (1992), in which the Superior Court affirmed summary judgment for General Electric in

a products liability case because the plaintiffs' loss of a ***302** key part of the allegedly defective product deprived General Electric of the opportunity to inspect it, "a necessary step in preparation of its defense." Colston's reliance on this case, however, is misplaced.

The holding in *Roselli* was predicated upon the Court's conclusion that public policy weighed against the plaintiffs because to allow their claims to go forward would encourage false claims and would make the legitimate defense of valid claims more difficult. In the instant case, the Department is the defendant, not the plaintiff, and therefore the policy concerns underpinning the *Roselli* holding are not present here.

Moreover, unlike the plaintiff in *Roselli,* the Department did not lose and/or destroy evidence *in the course of litigation.* Significantly, at the time the Department disposed of the grate and purged its previous complaints regarding the grate, [FN3] not only hadn't litigation been commenced, but the Department was not even on *notice* of potential litigation.

> FN3. It is not clear from the record the exact date on which the records of third party complaints regarding the subject grate were purged. However, Robert Bansept, assistant maintenance manager for the Department, testified that once the work is complete on a defect of the road, the records are purged at the end of that year. Presumably, therefore, the records regarding the subject sewer grate were purged at the end of 1990.

Section 5522 of the Judicial Code, 42 Pa.C.S. § 5522 provides in pertinent part:

> (a) **Notice prerequisite to action against government unit.--**
> (1) Within six months from the date that any injury was sustained or any cause of action accrued, any person who is about to commence any civil action or proceeding within this Commonwealth or elsewhere against a government unit for damages on account of any injury to his person or property under Chapter 85 ... or otherwise **shall file in the office of the government unit, and** if the action is against a Commonwealth agency for damages, then also file in the office of the Attorney General, a statement in writing.... (Emphasis added.)

It is undisputed that Colston never filed a written notice with the Department, even though she retained legal counsel within five days of the accident. [FN4] At the time that the Department removed the grate and purged its records in accordance with its established standard operating procedures, therefore, it had no knowledge of potential litigation regarding the grate. It follows that the Department was under no duty to preserve the sewer grate or keep prior complaints regarding the grate.

> FN4. Colston did send written notice to the Office of the Attorney General on June 6, 1990. The notice was defective on its face, however, because it erroneously identified the accident site as Bethel Road, not Chichester Avenue.
> Further, we note that Section 5522 of the Judicial Code has been interpreted as an affirmative defense, rather than a statute of limitations, and, thus, by failing to raise the defense of lack of statutory notice in the Department's answer to Colston's complaint, it waived that defense on appeal. Therefore, although we conclude that Colston failed to properly notify the Department under Section 5522 and for that reason that the Department did not act improperly in disposing of the grate and records, Colston's inadequate notice under Section 5522, alone, is not the basis upon which we ultimately affirm the decision of the trial court.

Colston alternatively argues that the Department should be estopped from contesting the notice issue, as a sanction under Pa. R.C.P. No. 4019, for the Department's violation of Pa. R.C.P. No. 4003.2 relating to discoverable evidence.

The fundamental flaw in Colston's reasoning is her presumption that the grate and the records, **at the time of their disposal,** were discoverable items of evidence, the destruction of which would warrant sanctions under Pa. R.C.P. No. 4019.

Discoverable evidence is specifically defined as "any matter, not privileged, which is relevant to the subject matter involved in the *pending* action...." Pa. R.C.P. No. 4003.1(a) (emphasis added). In the instant case, however, as discussed above, at the time the Department recycled the grate and ***303** purged the records there was no *pending* action in which the items were involved and, further, the Department was not even on notice of a *potential* action. Accordingly, we hold that the trial court did not err in rejecting Colston's "estoppel" theory. [FN5]

> FN5. This Court questions whether Colston is even arguing estoppel in this context as she does not allege any representation of material fact by the Department upon which she relied to her detriment. *See Foster v. Westmoreland Casualty Company,* 145 Pa.Cmwlth. 638, 604 A.2d 1131 (1992).

[4] Finally, Colston argues that the trial court abused its discretion in excluding the testimony of Dr. Deegan, an expert in metallurgy engineering offered by Colston. The trial court excluded this testimony on the basis that Dr. Deegan had not physically examined the grate in question and, therefore, would not have been able to accurately assess the age and cause of the defect.

[5] Admissibility and scope of an expert's testimony is within the discretion of the trial court; in making the admissibility determination the crucial issue is whether the testimony will assist the trier of fact. *Panitz v. Behrend,* 429 Pa. Superior Ct. 273, 632 A.2d 562 (1993), *petition for allowance of appeal denied,* 539 Pa. 694, 653 A.2d 1232 (1994).

In the instant case, Colston offered Dr. Deegan for the purpose of establishing the availability of tests which measure the age of defects in metal structures such as the subject grate and to bolster Colston's position that the Department sabotaged her case by disposing of the grate. However, as we stated above, the Department's actions in disposing of the grate were proper. Further, the mere *availability* of the tests to determine the age of the defects in the gate is in no way helpful to the jury as to the issue in contention, *i.e.,* whether the Department should have known of the defect before Colston's accident. Accordingly, we conclude that the trial court did not abuse its discretion in excluding this testimony.

Order affirmed.

ORDER

NOW, July 15, 1996, the order of the Court of Common Pleas of Delaware County in the above-captioned matter is hereby affirmed.

FLAHERTY, J., concurs in the result only.

679 A.2d 299

END OF DOCUMENT

H

Commonwealth Court of Pennsylvania.

Edwin MILLER, Jr. and Donna Miller, his wife,
Appellants,
v.
LYKENS BOROUGH AUTHORITY.

Argued April 14, 1998.
Decided May 19, 1998.

Motorist who was injured when he drove over trench in which water pipes had been installed by city utility department brought action against utility department. The Court of Common Pleas, Dauphin County, No. 3357 S 1991, Lewis, J., granted department's posttrial motion for directed verdict, and motorist appealed. The Commonwealth Court, No. 1317 C.D. 1996, Smith, J., 690 A.2d 818, reversed and remanded. On remand, the Court of Common Pleas, Dauphin County, No. 3357 S 1991, Clark, Jr., J., found that department was not liable and denied motorist's post-trial motions seeking new trial on issue of damages, and appeal was taken. The Commonwealth Court, No. 2706 C.D. 1997, Pellegrini, J., held that, for purposes of utility exception to governmental immunity, motorist was not excused from establishing that department had actual or constructive notice of latent defect in placement of fill in time to correct it, even though it was department's negligence that created dangerous condition.

Affirmed.

West Headnotes

[1] Municipal Corporations ⚿733(1)
268k733(1) Most Cited Cases

As prerequisite for recovering under utility exception to governmental immunity, plaintiff is required to establish that agency had actual or constructive notice under all of the circumstances. 42 Pa.C.S.A. § 8542(b)(5).

[2] Municipal Corporations ⚿733(4)
268k733(4) Most Cited Cases

Notice of latent defect in placement of fill that could not be discerned upon reasonable inspection could not be imputed to city utility department, which had excavated street to repair damaged water line, simply because it created dangerous condition for purposes of utility exception to governmental immunity. 42 Pa.C.S.A. § 8542(b)(5).

[3] Automobiles ⚿274
48Ak274 Most Cited Cases

For purposes of utility exception to governmental immunity, motorist who was injured when he drove over trench, in which water pipes had been installed by city utility department, was not excused from establishing that department had actual or constructive notice of latent defect in placement of fill in time to correct it, even though it was department's negligence that created dangerous condition. 42 Pa.C.S.A. § 8542(b)(5).

***800** Richard C. Angino, Harrisburg, for appellants.

Brooks R. Foland, Harrisburg, for appellee.

Before PELLEGRINI, and LEADBETTER, JJ., and JIULIANTE, Senior Judge.

***801** PELLEGRINI, Judge.

Edwin and Donna Miller (Millers) appeal from an order of the Court of Common Pleas of Dauphin County (trial court) denying their post-trial motions seeking a new trial solely on the issue of damages against Lykens Borough Authority (Authority).

On December 18, 1989, the Authority excavated part of Pottsville Street in Wiconisco Township (Township) in order to repair a damaged water line. After finishing its repairs to the water line, the Authority filled in the area of the roadway that it had excavated using material that contained frozen particles and placed the material in eight to twelve inch layers using a regular tamper. [FN1] This measure was to be a temporary solution until the repairs could be completed by paving the roadway. On December 30, 1989, while driving down Pottsville Street, Mr. Miller's vehicle struck the utility cut which, since the time of the last inspection, was down eight to twelve inches below the roadway. Up until two days before the accident, the Authority had sent employees to the

site to check the excavation for subsidence but none had occurred. The Millers filed suit against the Authority alleging that the Authority was negligent in the restoration of the roadway because it improperly backfilled the trench it had excavated and such negligence caused Mr. Miller's injuries. [FN2]

FN1. When making such repairs, however, the Millers offered evidence that only dry, unfrozen material should be used when backfilling and should be tamped in four inch layers rather than the eight inch layers used by the Authority.

FN2. The Millers also named the Township and the Pennsylvania Department of Transportation as additional defendants, but both were dismissed pursuant to a stipulation among the parties.

When the case was first tried the jury was unable to reach a verdict. The Authority then moved for a directed verdict because it contended that the evidence did not establish that it had notice of a dangerous condition of the roadway. The trial court granted the motion and entered a directed verdict in favor of the Authority and the Millers appealed to this Court. In *Miller v. Department of Transportation,* 690 A.2d 818 (Pa.Cmwlth.1997) (*Miller I),* we reversed and ordered a new trial reasoning that there was sufficient evidence presented in which the jury could conclude that the Authority had notice that the roadway was a dangerous condition and the trial judge erred in taking that issue away from the jury.

At the close of the second trial, the trial court submitted a special verdict form to the jury containing three questions. [FN3] Because the utility exception to governmental immunity in 42 Pa.C.S. § 8542(b)(5) requires actual or constructive notice to the agency before a plaintiff can recover, the trial court submitted this third question to the jury:

FN3. The first question was whether the jury found that the Borough was negligent and the second was whether the Authority's negligence was a substantial factor in causing Miller's injuries.

> Do you find that the Defendant, Lykens Borough Authority, had actual notice or could reasonably be charged with notice of the depression/ditch on Pottsville Street, under all the circumstances in this case, in sufficient time prior to the accident on the evening of December 30, 1989, to have taken measures to protect against the dangerous condition?

Millers' counsel objected to submitting this question to the jury. He contended that the Authority was presumed, as a mater of law, to have the requisite notice because it created the allegedly dangerous condition if the jury were to find that the Authority had improperly filled the utility cut. When the jury returned its verdict, it found that the Authority was negligent in backfilling the utility cut and that its negligence caused Mr. Miller's injuries, but because the Authority did not have actual or constructive notice of the dangerous condition in sufficient time before Mr. Miller's accident to allow it to make repairs, the Authority was not liable to Mr. Miller for his injuries. The Millers filed post-trial motions contending that the trial judge erred in submitting the factual issue of notice to the jury and because the jury found the Authority negligent backfilling the utility cut a new trial should be held solely on the issue of damages. Relying on our decision in *Kennedy v. City of Philadelphia,* 160 Pa.Cmwlth. 558, 635 A.2d 1105 (1993) *affirmed,* ***802** 540 Pa. 527, 658 A.2d 788 (1995), the trial court denied the motion because notice under the exceptions to governmental immunity was not to be inferred merely because the Authority created the dangerous condition. This appeal followed. [FN4]

FN4. When reviewing a trial court's denial of a motion for post-trial relief, our scope of review is limited to a determination of whether the trial court abused its discretion or committed an error of law. *Ellis v. City of Pittsburgh,* 703 A.2d 593 (Pa.Cmwlth.1997). Additionally, we must review the record in a light most favorable to the verdict winner, who is afforded the benefit of all reasonable inferences that arise from the evidence. *Id.*

As they did below, the Millers do not allege here that the jury's finding that the Authority lacked notice was against the weight of the evidence, but only that because the Authority created the dangerous condition causing Miller's injuries, the trial court erred in submitting the issue of notice to the jury because notice that the cut could have subsided should have been imputed to the Authority as a matter of law. They contend that the notice required by 42 Pa.C.S. § 8542(b)(5) is nothing more than normal constructive notice and that where the defendant's own antecedent conduct causes the dangerous condition, the plaintiff need not establish either actual or constructive notice. *Penn v. Isaly Dairy Co.*, 413 Pa. 548, 198 A.2d 322 (1964); *Finney v. G C. Murphy,* 406 Pa. 555, 178 A.2d 719 (1962). Because its negligence created the dangerous condition that caused Mr. Miller's injury, the Millers argue that the Authority should be deemed to have had notice of the dangerous condition, just as a private landowner would have under the same circumstances.

[1] The trial court based it decision to submit the factual question of notice to the jury on the exception contained in 42 Pa.C.S. § 8542(b)(5) that deals with local utilities. The utility exception provides that liability shall be imposed if the injuries complained of were caused by:

> A dangerous condition of the facilities of a steam, sewer, water, gas or electric systems owned by the local agency and located within rights-of-way, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition. [FN5]
>
> FN5. This Court has held that this exception applies not only to the water pipe, but also to the strip of land that the Authority disturbs to repair the pipe. *Miller,* 690 A.2d at 820.

As a prerequisite for recovering under this exception, a plaintiff is required to establish that the agency had actual or constructive notice under all of the circumstances. What the Millers contend is that when an agency creates a dangerous condition, negligence and notice are intertwined. While this may be true where the dangerous condition is obvious, e.g., if the Authority did not fill in the cut at all, the more precise issue, and the one involved in this case is whether the agency is charged with notice of a latent defect caused by its antecedent conduct.

We dealt with the issue of whether a governmental agency had notice of a latent defect in *Kennedy, albeit* under the traffic control exception that contains the same language on notice as the utility exception. [FN6] In *Kennedy,* plaintiff's decedent was killed after she was struck by a car while walking along a roadway in which plaintiff alleged was improperly marked by PennDOT. The roadway contained only a single dotted white line that separated the west bound lanes. At trial it was shown that PennDOT ***803** was negligent in marking the road because it should have better delineated where the highway ended and the berm began by installing a solid white line at the point the roadway ended. However, it was not shown that PennDOT had notice of the defect in the road markings. The trial court, citing to both *Penn* and *Finney* as do the Millers, held that plaintiffs did not need to prove notice to PennDOT because PennDOT had notice as a matter of law as it was the one that actually created the dangerous condition. We reversed, reasoning that under the traffic control exception, PennDOT could not be deemed to have notice as a matter of law and the plaintiffs still needed to prove by specific evidence, either actual or constructive notice, on the part of PennDOT even though it was the agency's negligence that caused the dangerous condition. In doing so, we stated that both *Penn* and *Finney* were inapplicable because they dealt with private landowners and not a governmental agency. We went on to hold that local agencies were to be treated differently than private entities because the immunity statute which specifically provides that a plaintiff must prove either actual or constructive notice of the dangerous condition when bringing an action against a local agency. We also distinguished *Penn* and *Finney* because the dangerous condition in those cases, i.e. wax on the floor put there by the owner of the store, was an obvious condition of which the owner should have had notice and was not a latent defect.

> FN6. The traffic control exception at 42 Pa.C.S. § 8542(b)(4) provides that liability may be imposed if the injury is caused by: A dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting system under the care, custody and control of the local agency except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

Our holding in *Kennedy* that the municipality must have knowledge of a latent defect even if created by its own previous conduct has long been the law in this Commonwealth. In *Travers v. Delaware County,* 280 Pa. 335, 124 A. 497 (1924), a case similar to this one, a span of a bridge constructed by the county gave way during a rescue attempt causing plaintiff to fall into the waterway below the bridge. An examination after the plaintiff's fall showed that there was an old defect in the bridge that was caused by workmen employed by the city some years earlier but had been concealed as the repairs were completed. The plaintiff argued that because the workmen who repaired the bridge created the defect, notice should therefore be imputed to the county. The evidence adduced at trial showed that the county had inspected the bridge a few months prior to the accident and found that there was no damage to the iron work that ultimately collapsed causing plaintiff's injuries. Our Supreme Court held that where the defect was not obvious and the county undertook a reasonable inspection that revealed no damage to the iron work of the bridge, there could not be any liability on the part of the municipality without a showing that the defect was one that should have been discovered through the use of ordinary care.

[2][3] Likewise, notice of a latent defect in the placement of the fill that could not be discerned upon reasonable inspection cannot be imputed to the Authority simply because it created the dangerous condition. Just as in *Kennedy* and *Travers,* the Millers as plaintiffs, were not excused from establishing that the Authority had actual or constructive notice of the latent defect in time to correct it, even though it was the Authority's negligence that created the dangerous condition. [FN7] Because it was not error for the trial court to find that the Authority was not charged with notice as a matter of law when it created the dangerous condition as result of a latent defect, we affirm the trial court's denial of the Millers' post-trial motions and entry of judgment for the Authority. [FN8]

> FN7. Other states, however have held that notice is imputed under the circumstances presented in this case. *See Harding v. City of Highland Park,* 228 Ill.App.3d 561, 169 Ill.Dec. 448, 591 N.E.2d 952 (1992) (where the affirmative act of a governmental agency's employees cause a dangerous condition, no actual or constructive notice of the condition needs to be shown under the Illinois immunity statute); *see also Sherman v. District of Columbia,* 653 A.2d 866 (D.C.1995) (proof that the District had notice of the defective condition is irrelevant where liability is premised on the primary negligence of the District's agent).

> FN8. The Authority has moved for costs and attorney's fees under Pa.R.A.P. 2744 in connection with this matter for what it contends is a "frivolous and vexatious second appeal." It argues that because the Millers previously argued that notice was a question for the jury and now argues on this appeal that it is not, their appeal is frivolous. However, we do not find that such alternative arguments in two separate trials are frivolous or vexatious so as to warrant the imposition of fees and costs against the Millers. Accordingly, the motion for fees and costs is denied.

804 *ORDER

AND NOW, this 19th day of May, 1998, the order of the Court of Common Pleas of Dauphin County at 3357 S 1991, dated September 9, 1997, is affirmed. It is further ORDERED that the motion of Lykens Borough Authority for counsel fees and

the costs of this proceeding is denied.

712 A.2d 800

END OF DOCUMENT

H

Commonwealth Court of Pennsylvania.

John R. KENNEDY, Administrator of the Estate of Kathleen Kennedy, Deceased,
v.
CITY OF PHILADELPHIA and Commonwealth of Pennsylvania, Torts Litigation Unit-Office of Attorney General and PA Department of Transportation and James H. Hartbauer,
Appeal of CITY OF PHILADELPHIA, Appellant.

Argued Oct. 8, 1993.
Decided Dec. 16, 1993.
Reargument Denied Feb. 16, 1994.

City appealed from an order of the Court of Common Pleas of Philadelphia County, No. 2816 and 3947 September Term, 1983, Caesar, J., denying the city's motion for new trial or judgment notwithstanding the verdict and granting petitions to mold verdicts representing damage awards arising from collision between automobile and pedestrians. The Commonwealth Court, No. 634 C.D. 1993, Kelton, Senior Judge, held that: (1) city's exercise of discretionary authority to paint lane markings on state highway subjected it to potential liability despite fact that city had no statutory duty to erect traffic controls and no contract with Department of Transportation to do so, and (2) there was no showing that city had actual or constructive notice of specific dangerous condition causing accident, as required to satisfy detailed notice requirement of Political Subdivision Tort Claims Act.

Reversed.

West Headnotes

[1] Appeal and Error ⚿949
30k949 Most Cited Cases

Commonwealth court's scope of review of decision of trial court denying motions for judgment notwithstanding the verdict or for new trial is limited to determination of whether court abused its discretion or committed an error of law.

[2] Highways ⚿198
200k198 Most Cited Cases

City is under no statutory authority to paint lines on a state highway.

[3] Automobiles ⚿255
48Ak255 Most Cited Cases
(Formerly 200k198)

Where city had exercised discretionary authority by placing some lane markings on state highway, its actions in choosing to delineate part of that state highway, not its failure to paint any lines, were catalyst for potential liability under Political Subdivision Tort Claims Act. 42 Pa.C.S.A. § 8542(b)(4).

[4] Automobiles ⚿255
48Ak255 Most Cited Cases
(Formerly 200k198)

Lack of contract between city and State Department of Transportation imposing lane marking maintenance responsibility on city was irrelevant to city's liability for traffic accident, in light of city's affirmative action of exercising its discretionary duty to erect traffic controls. 42 Pa.C.S.A. § 8542(b)(4).

[5] Automobiles ⚿306(5)
48Ak306(5) Most Cited Cases
(Formerly 200k211)

There was no evidence from which jury could conclude that city had actual or constructive notice of specific dangerous condition arising out of absence of pedestrian lane at accident site, as required to satisfy detailed notice requirement of Political Subdivision Tort Claims Act; testimony of police officer familiar with accident site did not indicate knowledge of specific dangerous condition of lack of dotted line separating area for pedestrians from vehicle lanes. 42 Pa.C.S.A. § 8542(b)(4).
****1106*559** Alan C. Ostrow, Asst. City Sol., for appellant.

Lawrence D. Finney, for appellees.

Before DOYLE and SMITH, JJ., and KELTON, Senior Judge.

***560** KELTON, Senior Judge.

In this case involving a collision between an automobile and two pedestrians, we are required to determine whether the City of Philadelphia (City) may be held liable for negligence in failing to paint additional traffic control lane markings on a state highway.

The City appeals from the February 10, 1993 order of the Court of Common Pleas of Philadelphia County (trial court) denying the City's motion for new trial or judgment notwithstanding the verdict and granting the petitions to mold the verdicts of Lewis Scott (Scott), an incompetent whose estate is represented by guardian Cora Smith, and the deceased Kathleen Kennedy (Kennedy), whose estate is represented by administrator John R. Kennedy. In addition to denying the motion for a new trial and judgment notwithstanding the verdict, the trial judge also molded Kennedy's verdict from $600,000.00 to $336,382.45, Scott's verdict from $2,000,000.00 to $1,167,977.50 and entered judgment on both molded verdicts.

Because we conclude that Kennedy and Scott failed to establish that they met the specific notice requirements for liability under Section 8542(b)(4) of what is commonly called the Political Subdivision Tort Claims Act (Act), [FN1] the "traffic controls" exception to governmental immunity, we are compelled to reverse. In view of our decision on governmental immunity, we do not discuss any issues related to the amount of the molded verdicts or the manner of calculating delay damages.

FN1. 42 Pa.C.S. § 8542(b)(4).

On October 3, 1981, an automobile driven by James Hartbauer (Hartbauer) struck Ms. Kennedy and Mr. Scott while they were ****1107** walking along Westbound Frontage Road in Philadelphia County. Hartbauer was en route to Liberty Bell Race Track (Liberty) when he collided with the pedestrians.

From his home, Hartbauer had traveled on Interstate 95, exited onto Woodhaven Road and had driven on Woodhaven in a northwesterly direction. From Woodhaven Road, he exited ***561** onto the exit ramp leading to Millbrook Road. Traveling in the left lane of the two-lane exit ramp, he moved into the right lane of the ramp in order to turn into Liberty's driveway. Liberty's driveway was located to the right of Westbound Frontage Road, several hundred feet from the intersection of Westbound Frontage and Millbrook roads. Frontage Road is parallel to Woodhaven Road, but separate from Woodhaven's main thoroughfare. After passing another vehicle and moving into the right lane of the ramp, he spotted the two pedestrians, but was so close to them that he was unable to prevent the accident.

The collision occurred four hundred feet east of the east curb line of Millbrook Road and seven feet into the traveling lanes of Westbound Frontage Road. Kennedy died as a result of the impact and Scott was rendered incompetent due to massive brain damage.

Kennedy's administrator and Scott's guardian sued 1) Liberty for breaching its duties as a possessor of land; 2) the City for dangerous condition of the street markings and/or traffic controls; 3) the Commonwealth of Pennsylvania, Department of Transportation (DOT) for the defective design of the highway; [FN2] and 4) Hartbauer. At the end of the liability phase, the jury found in favor of Hartbauer and Liberty, but against the City (45%), DOT (15%) and Kennedy and Scott for contributory negligence (40%). Prior to the damages phase of the trial, the City, DOT, Kennedy's administrator and Scott's guardian stipulated to a verdict in favor of Scott in the amount of $2,000,000.00 and in favor of Kennedy's estate in the amount of $600,000.00.

FN2. Subsequent to filing post-trial motions, the Commonwealth of Pennsylvania, Department of Transportation settled with both Scott's guardian ad litem and Kennedy's administrator.

The evidence at trial was sufficient to establish that Woodhaven Road, Frontage Road and the two-lane exit ramp were all state roads, but that the City had painted whatever lane markings were on the roads on the date of the accident. At that time, the lane markings consisted solely of a single white dotted

line separating the two west-bound lanes on Frontage ***562** Road. The Kennedy and Scott expert witnesses opined that the City was negligent in failing to paint additional white lines. Their counsel contends:

> Tragically, the existing traffic control pavement line misled pedestrians with respect to where they were walking relative to the road and available berm, and misled drivers with respect to merging traffic conditions and their placement upon the roadway. This solitary line actively deceived the pedestrians, Kennedy and Scott, into believing that they could walk in the area where they were struck, without being warned or alerted to the impending danger....
>
> Beside[s] the single, inadequate white dashed line on Westbound Frontage Road, the lack of additional, proper lane markings, the lack of pavement edgelines and the absence of other street markings which would designate the race track driveway entrance, also created a situation where pedestrians were placed in the line of danger with regard to motor vehicle traffic without warnings or guidelines to alert them to the potential hazard.... The proper marking of the roadway would have included a designation of the entrance to the race track, a demarcation of the shoulder and an area for safe pedestrian passage.

Brief of Kennedy and Scott at 3.

[1] There are two issues before us for review. [FN3] The first is whether the trial court ****1108** erred in concluding that the City's actions in painting some lane markings on a state highway properly subjected it to liability, [FN4] despite the fact that the City ***563** had no statutory duty to erect traffic controls and no contract with DOT to do so. The second issue is whether the trial court erred in concluding that the City had actual or constructive notice of the specific dangerous condition causing the accident. [FN5]

> FN3. Our scope of review of a decision of a trial court denying motions for judgment notwithstanding the verdict or for a new trial is limited to a determination of whether the court abused its discretion or committed an error of law. *Phillips v. City of Philadelphia,* 148 Pa.Commonwealth Ct. 175, 610 A.2d 509 (1992).

> FN4. In most cases, the City is immune from liability for damages caused by its acts or the acts of its officials and employees. 42 Pa.C.S. § 8541. The General Assembly in 42 Pa.C.S. § 8542, however, waived the grant of immunity when two distinct conditions are satisfied: 1) the damages would be recoverable under statutory or common law against a person unprotected by governmental immunity, and; 2) the negligent act of the local agency or its employees which caused the injury falls within one of the limited categories of exceptions to immunity listed in Section 8542(b), 42 Pa.C.S. § 8542(b).

> FN5. Because we conclude that Kennedy and Scott did not prove notice on the part of the City, we need not reach the issue of whether the trial court erred in molding the verdict on the basis of *Woods v. Commonwealth of Pennsylvania, Department of Transportation,* 531 Pa. 295, 612 A.2d 970 (1992), instead of on the basis of the parties' agreement that delay damages be limited to the statutory cap on damages found in Section 8553(b) of the Act, 42 Pa.C.S. § 8553(b).

Section 8542(b)(4), which contains the requirements that must be met to impose liability on a local agency, provides as follows:

> (b) Acts which may impose liability.--The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:
>
> ....
>
> (4) Trees, traffic controls and street lighting.--A dangerous condition of trees, traffic signs, lights or street lighting system under the care, custody or control of the local agency, except that *the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition* at a sufficient time prior to the event to have taken measures to protect against the

dangerous condition.
42 Pa.C.S. § 8542(b)(4) (Emphasis added). Accordingly, we must determine whether a dangerous condition existed and whether the local agency had actual notice of that condition or could reasonably be charged with notice of the same. We conclude that the evidence was sufficient to permit the jury to conclude that a dangerous condition existed, but that it was ***564** not sufficient to permit a finding that the City had notice of the specific condition which caused the injury.

I. The City's Exercise of Discretionary Authority to Paint Lane Markings:

The City first argues that, under the Act, it cannot be held liable for failure to paint traffic lines on a state highway because no such liability exists under the Section 8542(b)(4) traffic controls exception. Further, it contends that, under that exception, the *absence* of traffic controls cannot be a dangerous condition of a traffic control. *Bryson v. Solomon,* 97 Pa.Commonwealth Ct. 530, 510 A.2d 377 (1986) , *petition for allowance of appeal denied,* 519 Pa. 668, 548 A.2d 257 (1988) (City's failure to erect any traffic controls at the intersection of a city avenue and a state road did not fall under exception to immunity); *Farber v. Engle,* 106 Pa.Commonwealth Ct. 173, 525 A.2d 864 (1987) (City's failure to erect any traffic controls on its street, part of which is a legislative route, did not fall under exception to immunity); *Bendas v. Township of White Deer,* 131 Pa.Commonwealth Ct. 138, 569 A.2d 1000, *petition for allowance of appeal denied,* 526 Pa. 639, 584 A.2d 321 (1990) (Township's failure to exercise its discretionary power to erect a traffic control at intersection of state and township roads did not fall under exception to sovereign immunity).

Kennedy and Scott argue that the City negligently undertook and performed a duty to control traffic by placing an inadequate broken white traffic control line on Westbound Frontage Road. They contend that there is no absence of a traffic control. We agree.

****1109** [2] It is true that the City is under no statutory authority to paint lines on a state highway. *Carter v. City of Philadelphia,* 137 Pa.Commonwealth Ct. 152, 585 A.2d 578 (1991). Here, however, the City exercised discretionary authority by placing *some* lane markings on the state highway. (R.R. 70a, 73-4a.) Thus, it is not true, as the City seems to be implying, that it was held liable for a failure to paint *any* lines; it was held liable for its failure to paint *enough* lines. City-implemented traffic controls existed; there was no absence of ***565** traffic control devices as in *Bryson, Farber* and *Bendas.* Accordingly, its actions in choosing to delineate part of that state highway constituted the catalyst for potential liability in this case, not its failure to paint any lines.

As noted, two expert witnesses testified for Kennedy and Scott that there was a dangerous condition at the accident site, the inadequate and misleading traffic control markings, [FN6] and that the condition was a substantial factor in causing the accident. (R.R. 86a-93a, 97a-104a, 105a-109a.) Therefore, we conclude that the City's argument that there can be no liability because there were no traffic controls is without merit.

> FN6. *Compare Crowell v. City of Philadelphia,* 531 Pa. 400, 613 A.2d 1178 (1992). There, a three year old child was fatally injured when a drunk driver obeyed an erroneously placed directional arrow causing him to careen into the Crowells' car. In addition to suing the drunk driver under traditional tort law, the Crowells sued the City under Section 8542(b)(4) of the Act, the traffic controls exception.
> The Supreme Court held that the jury's verdict against the City was proper because a City employee had placed the specific directional sign, which created the dangerous condition.

[3] The City secondly argues that it cannot be held liable for its failure to paint additional lane markings because no contract exists between the City and DOT imposing lane marking maintenance responsibility on the City. We find the absence of a contract in effect at the time of the accident to be irrelevant, however, in light of the City's affirmative action of exercising its discretionary duty to erect traffic controls. *See City of Philadelphia v. Messantonio,* 111 Pa.Commonwealth Ct. 364, 533 A.2d 1127 (1987), *petition for allowance of appeal denied,* 519 Pa. 668, 548 A.2d 257 (1988) (holding that once the City undertakes a discretionary duty, it subjects itself to potential liability for performing

that duty in a negligent manner.)

II. The City's Legal Notice of the Dangerous Condition Created by its Lane Markings:

[4] Because we conclude that painting some lines constitutes erection of a traffic control device, we must address the ***566** City's alternative argument that it did not have notice of the dangerous condition created by the absence of adequate street lining at the accident site. The City cites *Fenton v. City of Philadelphia,* 127 Pa.Commonwealth Ct. 466, 561 A.2d 1334, *aff'd per curiam,* 526 Pa. 300, 585 A.2d 1003 (1991), for the proposition that it had inadequate notice of a dangerous condition on Westbound Frontage Road. We find that *Fenton* controls our decision here.

In *Fenton,* an accident between a tractor trailer driver and an automobile driver occurred when the plaintiff's automobile was passing the tractor-trailer at the intersection of Richmond and Butler Streets in the City of Philadelphia. There the plaintiff argued that the accident was caused by the City's "inadequate and confusing" line painting on a state highway, i.e. that the City should have painted a left-turn lane in addition to the other lane markings which had previously been painted by the City. We concluded that plaintiff failed to establish an exception to governmental immunity because she offered only proof of a dangerous condition in general, but did not prove that the City had actual or constructive notice under 42 Pa.C.S. § 8542(b)(4) of the specific left-hand turning lane problem. As we noted in *Fenton:*

> Plaintiff offered further testimony that because of periodic resurfacing of Richmond Street, the City on a number of occasions was required to repaint the lane markings. We believe it crucial that *none of this evidence dealt with the specific problem of the lack of a left hand turning lane,* the lynchpin [sic] of the plaintiff's case.

Id., 127 Pa.Commonwealth Ct. at 469, 561 A.2d at 1336 (Emphasis in original). Thus, ****1110** even though the City was familiar with the truck traffic problem at the Richmond-Butler intersection, Fenton simply failed to establish that it had notice of a left-hand turning lane problem.

Similarly, Kennedy and Scott presented the testimony of a City police officer, who was familiar with the vehicular and pedestrian traffic at the accident site. The police officer, however, never testified that he had knowledge of the specific dangerous condition: the lack of dotted lines separating an ***567** area for pedestrians from the vehicle lanes. Thus, his testimony was simply insufficient to prove notice on the part of the City as required by 42 Pa.C.S. § 8542(b)(4).

The trial court cites two non-governmental immunity cases, *Penn v. Isaly Dairy Co.,* 413 Pa. 548, 198 A.2d 322 (1964) and *Finney v. G.C. Murphy,* 406 Pa. 555, 178 A.2d 719 (1962), in support of its determination that, because the City created the dangerous condition, it had notice as a matter of law of that condition due to its prior conduct. We find *Penn* and *Finney,* however, to be distinguishable.

Penn and *Finney* involved store customers slipping on floors which had been waxed and oiled, respectively, by the defendant store owners. In *Penn,* wherein the Court cited *Finney,* the Supreme Court stated that, where a dangerous condition was created by a defendant's own antecedent conduct, a plaintiff need not prove notice. Thus, in both cases, the specific slippery condition was created by the store owners or their employees.

Unlike *Penn* and *Finney,* the case before us for disposition involves governmental immunity. In addition, in *Penn* and *Finney,* the dangerous condition was self evident: slippery floors due to coats of wax or oil. Here, the dangerous condition was more sophisticated, as evidenced by the experts' testimony, and Kennedy and Scott accordingly were required to present precise and specific evidence to satisfy Section 8542(b)(4)'s detailed notice requirement.

[5] We conclude that there simply was no evidence from which the jury could have concluded that the City had actual or constructive notice of the specific dangerous condition arising out of the absence of a pedestrian lane. Thus, because we find *Fenton* to be legally indistinguishable, we are compelled to reverse the trial court. Accordingly, we need not reach the delay damages issue. [FN7]

> FN7. In the event that delay damages are found to be awardable, we note that the parties have an agreement on that issue. Brief of Kennedy and Smith at 24-5.

***568** For the above reasons, we reverse the trial court's denial of the City's motion for a new trial or judgment notwithstanding the verdict.

ORDER

AND NOW, this 16th day of December, 1993, we hereby reverse the trial court's denial of the City's motion for judgment notwithstanding the verdict.

635 A.2d 1105, 160 Pa.Cmwlth. 558

END OF DOCUMENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pretrial Statement was served upon the following counsel of record, via first-class mail, postage pre-paid on May 30, 2003:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

Office of Court Administrator
Clearfield County Courthouse
Suite 228, 230 East Market St.
Clearfield, PA 16830

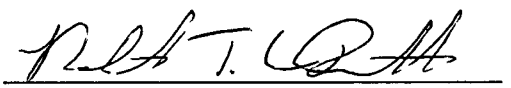
J. Richard Mattern, II, Esq.
211 East Pine St.
Clearfield, PA 16830

Andrew P. Gates, Esq.
GATES & SEAMAN
P. O. Box 846
Clearfield, PA 16830

Blaise Ferraraccio, Esq.
FERRARACCIO & NOBLE
301 East Pine St.
Clearfield, PA 16830

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

James A. Hoover
vs.
Bureau of Forestry

No. 2001-01299-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 9th day of June, 2003, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

J. Richard Mattern, II, Esq. — Chairman

Andrew P. Gates, Esq.

Blaise Ferraraccio, Esq.

Sworn to and subscribed before me this
June 9, 2003

Prothonotary

AWARD OF ARBITRATORS

Now, this 9TH day of JUNE, 2003, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

JUDGEMENT IN FAVOR OF THE PLAINTIFF, JAMES A. HOOVER AND AGAINST THE DEFENDANT BUREAU OF FORESTRY IN THE AMOUNT OF TWO THOUSAND FIVE HUNDRED ($2,500.00) DOLLARS.

Chairman

, Dissent

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 9th day of June, 2003, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

Prothonotary
By

FILED
02:13 BA Copies to Atty
JUN 09 2003

William A. Shaw
Prothonotary

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs. : No. 2001-01299-CD

Bureau of Forestry

NOTICE OF AWARD

TO: Bureau of Forestry

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By_____

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs. : No. 2001-01299-CD

Bureau of Forestry

NOTICE OF AWARD

TO: BUREAU OF FORESTRY

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs : No. 2001-01299-CD

Bureau of Forestry

NOTICE OF AWARD

TO: JAMES A. HOOVER

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By_____

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs. : No. 2001-01299-CD

Bureau of Forestry :

NOTICE OF AWARD

TO: JOHN O. DODICK ESQ

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By_____

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs. : No. 2001-01299-CD

Bureau of Forestry

NOTICE OF AWARD

TO: ROBERT T. MCDERMOTT

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By_____

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs. : No. 2001-01299-CD

Bureau of Forestry

NOTICE OF AWARD

TO: PAUL COLAVECCHI

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By_____

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

LAWRENCE TOWNSHIP,

Defendant,

vs.

BUREAU OF FORESTRY,

Additional Defendant.

CIVIL ACTION

No. 01-1299 CD

NOTICE OF APPEAL

Filed on behalf of Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

NOTICE OF APPEAL

AND NOW, comes the additional defendant, Bureau of Forestry, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Notice of Appeal, averring in support thereof, as follows:

The additional defendant, Bureau of Forestry, hereby appeals the decision of the Board of Arbitrators in this case entered on June 9, 2003.

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: _____

ROBERT T. McDERMOTT
Sr. Deputy Attorney General
Counsel for Bureau of Forestry

James A. Hoover : IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY

Vs. : No. 2001-01299-CD

Bureau of Forestry

NOTICE OF AWARD

TO: BUREAU OF FORESTRY

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on June 9, 2003 and have awarded:

Judgment in favor of the Plaintiff, James A. Hoover and against the Defendant, Bureau of Forestry in the amount of Two Thousand Five Hundred ($2,500.00) Dollars

William A. Shaw
Prothonotary
By _____

June 9, 2003
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

Robert T. McDermott, being duly sworn according to law, deposes and says that he is the attorney for the Defendant, **Commonwealth of Pennsylvania, Bureau of Forestry,** and states that the Appeal taken in the case of Hoover v. Bureau of Forestry is not taken for purposes of delay but because the Commonwealth of Pennsylvania, Bureau of Forestry believes that the Board of Arbitrators erred in their application of the law.

Robert T. McDermott
Sr. Deputy Attorney General

Sworn to and subscribed
before me this 30th day
of June, 2003.

Carol Kubeldzis
Notary Public

Notarial Seal
Carol Kubeldzis, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires May 16, 2005

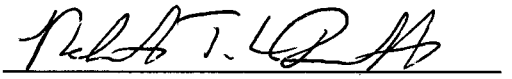
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon the following counsel of record, via first-class mail, postage pre-paid on June 30, 2003:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

Date: 07/03/2003
Time: 01:27 PM

Clearfield County Court of Common Pleas
Receipt

NO. 1862617
Page 1 of 1

Received of: Commonwealth of PA, Office of A.G. $ 900.00

Nine Hundred and 00/100 Dollars

Case: 2001-01299-CD	Defendant: Bureau of Forestry	Amount
Arbitration Appeal		900.00
Arbitration Appeal		
Total:		**900.00**

Check: 004678
Payment Method: Check
Amount Tendered: 900.00

Clerk: BILLSHAW
Duplicate

William A. Shaw, Prothonotary/Clerk of Courts

By: _____
Deputy Clerk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

BUREAU OF FORESTRY,

Defendant.

CIVIL ACTION

No. 01-1299 CD

MOTION FOR SUMMARY JUDGMENT

Filed on behalf of
Additional Defendant:

Bureau of Forestry

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

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

(412) 565-2574

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the defendant, Bureau of Forestry, by the Attorney General of the Commonwealth of Pennsylvania, and files the within Motion for Summary Judgment, averring in support thereof, as follows:

1. The instant case involves a pedestrian accident which occurred in Moshannon State Forest on a wooden bridge located on Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

2. On May 9, 2001, plaintiff, James A. Hoover, and a friend, James Tepsic, entered the Moshannon State Forest to go fishing. The plaintiff was not charged a fee to go fishing. (See testimony of James Hoover attached hereto as Exhibit "A").

3. At approximately 4:00 p.m., Hoover, who was walking or standing on the wooden bridge, allegedly stepped on a rotted plank which broke off causing plaintiff to fall sideways off the bridge and down into the creek.

4. As a result of the fall, plaintiff is alleged to have sustained various personal injuries which resulted in the plaintiff filing suit against the Bureau of Forestry for the dangerous condition of Commonwealth property. (Plaintiff Complaint attached hereto as Exhibit "B").

5. The Moshannon State Forest encompasses approximately 190,000 acres of undeveloped forest land which is opened to the public for a variety of recreational activities and for which no fee is charged. (See testimony of Robert Merrill, District Forest Manager, attached hereto as Exhibit "C").

6. The Recreational Use of Land and Water Act provides that an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes. 68 P.S. §477-1.

7. The Recreation Act defines land to mean land, roads, water, water courses, private ways and buildings, structures and machinery or equipment when attached to the realty. 68 P.S. §477-2.

8. Recreational purpose includes but is not limited to any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archeological, scenic or scientific sites. 68 P.S. §477-3.

9. The defendant, Bureau of Forestry, as a Commonwealth party is entitled to the immunity provisions provided by the Recreational Use of Land and Water Act and, therefore, plaintiff's Complaint should be dismissed. Commonwealth Department of Environmental Resources v. Auresto, 511 A.2d 815 (Pa. 1986).

10. Pursuant to the provisions of the Sovereign Immunity Act, 42 Pa. C.S.A. §8501, et. seq., the Bureau of Forestry as a Commonwealth agency is immune from claims based on willful or malicious conduct.

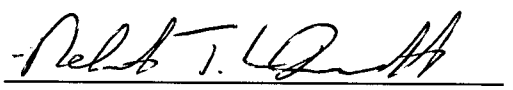
11. Plaintiff's claim against the Bureau of Forestry is barred by the interplay between the Sovereign Immunity Act and the Recreational Use of Land and Water Act. Under the Recreation Act, the Bureau of Forestry can only be liable to the plaintiff for willful or malicious conduct. However, under the Sovereign Immunity Act, the Bureau of Forestry has immunity from claims based upon willful or malicious conduct. Likewise, under the provision of the Sovereign Immunity Act, the Bureau of Forestry can only be liable to the plaintiff for a claim involving a negligent act. However, under the provisions of the Recreational Use of Land and Water Act, the Bureau of Forestry would enjoy immunity for claims involving negligent conduct. Lory v. City of Philadelphia, 674 A.2d 673 (Pa. 1996).

12. Based upon the Supreme Court's decision in Lory, the plaintiff's claim against the Bureau of Forestry is barred and plaintiff's Complaint should be dismissed with prejudice.

WHEREFORE, the defendant, Bureau of Forestry, respectfully requests that this Honorable Court grant its Motion for Summary Judgment and dismiss the plaintiff's Complaint against the Bureau of Forestry with prejudice.

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

JAMES A. HOOVER :

-vs- : No. 01-1299-CD

BUREAU OF FORESTRY :

PROCEEDINGS: Arbitration Hearing

BEFORE: J. RICHARD MATTERN, III, ESQUIRE, CHAIRMAN
ANDREW P. GATES, ESQUIRE
BLAISE FERRARACCIO, ESQUIRE

DATE: Monday, June 9, 2003

PLACE: Clearfield County Courthouse
Courtroom No. 1
Clearfield, Pennsylvania

TAKEN BY: Thomas D. Snyder, RPR
Official Court Reporter

APPEARANCES:

PAUL COLAVECCHI, ESQUIRE
Colavecchi & Colavecchi
For - Petitioner

ROBERT T. MCDERMOTT, ESQUIRE
Senior Deputy Attorney General
For - Defendant

INDEX

* * * * *

EXHIBITS

is on the Plaintiff to go forward then. You may proceed.

ATTORNEY COLAVECCHI: I'd like to call James Hoover to the stand.

Thereupon,

JAMES A. HOOVER, JR.,

the witness herein, having previously been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY COLAVECCHI:

Q Would you please state your name, sir.

A James A. Hoover, Jr.

Q And what's your address?

A Box 172, Laurel Run Road, Penfield.

Q How old are you, sir?

A Seventy-seven.

Q Mr. Hoover, the bridge that you fell off of was located near the border of Benezette Township and Lawrence Township. Is that an accurate statement?

A Yes.

Q And it was located near the intersection of Little Medix Run Road and Medix Grade Run Road, is that --

A Yes.

Q And it was basically a small wooden bridge --

A Yes.

Q -- with no guardrail; is that accurate? Could you

briefly tell us how your fall occurred?

A Well, we parked, my buddy and I. We was going to go fishing. So I just went to walk across the left-hand side of the bridge. My leg went down through a plank, and I fell sideways, because there's no guardrail on the bridge. I fell over the bridge.

Q Just so we're clear --

ARBITER MATTERN: Is this just a foot bridge or is it something you drive across?

ATTORNEY COLAVECCHI: It's something you drive across. Mr. Hoover, I want to show you some pictures. If you want to mark these.

(Three photographs marked Petitioner's Exhibit 1.)

ARBITER MATTERN: No objection to these pictures?

ATTORNEY MCDERMOTT: No objection.

(Petitioner's Exhibit 1 were admitted.)

BY ATTORNEY COLAVECCHI:

Q Mr. Hoover -- I've just handed Mr. Hoover C -- is that a picture of the bridge --

A Yes, it is.

Q -- that we're talking about?

A Yes.

Q That's sort of a bird's-eye view. Is that the bridge that you fell off of?

A Uh-huh. (yes)

Q Okay. Were you jumping up and down on this plank?
A No.
Q What happened just before the plank broke?
A I was just walking across and my leg went down through it and I fell sideways.
Q And how much do you weigh, sir?
A A hundred and seventy.
Q Have you gained any weight since --
A No.
Q About the same? Did you happen to look down at the plank that you stepped on before it broke?
A Well, actually, the plank had dust and dirt on, you know, from the -- and I was just walking across it. I wasn't looking at the planks. There was other rotten planks in the bridge. You could see them. Some of them was broke through.
Q Did you see the plank that you stepped on at all?
A No, I didn't. I was just walking across. It looked solid to me, so I walked across.
Q So you couldn't visibly see by looking at that plank that it was deteriorated?
A No.
Q Okay. Why were you on that bridge that day?
A I was walking across to get to the other side. I was going to fish down on the other side of the creek.

just an observance?

THE WITNESS: Well, that was -- that's the way it was when we walked over across it.

BY ATTORNEY COLAVECCHI:

Q You saw other planks broken?

A Yeah, on the other side.

Q How close to the other side?

A Well, it's about seven to eight feet from -- or eight feet, anywhere, nine, from the other side. You can see the rotten ones on there.

Q When you say they were rotten --

A Some of them actually fell out. They weren't even there. There was holes in the bridge.

Q Was that on the side you didn't fall over?

A Yeah, on the other side of the bridge.

ARBITER MATTERN: Okay. You may cross-examine.

CROSS-EXAMINATION

BY ATTORNEY MCDERMOTT:

Q Good morning, Mr. Hoover.

A Good morning.

Q You indicated on the day of this incident, May 9th of 2001, you had gone to -- you were fishing at the Moshannon State Forest, weren't you?

A Yeah, Medix Run.

Q Medix Run. Okay. And you had gone there for the

purpose of fishing?

A Yes.

Q Do you know what time you had gone there that day?

A It was in the morning. It was early. I don't recall the right time, no.

Q And you weren't charged anything? You didn't have to pay anything to go fishing?

A No, I didn't.

Q And isn't it true that the area where you were fishing, Moshannon State Forest, is primarily a forest area with streams running through it?

A Yeah, just one stream coming down, Medix Run.

Q You said you had crossed that bridge where you fell before the day of the incident; is that right?

A Maybe a month or so before that I was across it.

Q Were you fishing on that occasion?

A No. I was just looking around, looking for deer and turkeys and stuff.

Q When you crossed that bridge at that time, did you notice any problems with it?

A Yes. I noticed on the right-hand side there was some rotten planks in it then. The bridge needed replaced then.

Q All right. Had you been fishing down in the stream before you went up to the bridge?

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,
Plaintiff

Vs.

LAWRENCE TOWNSHIP,
Defendant

Vs.

BUREAU OF FORESTRY,
Additional Defendant

CIVIL DIVISION

No. 01 - 1299 - CD

FIRST AMENDED COMPLAINT

Filed on Behalf of:

Plaintiff, JAMES A. HOOVER

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - 1299 - CD
Vs.	:	
LAWRENCE TOWNSHIP,	:	
Defendant	:	
Vs.	:	
BUREAU OF FORESTRY,	:	
Additional Defendant	:	

NOTICE

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
814/765-2641 Ext. 5982

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JAMES A. HOOVER,	:	
Plaintiff	:	No. 01 - 1299 - CD
Vs.	:	
LAWRENCE TOWNSHIP,	:	
Defendant	:	
vs.	:	
BUREAU OF FORESTRY,	:	
Additional Defendant	:	

FIRST AMENDED COMPLAINT

1. Plaintiff is James A. Hoover an individual having a mailing address of P.O. Box 172, Laurel Run Road, Penfield, Pennsylvania 15849.

2. Defendants are:

a. Lawrence Township having a mailing address of P.O. Box 508, George Street, Clearfield, Pennsylvania 16830; and,

b. The Bureau of Forestry, having a mailing address of R.R. #1, P.O. Box 184, Penfield, Pennsylvania 15849.

COUNT I
JAMES A. HOOVER VS. LAWRENCE TOWNSHIP

3. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

as bridge, and it was the duty of Defendant to keep and maintain said bridge in a reasonably safe condition for those persons lawfully thereon.

4. Notwithstanding its duty, Defendant did on May 9, 2001, carelessly, recklessly and negligently allowed to permit and remain on said bridge, a dangerous condition; to wit, a deteriorated wooden plank support on the bridge and left it in such a state as to create a dangerous condition.

5. On or about May 9, 2001, at approximately 4:00 p.m., Plaintiff was walking on a bridge located on Little Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

6. A deteriorating wooden support plank existed on the floor of the bridge on which Plaintiff stepped on, causing Plaintiff's foot to break through the wooden plank and fall sideways, resulting in Plaintiff falling off the bridge.

7. At the time of the incident, Defendant did or should have had both notice and knowledge of the aforesaid dangerous condition, being the deteriorated wooden plank on the floor of the bridge which made it easy for someone lawfully on the premises to put their foot through the plank and fall off the bridge.

8. Defendant is liable to Plaintiff for his injuries pursuant to 42 Pa. C.S.A. 8522(b)(4) setting forth an exception to sovereign

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

immunity in the case when a dangerous condition exists on real property in the possession of the Commonwealth.

9. The injuries and damages hereinafter set forth were caused solely by and were he direct and proximate result of the negligence of the Defendant in any or all of the following respects:

a. In failing to keep the bridge in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the existence of reasonable care should have known of the danger involved;

c. In failing to warn Plaintiff of the dangerous condition created by the above described hazard;

d. In failing to cover, blockade or otherwise remove the dangerous of which Defendant knew, or in the exercise of reasonable care should have known;

e. Permitting persons, in particular the Plaintiff, to traverse the bridge when the Defendant knew, or in the existence of reasonable care, should have known it was dangerous to do so and involved reasonable risk of harm for persons so doing;

f. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

g. Maintaining the premises in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using the bridge with a safe area to traverse; and,

i. In failing to inspect the bridge to discovery the dangerous condition.

10. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head which may be of a permanent nature.

11. As a result of the aforesaid injuries, Plaintiff has sustained the following damages;

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and loss of the enjoyment of life;

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and,

c. Plaintiff's general health, strength and vitality have been impaired.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

WHEREFORE, Plaintiff brings this action against Lawrence Township to recovery damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand Dollars ($20,000.00).

COUNT II
JAMES A. HOOVER VS. BUREAU OF FORESTRY

Paragraphs 3 through 11 are incorporated herein as by reference thereto.

12. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described as bridge, and it was the duty of Defendant to keep and maintain said bridge in a reasonably safe condition for those persons lawfully thereon.

13. Notwithstanding its duty, Defendant did on May 9, 2001, carelessly, recklessly and negligently allowed to permit and remain on said bridge, a dangerous condition; to wit, a deteriorated wooden plank support on the bridge and left it in such a state as to create a dangerous condition.

14. On or about May 9, 2001, at approximately 4:00 p.m., Plaintiff was walking on a bridge located on Little Medix Run Road, Lawrence Township, Clearfield County, Pennsylvania.

15. A deteriorating wooden support plank existed on the floor of the bridge on which Plaintiff stepped on, causing Plaintiff's

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

foot to break through the wooden plank and fall sideways, resulting in Plaintiff falling off the bridge.

16. At the time of the incident, Defendant did or should have had both notice and knowledge of the aforesaid dangerous condition, being the deteriorated wooden plank on the floor of the bridge which made it easy for someone lawfully on the premises to put their foot through the plank and fall off the bridge.

17. Defendant is liable to Plaintiff for his injuries pursuant to 42 Pa. C.S.A. 8522(b)(4) setting forth an exception to sovereign immunity in the case when a dangerous condition exists on real property in the possession of the Commonwealth.

18. The injuries and damages hereinafter set forth were caused solely by and were he direct and proximate result of the negligence of the Defendant in any or all of the following respects:

a. In failing to keep the bridge in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the existence of reasonable care should have known of the danger involved;

c. In failing to warn Plaintiff of the dangerous condition created by the above described hazard;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

d. In failing to cover, blockade or otherwise remove the dangerous of which Defendant knew, or in the exercise of reasonable care should have known;

e. Permitting persons, in particular the Plaintiff, to traverse the bridge when the Defendant knew, or in the existence of reasonable care, should have known it was dangerous to do so and involved reasonable risk of harm for persons so doing;

f. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

g. Maintaining the premises in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using the bridge with a safe area to traverse; and,

i. In failing to inspect the bridge to discovery the dangercus condition.

19. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff suffered injuries to his shoulders, arms, ribs, fingers and head which may be of a permanent nature.

2C. As a result of the aforesaid injuries, Plaintiff has sustained the following damages;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and loss of the enjoyment of life;

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and,

c. Plaintiff's general health, strength and vitality have been impaired.

WHEREFORE, Plaintiff brings this action against the Bureau of Forestry to recovery damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand Dollars ($20,000.00).

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

James A Hoover

JAMES A. HOOVER

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

THE WITNESS: It weighs more than three ton. In order to cross that at a higher weight, they'd have to bottom the bridge. That's what the weight limit thing is.

ARBITER FERRARACCIO: Okay. Thank you. That's all.

ARBITER MATTERN: Any further direct -- or redirect?

ATTORNEY MCDERMOTT: No.

ARBITER MATTERN: Okay. Thank you very much, sir.

ATTORNEY MCDERMOTT: Call Mr. Merrill to the stand.

Thereupon,

ROBERT MERRILL,

the witness herein, having previously been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY MCDERMOTT:

Q Mr. Merrill, could you state your full name, please.

A Robert Merrill.

Q And where do you work, sir?

A I work at Moshannon State Forest out of the District 9 office in Penfield.

Q And what is your title, or what position do you have?

A I'm forest district manager.
Q And how long have you held that position?
A Just a little over four years.
Q And that's part of the Bureau of Forestry of the Department of Conservation and Natural Resources?
A That's correct.
Q Can you briefly describe your educational background?
A Yeah. I have a Bachelor of Science degree from Penn State. I worked six years for Hoomer (phonetic) Mill Paper Company as a forester for them, helping maintenance about 53,000 acres of forest industry land.

And I did work in the Bureau of Forestry for 24 years, holding a variety of jobs with them as far as -- I worked in Harrisburg for a period of time and as a service forester for 12 years.

Q Well, Mr. Merrill, what was your degree in from Penn State?
A Forest science.
Q The area where this incident occurred is located in Moshannon State Forest?
A That's correct.
Q And how many acres of land make up Moshannon State Forest?
A There are a hundred and ninety -- close to 190,000

acres of state forest land in the Moshannon under our administration.

Q And what type of land is the land that's in Moshannon State Forest?

A It's forestland. And we're to manage it for protection and conservation of the forest resources and provide recreation to the citizens of Pennsylvania.

Q Specifically with regard to Moshannon State Forest, what type of recreation is provided?

A Well, we provide -- it's open to a variety of recreation, anything from hiking, fishing, hunting. The only thing that we're really restricted on right now is the use of ATVs and nonlicensed off-road motorized vehicles.

Q Is there horseback riding?

A Yes; horseback riding, cross-country skiing in the wintertime, snowmobiling, nature-watching. We have a new program now. It's called geocaching. There's a whole wide variety of recreation that's open to --

Q Is anybody from the public that uses Moshannon State Forest, and this would be back in the time period of May of 2001, are they charged any fee to use the state forest?

A No.

Q Of the 190,000 acres of Moshannon State Forest, are there any bridges that are part of the forest?

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES A. HOOVER,

Plaintiff,

vs.

BUREAU OF FORESTRY,

Defendant.

CIVIL ACTION

No. 01-1299 CD

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2003, it is HEREBY ORDERED ADJUDGED AND DECREED that defendant's Motion for Summary Judgment is granted and the plaintiff's Complaint against the Bureau of Forestry is dismissed with prejudice.

BY THE COURT:

_____

J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment was served upon the following counsel of record, via first-class mail, postage pre-paid on August 13, 2003:

Paul Colavecchi, Esq.
COLAVECCHI RYAN & COLAVECCHI
221 East Market St.
P. O. Box 131
Clearfield, PA 16830
(Counsel for Plaintiff)

Respectfully Submitted,

D. MICHAEL FISHER
Attorney General

BY: _____
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES A. HOOVER, Plaintiff	*	
vs.	*	NO. 2001-1299-C.D.
BUREAU OF FORESTRY, Defendants	*	

O R D E R

NOW, this 15th day of August, 2003, following Pre-Trial Conference with counsel for both parties and the Court; with the Court noting the Motion for Summary Judgment submitted this date concerning claims of immunity on the part of the Defendant; counsel for both parties having agreed to continue the matter to the next term of Court in order that Plaintiff may submit brief in response to the said Motion and that the Court may rule, it is therefore the ORDER of this Court as follows:

1. Counsel for the Plaintiff shall submit Brief in oppcsition to the Defendant's Motion for Summary Judgment within no more than twenty (20) days from this date. Brief shall be submitted to the Court Administrator.

2. The case is hereby removed from the Civil Trial List and the Court Administrator shall cause the matter to be listed for the winter term of Court.

By the Court,

Judge J Ammerman

JUDGE FREDRIC J. AMMERMAN

FILED

AUG 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED 2 cc Atty P. Colavecchi
01/1:21 BOH
AUG 15 2003 2 cc Atty R. McDermott

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES A. HOOVER, Plaintiff	:	
vs.	:	No. 01 - 1299 - CD
BUREAU OF FORESTRY, Defendant	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 15, 2003, a true and correct copy of Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment in the above matter was served on the following by depositing said copy in the United States Mail, first class, postage prepaid and addressed as follows:

Robert T. McDermott
Sr. Deputy Attorney General
Commonwealth of Pennsylvania
Office of Attorney General
Tort Litigation Unit
Manor complex
564 Forbes Avenue
Pittsburgh, PA 15219

FILED

AUG 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8 - 15 - 03

BY: Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES A. HOOVER, *
Plaintiff *
*
vs. * No. 2001-1299-C.D.
*
BUREAU OF FORESTRY, *
Defendant *

OPINION

The case before the Court involves an accident which occurred in the Moshannon State Forest on a wooden bridge located on Medix Run Road, Lawrence Township, Clearfield County. On May 9, 2001 the Plaintiff James A. Hoover and a friend entered the State Forest to go fishing. That afternoon, Mr. Hoover was walking across or standing on a small wooden bridge located within the State Forest, and allegedly stepped on a rotten plank which broke off causing him to fall off of the bridge and into the creek. As a result of this fall, Mr. Hoover alleges he has sustained personal injuries and has brought a suit in negligence.

The Bureau of Forestry has filed a Motion for Summary Judgment claiming that provisions of the Recreational Use of Land and Water Act ("RULWA") is applicable to Commonwealth agencies and extends immunity to the Commonwealth. The RULWA was enacted for the purpose of encouraging:

> Owners of land to make land and water available to the public for recreational purposes by limiting their liability towards persons entering thereon for such purposes. 68 Pa. C.S.A. Section 477-1.

Specifically under Section 3 of the Act, landowners are shielded from liability as follows:

1. An owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of the dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

2. "Land" means land, roads, water, water courses, privateways and buildings, structures and machinery or equipment when attached to the realty.

3. "Recreational purpose" includes, but is not limited to any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, water sports, cave exploration and viewing or enjoying historical, archaeological, scenic or scientific sites.

The RULWA applies to land that is largely unimproved in character and where no admission is charged. Lory v. City of Philadelphia, 675 A.2d 673 (Pa. 1996), cert. denied 519 U.S. 870, 117 S. Ct. 184 (1996). The provisions of the RULWA apply to Commonwealth agencies and extend immunity to the Commonwealth with respect to its recreational areas open to the public free of charge. Commonwealth Department of Environmental Resources v. Auresto, 511 A.2d 815 (Pa. 1986).

In the case at bar, The District Forest Manager for the Moshannon State Forest, Robert Merrill, provided testimony that the forest in question encompasses approximately one hundred ninety thousand acres of undeveloped forest land, all of which is open to the public for a variety of recreational activities free of charge. Plaintiff had also provided

testimony that he entered the State Forest in order to fish. As stated, fishing is a recreational purpose as listed in the Statute. Plaintiff also confirmed that he did not have to pay anything to go fishing in the State Forest. As such, under the circumstances of this case the Court believes that the Bureau of Forestry is immune under the RULWA and that the Plaintiff's negligence action must fail.

The fact that Mr. Hoover was injured while walking or standing on a bridge does not defeat the provisions of the immunity statute. The definition of land in the Act includes structures attached to realty which applies to the bridge. The Legislature clearly intended to apply the RULWA to outdoor recreation on largely unimproved land, which is evident not only from the Act's stated purpose but also from the nature of the activities listed as recreational purposes within the meaning of the Statute. Pagnotti v. Lancaster Township, 751 A.2d 1226 (Pa. Commonwealth 2000). An improvement on the property does not automatically remove the property from the protection of the Act, even where the Plaintiff is injured as a result of that improvement. Yanno v. Consolidated Rail Corporation, 744 A.2d 279 (Pa. Super 1999). Generally speaking, the cases reviewed by this Court where the Appellate Courts have refused to apply the immunity provisions of the Act are in circumstances where substantial improvements, such as a recreational center, were made to the property. Walsh v. City of Philadelphia, 585 A.2d 445 (Pa. 1991).

In this case, this is a State Forest of approximately 190,000 acres, the primary use of which is strictly for recreation. The forest is largely wooded and undeveloped and the bridge in question is a single lane wooden plank bridge with an open structure, uncovered and located completely out of doors. The Superior Court in Yanno, Supra held that the Consolidated Rail Corporation was immune from suit under the

RULWA relative Yano falling off a railroad trestle once used by Conrail to carry trains. Even a small railroad trestle is a more substantial structure and improvement than the bridge in the case at bar. If the immunity provisions of the RULWA applied in Yano, they apply in this case before the Court.

For the Court to enter Summary Judgment, the pleadings, depositions, answers to interrogatories, and other filed documents must demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. Marks v. Tasman, 589 A.2d 205 (Pa. 1991). See Pennsylvania Rules of Civil Procedure numbers 1035.1 and 1035.2. Here the Court has examined the record in a light most favorable to the Plaintiff as the non-moving party. A review of the evidence in this light along with the direction afforded by the Pennsylvania Appellate Courts dictates that the Defendant's Motion for Summary Judgment be granted.

By the Court,

JUDGE FREDRIC J. AMMERMAN

FILED

SEP 10 2003

William A. Shaw
Prothonotary/Clerk of Courts

2 certified copies to ~~Plaintiff~~ Atty P. Colavecchi
2 certified copies to ~~Defendant~~ Atty R. McDesmott
2 copies to Judge Ammerman
1 copy to Court Administrator
1 copy to Law Library
1 copy to Don Mikesell, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES A. HOOVER, Plaintiff	*	
vs.	*	No. 2001-1299-C.D.
BUREAU OF FORESTRY, Defendant	*	

O R D E R

NOW, this 8th day of September, 2003, it is the ORDER of this Court that the Motion for Summary Judgment filed on behalf of the Defendant, Bureau of Forestry, be and is hereby GRANTED. The Plaintiff's Complaint is DISMISSED.

By the Court,

JUDGE FREDRIC J. AMMERMAN

FILED
10/3:10 ~~cc~~
SEP 10 2003

William A. Shaw
Prothonotary/Clerk of Courts

2 certified copies to ~~Plaintiff~~ Atty P. Colavecchi
2 certified copies to ~~Defendant~~ Atty R. McDermott
2 copies to Judge Ammerman
1 copy to Court Administrator
1 copy to Don Mikesell, Esquire
1 copy to Law Library

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

April 14, 2003

Paul Colavecchi, Esquire
Colavecchi & Colavecchi
Post Office Box 131
Clearfield, PA 16830

Robert T. McDermott, Sr., Esquire
Deputy Attorney General
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

RE: JAMES A. HOOVER
vs.
BUREAU OF FORESTRY
No. 01-1299-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held **Monday, June 9, 2003.** The following have been appointed to the Board of Arbitrators:

J. Richard Mattern, II, Esquire
Andrew P. Gates, Esquire
Kimberly M. Kubista, Esquire
Blaise Ferraraccio, Esquire
Brian K. Marshall, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration Hearing.

Very truly yours,

Marcy Kelley

Marcy Kelley
Deputy Court Administrator

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

April 24, 2003

Paul Colavecchi, Esquire
Colavecchi & Colavecchi
Post Office Box 131
Clearfield, PA 16830

Robert T. McDermott, Sr., Esquire
Deputy Attorney General
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

RE: JAMES A. HOOVER
vs.
BUREAU OF FORESTRY
No. 01-1299-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held **Monday, June 9, 2003 at 9:30 A.M.** The following have been appointed as Arbitrators:

J. Richard Mattern, II, Esquire, Chairman
Andrew P. Gates, Esquire
Blaise Ferraraccio, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators.** For you convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

Very truly yours,

Marcy Kelley
Deputy Court Administrator

cc: J. Richard Mattern, II, Esquire
Andrew P. Gates, Esquire
Blaise Ferraraccio, Esquire