

01-1728-CD -
JAMES BRINK -vs- BRIAN R. CRAWFORD

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

JAMES BRINK, :
Plaintiff :
v. : NO. 01-1728-CD
BRIAN R. CRAWFORD :
Defendant :
:

PRAECIPE

TO THE PROTHONOTARY OF SAID COURT:

Please issue a writ of summons in the above captioned matter.


Ronald E. Archer, Esq.
Attorney for Plaintiff
711 Hannah St.
Houtzdale, PA. 16651
814/378-7641

FILED

OCT 17 2001

William A. Shaw
Prothonotary

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

JAMES BRINK, :
Plaintiff, :
v. : No. 01-01728-CD
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

PRAECIPE FOR A RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Please issue a Rule on Plaintiff to file his Complaint within twenty (20) days from service thereof or suffer a judgment of non pros against him.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
Katherine V. Oliver, Esquire
I.D. No. 77069
Chena L. Glenn-Hart, Esquire
I.D. No. 82750
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Brian R. Crawford

Dated: October 27, 2003

FILED

OCT 28 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK, :
Plaintiff, :
v. : No. 01-01728-CD
BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praeclipe for Rule to File Complaint, in the above-captioned matter was mailed by certified mail, return receipt requested postage prepaid, at the Post Office, State College, Pennsylvania, on this 27th day of October, 2003, to the attorney(s) of record:

James Brink, Pro Se Plaintiff
PO Box 232, Railroad Street
Irvona, PA 16656

James Brink, Pro Se Plaintiff
1200 Black Elk Road
Irvona, PA 16656-9212

Ronald E. Archer
Houtzdale PA 16651

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Chena L. Glenn-Hart
Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart, Esquire
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

COEY

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

JAMES BRINK, :
Plaintiff, :
v. : No. 01-01728-CD
: :
BRIAN R. CRAWFORD, :
Defendant. :
: :

RULE

To: James Brink, Pro Se Plaintiff
PO Box 232, Railroad Street
Irvona, PA 16656

James Brink, Pro Se Plaintiff
1200 Black Elk Road
Irvona, PA 16656-9212

James Brink
c/o Ronald E. Archer
Houtzdale PA 16651

YOU ARE HEREBY RULED to file a Complaint in the above captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

Prothonotary

Dated: *October 28, 2003*

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

JAMES BRINK, : No. 01-01728-C.D.
: Plaintiff, : TYPE OF PLEADING:
: : Certificate of Service
v. :
BRIAN R. CRAWFORD, : TYPE OF CASE: CIVIL
: Defendant. : FILED ON BEHALF OF:
: : DEFENDANT
: :
: : COUNSEL OF RECORD FOR
: : FOR THIS PARTY:
: : KATHERINE V. OLIVER, ESQ.
: : I.D. NO. 77069
: : CHENA L. GLENN-HART, ESQ.
: : I.D. NO. 82750
: : McQUAIDE, BLASKO, SCHWARTZ,
: : FLEMING & FAULKNER, INC.
: : 811 University Drive
: : State College, PA 16801
: : PH# (814) 238-4926
: : FAX#(814) 238-9624

FILED

JAN 22 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK,
v.
Plaintiff,
BRIAN R. CRAWFORD,
Defendant.
No. 01-01728-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Court issued Rule to File Complaint, in the above-captioned matter was served via U.S. 1st Class Mail, on this 26 day of January, 2004, to the party/attorney of record:

James Brink, *Pro Se* Plaintiff
172 R.R. #1
Irvona, PA 16656

Ronald E. Archer
Houtzdale, PA 16651

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By:

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

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

JAMES BRINK,

Plaintiff,

v.

BRIAN R. CRAWFORD,

Defendant.

: No. 01-01728-C.D.

: TYPE OF PLEADING:
**Defendant's Motion for
Alternative Service**

: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
DEFENDANT

: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

MAR 31 2004

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

DEFENDANT'S MOTION FOR ALTERNATIVE SERVICE

AND NOW, comes Defendant, Brian R. Crawford, by and through his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., to file the instant Motion for Alternative Service and in support thereof avers as follows:

1. The instant action was commenced via Writ of Summons filed on behalf of Plaintiff on October 17, 2001.
2. Plaintiff has taken no action on this case whatsoever, including service of the Writ upon Defendant, since the filing of the Writ on October 17, 2001.
3. Given the docket inactivity, Defendant filed a Praecipe for a Rule to File Complaint on October 27, 2003. (See Praecipe and applicable Certificate of Service attached hereto as Exhibit "A").
4. Said Praecipe was mailed via certified mail to Plaintiff at three separate addresses including:
 - a. James Brink
Pro se Plaintiff
P.O. Box 232, Railroad Street
Irvona, PA 16656

b. James Brink
Pro se Plaintiff
1200 Black Elk Road
Irvona, PA 16656-9212

c. James Brink
c/o Ronald E. Archer
Houtzdale, PA 16651

(See Exhibit "A")

5. The P. O. Box 232 address was Plaintiff's last known address of record; the 1200 Black Elk Road address was obtained via an internet search; and the address in care of Ronald E. Archer was used because Mr. Archer was Plaintiff's attorney of record when the suit was initiated.

6. On or about October 28, 2003, the undersigned counsel received a telephone call from Mrs. Gladys Brink who represented herself to be the wife of James Brink presently residing at 1200 Black Elk Road, Irvona, PA 16656-9212. Mrs. Brink further advised that her husband was not the James Brink that initiated suit against the Defendant and was therefore not the person who we intended to serve with the Praeclipe for Rule to File Complaint.

7. On or about November 5, 2003, the undersigned counsel received a voicemail message from Ronald E. Archer, Plaintiff's former attorney, indicating that he has had no contact with Plaintiff over the course of the two years since the Writ was filed and did not know Plaintiff's present whereabouts.

8. In addition, service of the Praeclipe for Rule to File Complaint upon Plaintiff at P.O. Box 232 in Irvona, PA was not achieved as said mail was returned to sender.

9. On October 28, 2003, the Clearfield County Prothonotary issue a Rule to File Complaint. (See Rule attached hereto as Exhibit "B").

10. However, Defendant was unable to serve said Rule upon Plaintiff at that time because each of the known possible addresses for Plaintiff proved to be incorrect as demonstrated by the failed service of the Praecept described above.

11. In an effort to ascertain Plaintiff's whereabouts such that service of the Rule to File Complaint upon him could be completed, Howard Shaffer a representative of Defendant's insurance company, State Farm Insurance Company, attempted to confirm Plaintiff's whereabouts with Plaintiff's mother and grandmother. Unfortunately, Plaintiff's relatives were unwilling to divulge Plaintiff's whereabouts to Mr. Shaffer.

12. In addition, defense counsel retained the services of Competitive Intelligence Bureau, Inc. to investigate the whereabouts of Plaintiff such that he could be served with the Rule to File Complaint.

13. On or about January 20, 2004, Competitive Intelligence Bureau, Inc. provided defense counsel with five possible addresses for the residence of Plaintiff. (See Competitive Intelligence Bureau, Inc. results attached hereto as Exhibit "C").

14. In this regard, Defendant used the most recent address listed for January 2004 at 172 R.R. 1, Irvona, PA 16656 with which to serve Plaintiff with the Rule to File Complaint on January 20, 2004. (See applicable Certificate of Service attached hereto as Exhibit "D" and Exhibit "C"). As a cautionary measure, the Rule was also served upon Plaintiff's former attorney, Mr. Archer. (See Exhibit "D").

15. Service upon Plaintiff could not be completed at the 172 R. R. 1, Irvona, PA address as the mailing was returned to sender.

16. Despite repeated and diligent efforts, Defendant has been unable to ascertain the present whereabouts of Plaintiff such that the Rule to File Complaint may be served upon him via mail in accordance with Rules of Civil Procedure.

17. That said, Defendant has made a reasonable and good faith effort as outlined above to ascertain the current address and whereabouts of Plaintiff such that he may be properly served with the Rule to File Complaint.

18. Despite Defendant's efforts in this regard, Plaintiff's exact whereabouts are presently unknown, and Defendant continues to be unable to serve him with the Rule to File Complaint.

19. As a result, this case remains stagnant on the Court's docket with no activity anticipated in the near future if Defendant is unable to serve the Rule to File Complaint upon Plaintiff.

20. Given this and the fact that this action has been pending since October 17, 2001, with absolutely no activity by Plaintiff, Defendant is severely prejudiced in that this action has been filed against him and remains pending with no conceivable resolution in the near future. All the while, Defendant remains unable to defend against this action and work toward ultimate resolution because Plaintiff has failed to even serve his Writ upon Defendant or file a Complaint.

21. In this regard, Defendant respectfully requests that this Court grant him permission to serve Plaintiff with the Rule to File Complaint and all subsequent pleadings via alternative means as deemed appropriate by this Court.

22. Alternative service of the Rule to File Complaint and subsequent pleadings is the only means which will enable Defendant to move this case forward toward ultimate resolution.

WHEREFORE, Defendant, Brian R. Crawford, respectfully requests that this Honorable Court grant him leave to serve Plaintiff with the Rule to File Complaint and any subsequent pleadings via alternative means as deemed appropriate by this Court. Should the Court wish to hear argument on the instant Motion, an appropriate Order is attached hereto.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Chena L. Glenn-Hart
Chena L. Glenn-Hart
I.D. No. 82750
Attorneys for Defendant
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: March 30, 2004

EXHIBIT “A”

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

JAMES BRINK,

Plaintiff,

v.

No. 01-01728-CD

BRIAN R. CRAWFORD,

Defendant.

PRAECIPE FOR A RULE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Please issue a Rule on Plaintiff to file his Complaint within twenty (20) days from service thereof or suffer a judgment of non pros against him.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By:

Chena L. Glenn-Hart

Katherine V. Oliver, Esquire

I.D. No. 77069

Chena L. Glenn-Hart, Esquire

I.D. No. 82750

811 University Drive

State College, PA 16801

(814) 238-4926

Attorneys for Brian R. Crawford

Dated: October 27, 2003

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

JAMES BRINK, :
Plaintiff, :
v. : No. 01-01728-CD
: :
BRIAN R. CRAWFORD, :
Defendant. :
: :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praeclipe for Rule to File Complaint, in the above-captioned matter was mailed by certified mail, return receipt requested postage prepaid, at the Post Office, State College, Pennsylvania, on this 27th day of October, 2003, to the attorney(s) of record:

James Brink, Pro Se Plaintiff
PO Box 232, Railroad Street
Irvona, PA 16656

James Brink, Pro Se Plaintiff
1200 Black Elk Road
Irvona, PA 16656-9212

Ronald E. Archer
Houtzdale PA 16651

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Chena L. Glenn-Hart
Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart, Esquire
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

EXHIBIT “B”

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

JAMES BRINK,

Plaintiff,

v.

No. 01-01728-CD

BRIAN R. CRAWFORD,

Defendant.

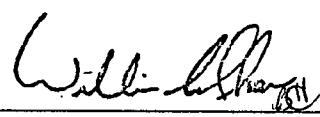
RULE

To: James Brink, Pro Se Plaintiff
PO Box 232, Railroad Street
Irvona, PA 16656

James Brink, Pro Se Plaintiff
1200 Black Elk Road
Irvona, PA 16656-9212

James Brink
c/o Ronald E. Archer
Houtzdale PA 16651

YOU ARE HEREBY RULED to file a Complaint in the above captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



Prothonotary

Dated: *October 28, 2003*

EXHIBIT “C”

Competitive **I**ntelligence **Bureau, Inc.**

4304 Walnut Street ~ Suite 2, McKeesport, PA 15132

An Information and Research Company

Tel: (412) 751-0660 Fax (412) 754-2570

January 20, 2004

Requestor

Katie Oliver
McQuaide & Blasko
811 University Drive
State College, PA 16801
Tel: (814) 238-4926
Fax: (814) 234-5620

Name:

Subject:

James Brink

RESULTS:**JAMES R BRINK** DOB: JUN 1977

SSN 191-58-0785 issued in Pennsylvania between 1977 and 1980

Possible Addresses Associated with Subject

JUN-2000/JAN-2004	- 172 RR 1 IRVONA, PA 16656
JUN-1998/MAY-2003	- 176 RR 1 IRVONA, PA 16656
DEC-2000/SEP-2001	- 1202 SKYLINE DR BLANDBURG, PA 16619
AUG-1995/JUL-2001	- 232 PO BOX IRVONA, PA 16656
MAY-1997/JUN-2001	- PO BOX 154 BLANDBURG, PA 16619

TERMS AND CONDITIONS OF USE. IMPORTANT!

The information provided in this report is governed by the Terms and Conditions of the Competitive Intelligence Bureau, Inc. The use of and reliance on this or any information provided by Competitive Intelligence Bureau, Inc. is at your own risk and discretion. Competitive Intelligence Bureau, Inc. makes no assurances as to the merchantability or fitness for a specific purpose of this information. Competitive Intelligence Bureau, Inc. shall not be responsible for any damages resulting from mistakes, omissions, errors, delays, or other defects in the information provided, or for any performance defect due to circumstances beyond the control of Competitive Intelligence Bureau, Inc. Your use of the information provided is conditioned upon your agreement to indemnify Competitive Intelligence Bureau, Inc. against any claim for damages or loss (including copyrights and proprietary rights as well as privacy rights). Any unlawful, illicit or improper use of this information is strictly prohibited.

EXHIBIT “D”

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

JAMES BRINK,

Plaintiff,

: No. 01-01728-C.D.

: TYPE OF PLEADING:
: Certificate of Service

v.

BRIAN R. CRAWFORD,

Defendant.

: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
: DEFENDANT

: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

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

JAMES BRINK,

Plaintiff,

v.

No. 01-01728-CD

BRIAN R. CRAWFORD,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Court issued Rule to File Complaint, in the above-captioned matter was served via U.S. 1st Class Mail, on this 20 day of January, 2004, to the party/attorney of record:

James Brink, *Pro Se* Plaintiff
172 R.R. #1
Irving, PA 16656

Ronald E. Archer
Houtzdale, PA 16651

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

VERIFICATION

Chena Glenn-Hart, hereby verifies that she is the attorney of record for Defendant, Brian R. Crawford, in the foregoing action, and as such is authorized to make this verification on his behalf, and that the facts set forth in the foregoing Defendant's Motion for Alternative Service are true and correct to the best of her information, knowledge and belief. This verification is hereby made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



CHENA GLENN-HART

Dated: March 30, 2004

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

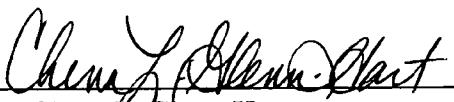
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Motion for Alternative Service in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 30th day of March, 2004, to the attorneys/parties of record:

James Brink, Pro Se Plaintiff
172 R. R. 1
Iriona, PA 16656

Ronald E. Archer
Houtzdale PA 16651

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
Chena L. Glenn-Hart
I.D. No. 82750
Attorneys for Defendant
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

JAMES BRINK,	:	
Plaintiff	:	
	:	No. 01-01728-CD
v.	:	
	:	
BRIAN R. CRAWFORD,	:	
Defendant.	:	

ORDER

AND NOW, this 1st day of April, 2004, upon consideration of Defendant's Motion for Alternative Service, said Motion is GRANTED. It is further ORDERED that Defendant shall serve the Rule to File Complaint and any subsequent pleadings in this matter to Plaintiff in the following manner:

Plaintiff James Brink shall be served by publication. Publication shall be one time in The Progress and one time in the Legal Journal.

BY THE COURT:

BY THE COURT:

FILED

APR 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK,

: No. 01-01728-C.D.

Plaintiff,

: TYPE OF PLEADING:
Certificate of Service

v.

BRIAN R. CRAWFORD,

Defendant.

: TYPE OF CASE: CIVIL
FILED ON BEHALF OF:
DEFENDANT

: COUNSEL OF RECORD FOR
FOR THIS PARTY:
KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
CHENA L. GLENN-HART, ESQ.
I.D. NO. 82750
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926
FAX#(814) 238-9624

FILED

APR 02 2004

William A. Smith
Prothonotary Clerk of Court

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

JAMES BRINK, :
Plaintiff, :
v. : No. 01-01728-CD
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Rule, in the above-captioned matter was mailed by certified mail, return receipt requested postage prepaid, at the Post Office, State College, Pennsylvania, on this 1st day of April, 2004, to the attorney(s) of record:

James Brink
PO Box 232
Irvona, PA 16656

Ronald E. Archer
Houtzdale PA 16651

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart, Esquire
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

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

JAMES BRINK, : No. 01-01728-C.D.
: Plaintiff, : TYPE OF PLEADING:
: : Certificate of Service
v. :
: Plaintiff, : TYPE OF CASE: CIVIL
BRIAN R. CRAWFORD, : FILED ON BEHALF OF:
: Defendant. : DEFENDANT
: :
: : COUNSEL OF RECORD FOR
: : FOR THIS PARTY:
: : KATHERINE V. OLIVER, ESQ.
: : I.D. NO. 77069
: : CHENA L. GLENN-HART, ESQ.
: : I.D. NO. 82750
: : McQUAIDE, BLASKO, SCHWARTZ,
: : FLEMING & FAULKNER, INC.
: : 811 University Drive
: : State College, PA 16801
: : PH# (814) 238-4926
: : FAX#(814) 238-9624

FILED

APR 06 2004

CLERK OF COURT
CLEARFIELD COUNTY, PA

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

JAMES BRINK,

Plaintiff,

v.

No. 01-01728-CD

BRIAN R. CRAWFORD,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Court's Order, in the above-captioned matter was served via U. S. 1st Class Mail, on this 5th day of April, 2004, to the party/attorney of record:

James Brink
PO Box 232
Irvona, PA 16656

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

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

JAMES BRINK, : No. 01-01728-C.D.
Plaintiff, :
v. : TYPE OF PLEADING:
BRIAN R. CRAWFORD, : **CERTIFICATE OF SERVICE**
Defendant. :
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
: **DEFENDANT**
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

APR 22 2004

William A. Show
Prothonotary Clerk of Courts

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **NOTICE OF INTENT** in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21st day of April, 2004, to the attorneys/parties of record:

James Brink
PO Box 232
Irvinon, PA 16656

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Chena L. Glenn-Hart
Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
Attorneys for Defendant
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

01-1728-CB
NO. 010-0728-CB

Plaintiff

v.

**PLAINTIFF'S VERIFICATION TO
COMPLAINT**

BRIAN R. CRAWFORD,

Defendant.

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

FILED

MAY 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

VERIFICATION

I, James Brink, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.



James Brink

In The Court of Common Pleas of Clearfield County, Pennsylvania

BRINK, JAMES

VS.

CRAWFORD, BRIAN R.

COMPLAINT

Sheriff Docket # 15627

01-1728-CD

SHERIFF RETURNS

NOW JUNE 2, 2004 RETURN THE WITHIN COMPLAINT "NOT SERVED, TIME EXPIRED" AS TO BRIAN R. CRAWFORD, DEFENDANT. NOT ENOUGH TO SERVE, EVENING SERVICE.

Return Costs

Cost	Description
------	-------------

10.00	SURCHARGE PAID BY: ATTY CK# 30845
-------	-----------------------------------

Sworn to Before Me This

3rd Day Of June 2004
William A. Shaw

So Answers,

Chester A. Hawkins
by Marilyn Ham
Chester A. Hawkins
Sheriff

FILED

JUN 03 2004
01/10-457 A-27
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

01-1728-CD
NO. 010-0728-CD

Plaintiff

v.

COMPLAINT IN CIVIL ACTION

BRIAN R. CRAWFORD,

Defendant.

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

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

MAY 20 2004

Attest.

W.A. Shaw
Prothonotary/
Clerk of Courts

FILED
MAY 20 2004
MAY 23 2004
William A. Shaw
Prothonotary/Clerk of Courts

THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

01-1728-C0
NO. 010-0728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

NOTICE TO PLEAD

TO: BRIAN R. CRAWFORD, Defendant

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 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.

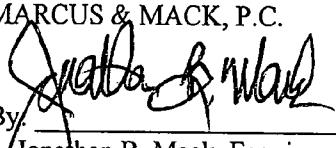
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

Clearfield County Court Administrator
2230 East Market Street
Clearfield, PA 16830
Telephone: (814) 765-2641

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

OL-1728-C0
NO. 010-0728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

COMPLAINT

AND NOW, comes the Plaintiff, James Brink, by and through his attorneys, Jonathan B. Mack, Esquire, and Marcus & Mack, P.C., and files the following Complaint:

COUNT I - NEGLIGENCE

1. The Plaintiff is an adult individual who resides in Irvona, Clearfield County, Pennsylvania.
2. The Defendant is an adult individual who is believed to reside at Jackson Street, P.O. Box 226, Coalport, Clearfield County, Pennsylvania.
3. On or about October 17, 1999, Plaintiff was a passenger in a vehicle that was traveling southbound on State Route 3005 in Irvona Borough, Clearfield County, Pennsylvania. At the same time and place, Defendant's vehicle was parked along the east curb of State Route 3005 facing north, when suddenly and without warning the Defendant pulled out from the curb area and turned sharply to the left in an attempt to make a U-turn in order to travel southbound on State Route 3005. In doing so, Defendant pulled his vehicle directly into the path of Plaintiff's

vehicle causing a collision.

4. The aforesaid accident was caused by the negligence of the Defendant in general

and in the following particulars:

- a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;
- b. In operating the vehicle in a careless, dangerous and reckless manner under the circumstances;
- c. In failing to have the vehicle under proper control;
- d. In continuing to operate the vehicle in a direction toward the Plaintiff's vehicle when the Defendant saw or in the exercise of reasonable care should have seen that further operation in that direction would result in a collision;
- e. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions;
- f. In failing to sound a horn or give other warning of the approach of the vehicle;
- g. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the collision;
- h. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances;
- i. In crossing over the roadway into oncoming traffic;
- j. In failing to stop before striking the front of Plaintiff's vehicle;
- k. In failing to maintain a reasonable lookout for the presence of other motor vehicles on the road;
- l. In failing to avoid hitting the Plaintiff's vehicle when the Defendant saw or should have seen that the Plaintiff's vehicle was on the road in full view of the Defendant;
- m. In failing to drive around the Plaintiff's vehicle instead of colliding with it;

- n. In failing to take proper note of, and precautions for, the configuration of the roadway; and
- o. In failing to take measures to avoid the crash or lessen its severity;
- p. In violating 75 Pa. C. S. A §3332;
- q. In violating 75 Pa. C.S.A. §3333;
- r. In violating 75 Pa. C.S.A. §3309(1); and,
- s. In violating 75 Pa. C.S.A. §3334(a).

5. Plaintiff is covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

6. As a result of the aforesaid accident, Plaintiff James Brink has suffered, among other things, the following injuries:

- a. Cervical strain with radicular symptoms on the left side;
- b. Abrasion of the left wrist;
- c. Sprain of the left wrist;
- d. Sprain/strain of the lumbar spine;
- e. Left upper extremity numbness;
- f. Left ulnar nerve entrapment;
- g. Left median nerve compression;
- h. Left sided carpal tunnel syndrome;
- i. Left lower extremity numbness;
- j. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the lumbar spine;
- k. Generalized trauma and injury to the nerves, muscles, tissues, ligaments &

tendons of the cervical spine;

1. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the left upper extremity; and,
- m. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the left lower extremity.

7. As a result of the aforesaid injuries, the Plaintiff James Brink has suffered the following damages:

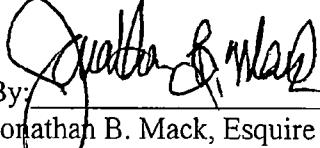
- a. He has incurred in the past, and will incur in the future, substantial medical expenses;
- b. He has suffered in the past, and will suffer in the future, substantial pain, suffering and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. He has sustained in the past, and will sustain in the future, loss of earnings and/or earning capacity; and,
- d. He has sustained in the past, and will sustain in the future, other emotional, economic and physical harm.

WHEREFORE, the Plaintiff James Brink demands judgment against the Defendant in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, James Brink, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.

James Brink
James Brink

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

MAY 20 2004

Attest.

Willie L. Brink
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

01-1728-C0
NO. 010-0728-CD

Plaintiff,

vs.

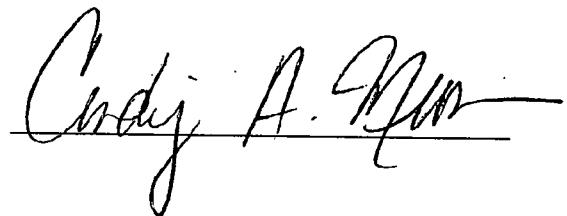
BRIAN R. CRAWFORD,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINT** was mailed, U.S. First Class mail, to the following this 30th day of April, 2004:

Chena L. Glenn-Hart
McQuaide Blasko
811 University Drive
State College, PA 16801-6699



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 01-1728-CD

Plaintiff

v.

**PRAECIPE TO REINSTATE
COMPLAINT**

BRIAN R. CRAWFORD,

Defendant.

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

FILED

JUN 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 01-1728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

PRAECIPE TO REINSTATE COMPLAINT

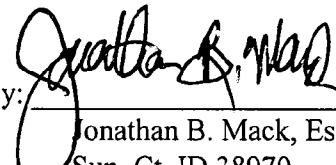
TO THE PROTHONOTARY OF SAID COURT:

Please reinstate the Complaint in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By:



Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

PRAECIPE TO LIST FOR ARGUMENT

TO THE PROTHONOTARY/COURT ADMINISTRATOR:

Kindly list Defendant Brian R. Crawford's Preliminary Objections on the next available argument list.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Frederick R. Battaglia
I.D. No. 91624
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Dated: June 4, 2004

FILED

JUN 07 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

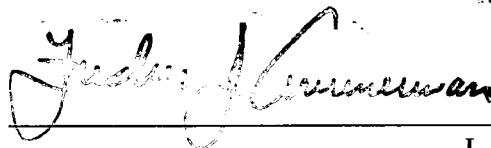
JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

RULE TO SHOW CAUSE

AND NOW, this 28th day of June, 2004, Plaintiff is
requested to show cause why Defendant's Preliminary Objections should not be granted.

Rule returnable the 2nd day of July, 2004, at 7:30 A.m.
in Courtroom 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT



J.

FILED

JUN 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 01-1728-CD

Plaintiff

v.

**PRAECIPE TO REINSTATE
COMPLAINT**

BRIAN R. CRAWFORD,

Defendant.

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

FILED *cc*
3/1/43 Atty
JUN 30 2004 Atty pd. 7.00
Reinstated to Sheriff
William A. Shaw
Prothonotary/Clerk of Courts
1 Compl.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 01-1728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

PRAECIPE TO REINSTATE COMPLAINT

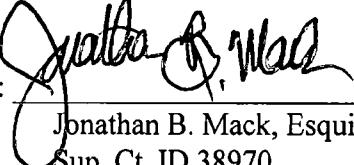
TO THE PROTHONOTARY OF SAID COURT:

Please reinstate the Complaint in the above-captioned action.

Respectfully submitted,

MARCUS & MACK, P.C.

By:



Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602

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

JAMES BRINK,

Plaintiff,

: No. 01-01728-C.D.

:
: TYPE OF PLEADING:
: CERTIFICATE OF SERVICE

BRIAN R. CRAWFORD,

Defendant.

:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: DEFENDANT

:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: FREDERICK R. BATTAGLIA, ESQ.
: I.D. NO. 91624
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED NOCC
m/10/3864
JUL 02 2004
SAC William A. Shaw
Prothonotary, Clerk of Courts

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

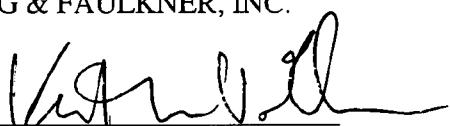
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Rule to Show Cause dated June 28, 2004 and a copy of Defendant's Preliminary Objections, in the above-captioned matter was served via U. S. 1st Class Mail, on this 30th day of June, 2004, to the party/attorney of record:

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

Clearfield County Courthouse
Attention: David S. Meholick
Court Administrator
230 East Market Street
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Frederick R. Battaglia
I.D. No. 91624
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

In The Court of Common Pleas of Clearfield County, Pennsylvania

BRINK, JAMES
VS.
CRAWFORD, BRIAN R.
COMPLAINT

Sheriff Docket # 15627
01-1728-CD

SHERIFF RETURNS

NOW JULY 2, 2004 RETURN THE WITHIN COMPLAINT "NOT SERVED, TIME EXPIRED" AS TO BRIAN R. CRAWFORD, DEFENDANT.

Return Costs

Cost	Description
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10.00	SURCHARGE PAID BY: ATTY CK# 30948
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Sworn to Before Me This
2nd Day Of July 2004
William A. Shaw
WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester Hawkins
by Maury Harr
Chester A. Hawkins
Sheriff

FILED
013:2001
JUL 02 2004
SAC
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

01-1728-CD
NO. ~~010~~ *1728-CD*

Plaintiff

v.

COMPLAINT IN CIVIL ACTION

BRIAN R. CRAWFORD,

Defendant.

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

(0-4-04) Document
Reinstated/Reissued to Sheriff/Attorney
for service.
Willie L. Hazzard
Deputy Prothonotary

IN THE COURT OF COMMON PLEAS C
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 010-4728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

NOTICE TO PLEAD

TO: BRIAN R. CRAWFORD, Defendant

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 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.

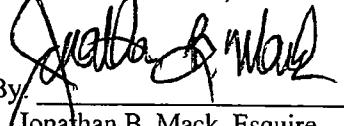
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

Clearfield County Court Administrator
2230 East Market Street
Clearfield, PA 16830
Telephone: (814) 765-2641

Respectfully submitted,

MARCUS & MACK, P.C.

By 

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 010-1728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

COMPLAINT

AND NOW, comes the Plaintiff, James Brink, by and through his attorneys, Jonathan B. Mack, Esquire, and Marcus & Mack, P.C., and files the following Complaint:

COUNT I - NEGLIGENCE

1. The Plaintiff is an adult individual who resides in Irvona, Clearfield County, Pennsylvania.
2. The Defendant is an adult individual who is believed to reside at Jackson Street, P.O. Box 226, Coalport, Clearfield County, Pennsylvania.
3. On or about October 17, 1999, Plaintiff was a passenger in a vehicle that was traveling southbound on State Route 3005 in Irvona Borough, Clearfield County, Pennsylvania. At the same time and place, Defendant's vehicle was parked along the east curb of State Route 3005 facing north, when suddenly and without warning the Defendant pulled out from the curb area and turned sharply to the left in an attempt to make a U-turn in order to travel southbound on State Route 3005. In doing so, Defendant pulled his vehicle directly into the path of Plaintiff's

vehicle causing a collision.

4. The aforesaid accident was caused by the negligence of the Defendant in general and in the following particulars:

- a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;
- b. In operating the vehicle in a careless, dangerous and reckless manner under the circumstances;
- c. In failing to have the vehicle under proper control;
- d. In continuing to operate the vehicle in a direction toward the Plaintiff's vehicle when the Defendant saw or in the exercise of reasonable care should have seen that further operation in that direction would result in a collision;
- e. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions;
- f. In failing to sound a horn or give other warning of the approach of the vehicle;
- g. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the collision;
- h. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances;
- i. In crossing over the roadway into oncoming traffic;
- j. In failing to stop before striking the front of Plaintiff's vehicle;
- k. In failing to maintain a reasonable lookout for the presence of other motor vehicles on the road;
- l. In failing to avoid hitting the Plaintiff's vehicle when the Defendant saw or should have seen that the Plaintiff's vehicle was on the road in full view of the Defendant;
- m. In failing to drive around the Plaintiff's vehicle instead of colliding with it;

- n. In failing to take proper note of, and precautions for, the configuration of the roadway; and
- o. In failing to take measures to avoid the crash or lessen its severity;
- p. In violating 75 Pa. C. S. A §3332;
- q. In violating 75 Pa. C.S.A. §3333;
- r. In violating 75 Pa. C.S.A. §3309(1); and,
- s. In violating 75 Pa. C.S.A. §3334(a).

5. Plaintiff is covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

6. As a result of the aforesaid accident, Plaintiff James Brink has suffered, among other things, the following injuries:

- a. Cervical strain with radicular symptoms on the left side;
- b. Abrasion of the left wrist;
- c. Sprain of the left wrist;
- d. Sprain/strain of the lumbar spine;
- e. Left upper extremity numbness;
- f. Left ulnar nerve entrapment;
- g. Left median nerve compression;
- h. Left sided carpal tunnel syndrome;
- i. Left lower extremity numbness;
- j. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the lumbar spine;
- k. Generalized trauma and injury to the nerves, muscles, tissues, ligaments &

tendons of the cervical spine;

1. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the left upper extremity; and,
- m. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the left lower extremity.

7. As a result of the aforesaid injuries, the Plaintiff James Brink has suffered the following damages:

- a. He has incurred in the past, and will incur in the future, substantial medical expenses;
- b. He has suffered in the past, and will suffer in the future, substantial pain, suffering and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. He has sustained in the past, and will sustain in the future, loss of earnings and/or earning capacity; and,
- d. He has sustained in the past, and will sustain in the future, other emotional, economic and physical harm.

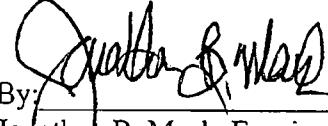
WHEREFORE, the Plaintiff James Brink demands judgment against the Defendant in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By:


Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

VERIFICATION

I, James Brink, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.


James Brink

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

NO. 010-~~4~~728-CD

Plaintiff,

vs.

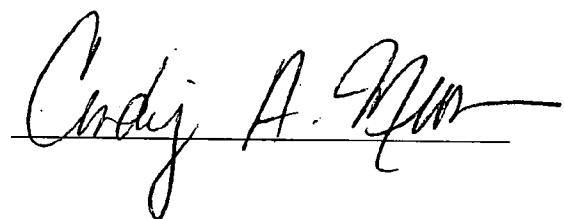
BRIAN R. CRAWFORD,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINT** was mailed, U.S. First Class mail, to the following this 30th day of April, 2004:

Chena L. Glenn-Hart
McQuaide Blasko
811 University Drive
State College, PA 16801-6699



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

JAMES BRINK :
: No. 01-1728-CD
vs. :
: BRIAN R. CRAWFORD :

O R D E R

NOW, this 12th day of July, 2004, it is the ORDER of the Court that argument on Defendant's Preliminary Objections in the above matter has been rescheduled from July 23, 2004 to Monday, August 23, 2004 at 10:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

JUL 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
cc:Attn: Mack, Oliver
JUL 13 2004

William A. Shaw
Prothonotary, Clerk of Courts

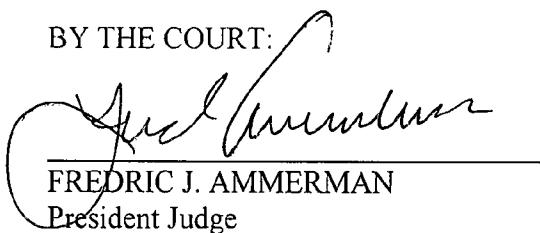
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JAMES BRINK :
vs. : No. 01-1728-CD
BRIAN R. CRAWFORD :

O R D E R

AND NOW, this 24 day of August, 2004, it is the ORDER of the Court that argument on Defendant's Preliminary Objections in the above-captioned matter has been rescheduled from August 23, 2004 to Wednesday, September 22, 2004 at 10:30 A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN

President Judge

FILED

AUG 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926 FAX (814) 234-5620
www.mcquaideblasko.com

September 16, 2004

Via First Class Mail

William Shaw, Prothonotary
Clearfield County Courthouse
P. O. Box 549
Clearfield, PA 16830

Re: Brink v. Crawford, No. 01-0728-CD

Dear Mr. Shaw:

Enclosed for filing please find a Joint Stipulation of Parties to Treat Preliminary Objections in Nature of Motion to Dismiss Based on Statute of Limitations as Motion for Summary Judgment, and a Stipulation of Facts and Procedural History with regard to the above-captioned matter. Please note that we have forwarded courtesy copies of both documents to Judge Ammerman, who is scheduled to hear argument related to the documents on September 22, 2004.

Thank you for your attention to this matter.

Very truly yours,

McQUAIDE BLASKO

By:



Katherine V. Oliver

KVO/nlc

Enclosures

cc/Enc.: Jason Matzus, Esquire, Attorney for James Brink

Cathy Dyke (Claim No. 38-J421-305)

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko Thomas E. Schwartz R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright Paul J. Tomeczuk Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Pamela A. Ruest Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Ashley Hines Krunich Chenu L. Glenn-Hart Livinia N. Jones Cristin R. Barnes Matthew T. Rogers Frederick R. Battaglia Anthony A. Simon Russell A. Ventura

Hershey Office: Grant H. Fleming Maureen A. Gallagher Michael J. Mohr Jonathan B. Stephanian Britt D. Russell

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager

John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Reply Brief in the above-captioned matter was served via U. S. 1st Class Mail, on this 17th day of September, 2004, to the party/attorney of record:

Jason Matzus, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

EGK
FILED NO
m 19:38 60
SEP 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK, : No. 01-01728-C.D.
: Plaintiff, : TYPE OF PLEADING:
: : CERTIFICATE OF SERVICE
: :
BRIAN R. CRAWFORD, : :
: Defendant. : TYPE OF CASE: CIVIL
: : FILED ON BEHALF OF
: DEFENDANT
: :
: : COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

FILED 8/6/04

OCT 07 2004
my 10:30 AM
William A. Stump
Prothonotary/Clerk of Court

cc/c

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Judge Ammerman's Order granting Motion for Summary Judgment in the above-captioned matter was served via U. S. 1st Class Mail, on this 6th day of October, 2004, to the party/attorney of record:

Jason Matzus, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Katherine V. Oliver

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Date: 09/15/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 10:11 AM

ROA Report

Page 1 of 2

Case: 2001-01728-CD

Current Judge: Fredric Joseph Ammerman

James Brink vs. Brian R. Crawford

Civil Other

Date	Judge
10/17/2001	Filing: Writ of Summons Paid by: Archer, Ronald E., Esq Receipt number: 1832974 Dated: 10/17/2001 Amount: \$80.00 (Check) Two CC Attorney No Judge <i>✓</i>
10/28/2003	Praeclipe for a Rule to File A Complaint filed by Atty. Oliver. 1 Rule issued No Judge to Atty.
01/22/2004	Certificate of Service, Rule to File Complaint upon James Brink, Pro Se Plaintiff and Ronald E. Archer filed by, s/Katherine V. Oliver, Esq. no cc No Judge <i>✓</i>
03/31/2004	Defendant's Motion For Alternative Service. filed by, s/Chena L. Glenn-Hart, Esquire Verification s/Chena Glenn-Hart Certificate of Service 1 cc Atty Hart No Judge <i>✓</i>
04/01/2004	ORDER, AND NOW, this 1st day of April, 2004, re: Defendant's Motion for Alternative Service is GRANTED. Defendant shall serve the Rule to File Complaint and any subsequent pleadings in this matter to Plaintiff in the following manner, Plaintiff James Brink shall be served by publication. Publication shall be one time in The Progress and one time in the Legal Journal. by the Court, s/FJA, P.J. 4 cc Atty Hart Fredric Joseph Ammerman <i>4</i>
04/02/2004	Certificate of Service of Rule filed by Atty. Oliver. No cc. Fredric Joseph Ammerman <i>4</i>
04/06/2004	Certificate of Service, Court's Order upon James Brink. filed by, s/Chena L. Glenn-Hart, Esquire no cc Fredric Joseph Ammerman <i>✓</i>
04/22/2004	Certificate of Service, Notice of Intent upon James Brink. s/Chena L. Glenn-Hart, Esquire no cc Fredric Joseph Ammerman <i>✓</i>
05/03/2004	Complaint In Civil Action. filed by, s/Jonathan B. Mack, Esquire Verification s/James Brink Certificate of Service no cc Fredric Joseph Ammerman <i>4</i>
05/05/2004	Verification s/James Brink no cc Fredric Joseph Ammerman <i>✓</i>
05/18/2004	Defendant's Preliminary Objections To Plaintiff's Complaint. filed by, s/Katherine V. Oliver, Esquire Certificate of Service no cc Fredric Joseph Ammerman <i>✓</i>
06/03/2004	Now, June 2, 2004, return the within Complaint "NOT SERVED, TIME EXPIRED" as to Brian R. Crawford, Defendant. Not enough to serve, evening service. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Fredric Joseph Ammerman <i>✓</i>
06/04/2004	Filing: Reissue Writ/Complaint Paid by: Mack, Jonathan B. (attorney for Brink, James) Receipt number: 1880333 Dated: 06/04/2004 Amount: \$7.00 (Check) Fredric Joseph Ammerman <i>it</i> Fredric Joseph Ammerman <i>✓</i>
	Praeclipe To Reinstate Complaint. filed by, s/Jonathan B. Mack, Esquire Fredric Joseph Ammerman <i>✓</i>
06/07/2004	1 Reinstated To Sheriff Fredric Joseph Ammerman <i>✓</i>
06/29/2004	Praeclipe to List for Argument, filed by s/Katherine V. Oliver No CC Fredric Joseph Ammerman <i>✓</i>
	Rule to Show Cause, AND NOW, this 28th day of June, 2004, Plaintiff requested to show cause why Defendant's Preliminary Objections should not be granted. Rule returnable the 23 day of July, 2004, at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Four CC with service memo to Attorney Oliver Fredric Joseph Ammerman <i>✓</i>
06/30/2004	Filing: Praeclipe to Reinstate Complaint Paid by: Mack, Jonathan B. (attorney for Brink, James) Receipt number: 1881888 Dated: 06/30/2004 Amount: \$7.00 (Check) One CC to Attorney One Complaint Reinstate to Sheriff Fredric Joseph Ammerman <i>✓</i>

Date: 09/14/2004
Time: 02:31 PM

Clearfield County Court of Common Pleas
Receipt

NO. 1886513

Received of: Deyarmin, Bryan Dale \$ 145.00
71 Maple St.
Burnside, PA 15721
One Hundred Forty-Five and 00/100 Dollars

Case: 2004-01141-CD Defendant: Deyarmin, Bryan Dale

Fine:
Costs: 145.00
Restitution:

Check: Money Order

Payment Method: Money Order

William A. Shaw, Prothonotary/Clerk of Courts

By: _____

Clerk: BILLSHAW

Deputy Clerk

Duplicate Reprinted: 09/14/2004 by BHUDSON

Date: 09/15/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 10:11 AM

ROA Report

Page 2 of 2

Case: 2001-01728-CD

Current Judge: Fredric Joseph Ammerman

James Brink vs. Brian R. Crawford

Civil Other

Date	Judge	
07/02/2004	Certificate of Service, Rule to Show Cause dated June 28, 2004, and a copy of Defendant's Preliminary Objections, upon Jonathan B. Mack, Esq. and Clearfield Court Administrator, filed by s/Katherine V. Oliver No CC Sheriff Return, Return the Complaint "Not Served, Time Expired" as to Brian R. Crawford. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm \$10.00 Sheriff Hawkins paid by Attorney	Fredric Joseph Ammerman <i>(initials)</i>
07/13/2004	Order, NOW, this 12th day of July, 2004, Order that argument on Defendant's Preliminary Objections rescheduled from July 23, 2004 to Monday, August 23, 2004, at 10:00 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys: Mack, Oliver	Fredric Joseph Ammerman <i>(initials)</i>
08/12/2004	Sheriff Return, NOW JULY 28, 2004, Complaint, served on Brian R. Crawford. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	Fredric Joseph Ammerman <i>(initials)</i>
08/19/2004	Defendant's Answer with New Matter to Plaintiff's Complaint. Filed by s/Katherine V. Oliver, Esq., No cc	Fredric Joseph Ammerman <i>(initials)</i>
08/25/2004	ORDER, AND NOW, this 24 day of September, 2004, it is ORDER of the Court that argument on Defendant's Preliminary Objections, has been rescheduled from August 23, 2004; to WEDNESDAY, SEPTEMBER 22, 2004, at 10:30 A.M., in Courtroom No. 1, By the Court, Fredric J. Ammerman, 1 cc Attys Matzus, Oliver ORDER, AND NOW, this 24 day of August, 2004, upon consideration of the allegations set forth in foregoing Petition for Hearing to Confirm Plaintiff's Right to Move to Ohio with Minor Child, it is ORDERED and DECREED that a hearing is scheduled for the 30 day of September, 2004, in Courtroom No 1, at 1:30 P.M. At this hearing, the Court will consider the Plaintiff's request to move to Ohio with minor child. By the Court, Fredric J. Ammerman, 2 cc Atty T. Cherry	Fredric Joseph Ammerman <i>(initials)</i>

Date: 9/14/2004
Time: 02:20 PM

Clearfield County Court of Common Pleas
Receipt

NO. 1886508
Page 1 of 1

Received of: Deyarmin, Bryan Dale (defendant) \$ 85.00

Eighty-Five and 00/100 Dollars

Case: 2004-01141-CD	Plaintiff: Deyarmin, Rebecca Sue	Amount
Protection From Abuse Petition		85.00
Total:		85.00

Check: Money Order
Payment Method: Money Order
Amount Tendered: 85.00
Clerk: BILLSHAW

William A. Shaw, Prothonotary/Clerk of Courts
By: _____
Deputy Clerk

MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926 FAX (814) 234-5620
www.mcquaideblasko.com

September 16, 2004

Honorable Judge Fredric J. Ammerman
Clearfield County Courthouse
231 East Market Street
Clearfield, PA 16830

Re: Brink v. Crawford, No. 01-0728-CD

Dear Judge Ammerman:

The above-referenced matter is scheduled for oral argument on Defendant's Preliminary Objections for September 22, 2004 at 10:30 a.m. Enclosed herewith are courtesy copies of two joint stipulations that were forwarded for filing of record today as well.

As set forth in the enclosed stipulations, the parties have agreed, subject to the Court's approval of course, that Count III of Defendant's Preliminary Objections raising the statute of limitations in defense of Plaintiff's claims should be considered a properly filed Motion for Summary Judgment. Assuming the Court approves, the procedural posture for next week's argument would be in the nature of a summary judgment motion on the statute of limitations issue, rather than Preliminary Objections on that same issue. The substantive issue before the Court would not be changed by this shift in the procedural posture.

Thank you for your consideration of this matter. Please do not hesitate to contact this office if you need further information to consider this joint request of the parties.

Very truly yours,

McQUAIDE BLASKO

By:



Katherine V. Oliver

KVO/nlc
Enclosures

cc: Jason Matzus, Esquire, Attorney for James Brink

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko Thomas E. Schwartz R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Durryl R. Slimak Mark Righter Daniel E. Bright Paul J. Tonczuk Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Pamela A. Ruest Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Ashley Hines Kranich Chena L. Glenn-Hart Livinia N. Jones Cristin R. Barnes Matthew T. Rogers Frederick R. Battaglia Anthony A. Simon Russell A. Ventura

Hershey Office: Grant H. Fleming Maureen A. Gallagher Michael J. Mohr Jonathan B. Stephanian Britt D. Russell

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager

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

JAMES BRINK, : No. 01-01728-C.D.
Plaintiff, : TYPE OF PLEADING:
v. : JOINT STIPULATION OF PARTIES TO
BRIAN R. CRAWFORD, : TREAT PRELIMINARY OBJECTIONS
Defendant : IN NATURE OF MOTION TO DISMISS
: BASED ON STATUTE OF LIMITATIONS
: AS MOTION FOR SUMMARY
: JUDGMENT
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: PLAINTIFF and DEFENDANT JOINTLY
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX# (814) 238-9624
: ATTORNEYS FOR DEFENDANT
: BRIAN R. CRAWFORD
: JASON MATZUS, ESQUIRE
: I.D. NO. 38970
: MARCUS & MACK, P.C.
: 57 South 6th Street
: P.O. Box 1107
: Indiana, PA 15701
: PH# (724) 349-5602
: ATTORNEY FOR PLAINTIFF
: JAMES BRINK

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
: :
:

**JOINT STIPULATION OF PARTIES TO TREAT PRELIMINARY OBJECTIONS IN
NATURE OF MOTION TO DISMISS BASED ON STATUTE OF LIMITATIONS AS
MOTION FOR SUMMARY JUDGMENT**

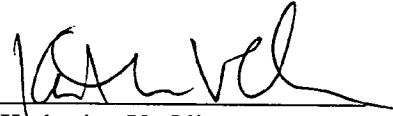
On even date herewith, the parties hereto filed a Joint Stipulation of Facts and Procedural History, setting forth procedural and factual background of this case as stipulated by the parties. As set forth in the aforementioned Joint Stipulation, the parties to this action agree that it would be in the best interests of both parties, as well as the interests of judicial economy, for the Court to issue a ruling, before any further efforts are undertaken in this litigation, regarding whether Plaintiff's claims herein are barred by the applicable statute of limitations. In light of the foregoing, the parties hereto, by and through their undersigned counsel, hereby stipulate and agree as follows:

1. Defendant's preliminary objection in the nature of a motion to dismiss for failure to conform to law filed on May 18, 2004, seeking dismissal of this case on the basis that Plaintiff's claims are barred by the statute of limitations, shall be treated as a motion for summary judgment, and the parties shall request that the Court treat the same as a properly filed motion for summary judgment that is ripe for disposition by the Court; and

2. The parties agree that this Joint Stipulation, along with the Joint Stipulation of Facts and Procedural History filed on even date herewith, shall be filed of record, and shall be presented to the Court with a request that both joint stipulations be approved, and that an order in the nature of that attached hereto as Exhibit A be entered of record.

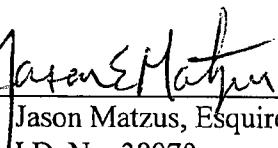
JOINTLY SUBMITTED BY:

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

MARCUS & MACK, P.C.

By: 

Jason Matzus, Esquire
I.D. No. 38970
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
Attorney for Plaintiff
James Brink
(724) 349-5602

Dated: September 16, 2004

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

ORDER

AND NOW, this _____ day of September, 2004, upon consideration of the Joint
Stipulation of Facts and Procedural History, and the Joint Stipulation of Parties To Treat
Preliminary Objections In Nature Of Motion To Dismiss Based On Statue Of Limitations As
Motion For Summary Judgment, the Court hereby approves both stipulations, and in accordance
therewith, hereby ORDERS as follows:

1. Defendant's preliminary objection in the nature of a motion to dismiss for failure
to conform with law raising the statute of limitations in defense of Plaintiff's claims, filed on
May 18, 2004, shall be treated as a properly filed motion for summary judgment, currently
pending before the Court; and
2. Argument previously scheduled for September 22, 2004 at 10:30 a.m. regarding
preliminary objections shall be conducted as argument on Defendant's motion for summary
judgment seeking dismissal of this case based on the statute of limitations.

BY THE COURT:

J.

EXHIBIT "A"

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copies of the **JOINT STIPULATION OF PARTIES TO TREAT PRELIMINARY OBJECTIONS IN NATURE OF MOTION TO DISMISS BASED ON STATUTE OF LIMITATIONS AS MOTION FOR SUMMARY JUDGMENT and STIPULATION OF FACTS AND PROCEDURAL HISTORY** in the above-captioned matter was served via U. S. 1st Class Mail, on this 16th day of September, 2004, to the party/attorney of record:

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver

I.D. No. 77069

Chena L. Glenn-Hart

I.D. No. 82750

811 University Drive

State College, PA 16801

Attorneys for Defendant

Brian R. Crawford

(814) 238-4926

LAW OFFICES OF

DICKIE, MCCAMEY & CHILCOTE

A PROFESSIONAL CORPORATION

TWO PPG PLACE, SUITE 400
PITTSBURGH, PENNSYLVANIA
15222-3402
WWW.DMC LAW.COM
TEL. 412/231-7272
FAX 412/392-5367PHILADELPHIA
215/925-2289NEW JERSEY
856/988-5473OHIO
740/284-1682WEST VIRGINIA
304/233-1022FAX COVER SHEET

DATE: _____

PLEASE HAND DELIVER, AS SOON AS POSSIBLE,
THE FOLLOWING FACSIMILE TRANSMISSION TO:

NAME: _____

JASON MATZOS ESQ
c/o JUDGE
AMERMAN

COMPANY: _____

FAX NO.: _____

File No.: _____

Client No.: _____

RE: _____

FROM: _____

MESSAGE: _____

(814) 765-7649

IF YOU HAVE ANY PROBLEM RECEIVING THIS TRANSMISSION, PLEASE CONTACT:

AT _____

412/392-

5207

TOTAL NUMBER OF PAGES (including cover sheet):

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,) NO. 01-1728-CD
)
 Plaintiff)
)
)
 v.)
) PLAINTIFF'S BRIEF IN OPPOSITION
) TO DEFENDANT'S MOTION FOR
) SUMMARY JUDGMENT BASED UPON
) EXPIRATION OF STATUTE OF
) LIMITATIONS
)
)

BRIAN R. CRAWFORD,)
 Defendant.)

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jason E. Matzus, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

RECEIVED

SEP 17 2004

COURT ADMINISTRATOR'S
OFFICE

COPY

In conclusion, for the reasons stated above, Plaintiff respectfully requests that this court issue an Order denying Defendant's Motion for Summary Judgment in the instant matter.

Respectively submitted,

MARCUS & MACK, P.C.

By: Jason E. Matzus

Jason E. Matzus, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 76229

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,)	NO. 01-1728-CD
)	
Plaintiff,)	
)	
)	
v.)	
)	
BRIAN R. CRAWFORD,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, on this _____ day of September, 2004, Defendant's Motion
for Summary Judgment Based Upon the Expiration of the Statute of Limitations is hereby
DENIED.

Judge Fredric J. Ammerman

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,) NO. 01-1728-CD
Plaintiff)
v.)
BRIAN R. CRAWFORD,)
Defendant.)

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BASED
UPON EXPIRATION OF STATUTE OF LIMITATIONS was mailed, U.S. First Class mail,
to the following this 16th day of September, 2004:

Katie Oliver, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

James Brink

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

JAMES BRINK, : No. 01-01728-C.D.
Plaintiff, :
: TYPE OF PLEADING:
: DEFENDANT'S REPLY BRIEF
BRIAN R. CRAWFORD, :
Defendant. :
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: DEFENDANT
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

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

JAMES BRINK,

Plaintiff

: No. 01-01728-CD

v.

BRIAN R. CRAWFORD,

Defendant

DEFENDANT'S REPLY BRIEF

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The procedural history and factual background of this matter are set forth in detail in the Joint Stipulations of the parties filed on or about September 17, 2004. Pursuant to those Stipulations, and subject to the Court's approval, the statute of limitations issue initially raised by Defendant via preliminary objections is now before the Court as a summary judgment motion. Defendant filed his Brief in support of dismissal of this case on the basis of the statute of limitations, *inter alia*, on or about June 4, 2004.¹

Plaintiff filed a Brief in Opposition to Summary Judgment on or about September 17, 2004. Defendant files this Reply Brief, and also relies on his previously filed Brief in support of dismissal, incorporated herein by reference.

¹ The Brief was filed in support of the then-pending preliminary objections. The section specifically dealing with the statute of limitations is at pages 8-12.

II. ARGUMENT

THERE IS NO DISPUTE THAT PLAINTIFF'S ACTION WAS NOT FILED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS, AND NEGLECT OF COUNSEL IS NOT A SUFFICIENT BASIS FOR AVOIDING THE LEGISLATIVE MANDATES OF THE STATUTE OF LIMITATIONS

In circumstances where a writ is filed but never served, the law places the burden on the plaintiff to show, via record evidence, that he made a good faith attempt to timely serve the writ. See Feher v. Altman, 357 Pa. Super. 50, 515 A.2d 317, 320 (Pa. Super. 1986). In the case at bar, both parties agree that *Plaintiff never took any action to serve the writ of summons originally filed in this case, and never took any steps to reissue the writ.* (See Joint Stipulation Facts and Procedural History, ¶¶ 1-4). Under such circumstances, the writ is clearly a nullity, and did not toll the statute of limitations. See Feher v. Altman, 357 Pa. Super. 50, 515 A.2d 317, 319-321 (Pa. Super. 1986); see also, authorities cited in Br. Supp of P.O.'s, filed on or about June 4, 2004, at pp 8-12.

Plaintiff's *Complaint* in this case, filed more than 4 and ½ years after the car accident at issue, was clearly not filed within the applicable two year statute of limitations. Plaintiff concedes as much, and takes the position that this delay of several years should be excused by the Court, because Plaintiff contends that the delay was solely the fault of his former counsel. (See Plaintiff's Br. Opp. Summ. Judgm., at 4). Plaintiff's argument in this regard is meritless and must be rejected.

Plaintiff fails to cite any authority for the proposition that a court may excuse a failure to comply with the statute of limitations because the delay in filing is attributable to counsel. Plaintiff's failure to identify any such authority is likely a function of the fact that this proposition is contrary to well established Pennsylvania law. See e.g., Hunsicker v. Connor, 465

A.2d 24, 27 (Pa. Super. 1983); Farinacci v. Beaver County Industrial Devel. Auth., 510 Pa. 589, 511 A.2d 757 (Pa. 1986). Pennsylvania appellate courts have consistently recognized that the statute of limitations defense is "not technical but 'substantial and meritorious . . . (such statutes) are vital to the welfare of society and are favored in the law.'" Hunsicker, 465 A.2d at 27 (quoting Insurance Co. of North America v. Carnahan, 446 Pa. 48, 51, 284 A.2d 728, 729 (1971)). A statute of limitations is not tolled by misunderstanding, lack of knowledge or mistake, nor can the statute be tolled because a party relies on counsel who fails to take proper steps to preserve an action. Id. In Hunsicker, the Court applied these rules to flatly reject a plaintiff's argument that his delay in filing a medical malpractice claim alleging the total loss of vision in one eye should be excused because of his attorney's manic-depressive condition. See id. The Hunsicker Court stated:

Although "we shall surely do equity whenever possible, . . . we may not act in derogation of the express limitations enacted by our Legislature." . . . Even if non-negligent, we do not find counsel's failure or inability to pursue a plaintiff's cause of action a sufficient reason to penalize a defendant and ignore the express mandate of the Legislature.

Id. (emphasis added). The Hunsicker Court affirmed summary judgment in the defendant's favor based on the statute of limitations, despite the plaintiff's claim that the delay was due to his attorney's mental illness.

The cases cited by Plaintiff, dealing with whether delay is excusable in the context of a petition to open judgment of non pros and/or default, are entirely distinguishable and not at all relevant to the issue presently before the court. The issue in those cases involved the court's exercise of its equitable powers to determine whether a party's delay in taking action was excusable under the circumstances. In contrast, when addressing statute of limitations issues,

equitable powers are not involved, and a court does not have discretion to act in derogation of the statute of limitations by excusing delay. Rather, the court is bound to apply the statute of limitations as enacted by the legislature. See Hunsicker, supra. Similarly, the purported absence of prejudice to a defendant is absolutely irrelevant in determining whether a plaintiff's claim is barred by the statute of limitations. See Watts v. Owens-Corning Fiberglas Corp., 353 Pa. Super. 267, 272-273, 509 A.2d 1268, 1271 (1986) ("A lack of prejudice to a defendant does not excuse a plaintiff's failure to comply with the requirements of the applicable statute of limitations"), appeal denied, 514 Pa. 632, 522 A.2d 559 (1987).

Finally, even assuming, without conceding, that the Court could properly consider the factors urged by Plaintiff herein, the record in this case does not support a finding that Plaintiff justifiably relied on former counsel to preserve his claims. The record is absolutely silent as to any activities by Plaintiff or his counsel after the writ was filed on October 17, 2001. Thus, although Plaintiff's brief urges this Court to consider his ostensible "belief that his attorney was diligently pursuing the case," Plaintiff has not proffered any testimony, evidence, or even sworn averments, to explain how it could be reasonable to harbor such a belief for a period of more than 2 and ½ years with no activity whatsoever. Thus, not only is Plaintiff's ostensible belief irrelevant under controlling legal authority, but his assertion of the same rings hollow in light of the extraordinary delay involved.

In sum, there is no dispute that Plaintiff in this case filed his action well after the statute of limitations expired. Although Plaintiff offers the unsubstantiated excuse that he believed counsel was diligently pursuing his case, Pennsylvania law does not permit plaintiffs to avoid the legislative mandates of the statute of limitations based on misplaced reliance on counsel.

Consequently, Plaintiff's claims in this action--filed more than 4 and 1/2 years after the accident at issue-- are clearly time-barred, and Defendant's motion for summary judgment based on the statute of limitations must be granted.

McQUAIDE, BLASKO, SCHWARTZ,
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Dated: September 17, 2004

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

JAMES BRINK,
Plaintiff

v.

BRIAN R. CRAWFORD,
Defendant.

No. 01-01728-CD

ORDER

AND NOW, this ____ day of September, 2004, on consideration of Defendant's Motion for Summary Judgment seeking dismissal of this action on the basis of the statute of limitations and Plaintiff's response thereto, it is hereby ORDERED that Defendant's Motion is GRANTED, and this case is hereby DISMISSED, with prejudice.

BY THE COURT:

J.

(A) 83304-1080
9-22-04-1030

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

JAMES BRINK, : No. 01-01728-C.D.
Plaintiff, : TYPE OF PLEADING:
BRIAN R. CRAWFORD, : DEFENDANT'S BRIEF IN SUPPORT
Defendant. : OF PRELIMINARY OBJECTIONS
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: DEFENDANT
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
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OFFICE

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or did I hear it
and is decision
pending?
?

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

JAMES BRINK,	:	
Plaintiff	:	
	:	No. 01-01728-CD
v.	:	
	:	
BRIAN R. CRAWFORD,	:	
Defendant.	:	

DEFENDANT'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

I. PROCEDURAL AND FACTUAL HISTORY

This action sounds in motor vehicle negligence, and arises from an accident that occurred on October 17, 1999. Plaintiff attempted to initiate the action via Writ of Summons filed on October 17, 2001. (See docket entries attached to Defendant's Preliminary Objections as Exhibit A). Plaintiff never served the Writ of Summons on Defendant or attempted to do so, nor did he ever seek reissuance of the Writ. See id.

More than two years after the aforementioned Writ was filed, on or about October 28, 2003, Defendant filed a praecipe for a rule to file complaint so that Defendant could then take appropriate steps to have the case properly dismissed of record. Although a rule to file complaint was issued in accordance with Defendant's praecipe, Defendant could not locate Plaintiff to serve the same. Consequently, Defendant filed a Motion for Alternate Service on March 30, 2004, seeking permission to make alternate service on Plaintiff so that steps could be taken to have the case dismissed from the docket. The rule to file complaint was subsequently served on Plaintiff. Plaintiff failed to file a timely Complaint, and Defendant filed a Notice of Intent to take

default on or about April 21, 2004. Plaintiff subsequently filed a Complaint on or about April 30, 2004.

Plaintiff forwarded his Complaint to counsel for Defendant herein via regular mail, and did not affect service of the Complaint on Defendant. Plaintiff's Complaint seeks damages for personal injuries allegedly incurred in a vehicle accident on October 17, 1999. Plaintiff's Complaint was filed more than 4 ½ years after the motor vehicle accident at issue and more than 2 ½ years since filing the original Writ of Summons. It bears repeating that Plaintiff had never served the original Writ of Summons filed in this case, and never sought reissuance of the Writ.

Plaintiff's Complaint alleges various theories of motor vehicle negligence. Among other theories, Plaintiff broadly avers that Defendant operated his vehicle "in a careless, dangerous and reckless manner under the circumstances." (Compl. ¶4(b)). Similarly, Plaintiff alleges that Defendant was negligent in "violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles." (Id. at ¶4(h)).

Defendant filed Preliminary Objections on May 17, 2004 based on improper service, lack of in personam jurisdiction, a failure to serve the Writ and/or Complaint within the applicable statute of limitations, and a failure to plead with the specificity required in violation of Pennsylvania Rule of Civil Procedure 1019(a). While Defendant recognizes that normally the proper remedy would be for service to be stricken/set aside and for Plaintiff to be permitted an opportunity to make proper service, such a course of action will only serve to delay the inevitable dismissal of the instant matter because the record is clear that Plaintiff's action is time-barred as a matter of law. Therefore, Defendant respectfully requests in the first instance that Plaintiff's Complaint be dismissed. Alternatively, Defendant requests that the Writ filed more than 2 ½ years ago and never served be stricken from the record as a nullity, that service of the Complaint

be set aside and/or stricken, and that Plaintiff be required to affect proper service within 30 days or suffer dismissal.

Defendant files the within Brief in Support of his Preliminary Objections.

II. QUESTIONS PRESENTED

1. Whether service of process is defective and a Court lacks personal jurisdiction when a Plaintiff files a Writ of Summons but never attempts service, and more than two years later files a Complaint and attempts service by simply mailing a copy to Defendant's attorney.

(Suggested Answer in the Affirmative)

2. Whether dismissal of an action is a proper remedy where service is defective and personal jurisdiction over Defendant is lacking, and where allowing Plaintiff an opportunity to effect proper service would be futile because the statute of limitations has clearly expired on the face of the record.

(Suggested Answer in the Affirmative)

3. Whether paragraphs 4(b) and (h) of Plaintiff's Complaint must be stricken/set aside because Plaintiff fails to plead with the required specificity in violation of Pennsylvania Rule of Civil Procedure 1019 resulting in extreme prejudice to Defendant?

(Suggested Answer in the Affirmative)

III. ARGUMENT

A. Plaintiff's Complaint Should Be Stricken And Dismissed, With Prejudice, Because Plaintiff Never Served Defendant With Original Process And Because The Applicable Statute Of Limitations Has Clearly Expired. Alternatively, Service Must Be Set Aside And Plaintiff Ordered To Effect Proper Service On Defendant.

1. Plaintiff Failed To Serve Defendant With Original Process, Such That The Court Lacks Personal Jurisdiction Over Defendant.

Proper service of original process is a prerequisite to a court's jurisdiction over the person of a defendant. Collins v. Park, 423 Pa. Super 601, 621 A.2d 996, 997 (1993), appeal denied, 536 Pa. 618, 637 A.2d 278 (1993). Improper service is not a mere procedural defect that can be ignored when the defendant becomes aware that an action has been commenced against him. Frycklund v. Way, 410 Pa. Super 347, 599 A.2d 1332, 1334 (1991), appeal denied, 531 Pa. 654, 613 A.2d 560 (1992). Rather, Pennsylvania courts require strict adherence to the Pennsylvania Rules of Civil Procedure in determining whether proper service has been effected. See Collins, 423 Pa. Super at 604, 621 A.2d at 997. Original process must be promptly served in accordance with the rules of procedure, or must be reissued or reinstated. See Pa. R.C.P. 401(a)-(b). A plaintiff's failure to keep original process "alive" in this manner renders the filing a nullity. Cf., Mannetti v. Mannetti, 47 Pa. D&C2d 544 (Fulton Co., P.J. Macphail, 1969); see also Goodrich-Amram 2d §401(a):1 (2003).

The rules with respect to the manner of proper service are set forth in Pennsylvania Rules of Civil Procedure 400 through 430. In personal injury cases such as the case at bar, service of original process may only be made upon an individual in one of the following manners, by the sheriff:

- (1) by handing a copy to the defendant;
- (2) by handing a copy at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence;
- (3) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides; or
- (4) at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.

See Pa. R.C.P. 402(a).

In the case at bar, Plaintiff never even attempted to serve the Writ of Summons filed on October 17, 2001. Consequently, the Writ expired, and Plaintiff's failure to reissue it thereafter renders the Writ a nullity under the authorities discussed above.

To the extent Plaintiff contends that his untimely Complaint should be treated as alternative original process, Plaintiff has still failed to make appropriate service on Defendant because the applicable rules of procedure clearly do not permit service of original process by mailing a copy of the document to a litigant's attorney. See e.g., Pa. R.C.P. 400 and 402. Pennsylvania Rule of Civil Procedure 400 states in pertinent part that: "(a) Except as provided in subdivisions (b) and (c), original process shall be served within the Commonwealth only by the sheriff." (emphasis added). The Explanatory Comment is instructive on the committees' intent concerning the issue of proper service of original process. The Comment states in pertinent part:

When these amendments were published as Recommendation No. 69, the recommendation proposed to extend the right of service by competent adult and by mail to all actions whether within or outside the Commonwealth. These proposals, however, have not been adopted and are not a part of the present amendments, and the right of service by competent adult and by mail is restricted to those situations where it was previously permitted.

Explanatory Comment--1985 preceding Pa. R.C.P. 400 (emphasis added).

Moreover, regardless of the various manners in which service may be made upon an individual by a sheriff, Pennsylvania Rule of Civil Procedure 402 requires that service of original process be made "by handing" a copy to the individuals specified. See Pa. R.C.P. 402(a). Although service by hand delivery is not an absolute, service by mail is only appropriate when specifically authorized by the rules in particular circumstances - none of which apply to the instant matter. Furthermore, Rule 402(b) allows original process to be served upon a defendant's attorney only if the attorney is an agent duly authorized to receive process, having entered an appearance of record and returned an acceptance of service form certifying that the attorney is authorized to accept service on behalf of the defendant. The Rule states that "[i]n lieu of service under this rule, the defendant or his authorized agent may accept service of original process by filing a separate document which shall be substantially in the following form [acceptance of service form]." Pa. R.C.P. 402(b). No acceptance of service has been filed in the case at bar.

Instead of attempting service of his Writ of Summons, Plaintiff waited for many years and took no action whatsoever, after which he filed a Complaint attempting to raise claims against Defendant. Even then, Plaintiff did not attempt to properly serve the Complaint, but instead simply mailed it to counsel for Defendant. (See docket entries attached hereto as Exhibit A). Given that no acceptance of service form was filed in the instant matter, as well as the fact that none of the specific provisions permitting service by mail apply, there is no question that service is utterly defective in this case, and that the Court therefore lacks personal jurisdiction over Defendant.

With respect to the proper remedy for defective service, Defendant acknowledges that striking or setting aside service and permitting a plaintiff the opportunity to cure the defect is

generally the appropriate remedy. See Collins, supra. Under the particular facts of this case, however, where the face of the record clearly demonstrates that Plaintiff's action is time-barred, Defendant submits that dismissal would be the appropriate remedy, as further discussed in Section 2 of this Brief, below. Alternatively, Defendant respectfully requests that the Writ filed on October 17, 2001 be stricken, that service of the Complaint be stricken/set aside as requested in Counts I and II of Defendant's Preliminary Objections, and that Plaintiff be required to make proper service of original process within thirty days or suffer dismissal.

2. Plaintiff's Complaint Must Be Dismissed For Failure To Conform To Law Because Striking And/Or Setting Aside Same Would Be An Exercise In Futility When It Is Evident From The Face Of The Record That The Statute Of Limitations Has Long Since Run.

Plaintiff's personal injury action in this case is governed by a two year statute of limitations. See 42 Pa. C.S. §5524. Thus, if Plaintiff intended to pursue a claim, he was required to properly commence an action within two years of the accident at issue. Plaintiff's Complaint identifies an accident that occurred on October 17, 1999. Clearly his Complaint filed on April 30, 2004, more than 4 ½ years after the incident at issue, was not timely filed, and it is apparent from the face of the record that the instant case is time-barred.

Since Lamp v. Heyman, 469 Pa. 465, 478 366 A.2d 882 (1976), it has been well-established law that a plaintiff must make a "good faith" effort to serve original process in order to toll the statute of limitations. Notwithstanding that a determination of what constitutes a "good faith" effort to effectuate service is to be done on a case-by-case basis, it is the plaintiff's burden to show that his efforts were reasonable. Rosenberg v. Nicholson, 408 Pa. Super 502, 506-07, 597 A.2d 145, 147 (1991) (finding a lack of good faith where plaintiff twice attempted to serve defendant at an incorrect address, reasoning that simple neglect regarding service

requirements, though unintentional, was nevertheless unavailing). Where a plaintiff's conduct serves to "stall the legal machinery in its tracks which he has set in motion," the filing of a Writ or Complaint does not effectively commence an action. See, e.g., Beglin v. Stratton, 816 A.2d 370, 373 (Pa.Cmwlth. 2003).

Pennsylvania appellate court decisions firmly establish that there does not need to be any affirmative bad faith on the part of a plaintiff for an action to be time-barred for lack of service: simple neglect and/or mistake that works to delay a defendant's notice of the action may be sufficient. See id. at 509-10, 597 A.2d at 148; see also Cahill v. Schults, 434 Pa. Super 332, 339, 643 A.2d 121, 124 (1994) (finding inadvertent failure to attach payment of service fee, despite contemporaneous sending of complaint to insurer, evidenced a lack of good faith). "At a minimum, the good faith requirement in *Lamp v. Heyman, supra*, mandates compliance with the Pennsylvania Rules of Civil Procedure and, importantly, local practice." Feher by Feher v. Altman, 357 Pa. Super 50, 54, 515 A.2d 317, 319 (1986) (finding a lack of good faith where plaintiff's counsel did not actively attempt to thwart service of a writ, but also did not take any affirmative action to see that the writ was served: he failed to comply with local rules regarding prepayment to the sheriff and the need for instructions for same).

In this case, Plaintiff attempted to initiate the instant action via Writ of Summons filed on October 17, 2001. However, Plaintiff never served the Writ of Summons on Defendant or attempted to do so. Thirty days after issuance of the Writ, it expired for lack of service. See Pa. R.C.P. 401(a). Plaintiff thereafter failed to reissue the Writ at any time and failed to attempt service. Never having been served or reissued, the Writ of Summons initially filed expired and should be stricken from the record as a nullity. See Pannill v. Seahorne, 278 Pa.Super. 562, 420 A.2d 684 (Pa. Super. 1980); Mannetti, supra; Goodrich-Amram 2d §401(a):1 (2003).

Recent decisions demonstrate the continuing vitality of the Lamp doctrine. For example, in Salomoni v. Phillips, 64 D&C.4th 181 (Lehigh County, J. Black, 2003), the plaintiff's personal injury action was also instigated by the filing of a writ of summons. In Salomoni, the issue came before the court on the defendants' motion for summary judgment asserting that the plaintiff's claim was time-barred as a matter of law. The defendant argued that pursuant to Lamp, supra, the plaintiff's failure to take any action to serve the Writ of Summons prior to its thirty (30) day expiration resulted in the statute of limitations not being tolled. Although the plaintiff had subsequently filed a praecipe to reissue the Writ approximately three months later, service was not effected because of an incorrect payment of the pertinent fee. A full five months after the original Writ was filed, the defendants finally were served with a second reissued Writ.

When analyzing the plaintiff's need to make a "good faith" effort to serve the writ under the principles articulated in Lamp and its progeny, the court found the plaintiff's arguments to be entirely insufficient. In this regard, the court rejected the plaintiff's excuse that his delay was justified because he was awaiting the receipt of medical records that he needed in order to attempt a settlement of the case, and that the defendants were not prejudiced because he had sent a letter to the defendants' insurer notifying them of the lawsuit the very same day as when he had filed the original writ. The court noted that "a plaintiff cannot ignore the statute of limitations...to pursue an amicable settlement" and that "[n]otice of a claim or suit is not a substitute for the timely filing and service of original process." Id. at 185, 188.

Similarly, the Commonwealth Court has not hesitated to dismiss a plaintiff's cause of action for failure to timely comply with the Rules of Civil Procedure regarding service when the defendant raised the issue by preliminary objection. See McCreesh v. City of Philadelphia, 839 A.2d 1206 (Pa. Cmwlth. 2003) (finding that although a statute of limitations defense is typically

raised in a responsive pleading, the plaintiff had not objected to the issue being raised by way of preliminary objection). In McCreesh, one finds facts evidencing far more affirmative action by the plaintiff in seeking to effectuate service than the instant matter, yet the court found that the plaintiff still had not met his good faith burden. The plaintiff in McCreesh had sent the original writ by certified mail to the defendant within the thirty (30) days, as well as later hand delivered a reissued Writ some three (3) months later. The trial court had found that the foregoing sufficiently evidenced the plaintiff's good faith, thus overruling the defendant's preliminary objections. The Commonwealth Court reversed, finding that pursuant to Pennsylvania appellate case law the trial court erred in finding service by mail sufficient under the rules, and the matter was remanded with instructions to dismiss the plaintiff's complaint because it was filed after expiration of the statute of limitations. See id. at 1212-13.

In the case at bar, and despite the fact that this issue comes before this Court by way of Defendant's Preliminary Objections, this Court has the benefit of not only a sufficient record for a proper dismissal of Plaintiff's Complaint, but a record that so clearly evidences an absence of "good faith" that dismissal even at this juncture is entirely appropriate. This matter is governed by a two year statute of limitations, which expired on October 17, 2001. Although Plaintiff caused a Writ of Summons to be issued on October 17, 2001, the very last possible day to file an action under the applicable statute, Plaintiff then abandoned the Writ by failing to make any attempt at service over a period of more than two years. (See docket entries attached to Defendant's Preliminary Objections as Exhibit A). As discussed above, the original Writ is a nullity and did not toll the statute of limitations due to Plaintiff's failure to ever serve or even reissue the Writ.

Moreover, even if the Writ could be said, albeit erroneously, to have extended the statute of limitations for another two years under the Lamp doctrine, this period also expired prior to Plaintiff's subsequent and improperly served Complaint. (See docket entries attached to Defendant's Preliminary Objections as Exhibit A). Even if Plaintiff's Complaint could conceivably be treated as alternative original process under Pa. R.C.P. 401 (b)(5), the operative date would be the filing date of April 30, 2004, over four and one-half years after the accident at issue, and well after the statute of limitations expired. See Pa. R.C.P 401 (b)(5) and Beglin, supra.

In sum, no amount of "good faith" can overcome the fact that Plaintiff's action is time-barred as a matter of law. Plaintiff's Complaint, filed on April 30, 2004, more than 4 ½ years after the accident at issue, fails to conform with positive law with respect to the time for filing an action. This Court should not waste any further time and/or resources on this case because, over and above the defective manner of service, the Complaint was obviously filed well after even an extended statute of limitations period under Lamp had long since expired. Because the record on its face shows an absolute failure to commence this action within the applicable limitations period, it is clear that permitting Plaintiff the opportunity to make proper service at this point would be futile. Consequently, Defendant respectfully submits that dismissal for failure to properly commence an action within the applicable statute of limitations would be the appropriate remedy at this juncture.

B. Paragraphs 4(b) and (h) of Plaintiff's Complaint Must Be Stricken Because Plaintiff Fails To Plead With The Required Specificity in Violation of Pennsylvania Rule Of Civil Procedure 1019(a).

Plaintiff asserts claims of negligence against Defendant in subparagraphs 4(b) and 4(h) of his Complaint. However, these allegations are factually insufficient under the laws of this Commonwealth. Pennsylvania is a fact pleading jurisdiction. Pursuant to Pa. R.C.P. 1019(a), “the material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” Where a pleading fails to conform to this rule, Rule 1028(a)(3) provides that a party may file preliminary objections on the basis of insufficient specificity.

The purpose of the pleadings is to adequately define the issues and give notice to the opposing party of what the pleader intends to prove at trial so that the opposition may, in turn, prepare to meet such proof with its own evidence. Laursen v. General Hospital of Monroe County, 259 Pa. Super 150, 160, 393 A.2d 761, 766 (1978), rev'd on other grounds, 494 Pa. 238, 431 A.2d 237 (1981). Moreover, Pa. R.C.P. 1019(a) has been interpreted to require that the pleadings must formulate the issues by summarizing those facts essential to support each claim. Miketic v. Baron, 450 Pa. Super 91, 675 A.2d 324 (1996); Alpha Tau Omega Fraternity v. University of Pennsylvania, 318 Pa. Super 293, 464 A.2d 1349 (1983); Smith v. Brown, 283 Pa. Super 116, 423 A.2d 743 (1980).

Following the standards set forth in Rule 1019(a), the Pennsylvania Superior Court has held that: “Blind suspicions and unsupported accusations simply do not state a cause of action pursuant to any theory of tort recovery.” Feingold v. Hill, 360 Pa. Super. 539, 549, 521 A.2d 33, 38 (1987). In Feingold, the Court remarked, “[e]ven our present liberalized system of pleading requires that the material facts upon which a cause of action is premised be pled with sufficient specificity so as to set forth the prima facie elements of the tort or torts alleged.” Id. (emphasis supplied), citing Pa. R.C.P. 1019(a).

If a defendant fails to object to an allegation of negligence for its lack of specificity, and instead simply denies the allegation, the court will assume that the defendant sufficiently understood the allegation. Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983). In Connor, the Pennsylvania Supreme Court stated as follows:

If appellee did not know how it “otherwise fail[ed] to use due care and caution under the circumstances,” it could have filed a preliminary objection in the nature of a request for a more specific pleading, or it could have moved to strike that portion of the appellants’ complaint. [citations omitted]... In this case, however, appellee apparently understood this allegation... well enough to simply deny it in its answer. Thus, appellee cannot now claim that it was prejudiced by the late amplification of this allegation.

Id. at 311, 461 A.2d at 602 n.3 (emphasis supplied).

Hence, under Connor, while the statute of limitations may preclude a plaintiff from amending a complaint to set forth a new cause of action, a plaintiff will not be precluded from merely amplifying a generally worded allegation of negligence in the original complaint when no objection has been timely made. Therefore, a defendant will be severely prejudiced by failing to object to a vague or general allegation if the plaintiff later seeks to amend the complaint to amplify such an allegation.

The following subparagraphs within Plaintiff’s Complaint in the case at bar are vague, open-ended, and ambiguous, and violate Pa. R.C.P. 1019(a) and applicable case law:

- b. In operating the vehicle in a careless, dangerous and reckless manner under the circumstances;
- h. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances.

(See Compl. paragraph 4). The above quoted subparagraphs fail to point to any specific alleged conduct of Defendant, and constitute an improper attempt to permit Plaintiff to expand on his claims at a later time, without regard for the rules of pleading and the statute of limitations.

In subparagraph (b), Plaintiff avers that Defendant operated the vehicle “in a careless, dangerous and reckless manner under the circumstances.” This averment fails the standards of fact pleading. Plaintiffs are required to specify what sort of action should have been performed, or why the actions taken were improper. Certainly, the specific acts that allegedly constitute the negligence at issue are material facts to Plaintiff’s cause of action. Additionally, Plaintiff’s allegation of recklessness is a legal conclusion, completely devoid of supporting facts and is highly objectionable.

Similarly, Plaintiff fails to plead sufficient facts in support of his allegations of Defendant’s negligence in “violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles” at subparagraph (h). Plaintiff cannot implicitly reserve an unfettered right to unilaterally amend his pleading at some unspecified point in the future. Such a practice is improper and highly prejudicial to Defendant. Under the fact pleading requirements of this Commonwealth, the pleadings must conform to the rules, and the availability of discovery proceedings is not a justification to relax pleading standards. See, e.g., Cullins v. Farmers & Merchants Trust Company of Chambersburg, 8 D&C.3d 764, 770 (Franklin County, P.J. Eppinger, 1978) (“we have uniformly held that as long as fact pleading exists in Pennsylvania we will require that pleadings conform to the rules and do not see the availability of discovery proceedings as a reason to relax pleading standards.”) (emphasis supplied). Plaintiff in this case fails to plead sufficient facts showing the particular statutes and municipal ordinances implicated

by subparagraph 4(h), and he cannot be permitted to simply await the results of the discovery proceedings to fill in the blanks.

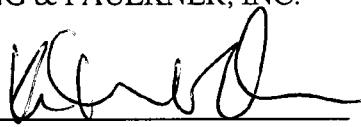
Based upon the foregoing, the allegations contained within Complaint paragraphs 4(b) and 4(h) fail to conform with Pa. R.C.P. 1019(a), which requires that the material facts on which a cause of action is based be stated in concise and summary form. The subparagraphs at issue are very similar to the language complained of in Connor, supra.¹ The deficiencies within Complaint paragraphs 4(b) and 4(h) are prejudicial to Defendant because he is unable to prepare a response and/or defense to these allegations. Therefore, Complaint paragraphs 4(b) and 4(h) should be stricken from Plaintiff's Complaint.

¹ The language at issue in Connor alleged that defendant was negligent “[i]n otherwise failing to use due care and caution under the circumstances.” Connor, supra, at 310, 461 A.2d at 602.

IV. CONCLUSION

For the reasons discussed above, Defendant respectfully requests that Plaintiff's Complaint be dismissed, with prejudice, for failure to conform to law and because it is time-barred as a matter of law. Alternatively, Defendant requests that the expired Writ be stricken from the record, that service be set aside as requested in Counts I and II of Defendant's Preliminary Objections, and that Plaintiff be required to make proper service within thirty days so that the statute of limitations can be raised in defense thereafter. Defendant also respectfully requests that Complaint subparagraphs 4(b) and (h) be ordered stricken, with prejudice.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Frederick R. Battaglia
I.D. No. 91624
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Dated: June 4, 2004

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

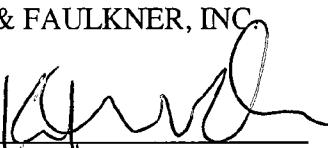
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS, in the above-captioned matter was served via U. S. 1st Class Mail, on this 4th day of June, 2004, to the party/attorney of record:

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____


Katherine V. Oliver

I.D. No. 77069

Frederick R. Battaglia

I.D. No. 91624

811 University Drive

State College, PA 16801

Attorneys for Defendant

Brian R. Crawford

(814) 238-4926

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

01-1728-C0

JAMES BRINK,

NO. 010-0728-CD

Plaintiff

v.

COMPLAINT IN CIVIL ACTION

BRIAN R. CRAWFORD,

Defendant.

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jonathan B. Mack, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

FILED

MAY 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

51-1728-40
NO. 010-0728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

NOTICE TO PLEAD

TO: BRIAN R. CRAWFORD, Defendant

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 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT REDUCED FEE OR NO FEE.

Clearfield County Court Administrator
2230 East Market Street
Clearfield, PA 16830
Telephone: (814) 765-2641

Respectfully submitted,

MARCUS & MACK, P.C.

By _____

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

51-1728-19
NO. 010-0728-CD

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

COMPLAINT

AND NOW, comes the Plaintiff, James Brink, by and through his attorneys, Jonathan B. Mack, Esquire, and Marcus & Mack, P.C., and files the following Complaint:

COUNT I - NEGLIGENCE

1. The Plaintiff is an adult individual who resides in Irvona, Clearfield County, Pennsylvania.
2. The Defendant is an adult individual who is believed to reside at Jackson Street, P.O. Box 226, Coalport, Clearfield County, Pennsylvania.
3. On or about October 17, 1999, Plaintiff was a passenger in a vehicle that was traveling southbound on State Route 3005 in Irvona Borough, Clearfield County, Pennsylvania. At the same time and place, Defendant's vehicle was parked along the east curb of State Route 3005 facing north, when suddenly and without warning the Defendant pulled out from the curb area and turned sharply to the left in an attempt to make a U-turn in order to travel southbound on State Route 3005. In doing so, Defendant pulled his vehicle directly into the path of Plaintiff's

vehicle causing a collision.

4. The aforesaid accident was caused by the negligence of the Defendant in general and in the following particulars:
 - a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;
 - b. In operating the vehicle in a careless, dangerous and reckless manner under the circumstances;
 - c. In failing to have the vehicle under proper control;
 - d. In continuing to operate the vehicle in a direction toward the Plaintiff's vehicle when the Defendant saw or in the exercise of reasonable care should have seen that further operation in that direction would result in a collision;
 - e. In failing to pay proper attention and failing to maintain an appropriate lookout of the road and surrounding traffic conditions;
 - f. In failing to sound a horn or give other warning of the approach of the vehicle;
 - g. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid the collision;
 - h. In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances;
 - i. In crossing over the roadway into oncoming traffic;
 - j. In failing to stop before striking the front of Plaintiff's vehicle;
 - k. In failing to maintain a reasonable lookout for the presence of other motor vehicles on the road;
 - l. In failing to avoid hitting the Plaintiff's vehicle when the Defendant saw or should have seen that the Plaintiff's vehicle was on the road in full view of the Defendant;
 - m. In failing to drive around the Plaintiff's vehicle instead of colliding with it;

- n. In failing to take proper note of, and precautions for, the configuration of the roadway; and
- o. In failing to take measures to avoid the crash or lessen its severity;
- p. In violating 75 Pa. C. S. A §3332;
- q. In violating 75 Pa. C.S.A. §3333;
- r. In violating 75 Pa. C.S.A. §3309(1); and,
- s. In violating 75 Pa. C.S.A. §3334(a).

5. Plaintiff is covered by the Full Tort option under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. §1705.

6. As a result of the aforesaid accident, Plaintiff James Brink has suffered, among other things, the following injuries:

- a. Cervical strain with radicular symptoms on the left side;
- b. Abrasion of the left wrist;
- c. Sprain of the left wrist;
- d. Sprain/strain of the lumbar spine;
- e. Left upper extremity numbness;
- f. Left ulnar nerve entrapment;
- g. Left median nerve compression;
- h. Left sided carpal tunnel syndrome;
- i. Left lower extremity numbness;
- j. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the lumbar spine;
- k. Generalized trauma and injury to the nerves, muscles, tissues, ligaments &

tendons of the cervical spine;

1. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the left upper extremity; and,
- m. Generalized trauma and injury to the nerves, muscles, tissues, ligaments & tendons of the left lower extremity.

7. As a result of the aforesaid injuries, the Plaintiff James Brink has suffered the following damages:

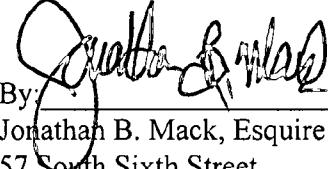
- a. He has incurred in the past, and will incur in the future, substantial medical expenses;
- b. He has suffered in the past, and will suffer in the future, substantial pain, suffering and inconvenience and the loss of certain of the ordinary pleasures of life;
- c. He has sustained in the past, and will sustain in the future, loss of earnings and/or earning capacity; and,
- d. He has sustained in the past, and will sustain in the future, other emotional, economic and physical harm.

WHEREFORE, the Plaintiff James Brink demands judgment against the Defendant in an amount in excess of the jurisdictional limits of a Board of Arbitrators of this Court.

JURY TRIAL DEMANDED.

Respectfully submitted,

MARCUS & MACK, P.C.

By: 

Jonathan B. Mack, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 38970

APR-29-04 THU 3:01 PM

FAX NO. 8149418737

P. 2

Apr-28-2004 01:38pm From-MARCUS & MACK PC

T-603 P.002/002 F-841

VERIFICATION

I, James Brink, verify that the averments of the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. A. §4904, relating to unsworn falsification to authorities.


James Brink

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,

OL-1728-CD
NO. ~~010-0728-CD~~

Plaintiff,

vs.

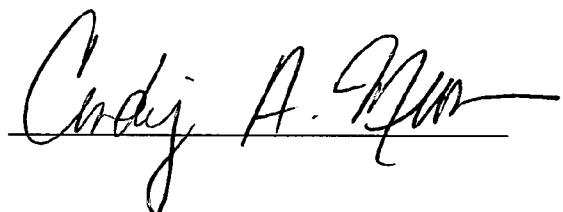
BRIAN R. CRAWFORD,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **COMPLAINT** was mailed, U.S. First Class mail, to the following this 30th day of April, 2004:

Chena L. Glenn-Hart
McQuaide Blasko
811 University Drive
State College, PA 16801-6699



4/1/04 Document
Reinstated/Reissued to Sheriff/Attorney
for service.
Will A. Shaw
Deputy Prothonotary

6-30-04 Document
Reinstated/Reissued to Sheriff/Attorney
for service.
Will A. Shaw
Deputy Prothonotary

FILED NO CC
MAY 10 2004
03 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,) NO. 01-1728-CD
)
 Plaintiff)
)
)
)
 v.)
)
)
)
 BRIAN R. CRAWFORD,)
)
)
)
 Defendant.)

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT BASED UPON EXPIRATION OF STATUTE OF
LIMITATIONS

AND NOW, come the Plaintiffs, by and through their attorneys, Jason E. Matzus, Esquire, and Marcus & Mack, P.C., and submit the following Brief in Opposition to Defendant's Motion for Summary Judgment:

I. FACTUAL BACKGROUND

This case arises out of an automobile accident that occurred on October 17, 1999. The Defendant was attempting to make a u-turn from the curb area on S.R. 3005 and pulled directly into the path of Plaintiff's vehicle. The Plaintiff primarily suffered from left-sided carpal tunnel syndrome consisting of ulnar and median nerve entrapment/compression.

On October 17, 2001, Plaintiff through his prior counsel Ronald E. Archer, Esquire, instituted this case by filing a Writ of Summons. Thereafter, there is no indication of record that Mr. Archer took any steps to properly and timely serve the Writ of Summons on Defendant nor have the Writ of Summons reissued. On October 27, 2003, Defendant filed a

Praecipe for Rule to File Complaint and said Rule was issued on October 28, 2003.

Thereafter, Defendant failed to effectuate timely service of the Rule to File Complaint and ultimately filed a Motion for Alternative Service on March 30, 2004. Thereafter, Defendant filed a Notice of Intent to Take Default Judgement on April 21, 2004 after which Plaintiff timely filed a Complaint, through successor counsel, on April 30, 2004.

II. ARGUMENT

Attorney neglect may provide a sufficient basis on which to justify a party's failure to effectuate service of process. *See Esslinger v. Sun Refining and Marketing Company*, 549 A.2d 600, 603 (Pa. Super. 1988). The *Esslinger* case dealt with a party seeking to open a judgment of *non pros*. In *Esslinger*, the case was commenced by Writ of Summons on April 1, 1985 seeking recovery for personal injuries sustained by the Plaintiff as a result of an explosion at the Tin Refinery on March 22, 1983. Thereafter, on August 29, 1985, Defendant served a Rule to File Complaint upon Plaintiff to file a Complaint within twenty (20) days or suffer judgment of *non pros*. Subsequently, on December 17, 1985 a Praecipe to enter Judgment of Non Pros was filed by Defendant. On March 5, 1987, approximately sixteen months after the Praecipe to Enter Judgment of Non Pros was filed, Plaintiff filed a petition to open or strike the Judgment of Non Pros. *Esslinger* at 602.

The trial court granted Plaintiff's petition to open, reasoning that the delay was excusable because Plaintiff relied on her counsel's representations that the lawsuit was being diligently pursued, that Plaintiff was not aware of the demand that a complaint be filed until well after she became aware of the entry of the Judgment of Non-Pros and that after she became aware of the real status of the case, Plaintiff retained new counsel who then filed an appropriate petition to open the judgment. *Esslinger* at 603. Additionally, the trial court concluded that the failure to file a complaint in the first instance was a result of Plaintiff's counsel's non-feasence. *Id.*

The Superior Court affirmed the trial court's decision. The Superior Court stated: While it is true that a litigant is generally bound by the actions or inactions of his/her counsel, a litigant placing his/her case in the hands of a reputable counsel should not be turned out of court if the delay complained of was almost entirely on account of the neglect or oversight of counsel. *Esslinger* at 603. The Superior Court went on to recognize that attorney neglect may provide a sufficient basis upon which to justify a party's failure to comply with the rules concerning responding to process. The Court stated: Attorney neglect may provide a sufficient basis on which to justify a party's failure to respond to process, particularly where there have been no negotiations or attempts by the opposing party to draw the attention of counsel to the case. *Id.* In fact, the *Esslinger* court recognized that, with respect to opening judgments of *non-pros*, prevailing Pennsylvania law supports opening such judgments when the default is the result of oversight or mistake by a party's counsel. *Esslinger* at 603, citing *White v. Alison*, 331 A.2d 765 (Pa. Super. 1974); and *Versak v. Washington*, 519 A.2d 438 (Pa. Super. 1986).

Admittedly, those cases all dealt with the opening of a judgment of *non-pros*. However, the rationale underlying those decisions is equally applicable to the instant matter. In this situation, the failure to effectuate timely service was entirely Plaintiff's prior counsel's fault. Plaintiff was under the belief that his attorney was diligently pursuing the case. Only after retaining new counsel on April 15, 2004 did Plaintiff become aware of the true status of his case. Thereafter, as previously indicated, Plaintiff's Complaint was timely filed on April 30, 2004.

Thus, since the delay in prosecuting this case is not attributable to the Plaintiff, but Plaintiff's prior counsel, such delay should be excused and Plaintiff's case should not be dismissed. Such a decision is consistent with Pennsylvania law in the context of opening judgments for *non pros*. Moreover, aside from the time delay itself, Defendant is not prejudiced in any manner by allowing the case to continue.

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

JAMES BRINK,
Plaintiff
vs.
BRIAN R. CRAWFORD,
Defendant

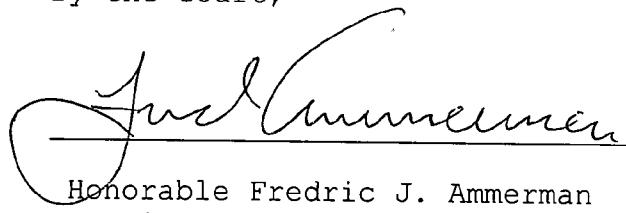
*
*
*
* No. 2001-1728-C.D.
*
*

O R D E R

NOW, this 4th day of October, 2004, the Court being satisfied that the applicable statute of limitations has expired, it is the ORDER of this Court that the Defendant's Motion for Summary Judgment be and is hereby granted. The above captioned case is hereby dismissed.

Opinion to be filed in the event of an appeal.

By the Court,


Honorable Fredric J. Ammerman
President Judge

FILED

o 2:48 PM 2 CC atty Oliver
1 CC atty Mack

OCT 05 2004

William A. Shaw
Prothonotary

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: :
BRIAN R. CRAWFORD, :
Defendant. :
:

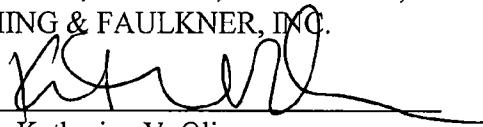
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copies of the **JOINT STIPULATION OF PARTIES TO TREAT PRELIMINARY OBJECTIONS IN NATURE OF MOTION TO DISMISS BASED ON STATUTE OF LIMITATIONS AS MOTION FOR SUMMARY JUDGMENT and STIPULATION OF FACTS AND PROCEDURAL HISTORY** in the

above-captioned matter was served via U. S. 1st Class Mail, on this 16th day of September, 2004, to the party/attorney of record:

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

FILED
M 11/12 BIR NOCC

SEP 17 2004

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

BRINK, JAMES

VS.

CRAWFORD, BRIAN R.

COMPLAINT

Sheriff Docket # 15627

01-1728-CD

SHERIFF RETURNS

NOW JULY 28, 2004 AT 6:50 PM SERVED THE WITHIN COMPLAINT ON BRIAN R. CRAWFORD, DEFENDANT AT RESIDENCE, 1466 UNION ST., (ROSEBUD), COALPORT, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BRIAN CRAWFORD A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING.

Return Costs

Cost	Description
91.00	SHERIFF HAWKINS PAID BY: <i>City</i>
10.00	SURCHARGE PAID BY: <i>City</i>

Sworn to Before Me This

12th Day Of Aug. 2004
Tull

So Answers,

Chester Hawkins
by Marilyn Hager
Chester A. Hawkins
Sheriff

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

FILED

AUG 12 2004 *ES*
078-306
William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK,

: No. 01-01728-C.D.

Plaintiff,

: TYPE OF PLEADING:
: STIPULATION OF FACTS AND
: PROCEDURAL HISTORY

v.

BRIAN R. CRAWFORD,

Defendant.

: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: PLAINTIFF and DEFENDANT JOINTLY

: COUNSEL OF RECORD FOR
: FOR THIS PARTY:

: KATHERINE V. OLIVER, ESQ.

: I.D. NO. 77069

: CHENA L. GLENN-HART, ESQ.

: I.D. NO. 82750

: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.

: 811 University Drive

: State College, PA 16801

: PH# (814) 238-4926

: FAX# (814) 238-9624

: ATTORNEYS FOR DEFENDANT
: BRIAN R. CRAWFORD

: JASON MATZUS, ESQUIRE

: I.D. NO. 38970

: MARCUS & MACK, P.C.

: 57 South 6th Street

: P.O. Box 1107

: Indiana, PA 15701

: PH# (724) 349-5602

: ATTORNEY FOR PLAINTIFF

: JAMES BRINK

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
BRIAN R. CRAWFORD, :
Defendant. :
:

JOINT STIPUALTION OF FACTS AND PROCEDURAL HISTORY

1. This personal injury action sounds in motor vehicle negligence, and arises from an accident that occurred on October 17, 1999.
2. Plaintiff attempted to initiate this action via Writ of Summons filed on or about October 17, 2001. (See docket entries attached hereto as Exhibit A).
3. Plaintiff never served the Writ of Summons on Defendant or attempted to do so, and never sought reissuance of the Writ. See id.
4. More than two years after the Writ was filed, on or about October 28, 2003, Defendant filed a Praeclipe for a Rule to File Complaint so that Defendant could then take appropriate steps to have the case properly dismissed of record.
5. Although a Rule to File Complaint was issued in accordance with Defendant's Praeclipe, Defendant could not locate Plaintiff to serve the same.

6. Consequently, Defendant filed a Motion for Alternate Service on March 30, 2004, seeking permission to make alternate service on Plaintiff so that steps could be taken to have the case dismissed from the docket.

7. The Rule was subsequently served on Plaintiff, and Plaintiff failed to file a timely Complaint

8. Defendant filed a Notice of Intent to take default on or about April 21, 2004, after which Plaintiff filed a Complaint.

9. On or about May 3, 2004, more than 4 ½ years after the motor vehicle accident at issue, and more than 2 ½ years since filing the original Writ of Summons (which had never been reissued), Plaintiff filed a Complaint.

10. Plaintiff subsequently forwarded the Complaint filed more than four years after the accident at issue to counsel for Defendant herein via regular mail.

11. Defendant filed Preliminary Objections on May 18, 2004, raising Plaintiff's failure to properly effect service and the related jurisdictional issues and seeking that service be stricken, and also, (in Count III), raising the statute of limitations and seeking dismissal of the case in its entirety on the basis that the case was clearly untimely filed on the face of the record.

12. Defendant filed a brief in support of preliminary objections, and the matter was scheduled for argument thereafter. Argument was rescheduled by the Court for August 23, 2004.

13. Plaintiff thereafter sought reissuance and/or reinstatement of the Complaint, which was ultimately served on Defendant by the Sheriff on July 28, 2004.

14. Defendant subsequently filed an Answer with New Matter to Plaintiff's Complaint. Among other defenses, Defendant raised the statute of limitations in defense of Plaintiff's claims.

15. Counsel for the parties thereafter discussed the posture of the case, and agreed that the statute of limitations issue raised in Defendant's preliminary objections should be addressed as early as possible by the Court due to the case dispositive nature of the issue.

16. An agreement was reached whereby, assuming the Court's approval, Plaintiff's counsel would have additional time to investigate whether any facts pertinent to the statute of limitations issue existed, and that after such time expired, the parties would request that the statute of limitations issue previously raised by Defendant in preliminary objections be treated as a summary judgment motion, and addressed by the Court as such.

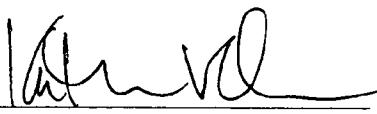
17. The parties believe that proceeding in the manner outlined above will serve the interests of both parties, as well as the Court's interest in judicial efficiency and economy, in that the Court will have the opportunity to rule on a potentially case dispositive issue before any further time and resources are spent on litigation of the case.

18. The time Plaintiff requested for further investigation has expired, and Plaintiff has no additional facts to offer in opposition to summary judgment, and does not believe that further discovery efforts will uncover any such facts.

19. Consequently, and in accordance with their agreement, the parties hereby submit this Joint Stipulation of Facts and Procedural Background, along with a joint request that the statute of limitations issue raised by way of Defendant's preliminary objections be addressed by the Court as a motion for summary judgment on the issue, and that the Court rule on the legal issue raised by the motion.

JOINTLY SUBMITTED BY:

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

MARCUS & MACK, P.C.

By: 

Jason Matzus, Esquire
I.D. No. 38970
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
Attorney for Plaintiff
James Brink
(724) 349-5602

Dated: September 16, 2004

Date: 08/18/2004

Time: 01:20 PM

Page 1 of 2

CLEARFIELD COUNTY COURT OF COMMON PLEAS

User: BHUDSON

ROA Report

Case: 2001-01728-CD

Current Judge: Fredric Joseph Ammerman

James Brink vs. Brian R. Crawford

Civil Other

Date	Judge
10/17/2001	Filing: Writ of Summons Paid by: Archer, Ronald E., Esq Receipt number: 1832974 Dated: 10/17/2001 Amount: \$80.00 (Check) Two CC Attorney
10/28/2003	Praeclipe for a Rule to File A Complaint filed by Atty. Oliver. 1 Rule issued to Atty.
01/22/2004	Certificate of Service, Rule to File Complaint upon James Brink, Pro Se Plaintiff and Ronald E. Archer filed by, s/Katherine V. Oliver, Esq. no cc
03/31/2004	Defendant's Motion For Alternative Service. filed by, s/Chena L. Glenn-Hart, Esquire Verification s/Chena Glenn-Hart Certificate of Service 1 cc Atty Hart
04/01/2004	ORDER, AND NOW, this 1st day of April, 2004, re: Defendant's Motion for Fredric Joseph Ammerman Alternative Service is GRANTED. Defendant shall serve the Rule to File Complaint and any subsequent pleadings in this matter to Plaintiff in the following manner, Plaintiff James Brink shall be served by publication. Publication shall be one time in The Progress and one time in the Legal Journal. by the Court, s/FJA, P.J. 4 cc Atty Hart
04/02/2004	Certificate of Service of Rule filed by Atty. Oliver. No cc.
04/06/2004	Certificate of Service, Court's Order upon James Brink. filed by, s/Chena L. Glenn-Hart, Esquire no cc
04/22/2004	Certificate of Service, Notice of Intent upon James Brink. s/Chena L. Glenn-Hart, Esquire no cc
05/03/2004	Complaint In Civil Action. filed by, s/Jonathan B. Mack, Esquire Verification s/James Brink Certificate of Service no cc
05/05/2004	Verification s/James Brink no cc
05/18/2004	Defendant's Preliminary Objections To Plaintiff's Complaint. filed by, s/Katherine V. Oliver, Esquire Certificate of Service no cc
06/03/2004	Now, June 2, 2004, return the within Complaint "NOT SERVED, TIME EXPIRED" as to Brian R. Crawford, Defendant. Not enough to serve, evening service. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
06/04/2004	Filing: Reissue Writ/Complaint Paid by: Mack, Jonathan B. (attorney for Brink, James) Receipt number: 1880333 Dated: 06/04/2004 Amount: \$7.00 (Check)
	Praeclipe To Reinstate Complaint. filed by, s/Jonathan B. Mack, Esquire 1 Reinstate To Sheriff
06/07/2004	Praeclipe to List for Argument, filed by s/Katherine V. Oliver No CC
06/29/2004	Rule to Show Cause, AND NOW, this 28th day of June, 2004, Plaintiff requested to show cause why Defendant's Preliminary Objections should not be granted. Rule returnable the 23 day of July, 2004, at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Four CC with service memo to Attorney Oliver
06/30/2004	Filing: Praeclipe to Reinstate Complaint Paid by: Mack, Jonathan B. (attorney for Brink, James) Receipt number: 1881888 Dated: 06/30/2004 Amount: \$7.00 (Check) One CC to Attorney One Complaint Reinstate to Sheriff
07/02/2004	Certificate of Service, Rule to Show Cause dated June 28, 2004, and a copy of Defendant's Preliminary Objections, upon Jonathan B. Mack, Esq. and Clearfield Court Administrator, filed by s/Katherine V. Oliver No CC Sheriff Return, Return the Complaint "Not Served, Time Expired" as to Brian R. Crawford. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm \$10.00 Sheriff Hawkins paid by Attorney

Fredric Joseph Ammerman

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,) NO. 01-1728-CD
)
 Plaintiff)
)
)
 v.) PLAINTIFF'S BRIEF IN OPPOSITION
) TO DEFENDANT'S MOTION FOR
) SUMMARY JUDGMENT BASED UPON
 BRIAN R. CRAWFORD,) EXPIRATION OF STATUTE OF
 Defendant.) LIMITATIONS
)
)

FILED ON BEHALF OF PLAINTIFF

COUNSEL OF RECORD FOR THIS
PARTY:

Jason E. Matzus, Esquire
Sup. Ct. ID 38970
Marcus & Mack, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701

RECEIVED

SEP 17 2004

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,)	NO. 01-1728-CD
)	
Plaintiff)	
)	
)	
v.)	
)	
BRIAN R. CRAWFORD,)	
)	
Defendant.)	

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT BASED UPON EXPIRATION OF STATUTE OF
LIMITATIONS**

AND NOW, come the Plaintiffs, by and through their attorneys, Jason E. Matzus, Esquire, and Marcus & Mack, P.C., and submit the following Brief in Opposition to Defendant's Motion for Summary Judgment:

I. FACTUAL BACKGROUND

This case arises out of an automobile accident that occurred on October 17, 1999. The Defendant was attempting to make a u-turn from the curb area on S.R. 3005 and pulled directly into the path of Plaintiff's vehicle. The Plaintiff primarily suffered from left-sided carpal tunnel syndrome consisting of ulnar and median nerve entrapment/compression.

On October 17, 2001, Plaintiff through his prior counsel Ronald E. Archer, Esquire, instituted this case by filing a Writ of Summons. Thereafter, there is no indication of record that Mr. Archer took any steps to properly and timely serve the Writ of Summons on Defendant nor have the Writ of Summons reissued. On October 27, 2003, Defendant filed a

Praecipe for Rule to File Complaint and said Rule was issued on October 28, 2003. Thereafter, Defendant failed to effectuate timely service of the Rule to File Complaint and ultimately filed a Motion for Alternative Service on March 30, 2004. Thereafter, Defendant filed a Notice of Intent to Take Default Judgement on April 21, 2004 after which Plaintiff timely filed a Complaint, through successor counsel, on April 30, 2004.

II. ARGUMENT

Attorney neglect may provide a sufficient basis on which to justify a party's failure to effectuate service of process. *See Esslinger v. Sun Refining and Marketing Company*, 549 A.2d 600, 603 (Pa. Super. 1988). The *Esslinger* case dealt with a party seeking to open a judgment of *non pros*. In *Esslinger*, the case was commenced by Writ of Summons on April 1, 1985 seeking recovery for personal injuries sustained by the Plaintiff as a result of an explosion at the Tin Refinery on March 22, 1983. Thereafter, on August 29, 1985, Defendant served a Rule to File Complaint upon Plaintiff to file a Complaint within twenty (20) days or suffer judgment of *non pros*. Subsequently, on December 17, 1985 a Praecipe to enter Judgment of Non Pros was filed by Defendant. On March 5, 1987, approximately sixteen months after the Praecipe to Enter Judgment of Non Pros was filed, Plaintiff filed a petition to open or strike the Judgment of Non Pros. *Esslinger at 602.*

The trial court granted Plaintiff's petition to open, reasoning that the delay was excusable because Plaintiff relied on her counsel's representations that the lawsuit was being diligently pursued, that Plaintiff was not aware of the demand that a complaint be filed until well after she became aware of the entry of the Judgment of Non-Pros and that after she became aware of the real status of the case, Plaintiff retained new counsel who then filed an appropriate petition to open the judgment. *Esslinger at 603.* Additionally, the trial court concluded that the failure to file a complaint in the first instance was a result of Plaintiff's counsel's non-feasence. *Id.*

The Superior Court affirmed the trial court's decision. The Superior Court stated: While it is true that a litigant is generally bound by the actions or inactions of his/her counsel, a litigant placing his/her case in the hands of a reputable counsel should not be turned out of court if the delay complained of was almost entirely on account of the neglect or oversight of counsel. *Esslinger* at 603. The Superior Court went on to recognize that attorney neglect may provide a sufficient basis upon which to justify a party's failure to comply with the rules concerning responding to process. The Court stated: Attorney neglect may provide a sufficient basis on which to justify a party's failure to respond to process, particularly where there have been no negotiations or attempts by the opposing party to draw the attention of counsel to the case. *Id.* In fact, the *Esslinger* court recognized that, with respect to opening judgments of *non-pros*, prevailing Pennsylvania law supports opening such judgments when the default is the result of oversight or mistake by a party's counsel. *Esslinger* at 603, citing *White v. Alston* 331 A.2d 765 (Pa.Super.1974); and *Versak v. Washington*, 519 A.2d 438 (Pa. Super.1986).

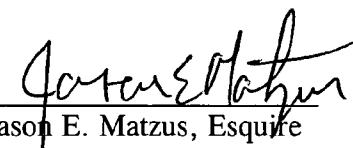
Admittedly, those cases all dealt with the opening of a judgment of *non-pros*. However, the rationale underlying those decisions is equally applicable to the instant matter. In this situation, the failure to effectuate timely service was entirely Plaintiff's prior counsel's fault. Plaintiff was under the belief that his attorney was diligently pursuing the case. Only after retaining new counsel on April 15, 2004 did Plaintiff became aware of the true status of his case. Thereafter, as previously indicated, Plaintiff's Complaint was timely filed on April 30, 2004.

Thus, since the delay in prosecuting this case is not attributable to the Plaintiff, but Plaintiff's prior counsel, such delay should be excused and Plaintiff's case should not be dismissed. Such a decision is consistent with Pennsylvania law in the context of opening judgments for *non pros*. Moreover, aside from the time delay itself, Defendant is not prejudiced in any manner by allowing the case to continue.

In conclusion, for the reasons stated above, Plaintiff respectfully requests that this court issue an Order denying Defendant's Motion for Summary Judgment in the instant matter.

Respectively submitted,

MARCUS & MACK, P.C.

By: 

Jason E. Matzus, Esquire
57 South Sixth Street
P.O. Box 1107
Indiana, PA 15701
Telephone: 724-349-5602
Sup. Ct. ID 76229

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,) NO. 01-1728-CD
)
 Plaintiff)
)
)
 v.)
)
)
 BRIAN R. CRAWFORD,)
)
)
 Defendant.)

ORDER OF COURT

AND NOW, on this _____ day of September, 2004, Defendant's Motion
for Summary Judgment Based Upon the Expiration of the Statute of Limitations is hereby
DENIED.

Judge Fredric J. Ammerman

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES BRINK,) NO. 01-1728-CD
)
 Plaintiff)
)
)
)
 v.)
)
)
)
)
 BRIAN R. CRAWFORD,)
)
)
 Defendant.)
)

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFF'S BRIEF IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BASED
UPON EXPIRATION OF STATUTE OF LIMITATIONS** was mailed, U.S. First Class mail,
to the following this 16th day of September, 2004:

Katie Oliver, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

James Matzus

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

JAMES BRINK,

Plaintiff,

v.

BRIAN R. CRAWFORD,

Defendant.

: No. 01-01728-C.D.
:
: TYPE OF PLEADING:
: STIPULATION OF FACTS AND
: PROCEDURAL HISTORY
:
:
:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: PLAINTIFF and DEFENDANT JOINTLY
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX# (814) 238-9624
: ATTORNEYS FOR DEFENDANT
: BRIAN R. CRAWFORD
:
:
: JASON MATZUS, ESQUIRE
: I.D. NO. 38970
: MARCUS & MACK, P.C.
: 57 South 6th Street
: P.O. Box 1107
: Indiana, PA 15701
: PH# (724) 349-5602
: ATTORNEY FOR PLAINTIFF
: JAMES BRINK

FILED
M 11:12 PM NOCC

SEP 17 2004

William A. Shaw
Prothonotary

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

JOINT STIPUALTION OF FACTS AND PROCEDURAL HISTORY

1. This personal injury action sounds in motor vehicle negligence, and arises from an accident that occurred on October 17, 1999.

2. Plaintiff attempted to initiate this action via Writ of Summons filed on or about October 17, 2001. (See docket entries attached hereto as Exhibit A).

3. Plaintiff never served the Writ of Summons on Defendant or attempted to do so, and never sought reissuance of the Writ. See id.

4. More than two years after the Writ was filed, on or about October 28, 2003, Defendant filed a Praeclipe for a Rule to File Complaint so that Defendant could then take appropriate steps to have the case properly dismissed of record.

5. Although a Rule to File Complaint was issued in accordance with Defendant's Praeclipe, Defendant could not locate Plaintiff to serve the same.

6. Consequently, Defendant filed a Motion for Alternate Service on March 30, 2004, seeking permission to make alternate service on Plaintiff so that steps could be taken to have the case dismissed from the docket.

7. The Rule was subsequently served on Plaintiff, and Plaintiff failed to file a timely Complaint

8. Defendant filed a Notice of Intent to take default on or about April 21, 2004, after which Plaintiff filed a Complaint.

9. On or about May 3, 2004, more than 4 ½ years after the motor vehicle accident at issue, and more than 2 ½ years since filing the original Writ of Summons (which had never been reissued), Plaintiff filed a Complaint.

10. Plaintiff subsequently forwarded the Complaint filed more than four years after the accident at issue to counsel for Defendant herein via regular mail.

11. Defendant filed Preliminary Objections on May 18, 2004, raising Plaintiff's failure to properly effect service and the related jurisdictional issues and seeking that service be stricken, and also, (in Count III), raising the statute of limitations and seeking dismissal of the case in its entirety on the basis that the case was clearly untimely filed on the face of the record.

12. Defendant filed a brief in support of preliminary objections, and the matter was scheduled for argument thereafter. Argument was rescheduled by the Court for August 23, 2004.

13. Plaintiff thereafter sought reissuance and/or reinstatement of the Complaint, which was ultimately served on Defendant by the Sheriff on July 28, 2004.

14. Defendant subsequently filed an Answer with New Matter to Plaintiff's Complaint. Among other defenses, Defendant raised the statute of limitations in defense of Plaintiff's claims.

15. Counsel for the parties thereafter discussed the posture of the case, and agreed that the statute of limitations issue raised in Defendant's preliminary objections should be addressed as early as possible by the Court due to the case dispositive nature of the issue.

16. An agreement was reached whereby, assuming the Court's approval, Plaintiff's counsel would have additional time to investigate whether any facts pertinent to the statute of limitations issue existed, and that after such time expired, the parties would request that the statute of limitations issue previously raised by Defendant in preliminary objections be treated as a summary judgment motion, and addressed by the Court as such.

17. The parties believe that proceeding in the manner outlined above will serve the interests of both parties, as well as the Court's interest in judicial efficiency and economy, in that the Court will have the opportunity to rule on a potentially case dispositive issue before any further time and resources are spent on litigation of the case.

18. The time Plaintiff requested for further investigation has expired, and Plaintiff has no additional facts to offer in opposition to summary judgment, and does not believe that further discovery efforts will uncover any such facts.

19. Consequently, and in accordance with their agreement, the parties hereby submit this Joint Stipulation of Facts and Procedural Background, along with a joint request that the statute of limitations issue raised by way of Defendant's preliminary objections be addressed by the Court as a motion for summary judgment on the issue, and that the Court rule on the legal issue raised by the motion.

JOINTLY SUBMITTED BY:

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

MARCUS & MACK, P.C.

By: 

Jason Matzus, Esquire
I.D. No. 38970
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
Attorney for Plaintiff
James Brink
(724) 349-5602

Dated: September 16, 2004

Date: 08/18/2004

Time: 01:20 PM

Page 1 of 2

Clefield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2001-01728-CD

Current Judge: Fredric Joseph Ammerman

James Brink vs. Brian R. Crawford

Civil Other

Date	Judge
10/17/2001	Filing: Writ of Summons Paid by: Archer, Ronald E., Esq Receipt number: No 1832974 Dated: 10/17/2001 Amount: \$80.00 (Check) Two CC Attorney
10/28/2003	Praecipe for a Rule to File A Complaint filed by Atty. Oliver. 1 Rule issued to Atty.
01/22/2004	Certificate of Service, Rule to File Complaint upon James Brink, Pro Se Plaintiff and Ronald E. Archer filed by, s/Katherine V. Oliver, Esq. no cc
03/31/2004	Defendant's Motion For Alternative Service. filed by, s/Chena L. Glenn-Hart, Esquire Verification s/Chena Glenn-Hart Certificate of Service 1 cc Atty Hart
04/01/2004	ORDER, AND NOW, this 1st day of April, 2004, re: Defendant's Motion for Fredric Joseph Ammerman Alternative Service is GRANTED. Defendant shall serve the Rule to File Complaint and any subsequent pleadings in this matter to Plaintiff in the following manner, Plaintiff James Brink shall be served by publication. Publication shall be one time in The Progress and one time in the Legal Journal. by the Court, s/FJA, P.J. 4 cc Atty Hart
04/02/2004	Certificate of Service of Rule filed by Atty. Oliver. No cc.
04/06/2004	Certificate of Service, Court's Order upon James Brink. filed by, s/Chena L. Glenn-Hart, Esquire no cc
04/22/2004	Certificate of Service, Notice of Intent upon James Brink. s/Chena L. Glenn-Hart, Esquire no cc
05/03/2004	Complaint In Civil Action. filed by, s/Jonathan B. Mack, Esquire Verification s/James Brink Certificate of Service no cc
05/05/2004	Verification s/James Brink no cc
05/18/2004	Defendant's Preliminary Objections To Plaintiff's Complaint. filed by, s/Katherine V. Oliver, Esquire Certificate of Service no cc
06/03/2004	Now, June 2, 2004, return the within Complaint "NOT SERVED, TIME EXPIRED" as to Brian R. Crawford, Defendant. Not enough to serve, evening service. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
06/04/2004	Filing: Reissue Writ/Complaint Paid by: Mack, Jonathan B. (attorney for Brink, James) Receipt number: 1880333 Dated: 06/04/2004 Amount: \$7.00 (Check)
	Praecipe To Reinstate Complaint. filed by, s/Jonathan B. Mack, Esquire 1 Reinstated To Sheriff
06/07/2004	Praecipe to List for Argument, filed by s/Katherine V. Oliver No CC
06/29/2004	Rule to Show Cause, AND NOW, this 28th day of June, 2004, Plaintiff requested to show cause why Defendant's Preliminary Objections should not be granted. Rule returnable the 23 day of July, 2004, at 9:30 a.m. in Courtroom No. 1. BY THE COURT: /s/Fredric J. Ammerman, P.J. Four CC with service memo to Attorney Oliver
06/30/2004	Filing: Praecipe to Reinstate Complaint Paid by: Mack, Jonathan B. (attorney for Brink, James) Receipt number: 1881888 Dated: 06/30/2004 Amount: \$7.00 (Check) One CC to Attorney One Complaint Reinstated to Sheriff
07/02/2004	Certificate of Service, Rule to Show Cause dated June 28, 2004, and a copy of Defendant's Preliminary Objections, upon Jonathan B. Mack, Esq. and Clearfield Court Administrator, filed by s/Katherine V. Oliver No CC Sheriff Return, Return the Complaint "Not Served, Time Expired" as to Brian R. Crawford. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm \$10.00 Sheriff Hawkins paid by Attorney

Fredric Joseph Ammerman

EXHIBIT

A

PUBLIC-SEAL, N.J.

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

JAMES BRINK,

: No. 01-01728-C.D.

Plaintiff,

: TYPE OF PLEADING:

v.

BRIAN R. CRAWFORD,

Defendant

: JOINT STIPULATION OF PARTIES TO
TREAT PRELIMINARY OBJECTIONS
IN NATURE OF MOTION TO DISMISS
BASED ON STATUTE OF LIMITATIONS
AS MOTION FOR SUMMARY
JUDGMENT

: TYPE OF CASE: CIVIL
FILED ON BEHALF OF
PLAINTIFF and DEFENDANT JOINTLY

: COUNSEL OF RECORD FOR
FOR THIS PARTY:

: KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
CHENA L. GLENN-HART, ESQ.
I.D. NO. 82750
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926
FAX# (814) 238-9624
ATTORNEYS FOR DEFENDANT
BRIAN R. CRAWFORD

: JASON MATZUS, ESQUIRE
I.D. NO. 38970
MARCUS & MACK, P.C.
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
PH# (724) 349-5602
ATTORNEY FOR PLAINTIFF
JAMES BRINK

FILED
M 10/12/04 NO CL

SEP 17 2004

William A. Shaw
Prothonotary

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

JAMES BRINK,	:
Plaintiff	:
	: No. 01-01728-CD
v.	:
	:
BRIAN R. CRAWFORD,	:
Defendant.	:

**JOINT STIPULATION OF PARTIES TO TREAT PRELIMINARY OBJECTIONS IN
NATURE OF MOTION TO DISMISS BASED ON STATUTE OF LIMITATIONS AS
MOTION FOR SUMMARY JUDGMENT**

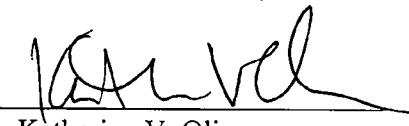
On even date herewith, the parties hereto filed a Joint Stipulation of Facts and Procedural History, setting forth procedural and factual background of this case as stipulated by the parties. As set forth in the aforementioned Joint Stipulation, the parties to this action agree that it would be in the best interests of both parties, as well as the interests of judicial economy, for the Court to issue a ruling, before any further efforts are undertaken in this litigation, regarding whether Plaintiff's claims herein are barred by the applicable statute of limitations. In light of the foregoing, the parties hereto, by and through their undersigned counsel, hereby stipulate and agree as follows:

1. Defendant's preliminary objection in the nature of a motion to dismiss for failure to conform to law filed on May 18, 2004, seeking dismissal of this case on the basis that Plaintiff's claims are barred by the statute of limitations, shall be treated as a motion for summary judgment, and the parties shall request that the Court treat the same as a properly filed motion for summary judgment that is ripe for disposition by the Court; and

2. The parties agree that this Joint Stipulation, along with the Joint Stipulation of Facts and Procedural History filed on even date herewith, shall be filed of record, and shall be presented to the Court with a request that both joint stipulations be approved, and that an order in the nature of that attached hereto as Exhibit A be entered of record.

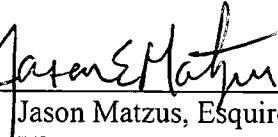
JOINTLY SUBMITTED BY:

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

MARCUS & MACK, P.C.

By: 

Jason Matzus, Esquire
I.D. No. 38970
57 South 6th Street
P.O. Box 1107
Indiana, PA 15701
Attorney for Plaintiff
James Brink
(724) 349-5602

Dated: September 16, 2004

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

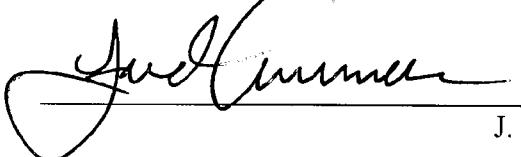
JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

ORDER

AND NOW, this 22 day of September, 2004, upon consideration of the Joint
Stipulation of Facts and Procedural History, and the Joint Stipulation of Parties To Treat
Preliminary Objections In Nature Of Motion To Dismiss Based On Statue Of Limitations As
Motion For Summary Judgment, the Court hereby approves both stipulations, and in accordance
therewith, hereby ORDERS as follows:

1. Defendant's preliminary objection in the nature of a motion to dismiss for failure to conform with law raising the statute of limitations in defense of Plaintiff's claims, filed on May 18, 2004, shall be treated as a properly filed motion for summary judgment, currently pending before the Court; and
2. Argument previously scheduled for September 22, 2004 at 10:30 a.m. regarding preliminary objections shall be conducted as argument on Defendant's motion for summary judgment seeking dismissal of this case based on the statute of limitations.

BY THE COURT:



J.

EXHIBIT "A"

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

JAMES BRINK,

Plaintiff,

vs.

BRIAN R. CRAWFORD,

Defendant.

: No. 01-01728-C.D.
:
: TYPE OF PLEADING:
: **DEFENDANT'S ANSWER WITH**
: **NEW MATTER TO PLAINTIFF'S**
: **COMPLAINT**
:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: **DEFENDANT**
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX# (814) 238-9624

FILED *no cc*
3/12/2004
AUG 19 2004 *WPS*

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

NOTICE TO PLEAD

TO: James Brink
c/o Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

YOU ARE HEREBY notified to file a written response to the enclosed
Answer and New Matter within twenty (20) days from the date of service hereof or a
judgment may be entered against you.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Katherine V. Oliver

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Dated: August 18, 2004

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

DEFENDANT'S ANSWER WITH
NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW, comes Defendant Brian R. Crawford, by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the following Answer with New Matter to Plaintiff's Complaint.

1. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 1. The same are therefore denied and strict proof thereof demanded.
2. Denied. More accurately stated, Defendant is an adult individual residing in Coalport, Clearfield County, Pennsylvania with a Post Office Box of 411.
3. Admitted in part and denied in part. On information and belief, it is admitted that on October 17, 1999, Plaintiff was a passenger in a vehicle that was traveling southbound on State Route 3005 in Irvona Borough, Clearfield County, Pennsylvania. The remainder of the averments of paragraph 3 are denied. By way of further response, a collision occurred on October 17, 1999 on State Route 3005 in Irvona Borough, Clearfield County, Pennsylvania when Defendant's vehicle was suddenly struck by a vehicle driven by Heather Brink as Defendant was in the process of making a

lawful left hand turn. It is denied that Defendant pulled his vehicle into the path of Plaintiff's vehicle, and all allegations of negligence on the part of Defendant are denied.

4. Denied. The allegations of paragraph 4 are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). By way of further response, please see paragraph 3, above.

5. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 5. The same are therefore denied and strict proof thereof demanded.

6. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 6. The same are therefore denied and strict proof thereof demanded.

7. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of Paragraph 7. The same are therefore denied and strict proof thereof demanded.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed with prejudice and costs of suit.

NEW MATTER

8. The averments of paragraphs 1-7 of this Answer with New Matter are incorporated herein by reference as though set forth in full.

9. Plaintiff did not attempt to serve Defendant with original process in this case until more than four years after the October 17, 1999 accident occurred.

10. The Writ of Summons originally filed by Plaintiff is a nullity, and did not effectively toll the statute of limitations.

11. Plaintiff's service of a Complaint on Defendant more than four years after the accident raised therein is a nullity.

12. This action is barred by the applicable statute of limitations.

13. Plaintiff's undue delay in attempting service and/or prosecution of this action has severely prejudiced Defendant.

14. The accident set forth in Plaintiff's Complaint was caused by the negligence of a third party not named in this action.

15. Defendant hereby raises and asserts all those defenses and/or limitations on damages available to him by reason of the terms and provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

16. To the extent Plaintiff was insured under a policy of insurance bearing the limited tort option, Plaintiff's claims are barred or reduced accordingly.

17. To the extent Plaintiff's medical expenses and wage loss, if any, have been paid or are payable under a policy of insurance, the same may not be plead, proven or recovered in the instant action.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed, with prejudice and costs of suit.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Dated: August 18, 2004

VERIFICATION

The undersigned verifies that he is authorized to make this Verification on his own behalf, and that the statements made in the foregoing Answer with New Matter are true and correct to the best of his knowledge, information and belief. The undersigned understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. § 4904, related to unsworn falsification to authority.

Brian R. Crawford
BRIAN R. CRAWFORD

Dated: 8-12-04

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

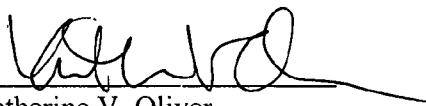
JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S ANSWER WITH**
NEW MATTER TO PLAINTIFF'S COMPLAINT, in the above-captioned matter was
served via U. S. 1st Class Mail, on this 18th day of August, 2004, to the party/attorney of
record:

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

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

JAMES BRINK,

: No. 01-01728-C.D.

Plaintiff,

: TYPE OF PLEADING:
**DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S
COMPLAINT**

v.

BRIAN R. CRAWFORD,

Defendant.

: TYPE OF CASE: CIVIL
FILED ON BEHALF OF
DEFENDANT

: COUNSEL OF RECORD FOR
FOR THIS PARTY:
KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
CHENA L. GLENN-HART, ESQ.
I.D. NO. 82750
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926
FAX#(814) 238-9624

FILED

MAY 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

AND NOW, comes Defendant, Brian R. Crawford, by and through his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc. and files the following Preliminary Objections to Plaintiff's Complaint:

PROCEDURAL BACKGROUND

1. This action sounds in motor vehicle negligence, and arises from an accident that occurred on October 17, 1999.
2. Plaintiff attempted to initiate the instant action via Writ of Summons filed on or about October 17, 2001. (See docket entries attached hereto as Exhibit A).
3. Plaintiff never served the Writ of Summons on Defendant or attempted to do so, and never sought reissuance of the Writ. See id.
4. More than two years after the Writ was filed, on or about October 28, 2003, Defendant filed a Praecept for a Rule to File Complaint so that Defendant could then take appropriate steps to have the case properly dismissed of record.

Complaint so that Defendant could then take appropriate steps to have the case properly dismissed of record.

5. Although a Rule to File Complaint was issued in accordance with Defendant's Praecept, Defendant could not locate Plaintiff to serve the same.

6. Consequently, Defendant filed a Motion for Alternate Service on March 30, 2004, seeking permission to make alternate service on Plaintiff so that steps could be taken to have the case dismissed from the docket.

7. The Rule was subsequently served on Plaintiff, and Plaintiff failed to file a timely Complaint

8. Defendant filed a Notice of Intent to take default on or about April 21, 2004, after which Plaintiff filed a Complaint.

COMPLAINT AND DEFECTIVE SERVICE

9. On or about April 30, 2004, Plaintiff filed a Complaint seeking damages for personal injuries allegedly incurred in a vehicle accident on October 17, 1999. Plaintiff's Complaint was filed more than 4 1/2 years after the motor vehicle accident at issue and more than 2 1/2 years since filing the original Writ of Summons.

10. Plaintiff never served the original Writ of Summons filed in this case, and never sought reissuance of the Writ.

11. Plaintiff forwarded the Complaint to counsel for Defendant herein via regular mail, and did not effect service of the Complaint on Defendant.

COUNT I
MOTION TO STRIKE/SET ASIDE WRIT AND COMPLAINT FOR IMPROPER
SERVICE

12. Defendant incorporates by reference his allegations set forth at paragraphs 1-11 as though set forth at length herein.

13. As noted above, Plaintiff never attempted to serve Defendant with the Writ of Summons in this case. Never having been served, the Writ of Summons initially filed became a nullity and should be stricken from the record. See Pannill v. Seahorne, 420 A.2d 684 (Pa. Super. 1980).

14. Instead of attempting service, Plaintiff waited for many years and took no action whatsoever, after which he filed a Complaint attempting to raise claims against Defendant.

15. Even then, Plaintiff did not attempt to properly serve the Complaint, but instead simply mailed it to counsel for Defendant. (See docket entries attached hereto as Exhibit A).

16. Pursuant to Pa. R.C.P. 400 and 402(a), service of original process in personal injury cases, such as the case at bar, may only be made upon an individual in one of the following manners, by the sheriff:

- (1) by handing a copy to the defendant;
- (2) by handing a copy at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence;
- (3) at the residence of the defendant to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which he resides; or
- (4) at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.

See Pa. R.C.P. 402(a).

17. Thus, to the extent Plaintiff contends that his untimely Complaint should be treated as alternative original process, Plaintiff has still failed to make appropriate service on Defendant because the applicable rules of procedure clearly do not permit service of original process by mailing a copy of the document to a litigant's attorney. See e.g., Pa. R.C.P. 402.

18. Based upon the foregoing, Plaintiff failed to properly serve original process on Defendant.

WHEREFORE, Defendant respectfully requests that the Writ originally filed in this action be stricken from the record as a nullity, that service of the Complaint be set aside/stricken, and that Plaintiff be given thirty (30) days within which to effectuate proper service or suffer dismissal of the case.

COUNT II
MOTION TO STRIKE/SET ASIDE BASED ON LACK OF
PERSONAL JURISDICTION

19. Defendant incorporates by reference his allegations set forth at paragraphs 1-18 as though set forth at length herein.

20. Under Pennsylvania law, proper service is a prerequisite to a Court's jurisdiction over the person of the defendant. See Collins v. Park, 621 A.2d 996, 997 (Pa. Super. 1993).

21. As set forth above, Plaintiff has never even made an attempt at service of original process in this case, let alone effected such service.

22. Accordingly, the Court lacks personal jurisdiction over Defendant.

WHEREFORE, Defendant respectfully requests that the Writ originally filed in this action be stricken from the record as a nullity, that service be set aside/stricken, and that Plaintiff be given thirty (30) days within which to effectuate proper service or suffer dismissal of the case.

COUNT III
MOTION TO DISMISS FOR FAILURE TO
CONFORM TO LAW

23. Defendant incorporates by reference his allegations set forth at paragraphs 1-22 as though set forth at length herein.

24. This matter is governed by a two year statute of limitations, which expired on October 17, 2001.

25. Although Plaintiff caused a Writ of Summons to be issued on October 17, 2001, the very last possible day to file an action under the applicable statute, Plaintiff then abandoned the Writ by failing to make any attempt at service over a period of more than two years.

26. Accordingly, the original Writ is a nullity, and did not toll the statute of limitations.

27. Plaintiff's Complaint, filed on April 30, 2004, more than 4 1/2 years after the accident at issue, fails to conform with positive law with respect to the time for filing an action.

28. It is clear that permitting Plaintiff the opportunity to make proper service at this point would be futile, and Defendant submits that dismissal for failure to file an action within the applicable statute of limitations would be the appropriate remedy in this case.

WHEREFORE, Defendant respectfully requests that Plaintiff's Complaint be dismissed, with prejudice, for failure to conform to law. Alternatively, Defendant requests that service be set aside as requested in Counts I and II, above, and that Plaintiff be required to make proper service so that the statute of limitations can be raised in defense thereafter.

COUNT IV
MOTION TO STRIKE PARAGRAPHS 4(b) and (h) FOR
FAILURE TO CONFORM TO PA. R.C.P. 1019

29. Defendant incorporates by reference his allegations set forth at paragraphs 1-28 as though set forth at length herein.

30. Plaintiff's Complaint sounds in negligence and arises from an automobile accident.

31. At Complaint paragraph 4, Plaintiff sets forth various allegations of negligence, including the following:

(b.) In operating the vehicle in a careless, dangerous and reckless manner under the circumstances;

(h.) In violating the various statutes and municipal ordinances pertaining to the operation of motor vehicles on public thoroughfares under the circumstances.

32. Pennsylvania Rule of Civil Procedure 1019(a) requires that a plaintiff set forth the material facts in support of a cause of action.

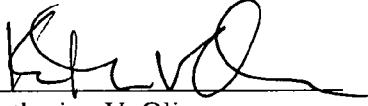
33. Certainly, the specific acts that allegedly constitute the negligence at issue are material facts to Plaintiff's cause of action in the case at bar.

34. The above quoted paragraphs fail to point to any specific alleged conduct of Defendant, and constitute an improper attempt to permit Plaintiff to expand on his claims at a later time, without regard for the rules of pleading and the statute of limitations.

35. The above-quoted paragraphs violate rule 1019, fail to conform to law, and should be stricken from Plaintiff's Complaint.

WHEREFORE, Defendant respectfully requests that Complaint paragraphs 4(b) and (h) be ordered stricken, with prejudice.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Dated: May 17, 2004

EXHIBIT “A”

Date: 05/07/2004

Time: 09:03 AM

Page 1 of 1

Cuyahoga County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2001-01728-CD

Current Judge: Fredric Joseph Ammerman

James Brink vs. Brian R. Crawford



Civil Other

Date	Judge
10/17/2001	Filing: Writ of Summons Paid by: Archer, Ronald E., Esq Receipt number: No 1832974 Dated: 10/17/2001 Amount: \$80.00 (Check) Two CC Attorney
10/28/2003	Praeclipe for a Rule to File A Complaint filed by Atty. Oliver. 1 Rule issued to Atty.
01/22/2004	Certificate of Service, Rule to File Complaint upon James Brink, Pro Se Plaintiff and Ronald E. Archer filed by, s/Katherine V. Oliver, Esq. no cc
03/31/2004	Defendant's Motion For Alternative Service. filed by, s/Chena L. Glenn-Hart, Esquire Verification s/Chena Glenn-Hart Certificate of Service 1 cc Atty Hart
04/01/2004	ORDER, AND NOW, this 1st day of April, 2004, re: Defendant's Motion for Fredric Joseph Ammerman Alternative Service is GRANTED. Defendant shall serve the Rule to File Complaint and any subsequent pleadings in this matter to Plaintiff in the following manner, Plaintiff James Brink shall be served by publication. Publication shall be one time in The Progress and one time in the Legal Journal. by the Court, s/FJA, P.J. 4 cc Atty Hart
04/02/2004	Certificate of Service of Rule filed by Atty. Oliver. No cc. Fredric Joseph Ammerman
04/06/2004	Certificate of Service, Court's Order upon James Brink. filed by, s/Chena L. Glenn-Hart, Esquire no cc Fredric Joseph Ammerman
04/22/2004	Certificate of Service, Notice of Intent upon James Brink. s/Chena L. Glenn-Hart, Esquire no cc Fredric Joseph Ammerman
05/03/2004	Complaint In Civil Action. filed by, s/Jonathan B. Mack, Esquire Verification s/James Brink Certificate of Service no cc Fredric Joseph Ammerman
05/05/2004	Verification s/James Brink no cc Fredric Joseph Ammerman

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

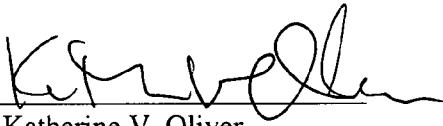
JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S COMPLAINT**, in the above-captioned matter was served via U. S. 1st Class Mail, on this 17th day of May, 2004, to the party/attorney of record:

Jonathan B. Mack, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver

I.D. No. 77069

Chena L. Glenn-Hart

I.D. No. 82750

811 University Drive
State College, PA 16801

Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

MARCUS & MACK

Attorneys at Law

A PROFESSIONAL CORPORATION

57 South 6th Street
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800-488-0338
724-349-5602
724-349-8362 (Fax)

The Grant Building
Suite 2220
310 Grant Street
Pittsburgh, PA 15219
412-391-3990
412-391-6673 (Fax)

September 16, 2004

Prothonotary
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

**RE: James Brink vs. Brian R. Crawford
Case No. 01-1728-CD**

Dear Sir or Madam:

Enclosed for filing please find an original and one copy of Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment Based Upon Expiration of Statute of Limitations in regard to the above-captioned action. Please file the original, time stamp the copy and return to me in the enclosed envelope.

Please do not hesitate to contact me should you have any questions or problems in this regard.

Very truly yours,

MARCUS & MACK, P.C.

By: Jason E. Matzus

RECEIVED
SEP 17 2004
COURT ADMINISTRATOR'S
OFFICE

JEM/kmw
Enclosures

Cc: Katie Oliver, Esquire
w/enclosures

MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926 FAX (814) 234-5620
www.mcquaideblasko.com

September 17, 2004

Honorable Judge Fredric J. Ammerman
Clearfield County Courthouse
231 East Market Street
Clearfield, PA 16830

Re: Brink v. Crawford, No. 01-0728-CD

Dear Judge Ammerman:

Enclosed please find Defendant's Reply Brief and proposed Order with regard to the above-captioned matter.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

McQUAIDE BLASKO

By:


Katherine V. Oliver

KVO/nlc
Enclosure

cc: Jason Matzus, Esquire, Attorney for James Brink

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko Thomas E. Schwartz R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slinak Mark Righter Daniel E. Bright Paul J. Tornzuk Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Pamela A. Ruest Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Ashley Himes Kranich Chenia L. Glenn-Hart Livinia N. Jones Cristin R. Barnes Matthew T. Rogers Frederick R. Battaglia Anthony A. Simon Russell A. Ventura

Hershey Office: Grant H. Fleming Maureen A. Gallagher Michael J. Mohr Jonathan B. Stepanian Britt D. Russell

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager

John G. Lowe (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

ORDER

AND NOW, this _____ day of September, 2004, on consideration of Defendant's Motion for Summary Judgment seeking dismissal of this action on the basis of the statute of limitations and Plaintiff's response thereto, it is hereby ORDERED that Defendant's Motion is GRANTED, and this case is hereby DISMISSED, with prejudice.

BY THE COURT:

J.

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

JAMES BRINK, : No. 01-01728-C.D.
Plaintiff, :
: TYPE OF PLEADING:
: DEFENDANT'S REPLY BRIEF
BRIAN R. CRAWFORD, :
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF
: DEFENDANT
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: CHENA L. GLENN-HART, ESQ.
: I.D. NO. 82750
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

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

JAMES BRINK, :
Plaintiff :
: No. 01-01728-CD
v. :
: BRIAN R. CRAWFORD, :
Defendant. :
:

DEFENDANT'S REPLY BRIEF

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The procedural history and factual background of this matter are set forth in detail in the Joint Stipulations of the parties filed on or about September 17, 2004. Pursuant to those Stipulations, and subject to the Court's approval, the statute of limitations issue initially raised by Defendant via preliminary objections is now before the Court as a summary judgment motion. Defendant filed his Brief in support of dismissal of this case on the basis of the statute of limitations, *inter alia*, on or about June 4, 2004.¹

Plaintiff filed a Brief in Opposition to Summary Judgment on or about September 17, 2004. Defendant files this Reply Brief, and also relies on his previously filed Brief in support of dismissal, incorporated herein by reference.

¹ The Brief was filed in support of the then pending preliminary objections. The section specifically dealing with the statute of limitations is at pages 8-12.

II. ARGUMENT

THERE IS NO DISPUTE THAT PLAINTIFF'S ACTION WAS NOT FILED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS, AND NEGLECT OF COUNSEL IS NOT A SUFFICIENT BASIS FOR AVOIDING THE LEGISLATIVE MANDATES OF THE STATUTE OF LIMITATIONS

In circumstances where a writ is filed but never served, the law places the burden on the plaintiff to show, via record evidence, that he made a good faith attempt to timely serve the writ. See Feher v. Altman, 357 Pa. Super. 50, 515 A.2d 317, 320 (Pa. Super. 1986). In the case at bar, both parties agree that *Plaintiff never took any action to serve the writ of summons originally filed in this case, and never took any steps to reissue the writ.* (See Joint Stipulation Facts and Procedural History, ¶¶ 1-4). Under such circumstances, the writ is clearly a nullity, and did not toll the statute of limitations. See Feher v. Altman, 357 Pa. Super. 50, 515 A.2d 317, 319-321 (Pa. Super. 1986); see also, authorities cited in Br. Supp of P.O.'s, filed on or about June 4, 2004, at pp 8-12.

Plaintiff's *Complaint* in this case, filed more than 4 and ½ years after the car accident at issue, was clearly not filed within the applicable two year statute of limitations. Plaintiff concedes as much, and takes the position that this delay of several years should be excused by the Court, because Plaintiff contends that the delay was solely the fault of his former counsel. (See Plaintiff's Br. Opp. Summ. Judgm., at 4). Plaintiff's argument in this regard is meritless and must be rejected.

Plaintiff fails to cite any authority for the proposition that a court may excuse a failure to comply with the statute of limitations because the delay in filing is attributable to counsel. Plaintiff's failure to identify any such authority is likely a function of the fact that this proposition is contrary to well established Pennsylvania law. See e.g., Hunsicker v. Connor, 465

A.2d 24, 27 (Pa. Super. 1983); Farinacci v. Beaver County Industrial Devel. Auth., 510 Pa. 589, 511 A.2d 757 (Pa. 1986). Pennsylvania appellate courts have consistently recognized that the statute of limitations defense is “not technical but ‘substantial and meritorious . . . [such statutes] are vital to the welfare of society and are favored in the law.’” Hunsicker, 465 A.2d at 27 (quoting Insurance Co. of North America v. Carnahan, 446 Pa. 48, 51, 284 A.2d 728, 729 (1971)). A statute of limitations is not tolled by misunderstanding, lack of knowledge or mistake, nor can the statute be tolled because a party relies on counsel who fails to take proper steps to preserve an action. Id. In Hunsicker, the Court applied these rules to flatly reject a plaintiff’s argument that his delay in filing a medical malpractice claim alleging the total loss of vision in one eye should be excused because of his attorney’s manic-depressive condition. See id. The Hunsicker Court stated:

Although “we shall surely do equity whenever possible, . . . we may not act in derogation of the express limitations enacted by our Legislature.” . . . Even if non-negligent, *we do not find counsel’s failure or inability to pursue a plaintiff’s cause of action a sufficient reason to penalize a defendant and ignore the express mandate of the Legislature.*

Id. (emphasis added). The Hunsicker Court affirmed summary judgment in the defendant’s favor based on the statute of limitations, despite the plaintiff’s claim that the delay was due to his attorney’s mental illness.

The cases cited by Plaintiff, dealing with whether delay is excusable in the context of a petition to open judgment of non pros and/or default, are entirely distinguishable and not at all relevant to the issue presently before the court. The issue in those cases involved the court’s exercise of its equitable powers to determine whether a party’s delay in taking action was excusable under the circumstances. In contrast, when addressing statute of limitations issues,

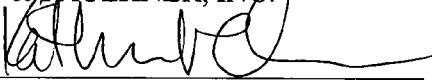
equitable powers are not involved, and a court does not have discretion to act in derogation of the statute of limitations by excusing delay. Rather, the court is bound to apply the statute of limitations as enacted by the legislature. See Hunsicker, supra. Similarly, the purported absence of prejudice to a defendant is absolutely irrelevant in determining whether a plaintiff's claim is barred by the statute of limitations. See Watts v. Owens-Corning Fiberglas Corp., 353 Pa. Super. 267, 272-273, 509 A.2d 1268, 1271 (1986) ("A lack of prejudice to a defendant does not excuse a plaintiff's failure to comply with the requirements of the applicable statute of limitations"), appeal denied, 514 Pa. 632, 522 A.2d 559 (1987).

Finally, even assuming, without conceding, that the Court *could* properly consider the factors urged by Plaintiff herein, the record in this case does not support a finding that Plaintiff justifiably relied on former counsel to preserve his claims. The record is absolutely silent as to any activities by Plaintiff or his counsel after the writ was filed on October 17, 2001. Thus, although Plaintiff's brief urges this Court to consider his ostensible "belief that his attorney was diligently pursuing the case," Plaintiff has not proffered any testimony, evidence, or even sworn averments, to explain how it could be reasonable to harbor such a belief for a period of more than 2 and ½ years with no activity whatsoever. Thus, not only is Plaintiff's ostensible belief irrelevant under controlling legal authority, but his assertion of the same rings hollow in light of the extraordinary delay involved.

In sum, there is no dispute that Plaintiff in this case filed his action well after the statute of limitations expired. Although Plaintiff offers the unsubstantiated excuse that he believed counsel was diligently pursuing his case, Pennsylvania law does not permit plaintiffs to avoid the legislative mandates of the statute of limitations based on misplaced reliance on counsel.

Consequently, Plaintiff's claims in this action--filed more than 4 and ½ years after the accident at issue-- are clearly time-barred, and Defendant's motion for summary judgment based on the statute of limitations must be granted.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
Attorneys for Defendant
Brian R. Crawford
(814) 238-4926

Dated: September 17, 2004

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

JAMES BRINK,

Plaintiff

v.

BRIAN R. CRAWFORD,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Reply Brief in the above-captioned matter was served via U. S. 1st Class Mail, on this 17th day of September, 2004, to the party/attorney of record:

Jason Matzus, Esquire
Marcus & Mack, P.C.
57 South 6th Street
P. O. Box 1107
Indiana, PA 15701

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
Chena L. Glenn-Hart
I.D. No. 82750
811 University Drive
State College, PA 16801
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Brian R. Crawford
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