

01-1905-CD
KATIE B. SIMBECK etux -vs- THOMAS PHELPS etal

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01- 1905 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

PLAINTIFFS

Counsel of Record:

Theron G. Noble, Esquire

Attorney for Estate

Ferraraccio & Noble

301 East Pine Street

Clearfield, PA 16830

(814)-375-2221

PA I.D. No: 55942

FILED

NOV-20 2001

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01-_____-CD

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

David Meholick, Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01-_____-CD

CIVIL COMPLAINT

NOW COMES, the Plaintiffs, Katie B. Simbeck and Joel S. Simbeck, husband and wife, by and through their counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:

The Parties

1. Katie B. Simbeck, an adult individual, does, and at all material times, did reside at 1264 Treasure Lake, Sandy Township, Clearfield County, Pennsylvania.
2. Joel S. Simbeck, an adult individual, does, and at all material times, did reside at 1264 Treasure Lake, Sandy Township, Clearfield County, Pennsylvania.
3. That Katie B. Simbeck and Joel S. Simbeck are husband and wife, and at all material times were also husband and wife, residing together as such at the aforementioned address.
4. That first defendant is Thomas Phelps, who does, and at all material times, did reside at

Treasure Lake, Sandy Township, Clearfield County, Pennsylvania.

5. That second defendant is Roseanne Phelps, who does, and at all material times did reside at Treasure Lake, Sandy Township, Clearfield County, Pennsylvania.

6. That upon information and belief, that defendants are, and at all material times, were husband and wife, living together as such at the aforementioned address.

Background

7. That on, or about, December 18, 2000, Katie B. Simbeck went to defendants' home, owned by them, to give them a check for drapes which were left in a home that the Simbecks had purchased, and which the defendants had previously occupied.

8. That Katie B. Simbeck parked in front of Defendants' driveway and exited her vehicle in order to deliver the check to the defendants.

9. That from the driveway to the Defendants' home is sloped downward.

10. That shortly after stepping out of her vehicle, Katie B. Simbeck did slip and fall after stepping onto a patch of snow and ice while on the defendants' driveway.

11. That upon falling, Katie B. Simbeck did break her right leg.

12. That as result of the fracture, Katie B. Simbeck did require medical treatment, at a cost to be determined at time of trial.

13. That as a result of her injuries, Katie B. Simbeck did experience significant pain and suffering for some time and should be compensated in an amount to be determined at time of trial.

14. That as a result of her injuries, Katie B. Simbeck's ability to enjoy life was diminished for some period and time for which she should be compensated, in an amount to be determined at time of trial.

15. That as a result of her injuries, Katie B. Simbeck was not able to do the normal and routine household type tasks that she otherwise have done for some period of time.

Count I: Negligence;

(Katie B. Simbeck v. Defendants)

16. That the averments of paragraphs 1 - 15, inclusive, are hereby incorporated as if again fully set forth at length.

17. That Defendants were negligent in that:

(a) they failed to clear snow and ice from their driveway when it was known, or likely to be known, that persons would be coming to their home; and

(b) failed to provide a safe walkway for persons coming to their home;

18. That Katie B. Simbeck was an invitee to the defendants home and was owed a duty of care.

19. That defendants' aforementioned negligence breached that duty owed to Katie B. Simbeck.

20. That as a result of their negligence, Katie B. Simbeck did suffer the aforementioned damages.

21. That defendants are jointly and severally liable for these damages.

WHEREFORE, Katie B. Simbeck does request judgment in her favor and against Defendants, jointly and severally, in an amount not to exceed Twenty Thousand Dollars, (\$20,000) together with costs of suit.

Count II: Loss of Consortium;

(Joel S. Simbeck v. Defendants)

22. That the averments of paragraphs 1 - 22, inclusive, are hereby incorporated as if again fully set forth at length.

23. That the defendants aforementioned negligence was the proximate cause of Katie B. Simbeck's inability to perform the normal and routine household tasks that she would otherwise do for a period of time.

24. That Joel S. Simbeck should be compensated, in an amount to be determined, for the loss of such services while Katie B. Simbeck was injured and recuperating.

WHEREFORE, Joel S. Simbeck requests that judgment be entered in his favor and against defendants, jointly and severally, in an amount less than Twenty Thousand (\$20,000), plus costs of suit.

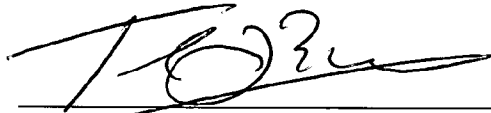
Miscellaneous

25. That venue is appropriate.

26. That jurisdiction is appropriate.

WHEREFORE, Plaintiffs request that judgment, in an amount not to exceed Twenty Thousand dollars (\$20,000), be entered in their favor and against defendants, jointly and severally, together with costs of suit.

Respectfully Submitted,

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

Theron G. Noble, Esquire
Attorney for Plaintiffs

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

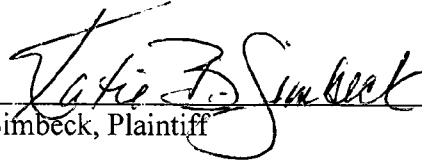
DEFENDANTS.

No. 01-_____-CD

VERIFICATION

We, Katie B. Simbeck and Joel S. Simbeck, Plaintiffs, do hereby swear and affirm that we have read the foregoing and attached CIVIL COMPLAINT, in the above captioned matter, and that to the best of our information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that we make this statement subject to the penalties of 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

So made this 19th day of November, 2001.


Katie B. Simbeck, Plaintiff


Joel S. Simbeck, Plaintiff

FILED

NOV 29 2001

03 05/ atty Noble
William A. Shaw
Prothonotary

PD \$80.00

Acc atty Noble

**DuBois Regional Medical Center**

P.O. Box 447 - DuBois, PA 15801-0447

(814) 375-4200

FEDERAL I.D. NO. 25-1490707

**DETAIL
STATEMENT**

TYPE OF BILL	DATE OF BILL	PAGE NO.
D1-ER	12/22/00	1

PATIENT NAME		PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE	DAYS
KATIE SIMBECK		00353-00519	F	28Y	12/18/00	12/18/00	
INSURANCE COMPANY NAME		GROUP NUMBER	POLICY NUMBER				
100003 BC KEYSTONE 105000 BLUE SHIELD PROFESSIO		04654003 04654003	YYM168549959 YYM168549959				
				PAYMENT AMOUNT			
GUARANTOR NAME AND ADDRESS	JOEL S SIMBECK		<input type="checkbox"/>		CARD NO. _____		
	1264 TREASURE LAKE		<input type="checkbox"/>		EXPIRATION DATE _____		
	DUBOIS PA 15801		<input type="checkbox"/>		SIGNATURE _____		
			PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE				

DATE	ITEM NO.	DESCRIPTION	CLM CODE	ORDER NO.	QTY	UNIT PRICE	TOTAL CHARGES
12/18/00	95027	BANDAGE ACE 4"	270	4	2	5.00	10.00
12/18/00	95052	ICE BAG	270	3	1	6.00	6.00
12/18/00	96141	CRUTCH MEDIUM	270	2	1	19.00	19.00
		TOTAL SUPPLIES					35.00
12/18/00	44024	ANKLE, MIN 3	320	1	1	96.00	96.00
		TOTAL RADIOLOGY					96.00
12/18/00	16212	EMERGENCY DEPARTMENT VISIT L3	450	5	1	160.00	160.00
		TOTAL EMERGENCY ROOM					160.00
12/18/00	58959	NALBUPHINE HCL 10MG/ML, 1 ML	636	1	1	5.00	5.00
		TOTAL Drugs w/ detail coding					5.00
12/18/00	1612	PC EMERGENCY DEPARTMENT VISIT L3	980	6	1	125.00	125.00
		TOTAL Professional fee-general					125.00
		TOTAL CHARGES					421.00
01/08/01	11015	14 BLUE CROSS PAYMENT					-267.13
02/15/01	11023	26 BLUE SHIELD PAYMENTS (OP)					-119.86
		TOTAL PAYMENTS/ADJUSTMENTS					-386.99

Plaintiffs' Exhibit "C"

PATIENT NUMBER	PLEASE REFER TO PATIENT NUMBER ON ALL INQUIRIES AND CORRESPONDENCE.	PAYMENT TO DUBOIS REGIONAL MEDICAL CENTER ONLY	TOTAL AMOUNT DUE	34.01
00353-00519				

PAYMENTS may be taken to the East or West registration
areas or to the Business Office located at 207 Hospital Avenue.

PLEASE RETAIN FOR YOUR RECORDS



West Penn Orthopaedics

18 Sportsman Drive, Suite 20 • Clarion, Pennsylvania 16214
814-226-1070 • FAX 814-226-1072

April 1, 2002

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

RE: Katie Simbeck

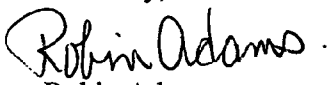
Dear Mr. Noble,

This letter is in reference to our phone conversation on 04-01-2002, concerning Katie Simbeck's litigation.

Katie's medical insurance did pay for services rendered, however, there is still a patient balance of \$147.69. This balance represents the 10% co-insurance required by Katie's insurance contract.

If you have any other questions concerning her account please do not hesitate to contact me. Thank you for the information concerning Katie's litigation status.

Sincerely,


Robin Adams
Billing Department

Plaintiffs' Exhibit "D"

10/31/2001

PROGRAMMER: JOSEPH A. ROOTS

HIGHMARK BLUE CROSS BLUE SHIELD
PROGRAM: ENDEVOR(CMPD772J)

PROJECT: 963576

PAGE

1

ACCIDENT LIEN REPORT

PATIENT NAME: SIMBECK KATIE

AGREEMENT: 1685499590

GROUP: 04654003

ACCIDENT DATE: 12/18/2000

ATTNY. CODE: LM001

NEW PAID AND/OR ADJUSTED CLAIMS
UPDATE

BEG SRV DT	CLAIM NUMBER	PATIENT FIRST NAME	PROVIDER NAME	TOTAL CHARGE	PAID AMT	PAID DATE	DIAG 1	DIAG 2	DIAG 3	CLM SYS	NEW/ ADJ
12/18/2000	03551160510	KATIE	WEST PENN ORTHO	838.00	330.99	12/20/2000	82480			CMP	
12/18/2000	03642033340	KATIE	DUBOIS REGIONAL	296.00	169.87	12/29/2000	82480			CMP	
12/18/2000	10031001400	KATIE	DUBOIS RADIOLOG	31.00	8.55	01/03/2001	82380			CMP	
12/18/2000	10381076400	KATIE	DUBOIS REGIONAL	125.00	46.22	02/07/2001	82480			CMP	N
12/26/2000	03631164290	KATIE	WEST PENN ORTHO	60.00	25.42	12/28/2000	82480			CMP	
01/15/2001	10171205010	KATIE	WEST PENN ORTHO	60.00	25.42	01/17/2001	82480			CMP	N
01/29/2001	10311008180	KATIE	WEST PENN ORTHO	60.00	28.24	01/31/2001	82480			CMP	N
01/29/2001	10521242830	KATIE	J SIMBECK	168.17	168.17	02/21/2001	82480			CMP	N
02/12/2001	10451405360	KATIE	WEST PENN ORTHO	60.00	28.24	02/14/2001	82480			CMP	N
03/01/2001	10621259460	KATIE	WEST PENN ORTHO	60.00	28.24	03/03/2001	82480			CMP	N
03/01/2001	10881260740	KATIE	J SIMBECK	85.49	85.49	04/02/2001	82490			CMP	N
04/17/2001	11101244710	KATIE	WEST PENN ORTHO	60.00	23.25	04/20/2001	82480			CMP	N
				1,903.66	968.10						

LIEN AMOUNT: 968.10

RECOVERY AMOUNT:

Plaintiffs' Exhibit "A"

Laffey & Associates, P.C.

ATTORNEYS AT LAW

210 Mary Street
Carnegie, PA 15106

800-827-8276
412-429-7079
Fax 412-429-7078

WWW.SUBROGATION.COM

MICHAEL J. LAFFEY

May 28, 2002

Terrance Noble, Esquire
301 E. Pine Street
Clearfield, PA 16830

Re: Highmark Blue Cross Blue Shield
Patient: Katie Simbeck
Agreement: 1685499590
Accident Date: 12/18/2000
Lien Amount: \$968.10

Dear Mr. Noble:

Highmark Blue Cross Blue Shield ("Highmark") has not paid any additional claims regarding your above client. The subrogation lien remains at \$968.10.

If additional information is needed, please do not hesitate to contact me. Thank you for your time and assistance in this matter.

Sincerely,



Susan Welch
Legal Assistant to
Michael J. Laffey

Plaintiffs' Exhibit "B"



385 Science Park Road, State College, PA 16803 USA <http://www.accuweather.com>
©2001 AccuWeather®



STEPHEN MARVILL WISTAR

Certified Consulting Meteorologist

Education

Pennsylvania State University - B.S., 1974 (Meteorology)
Upper Dublin High School, Fort Washington, Pennsylvania - Graduated 1970
Future Meteorologists of America, Franklin Institute, Philadelphia, Pennsylvania, 1963 to 1970

Professional and Academic Positions

AccuWeather, Inc. - October 1976 to date. Positions held: Member of Hiring Committee, 1983 - 1987;
Forensic Department, June 1995 to date. Have held the position of Senior Meteorologist since 1983.

Geophysical Institute, University of Alaska, Fairbanks, Alaska - Satellite Research Meteorologist, 1975.

National Environmental Satellite Service, Camp Springs, Maryland - Satellite Research Meteorologist,
1974.

Honors and Accomplishments

Awarded the nationally recognized Certified Consulting Meteorologist (CCM) designation by the
American Meteorological Society.

Admitted as Expert Witness in Meteorology in numerous trials in several states, at both the state and
federal level.

Coordinator of numerous past weather research projects.

Author of hundreds of reports documenting weather conditions at particular times and places in the past.

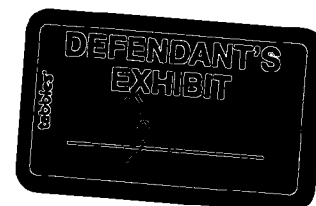
Specialist in weather conditions relating to roof failures, including snow loading and drifting factors.

Operational weather forecaster preparing forecasts daily for major markets in United States and abroad.

Regular live and taped broadcasts in major United States and overseas markets.

Unofficial weather observer for Lemont, Pennsylvania with regular reports provided to local Emergency
Management Agency.

Weather presentations to school classes.



Professional Affiliations

American Meteorological Society
National Weather Association

Publications

"Investigations of Strong Valley Winds in Alaska Using Satellite Infrared Imagery", (Joint Author). Marvill and Jayaweera. Monthly Weather Review, Vol. 103, No. 12, December 1975, 1129-1136

October 2, 2002

Casey Bowers
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

RE: Erie/Phelps
AccuWeather File Number: 090218

Dear Mr. Bowers:

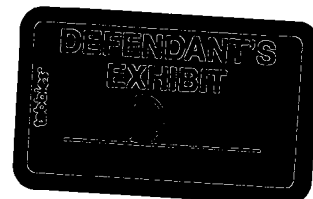
As you requested, we have investigated the weather conditions in the vicinity of Lot 203, Section 15, Treasure Lake, Sandy Township, Clearfield County, Pennsylvania on and prior to December 18, 2000, with particular attention to the existing conditions at approximately 10:00 AM¹ on the 18th. The results of our investigation are presented in the following paragraphs.

Our research shows that the weather in Treasure Lake was generally quite cold during the first 15 days of December 2000 with the temperature below the freezing point (32 degrees Fahrenheit) most of the time. A total of 5 to 8 inches of snow and sleet fell during this period. At the end of December 15, 2000, undisturbed surfaces were covered with an average of 2 to 3 inches of snow and ice. This included quite a bit of sleet from a storm on December 14.

During the morning of December 16, 2000, the sky over Treasure Lake was cloudy and a bit of sleet fell at times. The temperature climbed from 28 before dawn to about 34 degrees at 12:00 Noon. The weather turned milder during the afternoon and evening hours of the 16th with temperatures climbing into the 40's. There were periods of rain during this time and the rain was occasionally heavy. The combination of higher temperatures, drenching rain and gusty winds caused substantial natural melting of the accumulated snow and ice.

The mild, rainy weather continued during the first 9 hours of December 17, 2000. The temperature remained in the 40's and rapid natural melting of the snow and ice on the ground took place. At 9:00 AM on the 17th, all that remained of the snowpack on undisturbed ground surfaces were patches of old snow and ice. All exposed surfaces were wet with large puddles on portions of paved surfaces that drained poorly. The total amount of rain that fell in Treasure Lake from 12:00 Noon on December 16 through 9:00 AM on December 17 was between 0.70 and 0.90 of an inch.

¹ This and all other time references in this report are expressed in Eastern Standard Time (EST).



During the last 3 hours of the morning of December 17, much colder air began to move into Clearfield County. The sky was mainly cloudy and occasional sprinkles of rain fell. The temperature fell from approximately 42 degrees at 9:00 AM to 33 degrees just before 12:00 Noon. Wet snow began to fall at the site in question at about 11:45 AM on the 17th.

Throughout the afternoon and evening hours of December 17, the sky over Treasure Lake was cloudy and snow of varying intensity fell. The temperature fell from 33 degrees just before 12:00 Noon to approximately 13 degrees at the end of the evening. The wind blew from the west and west-southwest at an average speed of 15 to 25 MPH with gusts to between 35 and 40 MPH. The rapidly falling temperature caused freezing of wet areas and of puddles as well as a hardening of the initially wet snow that fell at the start of the afternoon. During the remainder of the afternoon and evening, as the temperature fell through the 20's and then through the teens, the snow was powdery and subject to extensive blowing and drifting in the strong wind.

Snow of varying intensity continued to fall in Treasure Lake through the morning hours of December 18, 2000. The temperature ranged from 10 to 13 degrees. Prior to 6:00 AM, the wind blew from the west and west-southwest, averaging 12 to 22 MPH with gusts to about 35 MPH. Blowing and drifting of the newly fallen snow continued. From 6:00 AM until 12:00 Noon, the wind blew from a similar direction at an average speed of 8 to 16 MPH and drifting was limited. The total amount of snow that fell from midday on December 17 through midday on December 18 was approximately one inch. This was the average snow accumulation on undisturbed surfaces; blowing and drifting caused substantial variations in the actual depth from place to place.

Specifically, in the vicinity of Lot 203, Section 15, Treasure Lake, Sandy Township, Clearfield County, Pennsylvania on December 18, 2000 at approximately 10:00 AM, the sky was cloudy, the temperature was about 12 degrees and the wind was blowing from the west and west-southwest at an average speed of 8 to 16 MPH. Light snow was falling and snow of varying intensity had been falling nearly all of the time during the previous 22 hours. Undisturbed ground surfaces were covered with an average of about one inch of powdery snow overtop areas of ice. These icy areas may have included old hard-frozen patches of snow and sleet left over from storms earlier in the month. Much of the ice formed when wet areas and puddles froze during the previous afternoon and evening as the temperature rapidly fell. The wet areas and puddles resulted from a soaking rain, combined with rapid snowmelt, that had taken place in Treasure Lake from the afternoon of December 16 through the first 9 hours of December 17.

There were substantial variations in the depth of the powdery snow from place to place due to extensive blowing and drifting from the afternoon of December 17 through the predawn hours of December 18.

While salt is very effective at melting ice at temperatures close to 32 degrees, salt would have been ineffective as an ice-melting agent on the morning of December 18, 2000 due to the low

temperatures. At an air temperature of 12 degrees, a given amount of salt will melt only slightly more than 10 percent as much ice as it will at 30 degrees.

The information in this report has been determined from the best sources of weather information available to us at this time and is the result of interpretation by our staff of professional meteorologists and represents our opinions to a reasonable degree of scientific certainty.

We hope this information is useful to you. If you should have any additional questions or need additional information, please do not hesitate to contact us.

Sincerely,



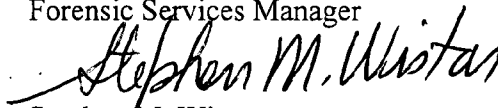
Joseph P. Sobel, Ph.D.

Director of Forensic Services



Edward R. Adams

Forensic Services Manager



Stephen M. Wistar

Certified Consulting Meteorologist

JPS/ERA/SMW:las



DEFENDANT'S
EXHIBIT

tabbies

1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Praecipe for Entry
of Appearance

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

DEC 05 2001

m/ 10:30/ hrs
William A. Shaw
Prothonotary

no c/l

ES
RCA

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

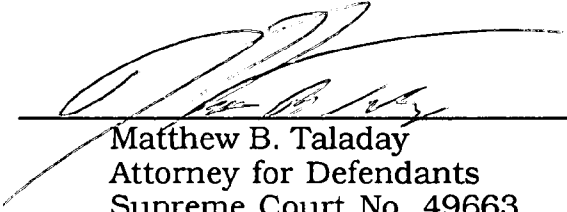
No. 01-1905-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for the Defendants, Thomas
Phelps and Roseanne Phelps, in the above captioned matter.

Date: 12-4-01


Matthew B. Taladay
Attorney for Defendants
Supreme Court No. 49663
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
(814) 371-7768

cc: Theron G. Noble, Esq.
301 East Pine Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Answer and
New Matter

Filed on Behalf of:

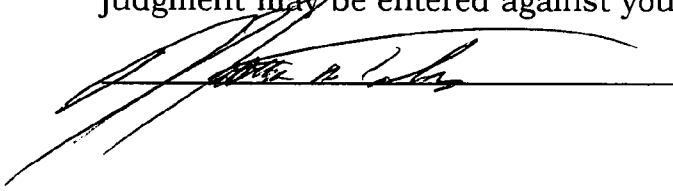
Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

You are hereby notified to plead
to the within pleading within twenty
(20) days of service thereof or default
judgment may be entered against you.



FILED

DEC 19 2001

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

ANSWER

AND NOW, come the Defendants, Thomas Phelps and Roseanne Phelps, by their attorneys, Hanak, Guido and Taladay, and hereby respond to Plaintiffs' Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted. By way of further answer, it is averred that Thomas Phelps resides at Treasure Lake, Section 15, Lot 203, Sandy Township, Clearfield County, Pennsylvania.
5. Admitted. By way of further answer, it is averred that Thomas Phelps resides at Treasure Lake, Section 15, Lot 203, Sandy Township, Clearfield County, Pennsylvania.
6. Admitted.
7. Admitted in part and denied in part. It is admitted that Plaintiffs had agreed to purchase drapes which were located in the home in which Defendants previously resided. With regard to the

remaining averments of paragraph 7, after reasonable investigation, Defendants are without information to form a belief as to their truth. Therefore, they are denied and strict proof thereof is demanded at the time of trial.

8. After reasonable investigation, Defendants are without information to form a belief as to their truth and therefore, they are denied and strict proof thereof is demanded at the time of trial. By way of further answer, it is averred that Plaintiffs gave no notice or indication that they would be visiting the Phelps home on the morning of December 18, 2000.

9. Denied as stated. It is admitted that the driveway to the home at Treasure Lake, Section 15, Lot 203, Sandy Township, Clearfield County, Pennsylvania, is not owned by Defendants, but rather is rented, contains a slope.

10. After reasonable investigation, Defendants are without information to form a belief as to their truth and therefore, they are denied and strict proof thereof is demanded at the time of trial.

11. After reasonable investigation, Defendants are without information to form a belief as to their truth and therefore, they are denied and strict proof thereof is demanded at the time of trial.

12. Upon information and belief, Defendant admit that Katie B. Simbeck required medical treatment for a leg fracture, the cost of which are unknown to Defendants and which remain an issue of dispute.

13. After reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the claims of pain

and suffering asserted by Plaintiff, Katie Simbeck, therefore these are denied and strict proof thereof is demanded at trial. The remaining averments of paragraph 13 constitute conclusions of law to which no response is required.

14. After reasonable investigation, Defendants are without knowledge sufficient to form a belief as to the claims of inability to enjoy life asserted by Plaintiff, Katie Simbeck, therefore these are denied and strict proof thereof is demanded at trial. The remaining averments of paragraph 14 constitute conclusions of law to which no response is required.

15. After reasonable investigation, Defendants are without information to form a belief as to their truth and therefore, they are denied and strict proof thereof is demanded at the time of trial.

COUNT I - NEGLIGENCE

Katie B. Simbeck vs. Defendants

16. Defendants incorporate paragraphs 1 through 15 of their response as if set forth in full.

17. Defendants deny all allegations of negligence, generally and specifically as follows:

(a) Defendants deny any advance knowledge of Plaintiff's visit to their home and further deny that they failed in any legal duty;

(b) Defendants deny knowledge of actual or likely visits to their home by any persons on the morning in question and further deny breach of any legal duty.

18. The averments of paragraph 18 constitute a conclusion of law to which no response is required. However, it is

Defendants' position that the status of Katie Simbeck with regard to any visit to Defendants' home was, at best, that of a licensee.

19. Defendants deny all negligence. The remaining averments of paragraph 19 constitute a conclusion of law to which no response is required.

20. Denied.

21. This averment constitutes a conclusion of law to which no response is required.

WHEREFORE, Defendants demand judgment in their favor.

COUNT II - LOSS OF CONSORTIUM

Joel S. Simbeck vs. Defendants

22. Defendants incorporate by reference paragraphs 1 through 22 of the Answer as if set forth in full.

23. Defendants deny all allegations of negligence. With regard to the remaining allegations of paragraph 23, Defendants are, after reasonable investigation, without the knowledge to form a belief as to their truth, and therefore they are denied and strict proof is demanded at trial.

24. This averment constitutes a conclusion of law to which no response is required.

WHEREFORE, Defendants demand judgment in their favor.

25. Admitted.

26. Admitted.

WHEREFORE, Defendants demand judgment in their favor.

NEW MATTER

27. Defendants incorporate their responses to paragraphs 1 through 26 of Plaintiff's Complaint as if set forth in full.

28. The injuries claimed by Plaintiffs are solely and proximately the result of the negligence of Katie B. Simbeck, which is as follows:

(a) In venturing onto a snow and ice covered, inclined surface when she knew or should have known that to do so would expose her to the risk of injury;

(b) In arriving at and approaching Defendants' house unannounced during a period of snowy/icy weather when she knew or should have known that Defendants would not be expecting her, and when it was obvious that natural accumulations of snow and ice that had been accumulating overnight may have not been moved;

(c) In failing to wear proper footwear when she knew or should have known that to do so would increase the likelihood of a slip on snow and ice and would potentially result in the injuries in which Plaintiffs are claiming; and

(d) In failing to notify Defendants that she was visiting their home on the morning of December 18, 2000 when she knew or should have known that generally snowy and icy conditions were prevailing at that time.

29. Plaintiffs' claims are barred or omitted by the Doctrine of Comparative Negligence.

30. Plaintiffs' claims are barred by the Doctrine of Assumption of Risk in that Plaintiff Katie B. Simbeck knowingly and voluntarily assumed the consequences of known risk when she ventured to walk on an inclined, snow and ice covered surface on the

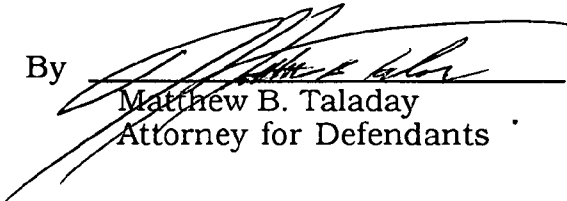
morning after a storm, and at a time when generally snowy and icy conditions were prevailing.

WHEREFORE, Defendants demand judgment in their favor.

Respectfully submitted,

Hanak, Guido and Taladay

By



Matthew B. Taladay
Attorney for Defendants

VERIFICATION

I, **Thomas Phelps** and **Roseanne Phelps**, do hereby verify that I have read the foregoing Answer & New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 12-15-2001

Thomas Phelps
Thomas Phelps

Roseanne Phelps
Roseanne Phelps

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

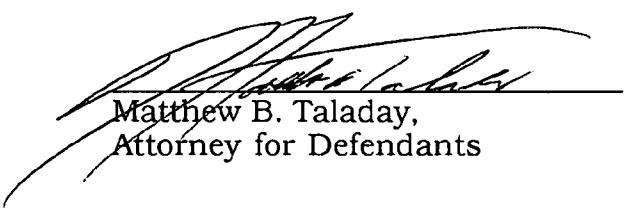
Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 18th day of December, 2001, a true
and correct copy of Defendants' Answer and New Matter was sent via
first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830



Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

:

:

No. 01- 1905 -CD

:

:

:

Type of Pleading:

: **REPLY TO NEW MATTER**

:

Filed By:

:

PLAINTIFFS

:

Counsel of Record:

: Theron G. Noble, Esquire

Attorney for Estate

: Ferraraccio & Noble

301 East Pine Street

: Clearfield, PA 16830

(814)-375-2221

: PA I.D. No: 55942

:

:

:

:

:

FILED

DEC 24 2001

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01- 1905 -CD

PLAINTIFFS' REPLY TO NEW MATTER

AND NOW, comes the Plaintiffs, Katie B. and Joel S. Simbeck, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in response to Defendants' NEW MATTER:

27. Plaintiffs hereby incorporate the averments of their CIVIL COMPLAINT as if again fully set forth at length.

28. That Katie B. Simbeck was not in any manner negligent, and specifically:

(a) was not negligent in attempting to traverse to the Defendants' home, to pay money for the drapes as requested by the Defendants, in the path and manner established to do so;

(b) that the time Katie B. Simbeck attempted to approach the Defendants' home was at a reasonable time such that reasonable persons did have their walkways cleared of snow;

(c) Katie B. Simbeck did wear proper footwear for the time of the year and conditions then prevailing; and

(d) That Katie B. Simbeck was not negligent in failing to make an exact time arrangement for delivery of the check in that she id as promised, which was to drop off a check at some point

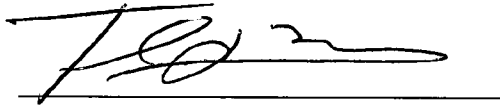
when she was in the area of the Defendants home;

29. The same is a legal conclusion for which no response is deemed necessary.

30. The same is a legal conclusion for which no response is deemed necessary.

Wherefore, Plaintiffs request JUDGMENT in their favor and as prayed for in their CIVIL COMPLAINT.

Respectfully Submitted,

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

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

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

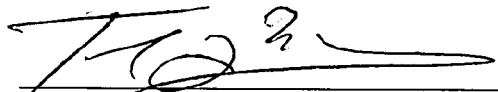
No. 01-1905-CD

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiffs, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 22nd day of December, 2001, a true and correct copy of Plaintiffs' REPLY TO NEW MATTER, to the below indicated person, at said address, being counsel of record for the Defendants:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

Respectfully Submitted,



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

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

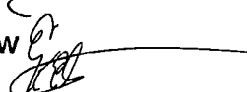
(814) 371-7768

FILED

JAN 14 2002

1110:411105C

William A. Shaw
Prothonotary



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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

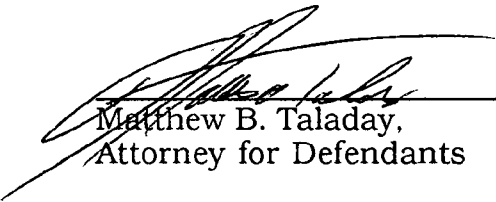
Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 11th day of January, 2002, originals of
the attached Notices of Deposition were sent via first class mail,
postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendants

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Notice of
Deposition

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD

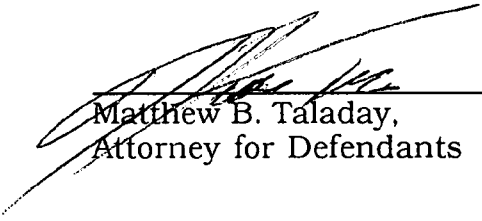
THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

NOTICE OF DEPOSITION

TO: JOEL S. SIMBECK
c/o Theron G. Noble, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Thursday, January 31, 2002 at 11:00 a.m.** at the office of Matthew B. Taladay, 498 Jeffers Street, DuBois, Pennsylvania. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure regarding Discovery.



Matthew B. Taladay,
Attorney for Defendants

cc: Schreiber Reporting Service
P.O. Box 997
St. Marys, PA 15857

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Notice of
Deposition

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD

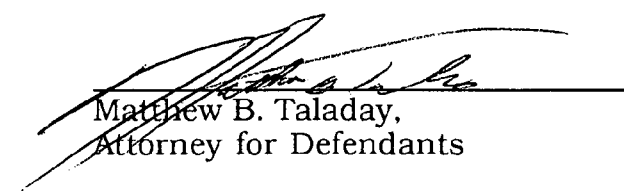
THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

NOTICE OF DEPOSITION

TO: KATIE B. SIMBECK
c/o Theron G. Noble, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Thursday, January 31, 2002 at 11:00 a.m.** at the office of Matthew B. Taladay, 498 Jeffers Street, DuBois, Pennsylvania. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure regarding Discovery.


Matthew B. Taladay,
Attorney for Defendants

cc: Schreiber Reporting Service
P.O. Box 997
St. Marys, PA 15857

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11784

SIMBECK, KATIE B. & JOEL S.

01-1905-CD

VS.

PHELPS, THOMAS & ROSEANNE

COMPLAINT

SHERIFF RETURNS

NOW, NOVEMBER 29, 2001, AT 10:37 AM, EST, SERVED THE WITHIN COMPLAINT
ON ROSEANNE PHELPS, DEFENDANT AT RESIDENCE, CANQUAN COURT,
TREASURE LAKE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO ROSEANNE PHELPS A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

NOW, NOVEMBER 29, 2001, AT 10:38 AM EST, SERVED THE WITHIN COMPLAINT
ON THOMAS PHELPS, DEFENDANT AT RESIDENCE, CONQUAN COURT,
TREASURE LAKE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING
TO ROSEANN PHELPS, ADULT AT RESIDENCE A TRUE AND ATTESTED COPY OF
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

Return Costs

Cost	Description
36.69	SHERIFF HAWKINS, PAID BY ATTN
20.00	SURCHARGE, PAID BY ATTN

FILED

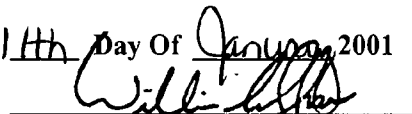
JAN 11 2002

012421pm
William A. Shaw
Prothonotary



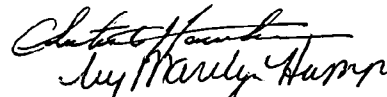
Sworn to Before Me This

1st Day Of January 2001



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

So Answers,



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,
Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,
Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

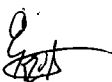
Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

JAN 10 2002

mjl10:48/nocc
William A. Shaw
Prothonotary



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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

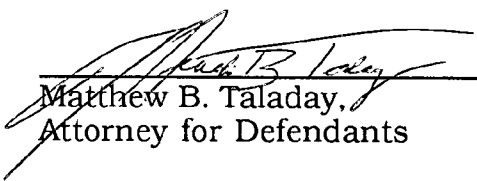
Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 9th day of January, 2002, two true and correct copies of Defendants' Interrogatories and Request for Production of Documents Directed to Plaintiffs - First Set were sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01-1905-CD

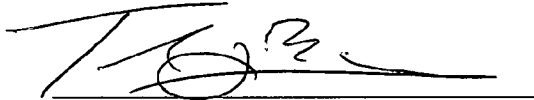
NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiffs, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 15th day of January, 2002, Plaintiffs' NOTICE OF DEPOSITIONS to the below indicated person, at said address, being counsel of record for the Defendants:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

Respectfully Submitted,



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

FILED

JAN 16 2002

01/16/2002
William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,
Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,
Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Motion for
Summary Judgment

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

MAR 11 2002

m/3.27/1cc atty
William A. Shaw
Prothonotary Taladay
ESB

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

MOTION FOR SUMMARY JUDGMENT

AND NOW, come the Defendants, Thomas Phelps and Roseanne Phelps, by their attorneys, Hanak, Guido and Taladay, and hereby bring the within Motion for Summary Judgment:

1. Plaintiffs have filed suit seeking recovery for injuries sustained by Wife Plaintiff when she slipped and fell on property rented by the Defendants on December 18, 2000.

2. On that date, Plaintiff, Katie Simbeck, appeared at the home rented by Defendants and located at Section 15, Lot 203, Treasure Lake.

3. Upon arriving at the area of the Phelps' home, Ms. Simbeck parked her car on the street and proceeded to walk down the Phelps' sloping, snow covered driveway. (T. 16, 17).

4. Wife Plaintiff stated that she recognized the snow covered driveway as a slippery surface. (T. 17, Line 16).

5. Ms. Simbeck further stated that she parked her vehicle at the top of the driveway rather than pulling on to the inclined driveway because she had concerns about being able to stop or getting back out of the inclined, snow covered driveway. (T. 17, Line 11-14).

6. Ms. Simbeck had taken two or three steps down the driveway when her foot slipped and she reportedly fell on with her right leg underneath her, resulting in a broken leg. (T. 17).

7. Plaintiffs' Complaint alleges that the Defendants were negligent for the following reasons:

(a) They failed to clear snow and ice from their driveway when it was known or likely to be known that persons would be coming to their home;

(b) Failed to provide a safe walkway for persons coming to their home.

8. Mr. Phelps had cleared a portion of the driveway the night before Ms. Simbeck's accident and had applied salt and sand to the cleared area. Mr. Phelps halted his clearing operations on that date because it had begun to snow or sleet. (T. 21)

9. Plaintiff testified that she had fallen on the area of the driveway that appeared to be partially cleared. (T. 17)

10. Any accumulation of snow or ice upon which the Plaintiff fell would have been the natural accumulation that occurred during the late evening or early morning hours of December 17 - 18.

11. The pleadings in this matter are now closed and discovery is completed.

12. Defendants are entitled to judgment as a matter of law since Plaintiff's fall occurred on a natural accumulation of snow and ice, "without hills and ridges".

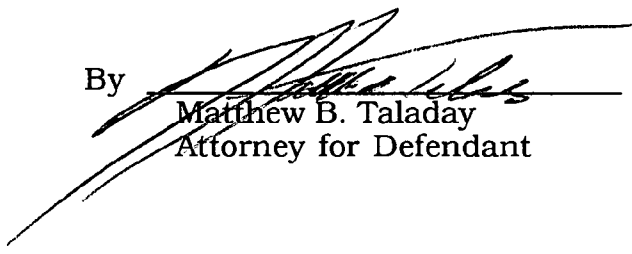
13. Plaintiffs have failed to establish a claim from which relief can be granted and Defendants are entitled to judgment as a matter of law.

WHEREFORE, it is respectfully requested that Defendant's Motion for Summary Judgment be granted.

Respectfully submitted,

HANAK, GUIDO AND TALADAY

By



Matthew B. Taladay
Attorney for Defendant

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

RULE TO SHOW CAUSE ORDER

AND NOW, this ____ day of _____, 2002, upon
filing of Motion for Summary Judgment, Rule is hereby entered upon
Katie B. Simbeck and Joel S. Simbeck to appear and show cause why
the Summary Judgment should not be granted.

Rule Returnable the ____ day of _____,
2002, at _____.m. in the Clearfield County Courthouse,
Courtroom No. _____, North Second Street, Clearfield, Pennsylvania.

BY THE COURT:

J.

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01-1905-CD


NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiffs, does hereby certify that I did propound, via United States mail, first class, postage pre-paid, this 11th day of March, 2002, to the below indicated person, at said address, being counsel of record for the Defendants, Plaintiffs' REQUESTS FOR ADMISSIONS:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

Respectfully Submitted,



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

FILED

MAR 12 2002

William A. Shaw
Prothonotary

W A Shaw
C/C

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,
Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,
Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Response to Requests
for Admissions

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

MAR 28 2002

0110:27110CC
William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

RESPONSE TO REQUESTS FOR ADMISSIONS


1. Admitted.

2. The lease is a document that speaks for itself and it is contended that if the terms of the lease create no additional duty on the Defendants beyond the ordinary duty of care as set forth in applicable Pennsylvania law.

3. Admitted.

4. Admitted, however, it is contended that the actual amount paid and accepted by provider, rather than the amount charged, is the potentially recoverable medical expense in this matter.

Respectfully submitted,


Matthew B. Taladay
Attorney for Defendants

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 27th day of March, 2002, a true and correct copy of Defendants' Response to Requests for Admissions was sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830

Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01-1905-CD

To: William A. Shaw, Prothonotary

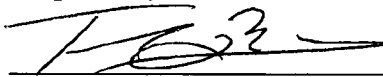
Date: April 5, 2002

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiffs, does hereby certify that I did propound on Defendants, via United States mail, first class, postage pre-paid, this 5th day of April, 2002, Plaintiffs' FIRST SET OF DISCOVERY MATERIALS, to the below indicated person, at said address, being counsel of record for the Defendants:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

Respectfully Submitted,



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

FILED

APR 05 2002

0/1:10/445
William A. Shaw
Prothonotary

no C/C



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,
Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,
Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

APR 19 2002

mll:os/ncc
William A. Shaw
Prothonotary



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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

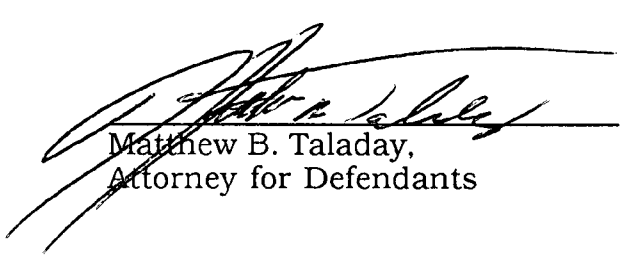
Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 18th day of April, 2002, two copies of
Defendants' Answers to Interrogatories and Responses to Request for
Production of Documents were sent via first class mail, postage
prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830



Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK and JOEL S.
SIMBECK, husband and wife

-VS-

No. 01 - ¹⁹⁰⁵~~1095~~ - CD

THOMAS PHELPS and ROSEANNE
PHELPS, husband and wife

OPINION AND ORDER

On December 18, 2000, Plaintiff Katie Simbeck slipped and fell on the driveway of Defendants' home in Treasure Lake, DuBois, Pennsylvania. Plaintiffs have commenced suit seeking to recover money damages for injuries sustained.

Defendants have filed a Motion for Summary Judgment based on the "hills and ridges" doctrine governing slip and fall cases on icy surfaces. The Superior Court of Pennsylvania in Morin v. Travelers Rest Motel, Inc., 704 A.2d 1085 (1997) explained this doctrine as follows:

The "hills and ridges" doctrine is a long standing and well entrenched legal principle that protects an owner or occupier of land from liability for generally slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations. Harmotta v. Bender, 411 Pa. Super. 371, 601 A.2d 837 (1992). "The doctrine as defined and applied by the courts of Pennsylvania, is a refinement or clarification of the duty owed by a possessor of land and is applicable to a single type of dangerous condition, i.e., ice and snow." Wentz v. Pennswood Apartments, 359 Pa. Super. 1, 5, 518 A.2d 314, 316 (1986). The rationale for this doctrine has been explained as follows:

...to require that one's walks be always free of ice and snow would be to impose an impossible burden in view of the climatic conditions in this hemisphere.

FILED

JUN 07 2002

William A. Shaw
Prothonotary

*1088 Id. The “hills and ridges” doctrine applies with equal force to both public and private spaces. See Wentz, supra (appellate courts of this Commonwealth apply the doctrine of hills and ridges not only to persons injured from falling on ice covered public walks or parking areas but to situations in which business invitees have fallen on ice covered private parking areas and walks as well). In order to recover for a fall on an ice or snow covered surface, therefore, a plaintiff is required to prove:

- (1) that snow and ice had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians travelling thereon;
- (2) that the property owner had notice, either actual or constructive, of the existence of such condition;
- (3) that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall.

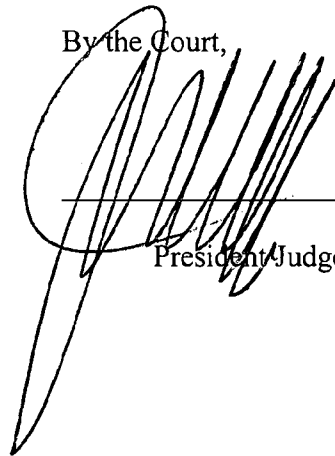
In the instant case to avail themselves of the “hills and ridges” defense, Defendants must show that generally slippery conditions existed at the time of Plaintiff’s fall. Should they be able to do so, and their “hills and ridges” doctrine applied, their Motion for Summary Judgment must be granted. However, it is not clear from the record that these conditions existed and before this Court can rule on said Motion for Summary Judgment, this concern must be addressed. Therefore, at this stage of the proceedings, this Court will dismiss Defendant’s Motion for Summary Judgment to give them an opportunity either in discovery or at trial to prove the existence of generally slippery conditions and therefore enters the following:

ORDER

NOW, this 6th day of June, 2002, following argument and briefs into Motion for Summary Judgment filed on behalf of Defendants above-named, it is the ORDER of this Court

that said Motion be and is hereby dismissed without prejudice in accordance with the foregoing Opinion.

By the Court,



President Judge

FILED

JUN 07 2002

William A. Shaw
Prothonotary

Cent to Mrs. Thelma
+ Noble

list

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01- 1905 -CD

Type of Pleading:

**PRAECIPE TO LIST
FOR ARBITRATION**

Filed By:

PLAINTIFFS

Counsel of Record:

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

FILED

JUL 15 2002

m/2:00/attz Noble

William A. Shaw
Prothonotary

pd \$20.00

Copy CA / no CC

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01- 1905 -CD

To: William A. Shaw, Prothonotary


Date: July 12, 2002

PRAECIPE TO LIST FOR ARBITRATION

Pleadings having been closed and there being no outstanding discovery or motions, please list
this matter for arbitration (1/2 day). Please be advised counsel for defendants is Matthew B.

Taladay, Esquire, c/o Hanak, Guido and Taladay, P.O. Box 487, DuBois, PA 15801

Respectfully Submitted,



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

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

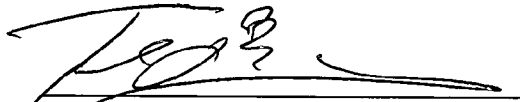
No. 01-1905-CD

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiffs, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 12th day of July, 2002, a true and correct copy of Plaintiffs' PRAECIPE TO LIST FOR ARBITRATION, to the below indicated person, at said address, being counsel of record for the Defendants:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

Respectfully Submitted,



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

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Amended Motion for
Summary Judgment

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

OCT 11 2001

William A. Shaw
Promotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

AMENDED MOTION FOR SUMMARY JUDGMENT

AND NOW, come the Defendants, Thomas Phelps and Roseanne Phelps, by their attorneys, Hanak, Guido and Taladay, and hereby bring the within Motion for Summary Judgment:

1. Plaintiffs have filed suit seeking recovery for injuries sustained by Wife Plaintiff when she slipped and fell on property rented by the Defendants on December 18, 2000.

2. On that date, Plaintiff, Katie Simbeck, appeared at the home rented by Defendants and located at Section 15, Lot 203, Treasure Lake.

3. Upon arriving at the area of the Phelps' home, Ms. Simbeck parked her car on the street and proceeded to walk down the Phelps' sloping, snow covered driveway. (T. 16, 17).

4. Wife Plaintiff stated that she recognized the snow covered driveway as a slippery surface. (T. 17, Line 16).

5. Ms. Simbeck further stated that she parked her vehicle at the top of the driveway rather than pulling on to the inclined driveway because she had concerns about being able to stop or getting back out of the inclined, snow covered driveway. (T. 17, Line 11-14).

6. Ms. Simbeck had taken two or three steps down the driveway when her foot slipped and she reportedly fell on with her right leg underneath her, resulting in a broken leg. (T. 17).

7. Plaintiffs' Complaint alleges that the Defendants were negligent for the following reasons:

(a) They failed to clear snow and ice from their driveway when it was known or likely to be known that persons would be coming to their home;

(b) Failed to provide a safe walkway for persons coming to their home.

8. Mr. Phelps had cleared a portion of the driveway the night before Ms. Simbeck's accident and had applied salt and sand to the cleared area. Mr. Phelps halted his clearing operations on that date because it had begun to snow or sleet. (T. 21)

9. Plaintiff testified that she had fallen on the area of the driveway that appeared to be partially cleared. (T. 17)

10. Any accumulation of snow or ice upon which the Plaintiff fell would have been the natural accumulation that occurred during the late evening or early morning hours of December 17 - 18.

11. The pleadings in this matter are now closed and discovery is completed.

12. Defendants previously filed a Motion for Summary Judgment based on the hills and ridges doctrine.

13. In ruling on Defendants' Motion for Summary Judgment, this Court held that if Defendants could establish that generally icy and snowy conditions existed at the time of the accident, Defendants' Motion for Summary Judgment must be granted.

14. Defendants now submit an Affidavit and expert report of an AccuWeather forensic meteorologist that reveal that generally icy and slippery conditions existed at the time of the accident.

15. Defendants are entitled to judgment as a matter of law since Plaintiff's fall occurred on a natural accumulation of snow and ice, "without hills and ridges".

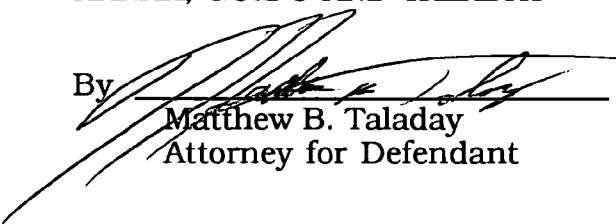
16. Plaintiffs have failed to establish a claim from which relief can be granted and Defendants are entitled to judgment as a matter of law.

WHEREFORE, it is respectfully requested that Defendant's Motion for Summary Judgment be granted.

Respectfully submitted,

HANAK, GUIDO AND TALADAY

By



Matthew B. Taladay
Attorney for Defendant

AFFIDAVIT

I, **Stephen Marvill Wistar**, hereby depose and say that I am a Certified Consulting Meteorologist currently employed by AccuWeather, Inc. and have been so employed since October, 1976. I have held the position of Senior Meteorologist since 1983.

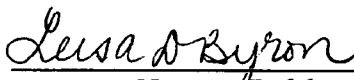
My full credentials are set forth in my Curriculum Vitae which is attached hereto as Exhibit "A".

I hereby affirm that I have prepared and submitted a Forensic Weather Report dated October 2, 2002 and addressed to the Office of Hanak, Guido and Taladay, which is attached hereto as Exhibit "B". This report specifically deals with the weather events, climatic conditions and participation and presence or absence of generally snowy and icy conditions prevailing at Treasure Lake, Lot 203, Section 215, Sandy Township, Clearfield County, Pennsylvania, on and prior to December 18, 2000 with particular attention to conditions at approximately 10:00 a.m. on December 18, 2000.

All conclusions and opinions set forth in this report are based on generally accepted scientific principles and are stated with a reasonable degree of scientific certainty.


Stephen Marvill Wistar

Sworn to and subscribed
before me this 10th
day of October, 2002.


Notary Public

Notarial Seal
Leisa D. Byron, Notary Public
Ferguson Twp., Centre County
My Commission Expires Mar. 29, 2004

Member, Pennsylvania Association of Notaries



STEPHEN MARVILL WISTAR
Certified Consulting Meteorologist

Education

Pennsylvania State University - B.S., 1974 (Meteorology)
Upper Dublin High School, Fort Washington, Pennsylvania - Graduated 1970
Future Meteorologists of America, Franklin Institute, Philadelphia, Pennsylvania, 1963 to 1970

Professional and Academic Positions

AccuWeather, Inc. - October 1976 to date. Positions held: Member of Hiring Committee, 1983 - 1987;
Forensic Department, June 1995 to date. Have held the position of Senior Meteorologist since 1983.

Geophysical Institute, University of Alaska, Fairbanks, Alaska - Satellite Research Meteorologist, 1975.

National Environmental Satellite Service, Camp Springs, Maryland - Satellite Research Meteorologist,
1974.

Honors and Accomplishments

Awarded the nationally recognized Certified Consulting Meteorologist (CCM) designation by the
American Meteorological Society.

Admitted as Expert Witness in Meteorology in numerous trials in several states, at both the state and
federal level.

Coordinator of numerous past weather research projects.

Author of hundreds of reports documenting weather conditions at particular times and places in the past.

Specialist in weather conditions relating to roof failures, including snow loading and drifting factors.

Operational weather forecaster preparing forecasts daily for major markets in United States and abroad.

Regular live and taped broadcasts in major United States and overseas markets.

Unofficial weather observer for Lemont, Pennsylvania with regular reports provided to local Emergency
Management Agency.

Weather presentations to school classes.

Professional Affiliations

American Meteorological Society
National Weather Association

Publications

"Investigations of Strong Valley Winds in Alaska Using Satellite Infrared Imagery", (Joint Author). Marvill and Jayaweera. Monthly Weather Review, Vol. 103, No. 12, December 1975, 1129-1136

October 2, 2002

Casey Bowers
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

RE: Erie/Phelps
AccuWeather File Number: 090218

Dear Mr. Bowers:

As you requested, we have investigated the weather conditions in the vicinity of Lot 203, Section 15, Treasure Lake, Sandy Township, Clearfield County, Pennsylvania on and prior to December 18, 2000, with particular attention to the existing conditions at approximately 10:00 AM¹ on the 18th. The results of our investigation are presented in the following paragraphs.

Our research shows that the weather in Treasure Lake was generally quite cold during the first 15 days of December 2000 with the temperature below the freezing point (32 degrees Fahrenheit) most of the time. A total of 5 to 8 inches of snow and sleet fell during this period. At the end of December 15, 2000, undisturbed surfaces were covered with an average of 2 to 3 inches of snow and ice. This included quite a bit of sleet from a storm on December 14.

During the morning of December 16, 2000, the sky over Treasure Lake was cloudy and a bit of sleet fell at times. The temperature climbed from 28 before dawn to about 34 degrees at 12:00 Noon. The weather turned milder during the afternoon and evening hours of the 16th with temperatures climbing into the 40's. There were periods of rain during this time and the rain was occasionally heavy. The combination of higher temperatures, drenching rain and gusty winds caused substantial natural melting of the accumulated snow and ice.

The mild, rainy weather continued during the first 9 hours of December 17, 2000. The temperature remained in the 40's and rapid natural melting of the snow and ice on the ground took place. At 9:00 AM on the 17th, all that remained of the snowpack on undisturbed ground surfaces were patches of old snow and ice. All exposed surfaces were wet with large puddles on portions of paved surfaces that drained poorly. The total amount of rain that fell in Treasure Lake from 12:00 Noon on December 16 through 9:00 AM on December 17 was between 0.70 and 0.90 of an inch.

¹ This and all other time references in this report are expressed in Eastern Standard Time (EST).

During the last 3 hours of the morning of December 17, much colder air began to move into Clearfield County. The sky was mainly cloudy and occasional sprinkles of rain fell. The temperature fell from approximately 42 degrees at 9:00 AM to 33 degrees just before 12:00 Noon. Wet snow began to fall at the site in question at about 11:45 AM on the 17th.

Throughout the afternoon and evening hours of December 17, the sky over Treasure Lake was cloudy and snow of varying intensity fell. The temperature fell from 33 degrees just before 12:00 Noon to approximately 13 degrees at the end of the evening. The wind blew from the west and west-southwest at an average speed of 15 to 25 MPH with gusts to between 35 and 40 MPH. The rapidly falling temperature caused freezing of wet areas and of puddles as well as a hardening of the initially wet snow that fell at the start of the afternoon. During the remainder of the afternoon and evening, as the temperature fell through the 20's and then through the teens, the snow was powdery and subject to extensive blowing and drifting in the strong wind.

Snow of varying intensity continued to fall in Treasure Lake through the morning hours of December 18, 2000. The temperature ranged from 10 to 13 degrees. Prior to 6:00 AM, the wind blew from the west and west-southwest, averaging 12 to 22 MPH with gusts to about 35 MPH. Blowing and drifting of the newly fallen snow continued. From 6:00 AM until 12:00 Noon, the wind blew from a similar direction at an average speed of 8 to 16 MPH and drifting was limited. The total amount of snow that fell from midday on December 17 through midday on December 18 was approximately one inch. This was the average snow accumulation on undisturbed surfaces; blowing and drifting caused substantial variations in the actual depth from place to place.

Specifically, in the vicinity of Lot 203, Section 15, Treasure Lake, Sandy Township, Clearfield County, Pennsylvania on December 18, 2000 at approximately 10:00 AM, the sky was cloudy, the temperature was about 12 degrees and the wind was blowing from the west and west-southwest at an average speed of 8 to 16 MPH. Light snow was falling and snow of varying intensity had been falling nearly all of the time during the previous 22 hours. Undisturbed ground surfaces were covered with an average of about one inch of powdery snow overtop areas of ice. These icy areas may have included old hard-frozen patches of snow and sleet left over from storms earlier in the month. Much of the ice formed when wet areas and puddles froze during the previous afternoon and evening as the temperature rapidly fell. The wet areas and puddles resulted from a soaking rain, combined with rapid snowmelt, that had taken place in Treasure Lake from the afternoon of December 16 through the first 9 hours of December 17.

There were substantial variations in the depth of the powdery snow from place to place due to extensive blowing and drifting from the afternoon of December 17 through the predawn hours of December 18.

While salt is very effective at melting ice at temperatures close to 32 degrees, salt would have been ineffective as an ice-melting agent on the morning of December 18, 2000 due to the low

temperatures. At an air temperature of 12 degrees, a given amount of salt will melt only slightly more than 10 percent as much ice as it will at 30 degrees.

The information in this report has been determined from the best sources of weather information available to us at this time and is the result of interpretation by our staff of professional meteorologists and represents our opinions to a reasonable degree of scientific certainty.

We hope this information is useful to you. If you should have any additional questions or need additional information, please do not hesitate to contact us.

Sincerely,



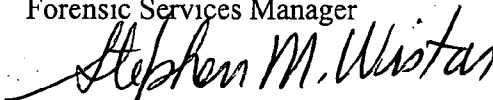
Joseph P. Sobel, Ph.D.

Director of Forensic Services



Edward R. Adams

Forensic Services Manager



Stephen M. Wistar

Certified Consulting Meteorologist

JPS/ERA/SMW:las

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

RULE TO SHOW CAUSE ORDER

AND NOW, this 16th day of October, 2002, upon
filing of Amended Motion for Summary Judgment, Rule is hereby
entered upon Katie B. Simbeck and Joel S. Simbeck to appear and
show cause why the Summary Judgment should not be granted.

Rule Returnable the 6 day of November,
2002, at 9:00 A.m. in the Clearfield County Courthouse,
Courtroom No. 1, 230 East Market Street, Clearfield,
Pennsylvania.

BY THE COURT:

J.

FILED

OCT 16 2002
01:40 PM
William A. Shaw
Prothonotary

1 Cent to Am

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

OCT 14 2004

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

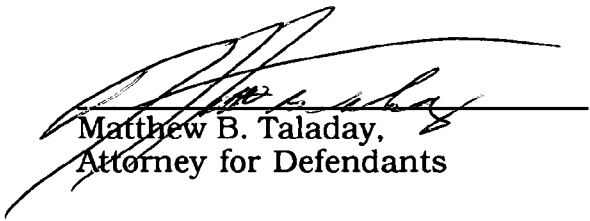
Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 14th day of October, 2002, a true and correct copy of Defendants' Amended Motion for Summary Judgment and a true and correct copy of Brief in Support of Amended Motion for Summary Judgment were sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendants

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

OCT 22 2002

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

CERTIFICATE OF SERVICE

I certify that on the 21st day of October, 2002, a Court
certified copy of Defendants' Amended Motion for Summary Judgment
and a Court certified copy of Rule to Show Cause Order were sent via
first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830



Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

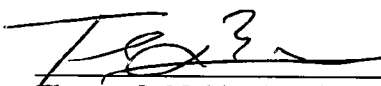
No. 01-1905-CD

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiffs, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 30th day of October, 2002, a true and correct copy of Plaintiffs' NOTICE TO TESTIFY to the below indicated person, at said address, being counsel of record for the Defendants:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

Respectfully Submitted,



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

FILED

OCT 31 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Application
for Continuance

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

OCT 14 2002

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

APPLICATION FOR CONTINUANCE
FILED ON BEHALF OF DEFENDANTS

Defendants, Thomas Phelps and Roseanne Phelps, husband and wife, by their undersigned counsel, respectfully request that this Court continue the above captioned case which is scheduled for Arbitration Hearing to be held on Tuesday, November 12, 2002 pursuant to Pa.R.C.P. 216, and in support thereof avers as follows:

1. Plaintiffs commenced this action on November 20, 2001 seeking to recover money damages for personal injuries sustained in an accident on or about December 18, 2000.
2. This case first appeared on the arbitration list on September 16, 2002.
3. Defendants submitted a Motion for Summary Judgment and Brief in Support thereof on the basis of the "hills and ridges doctrine".
4. In its Order dated June 6, 2002, this Court held that if Defendants could establish that generally slippery conditions existed

at the time of the accident, Defendant's Motion for Summary Judgment must be granted.

5. In so holding, the Court left the matter of whether generally slippery conditions existed open for further evidence.

6. On October 14, 2002, Defendants filed an Amended Motion for Summary Judgment and Brief in support thereof along with an Affidavit and Report from forensic meteorologists establishing that said conditions existed at the time of the accident.

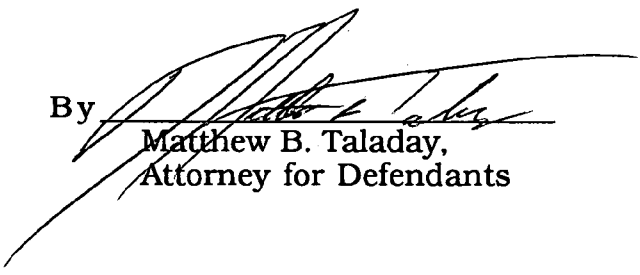
7. Defendants request that this action be continued from the arbitration list until such a time that the Court has opportunity to hear and rule upon Defendants' Amended Motion for Summary Judgment.

8. The cause for this requested continuance was not known to Defendants at the time of the publication of the arbitration list.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By



Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

No. 01-1905-CD

RULE TO SHOW CAUSE ORDER

AND NOW, this ____ day of _____, 2002, upon
filing of Application for Continuance, Rule is hereby entered upon
Katie B. Simbeck and Joel S. Simbeck to appear and show cause why
the continuance should not be granted.

Rule Returnable the ____ day of _____,
2002, at _____.m. in the Clearfield County Courthouse,
Courtroom No. _____, 230 East Market Street Street, Clearfield,
Pennsylvania.

BY THE COURT:

J.

Matthew B. Taladay,
Attorney for Defendants



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-~~6929~~ 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

October 16, 2002

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

Matthew B. Taladay, Esquire
Hanak, Guido & Taladay
Post Office Box 487
DuBois, PA 15801

RE: KATIE B. SIMBECK, al
vs.
THOMAS PHELPS, al
No. 01-1905-CD

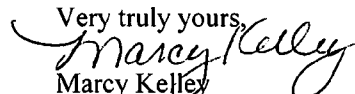
Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held **Tuesday, November 12, 2002.** The following have been appointed to the Board of Arbitrators:

Joseph Colavecchi, Esquire
Girard Kasubick, Esquire
Mark A. Falvo, Esquire
Michael S. Marshall, Esquire
Cynthia B. Stewart, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration Hearing.

Very truly yours,

Marcy Kelley
Deputy Court Administrator



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-~~6889~~ 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

September 25, 2002

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

Matthew B. Taladay, Esquire
Hanak, Guido & Taladay
Post Office Box 487
DuBois, PA 15801

RE: KATIE B. SIMBECK, al
vs.
THOMAS PHELPS, al
No. 01-1905-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held **Tuesday, November 12, 2002 at 8:30 A.M.** The following have been appointed as Arbitrators:

Girard Kasubick, Esquire, Chairman
Mark A. Falvo, Esquire
Michael S. Marshall, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators.** For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local rule of Court.

Very truly yours,


Marcy Kelley

Deputy Court Administrator

cc: Girard Kasubick, Esquire
Mark A. Falvo, Esquire
Michael S. Marshall, Esquire

ARBITRATION BOARD

I, William A. Shaw, Prothonotary of the Courts of Clearfield County, hereby certify that:

Case # 2001-01905-CD

COPY

Girard Kasubick, Esquire

Chairman

Mark A. Falvo, Esquire

Michael S. Marshall, Esquire

are members of the Clearfield County Bar and have served as arbitrators on the 12th day of November, 2002, starting at 8:55 A.M./~~P.M.~~ and ending at 3:00 A.M./P.M.

COMPENSATION OF ARBITRATORS

Each attorney shall receive an appearance fee of \$100.00 for appearing as a member of the Board of Arbitration on the day designated and shall receive additional fees as follows:

- a) an additional fee of \$50.00 in the event the attorney is required to hear cases until 10:00 A.M.
- b) an additional fee of \$50.00 if the attorney is required to be present between the hours of 10:00 A.M. and 12:00 noon
- c) an additional fee of \$100.00 if an attorney, after a normal lunch break, is required to return for arbitration after 1:00 P.M.

Said rule to be effective as of July 26, 1984

ACKNOWLEDGEMENT OF ARBITRATORS

DATE

Chairman

Girard Kasubick

Mark A. Falvo

MS 2

11/12/02

11/12/02

APPROVED

[Signature]

Prothonotary

Clearfield County Commissioner's Office

By: _____

Original to CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Katie B. Simbeck and Joel S. Simbeck

vs.

Thomas Phelps and Roseanne Phelps

No. 2001-01905-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 12th day of November, 2002, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Girard Kasubick, Esquire

Mark A. Falvo, Esquire

Michael S. Marshall, Esquire

Girard Kasubick
Chairman
Mark A. Falvo
MS

FILED

Sworn to and subscribed before me this
November 12, 2002

[Signature]

Prothonotary

NOV 12 2002

AWARD OF ARBITRATORS

Now, this 12th day of November, 2002, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

Judgement in favor Defendants
And Against the Plaintiffs.

William A. Shaw
Prothonotary

Girard Kasubick
Chairman
Mark A. Falvo
MS

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 12th day of November, 2002, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

Prothonotary

By

William A. Shaw

[Handwritten signature]

Attest.

[Handwritten signature]
Prothonotary

NOV 12 2002

and attest
statement

[Handwritten notes:]
Del. to
2cc to
1 att + 1 copy
1 copy make

Katie B. Simbeck
Joel S. Simbeck

: IN THE COURT OF
PLEAS OF CLEARF

Vs.

: No. 2001-01905-CD
:

Thomas Phelps
Roseanne Phelps

COPY

NOTICE OF AWARD

TO: MATHEW B. TALADAY

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on 12th day of November, 2002 and have awarded:

Judgment in favor Defendants and against the Plaintiffs

William A. Shaw
Prothonotary
By _____

Date: November 12, 2002

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Katie B. Simbeck
Joel S. Simbeck

: IN THE COURT OF
PLEAS OF CLEARF

Vs.

: No. 2001-01905-CD

Thomas Phelps Roseanne Phelps

COPY

NOTICE OF AWARD

TO: THERON G. NOBLE

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on 12th day of November, 2002 and have awarded:

Judgment in favor Defendants and against the Plaintiffs

William A. Shaw

Prothonotary

By _____

Date: November 12, 2002

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

FERRARACCIO & NOBLE

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

Panel of Arbitrators

November 12, 2002

Re: Simbeck v. Phelps;
Delay Damages

Dear Arbitrators:

Pursuant to Pa.R.Civ.P. 238(d)(1), I am giving you this letter. You were suppose to open this in the event you found for the Plaintiffs in this matter.

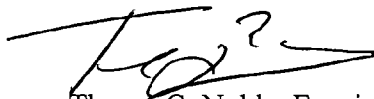
Please be advised that in accordance with such rule, I placed the defendants on notice, through their counsel, of Mr. and Mrs. Simbeck's intent to seek delay damages. A copy of such letter is attached hereto.

Please be further advised, that Plaintiffs did not receive any offer from the Defendants nor were any reasons given as to why such delay damages would not be appropriate.

The CIVIL COMPLAINT was filed by November 22, 2001.

With regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'TGN', with a stylized flourish extending to the right.

Theron G. Noble, Esquire

tn/TGN w.encl.

cc: Matthew B. Taladay, Esquire w.encl.

FERRARACCIO & NOBLE

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

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801

October 7, 2002

Re: Simbeck v. Phelps;
Delay Damages

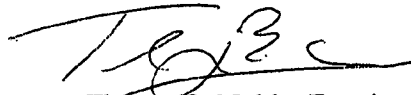
COPY

Dear Matt:

Please be advised that pursuant to Pa.R.Civ.P. 238(d)(1), Mr. and Mrs. Simbeck will seek delay damages in the event they are successful in their arbitration hearing. In accordance therewith, this notice is being sent to you more than twenty (20) days prior to the scheduled hearing.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN

cc: Mr. and Mrs. Joel Simbeck

FERRARACCIO & NOBLE

301 East Pine Street
Clearfield, PA 16830

Panel of Arbitrators
Simbeck v. Phelps

To Be Opened After Verdict Deliberations

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

KATIE B. SIMBECK and JOEL S. :

SIMBECK, husband and wife :

-VS- :

No. 01 – 1905 – CD

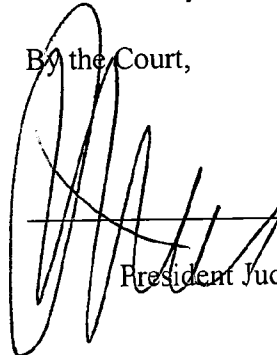
THOMAS PHELPS and ROSEANNE :

PHELPS, husband and wife :

ORDER

NOW, this 12th day of November, 2002, upon consideration of Motion for Summary Judgment filed on behalf of Defendants above-named, and argument and briefs thereon, this Court being satisfied that sufficient questions of fact remain to be determined, it is the ORDER of this Court that said Motion be and is hereby dismissed.

By the Court,



President Judge

FILED

NOV 13 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,
Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,
Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Praeipe for
Entry of Judgment

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

M 10:32 DA

JAN 15 2003

*Notice to Plaintiffs
Copy to att. Taladay*

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD

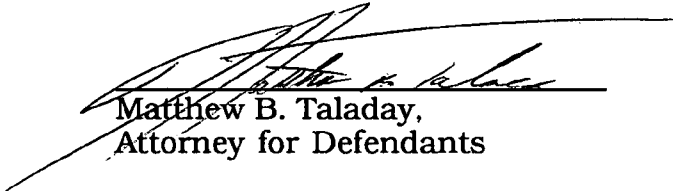
THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

PRAECIPE FOR ENTRY OF JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment in accordance with Notice of Award
of Board of Arbitrators dated November 12, 2002 in favor of the
Defendants.



Matthew B. Taladay,
Attorney for Defendants

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

Y2003

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD


THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

NOTICE OF JUDGMENT

TO: KATIE B. SIMBECK and
JOEL S. SIMBECK

On this the 15th day of JANUARY, 2003, resulting
from Arbitration of November 12, 2002, judgment was entered against
you and in favor of Defendants.



Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

Type of Case: Civil Action

No. 01-1905-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendants

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

M 10:14 BA Noel
JAN 15 2003

William A. Shaw
Prothonotary

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

KATIE B. SIMBECK and
JOEL S. SIMBECK, husband and
wife,

Plaintiffs

-vs-

No. 01-1905-CD

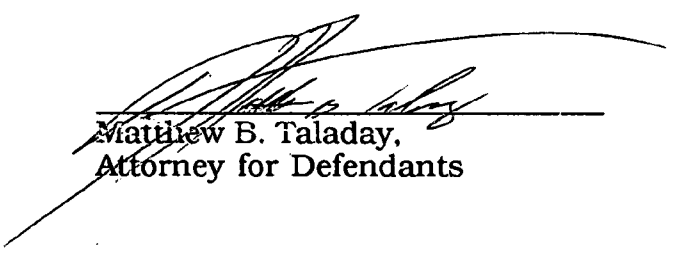
THOMAS PHELPS and
ROSEANNE PHELPS, husband
and wife,

Defendants

CERTIFICATE OF SERVICE

I certify that on the 14th day of January, 2003, a true and correct copy of Defendants' Praecept for Entry of Judgment was sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiffs
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendants

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

KATIE B. SIMBECK, and
JOEL S. SIMBECK, husband and wife,

PLAINTIFFS,

v.

THOMAS PHELPS, and ROSEANNE
PHELPS, husband and wife,

DEFENDANTS.

No. 01- 1905 -CD

PLAINTIFFS' PRE-ARBITRATION MEMORANDUM

AND NOW, comes the Plaintiffs, Joel s. and Katie B. Simbeck, plaintiffs, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who provides the following as Plaintiffs' PRE-ARBITRATION MEMORANDUM:

A. Statement of Case

Katie and Joel Simbeck, husband and wife Plaintiffs, bring this action for injuries sustained in a slip, trip and fall type in the Defendants' driveway. Averment 10. The incident , which occurred on December 18, 2000, resulted in a broken leg to Mrs. Simbeck. Averments 7 and 11. Mr. Simbeck's claim is for loss of consortium. Count II.

Mr. and Mrs. Simbeck were in the process of relocating back to this area from Ohio. Katie Simbeck Deposition, pages 7, lines 5 -7. They purchased a home in Treasure Lake which the Defendants had previously rented. Katie Simbeck Deposition, pages 7, lines 8 -11. After closing, the Defendants requested the Simbecks to pay for a custom window blind which they had installed in the home. Katie Simbeck Deposition, pages 9 & 10, lines 22 -1. Mrs. Simbeck was going to the Defendants' new rental residence, as she said she would do, to deliver the money the Defendants had requested for this item of personal property left in the Simbecks new home. Averment 7.

On the way to observing a possible day care facility for their very young children, Mrs.

RECEIVED

OCT 31 2002

**COURT ADMINISTRATOR'S
OFFICE**

Simbeck stopped at the Defendants' house at about 10:00 A.M.. Katie Simbeck Deposition, page 10, line 20. The Defendants' driveway is sloped down from the road to their residence. Averment 9. Fearful that she would not be able to remove her car from the snow covered, sloped driveway, Mrs. Simbeck parked her car on the road. Katie Simbeck Deposition, page 13, lines 17 - 22.

There was no other walkway from the road to the Defendants' house other than a path on a portion of the driveway which had been cleared of snow. Katie Simbeck Deposition, page 16, lines 11. This path had a slight dusting of snow but had been cleared from heavier snow which covered the remaining portion of the driveway. Katie Simbeck Deposition, pages 15 & 16, lines 23 - 7.

It has been learned in discovery that this pathway had not been cleared sine the day before. Defendant Thomas Phelps Deposition at page 15, lines 2 - 5. At the time it had been cleared, Defendant Thomas Phelps stopped clearing the path as it started to again snow. Defendant Thomas Phelps Deposition at page 21, lines 19 - 21. Defendant Thomas Phelps' efforts included applying some type of melting agent on the driveway. Defendant Thomas Phelps Deposition at page 21, lines 2 - 9. Since the day before, there had not been any appreciable accumulation of snow or ice and the cleared pathway was only covered with a "little dusting" of snow. See Deposition transcript of Katie Simbeck at pages 10, lines 24 - 25; page 11, lines 19 - 21; page 12, lines 17 - 24; and Joel Simbeck at page 4, lines 14 - 16.

Upon taking two or three steps onto the driveway, Mrs. Simbeck fell in an awkward manner with the brunt of her weight toppling onto her right leg, resulting in the fracture. Katie Simbeck Deposition, page 17, lines 1 - 10. The fall was caused by ice hidden by the light snow dusting on the cleared portion of the driveway which was the walkway. See Katie Simbeck Deposition, page 16, lines 18 - 20 and page 38, lines 14 - 20.

In a phone conversation with Mr. Simbeck the night following the accident, Defendant Mrs. Phelps admitted to Mr. Simbeck in a phone conversation that she had asked her husband to clear the pathway as she had difficulty walking on it earlier in the day. Joel Simbeck Deposition, page 10, lines 12 - 19. This admission was again repeated to Mrs. Simbeck, by Defendant Mrs. Phelps, during a personal visit a few days after the accident. Katie Simbeck Deposition, pages 36, lines 6 - 12.

B. Citation to Applicable Statutes

(1) In order for the defense of "hills and ridges" to apply at all, there must be generally slippery conditions at the time of the accident. Rinaldi v. Levine, 176 A.2d 623 (1962) and Morin v. Traveler's Rest Motel, Inc., 704 A.2d 1085 (1977).

(2) In order for "hills and ridges" to be applied, the condition must result from "an entirely natural accumulation". Harmotta v. Bender, 601 A.2d 837 (1992), appeal denied 608 A.2d 30 (1992). Hills and ridges does not apply when a localized patch of ice is present. Harmotta citing Tonik v. Apek Garages, Inc., 275 A.2d 296 (1971).

C. List of Witnesses

- (1) Defendant Thomas Phelps
- (2) Plaintiff Joel S. Simbeck
- (3) Plaintiff Katie B. Simbeck

D. Statement of Damages

Mr. and Mrs. Simbeck damages, stemming from Mrs. Simbeck's broken leg have included (i) medical bills and expenses related thereto (see attached); (ii) pain and suffering; and (iii) loss of consortium.

Respectfully Submitted,



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

TUCKER ARENSBERG, P.C.



Michael J. Laffey 1-800-627-8276
Special Counsel 412-594-5620
Pittsburgh Office Fax: 412-594-5639

November 1, 2001

Terrance Noble, Esquire
301 E. Pine Street
Clearfield, PA 16830

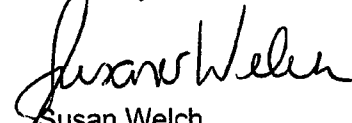
Re: Highmark Blue Cross Blue Shield
Patient: Katie Simbeck
Agreement: 1685499590
Accident Date: 12/18/2000
Lien Amount: \$968.10

Dear Mr. Noble:

Enclosed please find the updated record of claim payments prepared by Highmark Blue Cross Blue Shield ("Highmark") regarding your above client.

If additional information is needed, please do not hesitate to contact me. Thank you for your time and assistance in this matter.

Sincerely,



Susan Welch
Legal Assistant to
Michael J. Laffey

Enclosure

PITTSBURGH OFFICE: 1500 One PPG Place Pittsburgh, Pennsylvania 15222 412-566-1212 FAX 412-594-5619

Pittsburgh Airport Area • Harrisburg

E-mail: laffey@subrogation.com
www.subrogation.com

E-mail: mlaffey@tuckerlaw.com
www.tuckerlaw.com

10/31/2001

PROGRAMMER: JOSEPH A. ROOTS

HIGHMARK BLUE CROSS BLUE SHIELD
PROGRAM: ENDEVOR(CMPD772J)

PROJECT: 963576

PAGE 1

ACCIDENT LIEN REPORT

PATIENT NAME: SIMBECK KATIE

AGREEMENT: 1685499590

GROUP: 04654003

ACCIDENT DATE: 12/18/2000

ATTNY. CODE: LM001

NEW PAID AND/OR ADJUSTED CLAIMS
UPDATE

BEG SRV DT	CLAIM NUMBER	PATIENT FIRST NAME	PROVIDER NAME	TOTAL CHARGE	PAID AMT	PAID DATE	DIAG 1	DIAG 2	DIAG 3	CLM SYS	NEW/ ADJ
12/18/2000	03551160510	KATIE	WEST PENN ORTHO	838.00	330.99	12/20/2000	82480			CMP	
12/18/2000	03642033340	KATIE	DUBOIS REGIONAL	296.00	169.87	12/29/2000	82480			CMP	
12/18/2000	10031001400	KATIE	DUBOIS RADIOLOG	31.00	8.55	01/03/2001	82380			CMP	
12/18/2000	10381076480	KATIE	DUBOIS REGIONAL	125.00	46.22	02/07/2001	82480			CMP	N
12/26/2000	03631164290	KATIE	WEST PENN ORTHO	60.00	25.42	12/28/2000	82480			CMP	
01/15/2001	10171205010	KATIE	WEST PENN ORTHO	60.00	25.42	01/17/2001	82480			CMP	N
01/29/2001	10311008180	KATIE	WEST PENN ORTHO	60.00	28.24	01/31/2001	82480			CMP	N
01/29/2001	10521242830	KATIE	J SIMBECK	168.17	168.17	02/21/2001	82480			CMP	N
02/12/2001	10451405360	KATIE	WEST PENN ORTHO	60.00	28.24	02/14/2001	82480			CMP	N
03/01/2001	10621259460	KATIE	WEST PENN ORTHO	60.00	28.24	03/03/2001	82480			CMP	N
03/01/2001	10881260740	KATIE	J SIMBECK	85.49	85.49	04/02/2001	82490			CMP	N
04/17/2001	11101244710	KATIE	WEST PENN ORTHO	60.00	23.25	04/20/2001	82480			CMP	N
				1,903.66	968.10						

LIEN AMOUNT: 968.10

RECOVERY AMOUNT:

Laffey & Associates, P.C.

ATTORNEYS AT LAW

210 Mary Street
Carnegie, PA 15106

800-827-8276
412-429-7079
Fax 412-429-7078

WWW.SUBROGATION.COM

MICHAEL J. LAFFEY

May 28, 2002

Terrance Noble, Esquire
301 E. Pine Street
Clearfield, PA 16830

Re: Highmark Blue Cross Blue Shield
Patient: Katie Simbeck
Agreement: 1685499590
Accident Date: 12/18/2000
Lien Amount: \$968.10

Dear Mr. Noble:

Highmark Blue Cross Blue Shield ("Highmark") has not paid any additional claims regarding your above client. The subrogation lien remains at \$968.10.

If additional information is needed, please do not hesitate to contact me. Thank you for your time and assistance in this matter.

Sincerely,



Susan Welch
Legal Assistant to
Michael J. Laffey



West Penn Orthopaedics

18 Sportsman Drive, Suite 20 • Clarion, Pennsylvania 16214
814-226-1070 • FAX 814-226-1072

April 1, 2002

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

RE: Katie Simbeck

Dear Mr. Noble,

This letter is in reference to our phone conversation on 04-01-2002, concerning Katie Simbeck's litigation.

Katie's medical insurance did pay for services rendered, however, there is still a patient balance of \$147.69. This balance represents the 10% co-insurance required by Katie's insurance contract.

If you have any other questions concerning her account please do not hesitate to contact me. Thank you for the information concerning Katie's litigation status.

Sincerely,

Robin Adams
Billing Department

TUCKER ARENSBERG, P.C.



Michael J. Laffey 1-800-827-8276
Special Counsel 412-594-5620
Pittsburgh Office Fax: 412-594-5639

March 7, 2001

Terrance Noble, Esquire
301 E. Pine Street
Clearfield, PA 16830

Re: Patient: Katie Simbeck
Agreement #: 1685499590
Accident Date: 12/18/2000

Dear Mr. Noble:

Our firm assists Highmark Blue Cross Blue Shield ("Highmark") with respect to enforcement of its subrogation rights.

It is our understanding that you represent the above subscriber related to injuries sustained on December 18, 2000.

I would like to request that you protect Highmark's interest in this matter. Highmark proposes to pay you a fee of 25% of the medical benefits recovered prior to trial or 33.3% of the medical benefits if the case proceeds to trial.

To date, Highmark has received record of paying \$534.83 under the terms of this agreement. Enclosed please find the Record of Claim Payments prepared by Highmark. Upon settlement, we request all checks be made payable to "Tucker Arensberg, Attorneys for Blue Cross" and be forwarded to my attention at our Pittsburgh office.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,

Janet Hull
Legal Assistant to
Michael J. Laffey

Enclosure

1/13/2001

PROGRAMMER: JOSEPH A. ROOTS
PROGRAM: ENDEVOR(CMPD772J)

PROJECT: 963576

PAGE 1

ACCIDENT LIEN REPORT

PATIENT NAME: SIMBECK KATIE
AGREEMENT: 1685499590
GROUP: 04654003
ACCIDENT DATE: 12/18/2000
ATTNY. CODE: LM001
PAID CLAIMS
INITIAL REPORT

BEG SRV DT	CLAIM NUMBER	PATIENT FIRST NAME	PROVIDER NAME	TOTAL CHARGE	PAID AMT	PAID DATE	DIAG 1	DIAG 2	DIAG 3	CLM SYS	NEW/ ADJ
12/18/2000	03551160510	KATIE	WEST PENN ORTHO	838.00	330.99	12/20/2000	82480			CMP	N
12/18/2000	03642033340	KATIE	DUBOIS REGIONAL	296.00	169.87	12/29/2000	82480			CMP	N
12/18/2000	10031001400	KATIE	DUBOIS RADIOLOG	31.00	8.55	01/03/2001	82380			CMP	N
12/26/2000	03631164290	KATIE	WEST PENN ORTHO	60.00	25.42	12/28/2000	82480			CMP	N
				1,225.00	534.83						

LIEN AMOUNT: 534.83

RECOVERY AMOUNT:



18 Sportsman Drive, Ste. 20 • Clarion, PA 16214
Phone: (814) 226-1073

RESPONSIBLE PARTY NAME

KATIE B SIMBECK
1264 TREASURE LAKE
DUBOIS PA 15801

STATEMENT

CLOSING DATE	07/20/01
ACCOUNT NUMBER	25324
TOTAL ACCOUNT BALANCE	147.69
DUE FROM PATIENT	147.69

CHARGES OR PAYMENTS MADE
AFTER CLOSING DATE WILL
APPEAR ON NEXT STATEMENT.

DATE

AUG 03 2001

WE ACCEPT FOR PAYMENT:



CARD NO.

EXP. DATE

SIGNATURE **X**

AMOUNT ENCLOSED \$

DETACH THIS STUB AND RETURN WITH PAYMENT

☐ PLEASE CHANGE ADDRESS IF INCORRECT

Date	Description of Transaction	Charges	Receipts	Ins
------	----------------------------	---------	----------	-----

12/18/00	Fx Tib w/o Reduction	339.52	305.57	
12/18/00	Radiologic exam ankle AP/lateral	28.24	25.42	
12/26/00	Radiologic exam ankle AP/lateral	28.24	25.42	
01/15/01	Radiologic exam ankle AP/lateral	28.24	25.42	
01/29/01	Radiologic exam ankle AP/lateral	60.00	28.24	
02/12/01	Radiologic exam ankle AP/lateral	60.00	28.24	
03/01/01	Radiologic exam ankle AP/lateral	60.00	28.24	
04/17/01	Office visit/Limited/Minor	33.25	23.25	

ITEMS MARKED * ARE INSURANCE PENDING

PATIENT FEEL ONE NEIGHBORS PROPERTY ATTORNEY CLOSE TO SETTLE SEE OFFICE!

CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	TOTAL ACCOUNT BALANCE	INSURANCE PENDING	DUE FROM PATIENT
.00	.00	105.28	.00	42.41	147.69	.00	147.69

** FOR YOUR CONVENIENCE WE ACCEPT VISA MASTERCARD OR DISCOVER FOR PAYMENT **

**DuBois Regional Medical Center**

P.O. Box 447 - DuBois, PA 15801-0447

(814) 375-4200

FEDERAL I.D. NO. 25-1490707

**DETAIL
STATEMENT**

TYPE OF BILL	DATE OF BILL	PAGE NO.
D1-ER	12/22/00	1

PATIENT NAME		PATIENT NUMBER	SEX	AGE	ADMISSION DATE	DISCHARGE DATE	DAYS
KATIE SIMBECK		00353-00519	F	28Y	12/18/00	12/18/00	
INSURANCE COMPANY NAME		GROUP NUMBER	POLICY NUMBER				
100003 BC KEYSTONE		04654003	YYM168549959				
105000 BLUE SHIELD PROFESSIO		04654003	YYM168549959				
					PAYMENT AMOUNT		
GUARANTOR NAME AND ADDRESS	JOEL S SIMBECK 1264 TREASURE LAKE DUBOIS PA 15801		<input type="checkbox"/> CARD NO. _____ <input type="checkbox"/> EXPIRATION DATE _____ <input type="checkbox"/> SIGNATURE _____				
PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE							

DATE	ITEM NO.	DESCRIPTION	CLM CODE	ORDER NO	QTY	UNIT PRICE	TOTAL CHARGES
12/18/00	95027	BANDAGE ACE 4"	270	4	2	5.00	10.00
12/18/00	95052	ICE BAG	270	3	1	6.00	6.00
12/18/00	96141	CRUTCH MEDIUM	270	2	1	19.00	19.00
		TOTAL SUPPLIES					35.00
12/18/00	44024	ANKLE, MIN 3	320	1	1	96.00	96.00
		TOTAL RADIOLOGY					96.00
12/18/00	16212	EMERGENCY DEPARTMENT VISIT L3	450	5	1	160.00	160.00
		TOTAL EMERGENCY ROOM					160.00
12/18/00	58959	NALBUPHINE HCL 10MG/ML, 1 ML	636	1	1	5.00	5.00
		TOTAL Drugs w/ detail coding					5.00
12/18/00	1612	PC EMERGENCY DEPARTMENT VISIT L3	980	6	1	125.00	125.00
		TOTAL Professional fee-general					125.00
		TOTAL CHARGES					421.00
01/08/01	11015	14 BLUE CROSS PAYMENT					-267.13
02/15/01	11023	26 BLUE SHIELD PAYMENTS (OP)					-110.86
		TOTAL PAYMENTS/ADJUSTMENTS					-380.99

PATIENT NUMBER	00353-00519	PAYMENT TO DUBOIS REGIONAL MEDICAL CENTER ONLY	TOTAL AMOUNT DUE	34.01
----------------	-------------	------------------------------------------------	------------------	-------

PLEASE REFER TO PATIENT
NUMBER ON ALL INQUIRIES
AND CORRESPONDENCE.PAYMENTS may be taken to the East or West registration
areas or to the Business Office located at 207 Hospital Avenue.

PLEASE RETAIN FOR YOUR RECORDS

FERRARACCIO & NOBLE

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

Arb 11-12-02

Ms. Marcy Kelley
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830

Re: Simbeck v. Phelps;
01-1950-CD
Plaintiffs' Pre-Arbitration Statement

01-1905-CD

October 30, 2002

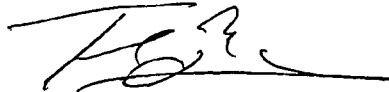
Dear Ms. Kelly:

Please find enclosed Plaintiffs' original Pre-Trial Arbitration Statement. In accordance with the local rule of Court, I have provided copies to opposing counsel as well as the panel of arbitrators.

As always, thank you for assistance which is greatly appreciated.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN w.encl.
cc: Mr. and Mrs. Joel Simbeck w.encl.
Matthew B. Taladay, Esquire w.encl.
Girard Kasubick, Esquire w.encl.
Mark A. Falvo, Esquire w.encl.
Michael S. Marshall, Esquire w.encl.

RECEIVED

OCT 31 2002

COURT ADMINISTRATORS
OFFICE