

01-1853-CD
ONE BEACON INSURANCE etal -vs- ALAN D. CHRISTENSEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ONE BEACON INSURANCE,
formerly doing business as
CGU INSURANCE CO.,
as subrogee of Reed Brothers,

Plaintiff,

v.

ALAN D. CHRISTENSEN,

Defendant.

CIVIL DIVISION

01-1853-CD

Arb. No.

Code No.

**COMPLAINT IN
ARBITRATION**

Filed on Behalf of:
PLAINTIFF

Counsel of Record
For This Party:

Ernest Simon, Esquire
Pa. I.D. No. 23468

114 Smithfield Street
Pittsburgh, PA 15222

412-261-1000

FILED

NOV 08 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ONE BEACON INSURANCE,
formerly doing business as
CGU INSURANCE CO.,
as subrogee of Reed Brothers,

CIVIL DIVISION

Plaintiff,

Arb. No.

v.

HEARING DATE:

ALAN D. CHRISTENSEN,

Defendant.

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, Pennsylvania 16830
Telephone: 814-765-2641 Ext. 50-51

~~HEARING NOTICE~~

~~YOU HAVE BEEN SUED IN COURT. The above Notice to Defend explains what you must do to dispute the claims made against you. If you file the written response referred to in the Notice to Defend, a hearing before a board of arbitrators will take place in Room _____ of the Clearfield County Courthouse, Second & Market Streets, Clearfield, Pennsylvania, on _____, 2004 at 9:00 a.m.~~

IF YOU FAIL TO FILE THE RESPONSE DESCRIBED IN THE NOTICE TO DEFEND, A JUDGMENT FOR THE AMOUNT CLAIMED IN THE COMPLAINT MAY BE ENTERED AGAINST YOU BEFORE THE HEARING.

DUTY TO APPEAR AT ARBITRATION HEARING

If one or more of the parties is not present at the hearing, THE MATTER MAY BE HEARD **AT THE SAME TIME AND DATE** BEFORE A JUDGE OF THE COURT WITHOUT THE ABSENT PARTY OR PARTIES. THERE IS NO RIGHT TO A TRIAL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.

NOTICE

YOU MUST RESPOND TO THIS COMPLAINT WITHIN TWENTY (20) DAYS OR A JUDGMENT FOR THE AMOUNT CLAIMED MAY BE ENTERED AGAINST YOU **BEFORE** THE HEARING. IF ONE OR MORE OF THE PARTIES IS NOT PRESENT AT THE HEARING, THE MATTER MAY BE HEARD IMMEDIATELY BEFORE A JUDGE WITHOUT THE ABSENT PARTY OR PARTIES. **THERE IS NO RIGHT TO A TRIAL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ONE BEACON INSURANCE,
formerly doing business as
CGU INSURANCE CO.,
as subrogee of Reed Brothers,

CIVIL DIVISION

Plaintiff,

Arb. No.

v.

ALAN D. CHRISTENSEN,

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW, comes Plaintiff, One Beacon Insurance (hereinafter "Beacon"), formerly doing business as CGU Insurance Co., subrogee of Reed Brothers, by and through its counsel, Ernest Simon, Esquire, and files the following Complaint in Arbitration, and in support thereof avers as follows:

1. Plaintiff, Beacon, is a licensed insurance company doing business in Pennsylvania, with offices at One Oxford Center, 301 Grant Street, Suite 2500, Pittsburgh, Allegheny County, Pennsylvania 15230.
2. Defendant Alan D. Christensen is an individual whose last known address is RR 2, Box 400 B, Munson, Clearfield County, Pennsylvania 16860.
3. Plaintiff is the insurer for Reed Brothers, an entity conducting business at 801 South 4th Street, P.O. Box 305, Clearfield, Clearfield County, Pennsylvania 16830. Reed Brothers is a general contractor that is also engaged in the distribution of residential and commercial building supplies and the rental of tools and equipment.

4. On May 19, 2001, Christensen rented from Reed Brothers a tow-behind post hole digger. Attached hereto as Exhibit A is a copy of the Rental Agreement (hereinafter "Agreement") entered into by Christensen and Reed Brothers.

5. The Agreement provided, in pertinent part, that:

RENTAL BASIS. . . . It is hereby agreed that . . . the lessee will be responsible for the loss of said equipment by fire, theft or other causes; that the leased equipment shall be returned to the lessor at his above business address on the termination date of the agreed rental period in the same condition as received, except for ordinary wear and tear. . . ; that the lessee agrees to use said equipment entirely at his own risk, to be liable for any damage to persons or property resulting directly or indirectly from the use thereof and the lessee further agrees to protect and save harmless the lessor, its agents, servants and employees from any and all liability resulting from the operation or use of the above rented equipment.

COUNT I - BREACH OF CONTRACT

6. The averments contained in Paragraphs 1 through 5, above, are incorporated herein as if set forth fully at length.

7. On May 21, 2001, Christensen, after having initially transported and used the post hole digger without incident, intended to return the post hole digger to Reed Brothers as set forth in the Agreement between the parties.

8. As Christensen was towing the post hole digger back to Reed Brothers, he lost control of his vehicle and/or the tow and caused the post hole digger to flip over, resulting in serious and extensive damage to the digger.

9. As a result of Christensen's actions, the post hole digger was determined to be a total loss, solely having a salvage value of \$259.65.

10. As a result of his actions, Christensen failed to return the post hole digger to Reed Brothers in the same condition in which he received it, except for ordinary wear and tear.

11. By entering into the Agreement with Reed Brothers, Christensen agreed that he would be responsible for damage to or loss of the tow-behind post hole digger.

12. By entering into the Agreement with Reed Brothers, Christensen agreed to return the tow-behind post hole digger in the same condition as received, except for ordinary wear and tear.

13. Christensen breached the Agreement between the parties by failing to return the post hole digger in the same condition as received, except for ordinary wear and tear.

14. The replacement cost of the post hole digger is \$5,259.65 (replacement cost of \$4,495.00; tax of \$314.65; and freight of \$450.00), less the salvage value of \$259.65, or \$5,000.00. See Exhibit B attached hereto.

15. As a result of Christensen's actions and breach of the Agreement, Beacon was required to pay for the replacement of the post hole digger.

16. Beacon is entitled to be reimbursed by Christensen for the payments it has made to Reed Brothers for the loss of the post hole digger.

WHEREFORE, Plaintiff, One Beacon Insurance, as subrogee of Reed Brothers, respectfully requests this Honorable Court to enter judgment in its favor and against Defendant Alan D. Christensen, in the amount of \$5,000.00, together with interest, costs of suit and attorney's fees.

COUNT II – NEGLIGENCE

17. The averments contained in Paragraphs 1 through 16, above, are incorporated herein as if set forth fully at length.

18. Christensen had under his care, control, custody, maintenance, and supervision the post hole digger that was the property of Reed Brothers at the time of the accident.

19. The damage to the post hole digger occurred as a result of the reckless, careless, and negligent actions and/or inactions of Christensen.

20. The damages hereinafter set forth were caused by and were the direct and proximate result of the negligence, carelessness, and recklessness of Christensen, generally and in the following particulars:

- a. In causing damage to the post hole digger;
- b. In operating his vehicle and tow at an excessive rate of speed under the circumstances;
- c. In failing to have his vehicle and tow under proper control;
- d. In failing to check and confirm that the tow was properly and securely attached to his vehicle;
- e. In failing to have the brakes and braking mechanism on his vehicle in proper working order and/or failing to properly, promptly, and adequately operate the brakes and braking mechanism of the vehicle;
- f. In operating his vehicle and tow in such a reckless, careless, and negligent manner, so as to cause or allow the tow to flip over;
- g. In failing to properly, promptly, and adequately act or react, or otherwise take corrective measures so as to avoid damage to the post hole digger;
- h. In failing to proceed at an appropriate rate of speed or take other appropriate action so that the damage to the post hole digger would be avoided; and,

- i. In failing to use due care and in acting without due regard for the property of others.

21. As a proximate result of the recklessness, negligence, and carelessness of Christensen, the post hole digger sustained damages and was a total loss having solely a salvage value of \$259.65.

22. As a proximate result of the recklessness, negligence, and carelessness of Christensen, Reed Brothers sustained damages in the amount of \$5,000.00.

23. As a proximate result of the recklessness, negligence, and carelessness of Christensen, Beacon was required to make payment to Reed Brothers in the amount of \$5,000.00 to replace the post hole digger.

24. Beacon is entitled to be reimbursed by Christensen for the payment it has made to Reed Brothers for the loss of the post hole digger.

WHEREFORE, Plaintiff, One Beacon Insurance, as subrogee of Reed Brothers, respectfully requests this Honorable Court to enter judgment in its favor and against Defendant Alan D. Christensen, in the amount of \$5,000.00, together with interest, costs of suit and attorney's fees.

Respectfully submitted,



Ernest Simon, Esquire

Counsel for Plaintiff
One Beacon Insurance

114 Smithfield Street
Pittsburgh, PA 15222
412-261-1000

VERIFICATION

I verify that the statements made in the foregoing Complaint in Arbitration 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. Section 4904 relating to unsworn falsification to authorities.

ONE BEACON INSURANCE

Date: 9-19-01

By: Balti Maske

**Distributors of Residential &
Commercial Bldg. Supplies**
Wire Mesh, Re Rod
Concrete Curing Compound

NEED BROTHERS

GENERAL CONTRACTOR "SINCE 1949"
"Tool & Equipment Rental"
TWO CONVENIENT LOCATIONS

**We Are Also Builders of
Commercial American
Steel Buildings**

BILLING ADDRESS:

Need Brothers
801 S. 4th St. • P.O. Box 305
Clearfield, PA 16830
(814) 765-7866

HOURS:

Winter Hours: Daily 8 a.m. to 4:30 p.m. - Sat. 8 a.m. to Noon
Summer Hours: Daily 7:30 a.m. to 5 p.m. - Sat. 7:30 a.m. to 1 p.m.
Closed Sunday

BRANCH OFFICE:

Rt. 219 South
R.D. #1 - Box 107
DuBois, PA 15801
(814) 375-9269

- RENTAL AGREEMENT -

LESSOR'S NAME

ALAN D. Christensen

DATE

5-19-01

LESSOR'S ADDRESS

RR 2 BOX 400B

PHONE

345 5777

JOB ADDRESS

Munson Pa 16810

LICENSE

22768961

☐ CASH☐ CHECK☒ VISA☐ MASTERCARD☐ OTHER

DEPOSIT

106.00

EQUIPMENT RENTED	RENTAL STARTS			RENTAL BASIS	Rental Termination			RENTAL ENDS			RENTAL CHARGE
	Time	Day	Mo.		Time	Day	Mo.	Time	Day	Mo.	
1- Tow - Behind Post Hole Digger w/ 12" Auger (New Bits on Auger)	7:30	19	5	100 ⁰⁰	8:00	21	5				
- unleaded gas											
- Engine oil - 30W.											
ACCESSORIES	Items	Items	Items	AMOUNT	Equipment Rental Accessory Sold Tax Less Deposit Delivery & Pick Up Fuel TOTAL DUE						
	Rent'd	Used	Price								
4- Extra Wisdom teeth	4		5 ⁰⁰ ea								
2- " Pilot Bits	2		12.95 ea								
ITEMS LOANED - (No Charge if Returned)				Chg.							
Item	Item	Item	Item								
1- Extra Safety Chain (Bob's Truck)											

RENTAL BASIS: The agreed rental period - hour, day, week and or weekly and the rate applying to that period - are entered in column above. All rentals are figured from the time the tool leaves the store until it is returned. Minimum charges in any case is 4 Hour Rate. Day rates are for 8 hours to 24 hours; weekend rates are from 8:00 A.M. Saturday to 8:00 A.M. Monday. It is hereby agreed that the above listed equipment is rented from the lessor by the lessee for his own use and will not be loaned, sub-let, mortgaged or in any other manner disposed of by the lessee; that the lessee will be responsible for the loss of said equipment by fire, theft or other cause; that the leased equipment shall be returned to the lessor at his above business address on the termination date of the agreed rental period in the same condition as received, except for ordinary wear and tear; that the lessor makes no warranty of any kind on said equipment and the lessee agrees to immediately return any leased equipment which develops indication of defect or improper working condition; that the lessee agrees to use said equipment entirely at his own risk, to be liable for any damage to persons or property resulting directly or indirectly from the use thereof and the lessee further agrees to protect and save harmless the lessor, its agents, servants and employees from any and all liability extending beyond the above agreement. It shall be charged on an hourly or daily rate, whichever is the lesser. Damage to equipment due to lessee neglect will be charged out at owner's discretion.

4. The lessor, reserve the right to have the rented equipment returned at any time.

Special Conditions and Instructions:

Clean before returning
Returning in Clearfield *

Not Included In Rental
Fuel Tire Damage
Cleaning Machine Abuse

Date

Lessee's Signature

ALAN D. Christensen
I have read and agreed to the terms above.

**We Sell Time.
Your Prompt Return
Saves You Money.**

**We Charge For All Time Out
Including Saturdays,
Sundays and Holidays**

**A Cleaning Charge
Is Made On Items
Returned Unclean.**

**Lessee Is Responsible For
Securing All Equipment
While Transporting.**

EXHIBIT

A

SUPER DIGGS

High Torque Auger Machine

The highway-towable **DeepRock SUPER DIGGS** is ideal for a wide variety of soil engineering work. For test holes, "perk" holes, anode placements, etc., the **SUPER DIGGS** goes wherever you need to go and does the job with half the manpower.

The **SUPER DIGGS** has an 8-HP, 4-cycle engine and gearhead which produces 319 ft. lbs. of torque giving it the digging capacity you'd expect to find only in much larger, more expensive equipment.

The **SUPER DIGGS** uses augers from 2" to 18" diameter. Depth capacity with the smaller augers ranges from 20 to 30 ft.



(Cat. # 40000) **\$4,495⁰⁰** *Flx + F12*

Replacement Cost

AUGERS for your Powerhead

With special earth-auger bits, you can use your **DR. DIGGS, Gorilla Drilla, and Super Diggs** for:

1. Planting holes for trees and shrubs.
2. Drilling post holes for fences, etc.
3. Drainage holes for low, wet areas.

\$400 To \$500 From ALABAMA

Augers for DR. DIGGS

2" x 30" Auger	(Cat. # 5200) Each	\$53
Tip	(Cat. # 5201) *	\$24
Tungsten Carbide Blade/Tip	(Cat. # 5202) *	\$37
4" x 30" Auger	(Cat. # 5210) Each	\$73
Tip	(Cat. # 5211) *	\$21
Cutter Blade	(Cat. # 5212) *	\$5
Tungsten Carbide Blade	(Cat. # 5213) *	\$13
6" x 30" Auger	(Cat. # 5220) Each	\$85
Tip	(Cat. # 5221) *	\$21
Cutter Blade	(Cat. # 5222) *	\$7
Tungsten Carbide Blade	(Cat. # 5223) *	\$14
8" x 30" Auger	(Cat. # 5230) Each	\$89
Tip	(Cat. # 5231) *	\$21
Cutter Blade	(Cat. # 5232) *	\$7
Tungsten Carbide Blade	(Cat. # 5233) *	\$17
18" Extension for Augers	(Cat. # 5240) Each	\$19
Wood Auger - 1 1/2" x 12" Complete	(Cat. # 5260) Each	\$71



EARTH AUGER

Augers for Gorilla Drilla and Super Diggs

2" x 36" Auger	(Cat. # 10050)	\$185
4" x 36" Auger	(Cat. # 10054)	\$195
6" x 36" Auger	(Cat. # 10056)	\$200
8" x 36" Auger	(Cat. # 10058)	\$215
10" x 36" Auger	(Cat. # 10060)	\$225
12" x 36" Auger	(Cat. # 10062)	\$235
18" x 30" Auger	(Cat. # 10068)	\$410
Replacement Teeth	(Cat. # 10070)	\$7
Replacement Bit	(Cat. # 10080)	\$39

2209 Anderson Road • Post Office Box 1
Opelika, Alabama 36803-9979, USA
Telephone: (334) 749-3377 • Fax: (334) 749-5601
<http://www.deeprock.com>

EXHIBIT

B

DeepRock

TAKE ADVANTAGE OF SEASONAL DISCOUNTS
CALL TOLL-FREE
1-800-633-8774

FILED

NOV 08 2001

m/1:57 p.m.

William A. Shaw

Prothonotary

EM

led
de

1cc to Atty: Simon

1cc to Sheriff

Q
101

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11744

ONE BEACON INSURANCE

01-1853-CD

VS.

CHRISTENSEN, ALAN D.

COMPLAINT IN ARBITRATION

SHERIFF RETURNS

NOW NOVEMBER 15, 2001 AT 10:44 AM EST SERVED THE WITHIN COMPLAINT
IN ARBITRATION ON ALAN D. CHRISTENSEN, DEFENDANT AT RESIDENCE,
R#2 BOX 400B, HARD SCRABBLE ROAD, MUNSON, CLEARFIELD COUNTY,
PENNSYLVANIA BY HANDING TO ALAN D. CHRISTENSEN A TRUE AND ATTESTED
COPY OF THE ORIGINAL COMPLAINT IN ARBITRATION AND MADE KNOWN TO
HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

Return Costs

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

FILED

DEC 14 2001
01:12pm
William A. Shaw
Prothonotary

Sworn to Before Me This

14th Day Of December 2001

William A. Shaw

WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

So Answers,

Chester A. Hawkins
by Mary Ann Harris
Chester A. Hawkins

Sheriff

FILED

APR 12 2007

m. 12:35 / w
William A. Shaw
Prothonotary/Clerk of Courts
2 cent to ATT.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ONE BEACON INSURANCE,
formerly doing business as
CGU INSURANCE CO.,
as subrogee of Reed Brothers,

Plaintiff,

v.

ALAN D. CHRISTENSEN,

Defendant.

CIVIL DIVISION

Arb. No. 01-1853-CD

Code No.

**PRAECIPE TO SETTLE,
DISCONTINUE AND SATISFY**

Filed on Behalf of:
PLAINTIFF

Counsel of Record
For This Party:

Ernest Simon, Esquire
Pa. I.D. No. 23468

114 Smithfield Street
Pittsburgh, PA 15222

412-261-1000

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Plaintiff,

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v.

ALAN D. CHRISTENSEN,

Defendant.

PRAECIPE TO SETTLE, DISCONTINUE, OR SATISFY

TO: MICHAEL LAMB, PROTHONOTARY

SIR: Kindly mark the docket as settled, discontinued, or satisfied - Verdicts, Judgments, Executions, Awards, Decrees, Equity, Liens, Counterclaims or Crossclaims and Plaintiff's Case or as to Garnishee Only, D.S.B., M.L. & Claims.

A handwritten signature in black ink, appearing to read 'Ernest Simon', is written over a horizontal line.

Ernest Simon, Esquire
Attorney for Plaintiff

Prothonotary/Clerk of Courts
William A. Shaw

APR 12 2007

FILED