

02-240-CD
RUSSELL WELDER et al -vs- STEPHEN C. BELL

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :

Plaintiffs :

VS. :

NO. 02- 240 - CD

STEPHEN G. BELL, :

Defendant :

CASE NUMBER: 02- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **COMPLAINT**

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

FEB 20 2002

William A. Shaw
Prothonotary

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :
Plaintiffs :
VS. : NO. 02- - CD
STEPHEN G. BELL, :
Defendant :

NOTICE TO DEFEND

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

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

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641 Ext. 50-51

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :
Plaintiffs :
VS. : NO. 02- - CD
STEPHEN G. BELL, :
Defendant :

COMPLAINT

AND NOW, come the Plaintiffs by and through their attorney, R. Denning Gearhart, who file this Complaint and aver as follows:

1. That Plaintiffs, RUSSELL WELDER and VALERIE L. WELDER, are husband and wife, and are the parents of Sara Welder, a minor, date of birth December 18, 1998, with an address of R.R. #1, Box 67, Grampian, Clearfield County, Pennsylvania 16838.
2. That Plaintiffs, RUSSELL WELDER and VALERIE L. WELDER bring this suit on behalf of themselves and on behalf of their minor child, SARA WELDER, date of birth December 18, 1998.
4. That Defendant, STEPHEN G. BELL, is an adult individual, with an address of R.R. #1, Box 458, Mahaffey, Clearfield County, Pennsylvania 15757.
5. That on August 24, 2001, Plaintiff, Valerie L. Welder was the driver of a vehicle that was northbound on SR 729.

6. That Plaintiff/Minor, Sara Welder, was a passenger in the vehicle driven by her mother, Plaintiff, Valerie L. Welder.

7. That Defendant, Stephen G. Bell, was traveling North on SR 219, failed to stop at the stop light, traveled through the intersection and struck the vehicle operated by Valerie L. Welder.

8. That all of the Plaintiffs, Russell Welder, Valerie L. Welder and Plaintiff/Minor, Sara Welder, were seriously injured as described below.

9. The accident was solely caused by the negligence of Defendant, Stephen G. Bell for the following reasons:

- (A) He failed to stop at a stop light;
- (B) Failed to keep his automobile under control;
- (C) He failed to comply with the laws of the Commonwealth of Pennsylvania.

10. That the injuries of the Plaintiffs would not have occurred except for the negligence of the Defendant as above described.

COUNT I

Valerie L. Welder v. Stephen G. Bell

11. That paragraphs One (1) through Ten (10) of the Complaint are incorporated herein as though set forth in full.

12. That as a result of the collision, Plaintiff, Valerie L. Welder, suffered the following injuries:

Diagnosed as having a closed head injury; fractured ribs with small left apical pneumothorax; compression fractures of the rights transverse processes of L3-4 and possibly L5; CT scan of the abdomen did show a left inferior ramus fracture and a right-sided acetabular fracture.

13. That as a result of the injuries sustained by the Plaintiff, Valerie L. Welder, she suffered the following damages:

- (A) severe pain and suffering;
- (B) interruption of her normal enjoyment of life

14. That as a result of the accident and her injuries, she has suffered the following monetary loss:

- (A) Medical bills totaling approximately
- (B) Loss wages of approximately

15. The negligence of the above named Defendant was the sole and proximate cause of the injuries and loss suffered by the Plaintiff, Valerie L. Welder.

16. The Plaintiff, Valerie L. Welder, was insured by Travelers Insurance and had limited tort option at the time in question.

WHEREFORE, the Plaintiff, Valerie L. Welder, prays your Honorable Court to enter judgment for her and against the Defendant in an amount in excess of \$20,000.00.

COUNT II

Sara Welder v. Stephen G. Bell

17. That Paragraphs One (1) through Sixteen (16) of the Complaint are incorporated herein as though set forth in full.

18. That at the time of the accident, Plaintiff, Sara Welder, was a minor and was living with her parents, Russell Welder and Valerie L. Welder, who were and are her custodian and natural parents.

19. That as a result of the collision, Plaintiff/Minor, Sara Welder, suffered the following injuries:

(A) A fracture of the distal tibia and fibula on the left ankle.

20. That as a result of the injuries sustained by the Plaintiff/Minor, Sara Welder, she suffered the following damages:

(A) sever pain and suffering;

(B) interruption of her normal enjoyment of life

21. That as a result of the accident described above, the following were expended on behalf of the Plaintiff/Minor, Sara Welder:

(A) Medical bills of approximately

22. That the negligence of the Defendant as described above, was the sole and proximate cause of the loss of the Plaintiff/Minor, Sara Welder.

WHEREFORE, the Plaintiff/Minor, Sara Welder, by her parents and natural guardians, Russell Welder and Valerie L. Welder, pray for judgment for her and against the Defendant, in an amount in excess of \$20,000.00.

COUNT III

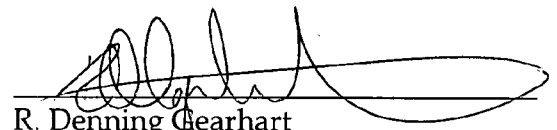
Russell Welder v. Stephen G. Bell

23. That Paragraphs One (1) through Twenty-two (22) of the Complaint are incorporated herein as though set forth in full.

24. That as a result of the accident described above, Plaintiff, Russell Welder, suffered the loss of consortium and companionship with his wife, Valerie Welder.

WHEREFORE, the Plaintiff, Russell Welder, prays your Honorable Court to enter judgment for him and against the Defendant in an amount in excess of \$20,000.00.

Respectfully submitted,



R. Denning Gearhart
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

AFFIDAVIT

Before me, the undersigned officer, personally appeared, RUSSELL WELDER and VALERIE L. WELDER who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information, and belief.

Russell F. Welder

RUSSELL WELDER, Individually and
On behalf of his daughter, Sara Welder,
a minor

Valerie L. Welder

VALERIE L. WELDER, Individually and
On behalf of her daughter, Sara Welder,
a minor

Sworn to and subscribed

before me this 19th day

of February, 2002.

Jennifer A. Michaels
Notary Public

NOTARIAL SEAL
JENNIFER A. MICHAELS, NOTARY PUBLIC
CLEARFIELD BORO., CLEARFIELD CO.
MY COMMISSION EXPIRES JUNE 17, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)
NO. 02-
-CD

RUSSELL WELDER, et al,
Plaintiffs
VS.

STEPHEN G. BELL,
Defendant

COMPLAINT

FILED

FILED
FEB 20 2002

William A. Shaw
Prothonotary

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Praecipe for
Entry of Appearance

Filed on Behalf of:

Defendant

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 06 2002

m/10:50/noc

William A. Shaw
Prothonotary



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

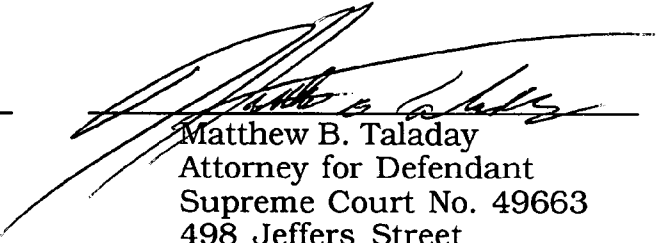
RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for the Defendant, Stephen G.
Bell, in the above captioned matter.

Dated: 3-5-02


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

cc: R. Denning Gearhart, Esq.
215 E. Lucust Street
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Answer and
New Matter

Filed on Behalf of:

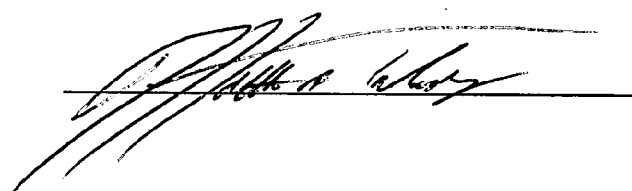
Defendant

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

MAR 14 2002

William A. Shaw
Prothonetary

RUSSELL WELDER and VALERIE :
 L. WELDER, husband and wife, :
 individually and as the natural :
 parents and guardians of SARA :
 WELDER, a minor, :
 Plaintiffs : No. 02-240-CD
 - vs - :
 :
 STEPHEN G. BELL, :
 Defendant :

7. Admitted in part and denied in part. It is admitted that Stephen G. Bell was traveling north on State Route 219. It is denied that Stephen Bell failed to stop at a stop light or otherwise traveled through the intersection without proper right of way. It is

admitted that a collision occurred between the Stephen G. Bell vehicle and the Valerie L. Welder vehicle.

8. It is denied that the Plaintiff's injuries constitute "serious injury" within the meaning of the Pennsylvania Motor Vehicle Financial Responsibility Law.

9. Defendant generally denies all allegations of negligence in accordance with Pa.R.C.P. Rule 1029(e).

10. Denied.

COUNT I

Valerie L. Welder vs. Stephen G. Bell

11. Defendant incorporates paragraphs 1 through 10 of the Complaint and his answers thereto as if set forth in full.

12. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph No. 12, therefore the same are denied and strict proof thereof is demanded at the time of trial.

13. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph No. 13, therefore the same are denied and strict proof thereof is demanded at the time of trial.

14. Paragraph 14 of Plaintiffs' Complaint sets forth no averments of fact, therefore, no response is required.

15. Denied.

16. Admitted.

WHEREFORE, Defendant demands judgment in his favor.

COUNT II

Sara Welder vs. Stephen G. Bell

17. Defendant's responses to paragraphs 1 through 16 of the Complaint are incorporated by reference as if set forth in full.

18. On information and belief, admitted.

19. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph No. 19, therefore the same are denied and strict proof thereof is demanded at the time of trial.

20. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph No. 20, therefore the same are denied and strict proof thereof is demanded at the time of trial.

21. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph No. 21, therefore the same are denied and strict proof thereof is demanded at the time of trial.

22. Denied.

WHEREFORE, Defendant demands judgment in his favor.

COUNT III

Russell Welder vs. Stephen G. Bell

23. Defendant incorporates paragraphs 1 through 22 of this Answer as if set forth in full.

24. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments

of paragraph No. 24, therefore the same are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant demands judgment in his favor.

NEW MATTER

25. Paragraphs 1 through 24 of the Complaint and Defendant's answers thereto are incorporated herein as if set forth in full.

26. The injuries and damages claimed by all Plaintiffs were solely and proximately caused by the negligence of Valerie L. Welder, which is as follows:

- (a) In failing to keep a proper lookout for traffic conditions then and there prevailing;
- (b) In driving her car too fast for conditions; and
- (c) In failing to keep her car under proper control.

27. At the time of the collision described in Plaintiffs' Complaint, the traffic signal controlling the intersection of State Routes 219 and 729 failed or malfunctioned, resulting in a collision for which neither Plaintiffs nor Defendant may be to blame.

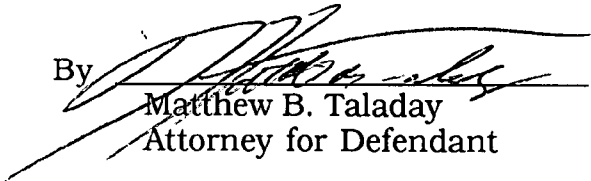
28. The claims of all Plaintiffs are barred or limited by application of the Pennsylvania Financial Responsibility Law as pertains to the limited tort threshold.

WHEREFORE, Defendant demands judgment in his favor.

Respectfully submitted,

Hanak, Guido and Taladay

By


Matthew B. Taladay

Attorney for Defendant

VERIFICATION

I, **Stephen G. Bell**, 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: 03-12-02

Stephen G. Bell
Stephen G. Bell

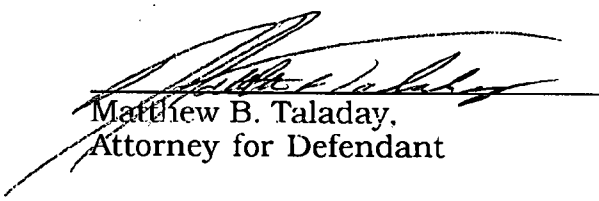
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
-vs-	:	
STEPHEN G. BELL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 13th day of March, 2002, a true and correct copy of Defendant's Answer and New Matter was sent via first class mail, postage prepaid, to the following:

R. Denning Gearhart, Esq.
Attorney for Plaintiffs
215 East Locust Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

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

RUSSELL WELDER and VALERIE :
L. WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :

Plaintiffs :

VS. :

NO. 02-240-CD

STEPHEN G. BELL, :
Defendant :

CASE NUMBER: 02-240-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWER TO NEW MATTER

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

APR 08 2002

01110715cc atty R. Gearhart
William A. Shaw
Prothonotary
(195)

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

RUSSELL WELDER and VALERIE :
L. WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :

Plaintiffs :

VS. :

NO. 02-240-CD

STEPHEN G. BELL, :

Defendant :

ANSWER TO NEW MATTER

AND NOW, come the Plaintiffs, by and through their attorney, R. Denning Gearhart, who answer Defendant's New Matter, and avers as follows:

25. No answer required.

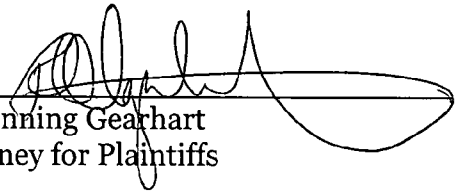
26. Denied as to any negligence on behalf of the Plaintiffs.

27. Denied. Not within the knowledge of the Plaintiffs. Strict proof required at trial.

28. Denied. The limited tort threshold of the Pennsylvania Financial Responsibility Law will pertain.

WHEREFORE, Plaintiffs demand judgment in their favor.

Respectfully submitted,


R. Denning Gearhart
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

AFFIDAVIT

Before me, the undersigned officer, personally appeared, RUSSELL WELDER and VALERIE L. WELDER who being duly sworn according to law deposes and says that the facts set forth in the foregoing Answer are true and correct to the best of their knowledge, information, and belief.

Russell L. Welder

RUSSELL WELDER

Valerie L. Welder

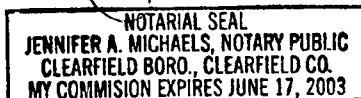
VALERIE L. WELDER

Sworn to and subscribed

before me this 5th day

of April, 2002.

Jennifer A. Michaels
Notary Public



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)
NO. 02-240-CD

RUSSELL WELDER, et al,
Plaintiffs
VS.

STEPHEN G. BELL,
Defendant

ANSWER TO NEW MATTER

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Certificate of
Service

Filed on Behalf of:

Defendant

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 12 2002

William A. Shaw
Prothonotary

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W

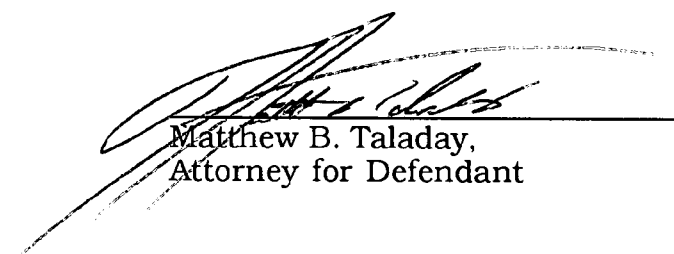
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
-vs-	:	
STEPHEN G. BELL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 11th day of April, 2002, two true and correct copies of Defendant's Interrogatories and Request for Production of Documents were sent via first class mail, postage prepaid, to the following:

R. Denning Gearhart, Esq.
Attorney for Plaintiffs
215 East Locust Street
Clearfield, PA 16830



Matthew B. Taladay,
Attorney for Defendant

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12122

5

WELDER, RUSSELL & VALERIE L.

02-240-CD

VS.

BELL, STEPHEN G.

COMPLAINT

SHERIFF RETURNS

NOW FEBRUARY 26, 2002 AT 1:55 PM EST SERVED THE WITHIN COMPLAINT
ON STEPHEN G. BELL, DEFENDANT AT RESIDENCE, RR#1 BOX 458, MAHAFFEY,
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO STEPHEN G. BELL, A
TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN
TO HIM THE CONTENTS THEREOF.
SERVE BY: NEVLING

Return Costs


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

FILED


APR 15 2002
011511
William A. Shaw
Prothonotary

Sworn to Before Me This

15th Day Of April 2002


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
(CIVIL DIVISION)

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :
Plaintiffs :
VS. : NO. 02-240- CD
STEPHEN G. BELL, :
Defendant :

CERTIFICATE OF SERVICE

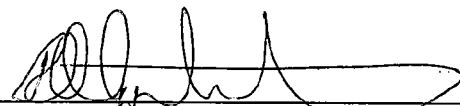
That on the 17th day of May, 2002, I served Answers to Defendant's Interrogatories
and Request for Production of Documents on the following and in the following manner:

FIRST CLASS MAIL, POSTAGE PREPAID

Matthew B. Taladay, Esquire
HANAK, GUIDO and TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801


I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 17, 2002



R. Denning Gearhart, Esquire
Attorney for Plaintiffs

FILED

MAY 20 2002
m 12:33pm Inoc
William A. Shaw
Prothonotary 

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

RUSSELL WELDER and VALERIE L.	:	
WELDER, husband and wife,	:	
individually and as the natural parents	:	
and guardians of SARA WELDER,	:	
a minor,	:	
	:	
Plaintiffs	:	
VS.	:	NO. 02-240-CD
	:	
STEPHEN G. BELL,	:	
	:	
Defendant	:	

CASE NUMBER: 02-240-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: Notice of Taking Deposition on Oral
Examination under Rule 4007.1

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. No. 26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

AUG 08 2002
01:27/1000
William A. Shaw
Prothonotary

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

RUSSELL WELDER and VALERIE L.	:	
WELDER, husband and wife,	:	
individually and as the natural parents	:	
and guardians of SARA WELDER,	:	
a minor,	:	
	:	
Plaintiffs	:	
VS.	:	NO. 02-240-CD
	:	
STEPHEN G. BELL,	:	
	:	
Defendant	:	

**NOTICE OF TAKING DEPOSITION ON ORAL
EXAMINATION UNDER RULE 4007.1**

TO: Matthew B. Taladay, Esquire
HANAK, GUIDO & TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Notice is given herewith that, Pursuant to Rule 4007.1 of the Pennsylvania Rules of Civil Procedure, the deposition of STEPHEN G. BELL, will be taken on oral examination at the offices of COLAVECCHI, RYAN & COLAVECCHI, 221 E. Market Street, Clearfield, PA 16830, on Thursday, August 29, 2002 at 11:00 a.m. and at any and all adjournments thereof.

Said witnesses should bring with them to the deposition any and all documents relevant to this legal action.


R. DENNING GEARHART, ESQUIRE
Attorney for Plaintiffs

Date: August 8, 2002

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

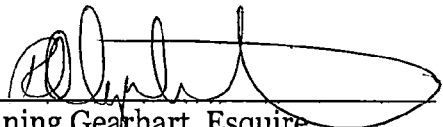
RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor, :
Plaintiffs :
VS. : NO. 02-240-CD
STEPHEN G. BELL, :
Defendant :

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than 18 years of age and that on the 8h day of August, 2002, I served a copy of the within Notice of Taking Depositions on Oral Examination under Rule 4007.1 filed in this proceeding, by First Class Mail, postage prepaid on the following:

Matthew B. Taladay, Esquire
HANAK, GUIDO & TALADAY
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Executed on August 8, 2002


R. Denning Gearhart, Esquire
215 E. Locust Street
Clearfield, PA 16830
(814) 765-1581

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Certificate of
Service

Filed on Behalf of:

Defendant

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

AUG 13 2002

mll33/nocc
William A. Shaw
Prothonotary

g
K28

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
-vs-	:	
STEPHEN G. BELL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 12th day of August, 2002, a true and correct copy of Notice of Deposition of Valerie Welder and a true and correct copy of Notice of Deposition of Russell Welder, copies of which are attached hereto, were sent via first class mail, postage prepaid, to the following:

R. Denning Gearhart, Esq.
Attorney for Plaintiffs
215 East Locust Street
Clearfield, PA 16830

Matthew B. Taladay
Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Notice of
Deposition

Filed on Behalf of:

Defendant

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
-vs-	:	
STEPHEN G. BELL,	:	
Defendant	:	

NOTICE OF DEPOSITION

TO: RUSSELL WELDER
c/o R. Denning Gearhart, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Thursday, August 29, 2002 at 10:00 a.m.** at the law office of Colavecchi, Ryan & Colavecchi, 221 East Market Street, Clearfield, 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
Matthew B. Taladay,
Attorney for Defendant

cc: Schreiber Reporting Service

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
-vs-	:	
STEPHEN G. BELL,	:	
Defendant	:	

NOTICE OF DEPOSITION

TO: VALERIE L. WELDER
c/o R. Denning Gearhart, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Thursday, August 29, 2002 at 10:00 a.m.** at the law office of Colavecchi, Ryan & Colavecchi, 221 East Market Street, Clearfield, 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
Matthew B. Taladay,
Attorney for Defendant

cc: Schreiber Reporting Service

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,

Plaintiffs

-vs-

STEPHEN G. BELL,

Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Motion for Partial
Summary Judgment

Filed on Behalf of:

Defendant

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

MOTION FOR PARTIAL SUMMARY JUDGMENT

AND NOW, comes the Defendant, Stephen G. Bell, by his attorneys, Hanak, Guido and Taladay, and hereby files the within Motion for Partial Summary Judgment, averring as follows:

1. Plaintiffs have filed suit for personal injury action arising out of an automobile accident which occurred on August 24, 2001.
2. At the time of the subject accident, Plaintiffs were insured under a policy of insurance issued by Traveler's Property Casualty which provided for limited tort coverage. A copy of the declaration page of the applicable insurance company is attached hereto as Exhibit "A".
3. Defendant in New Matter has pled that Plaintiffs are barred from recovery of non-economic damages in this matter because of the applicability of the limited tort threshold. Plaintiffs have

claimed that in spite of the limited tort threshold their injuries constitute serious injuries as defined by the Pennsylvania Financial Responsibility Act.

4. The pleadings in this matter are now closed and discovery has been completed.

5. Based on the pleadings, Interrogatories, depositions, medical records and Affidavits on file, it is believed and therefore averred that the injuries of Sara Welder, a minor, sustained in the subject accident are not serious injuries as defined by the Motor Vehicle Financial Responsibility Law and therefore Plaintiffs are not entitled to seek or recover non-economic damages regarding the injuries of Sara Welder.

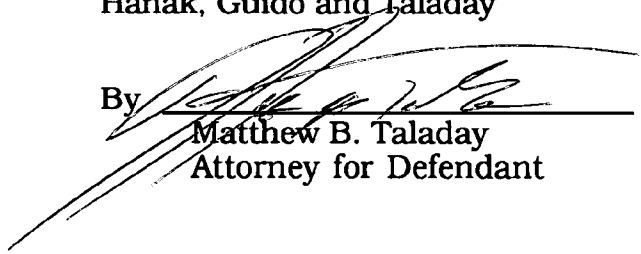
6. The facts and circumstances surrounding the injuries of Sara Welder are clear and this Court is entitled to make the initial threshold determination regarding the issue of Plaintiff, Sara Welder's, entitlement to non-economic damages.

WHEREFORE, Defendant respectfully requests that this Court enter an Order finding that Plaintiff, Sara Welder, did not, as a matter of law, sustain serious injury as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law and is not entitled to recover non-economic damages.

Respectfully submitted,

Hanak, Guido and Taladay

By



Matthew B. Taladay
Attorney for Defendant

AUTOMOBILE POLICY CONTINUATION DECLARATIONS**1. Named Insured**

VALERIE WELDER
RD 1 BOX 67
GRANPIAN PA 16838

Your Agency's Name and Address

HELMBOLD & STEWART INC
214 E CHERRY ST
CLEARFIELD PA 16830

Your Policy Number : 943564615 101.1
Your Account Number: 943564615

For Policy Service Call 814-765-5574
For Claim Service Call 1-800-CLAIM33

2. Your Total Premium for the Policy Period is \$549.00.
The policy period is from October 10, 2000 to October 10, 2001.

3. Your Vehicles**Identification Numbers**

1	1975 FORD F250 PU	F264EV40116
2	1985 FORD ECONOLINE	1FTDE14F4FHA25940
3	1972 PONTI LEMANS	2D37T1Z105865

4. Coverages, Limits of Liability and Premiums

Insurance is provided only where a premium is shown for the coverage.

	1	2	3
	75 FORD F250 PU	85 FORD ECONOLINE	72 PONTI LEMANS
A - Bodily Injury \$25,000 each person \$50,000 each accident	\$ 66	\$ 66	\$ 66
B - Property Damage \$25,000 each accident	75	75	75
QA - First Party Benefits Coverage Limited Tort Option See Endorsement A37021	42	42	42
Subtotals for your vehicles:	\$183	\$183	\$183

Total Premium for This Policy: \$549

5. Information Used to Rate Your Policy**Discounts Included in Your Premium**

Multiple Cars

FILED

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OCT 14 2302

¹⁰²
Att'y Taday
~~et~~

William A. Shaw
Prothonotary

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

RULE TO SHOW CAUSE ORDER

AND NOW, this ____ day of _____, 2002, upon
filing of Motion for Partial Summary Judgment, Rule is hereby entered
upon Russell Welder and Valerie Welder to appear and show cause why
the Partial 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 OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural parents
and guardians of SARA WELDER,
a minor

No. 02 - 240 - CD

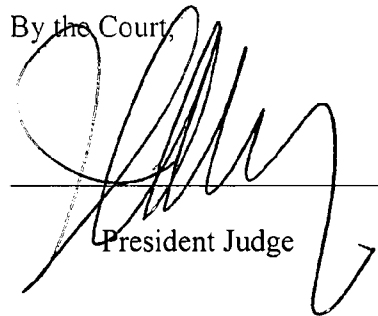
-vs-

STEPHEN G. BELL

ORDER

NOW, this 11th day of December, 2002, following argument and briefs into Motion for Partial Summary Judgment filed on behalf of Defendant above-named, and this Court being satisfied that the injuries to Plaintiff Sara Welder do not rise to the level of serious injury as defined by the Motor Vehicle Financial Responsibility Law, it is the ORDER of this Court that said Motion be and is hereby granted and Plaintiff Sara Welder precluded from recovering non-economic damages.

By the Court,



President Judge

FILED

DEC 11 2002

William A. Shaw
Prothonotary

FILED

DEC 11 2002

William A. Shaw
Prothonotary

ICC Atty General
ICC Atty Taladay

FILED

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY JUL 18 2003
CIVIL TRIAL LISTING

William A. Shaw
Prothonotary

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

No. 02-240-CD

07/18/03

CASE NUMBER TYPE TRIAL REQUESTED DATE PRESENTED
ESTIMATED TRIAL TIME

Date Complaint () Jury (x) Non-Jury
Filed: 02/20/02 () Arbitration 1 2 Days

PLAINTIFF(S) RUSSELL WELDER and VALERIE L.
WELDER, husband and wife, individually and as the
natural guardians of SARA WELDER, a minor, ()
DEFENDANT(S)

STEPHEN G. BELL ()
ADDITIONAL DEFENDANT(S)

Check Block if
a Minor is a
Party to the
Case

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than
\$ 20,000.00 () yes (X) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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


Matthew B. Taladay

FOR THE PLAINTIFF

TELEPHONE NUMBER

R. Denning Gearhart

(814) 765-1581

FOR THE DEFENDANT

TELEPHONE NUMBER

Matthew B. Taladay

(814) 371-7768

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

FILED

NOCC

copy to C/A

JUL 18 2003

Key

William A. Shaw
Prothonotary

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

RUSSELL WELDER and VALERIE :
L. WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor :
Plaintiffs :
vs. : No. 02-240-CD
STEPHEN G. BELL, :
Defendant :

CASE NUMBER: No. 02-240-CD
TYPE OF CASE: Civil
TYPE OF PLEADING: MOTION FOR CONTINUANCE
FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

AUG 11 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL WELDER and VALERIE :
L. WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, :
a minor :

Plaintiffs :

vs. :

No. 02-240-CD

STEPHEN G. BELL, :
Defendant :

MOTION FOR CONTINUANCE

AND NOW, comes the Petitioner, R. Denning Gearhart, Esq. who sets forth the following:

1. The above matter was listed for Trial by the Defendant, which case in on the Non-Jury Trial List for the 2003 Fall Civil Trial List, and was called at the Call of the List on July 31, 2003, and was scheduled for Pre-Trial with the Honorable John K. Reilly, Jr., on August 15, 2003.

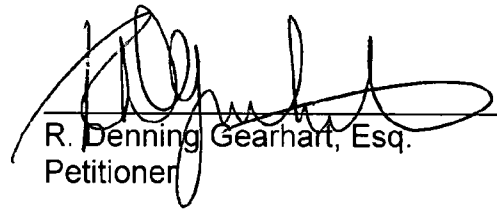
2. Counsel for the Plaintiff had surgery on July 8, 2003, and was hospitalized for a month. Prior to that, he was subject to some medical difficulties which caused him to fall behind.

3. That it is the Petitioner's opinion that the case is not prepared for trial yet.

4. That it has not been listed on the list for trial previously.

WHEREFORE, Petitioner prays your Honorable Court to continue the
above captioned matter and to list it for the 2004 Winter Term Civil Trial List.

Respectfully submitted,



R. Denning Gearhart, Esq.
Petitioner

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 02-240-CD

RUSSELL WELDER AND VALERIE L.
WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor, Plaintiffs

vs.
STEPHEN G. BELL,
Defendant

MOTION FOR CONTINUANCE

FILED
3cc
Aug 31 2003
William A. Shaw
Prothonotary/Clerk of Courts
Amy Gearhart

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural parents
and guardians of SARA WELDER,
a minor

Plaintiffs

Vs.

No. 02-240-CD

STEPHEN G. BELL,

Defendant

ORDER

AND NOW, THIS 11th day of August, 2003, upon consideration
of the foregoing Motion for Continuance, it is the ORDER of this Court that the above
captioned case is hereby removed from the 2003 Fall Civil Trial List and it shall be placed
on the Civil Trial List for the 2004 Winter Term.

BY THE COURT

JUDGE

FILED

AUG 11 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED

2003
AUG 11 2003

William A. Shaw

Prothonotary/Clerk of Courts

2003
100
Att'y General
Att'y Taladay

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, a minor, :
Plaintiffs :

VS. :

NO. 02-240-CD

STEPHEN G. BELL, :
Defendant :

CASE NUMBER: 02-240-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWERS TO INTERROGATORIES

FILED ON BEHALF OF: Plaintiffs

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQ.
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

JAN 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, a minor, :
Plaintiffs :

VS. :

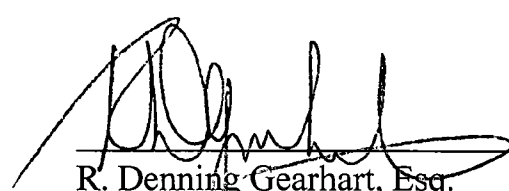
NO. 02-240-CD

STEPHEN G. BELL, :
Defendant :

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

The Plaintiff provides the following information regarding a witness on
her behalf.

Harry Hall
P. O. Box 91
Grampian, PA 16838
814-236-2617
(Accident Eyewitness)


R. Denning Gearhart, Esq.
Attorney for Plaintiff

Date: January 19, 2004

FILED

NO
CC

JAN 20 2004

2023

William A. Shaw
Prothonotary/Clerk of Courts

92

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

RUSSELL WELDER and VALERIE	:	NO. 02-240-CD
L. WELDER, husband and wife,	:	
individually and as the natural parents	:	
and guardians of SARA WELDER, a	:	
minor	:	
	:	
	:	
V.	:	
	:	
STEPHEN G. BELL	:	

ORDER

AND NOW, this 23rd day of January, 2004, following Pre-Trial Conference, It is
the ORDER of this Court:

1. This matter shall be continued until April 1, 2004.
2. Upon agreement of the Parties, this matter shall be removed from the Civil Non-Jury Trial List and added to the Civil Jury List.
3. The Discovery deadline in this case for exchange of any and all reports as well as Depositions shall be by and no later than April 1, 2004.
4. No further continuances will be granted.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

JAN 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 1cc Amy Gearhart

8/11/09 1cc Amy Talarday

JAN 26 2004

William A. Shaw

Prothonotary/Clerk of Courts

R. Denning Gearhart

Attorney & Counselor at Law

215 E. Locust Street
Clearfield, PA 16830

814-765-1581

(fax) 814-765-6745
<http://www.dgearhartpalaw.com>

April 8, 2004

Hon. Paul Cherry
Judge's Chambers
Court House
Clearfield, PA 16830

Re: Welder vs. Bell - No. 02-240-CD

Dear Judge Cherry:

Enclosed please find my Pre-Trial Statement in the above case. The Pre-Trial Conference for this is scheduled for April 15, 2004, at 9:30 o'clock A.M.

Sincerely,



R. Denning Gearhart

RDG:kar
Enclosure
cc: Matthew B. Taladay, Esq.

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

RUSSELL WELDER and VALERIE L. :	:	
WELDER, husband and wife,	:	
individually and as the natural parents	:	
and guardians of SARA WELDER, a minor,	:	
Plaintiffs	:	
VS.	:	NO. 02-240-CD
STEPHEN G. BELL,	:	
Defendant	:	

PLAINTIFF'S PRETRIAL STATEMENT

Procedural History

Suit was filed by Russell Welder and Valerie Welder, individually, and as the natural parents of Sara Welder. Summary judgment was requested by the Defendant, based on the Plaintiffs' election to take the "limited tort" option on their automobile insurance. Following Briefs and Arguments, the Court found that neither Russell Welder nor Sara Welder suffered "serious bodily injury", such that their election to take "limited tort" would allow them to proceed. However, the Court did agree there was a question whether Valerie Welder's bodily injuries were serious. Therefore, the case proceeds with her as the only Plaintiff.

The matter was previously scheduled for Pre-Trial, at which time it was continued to allow more time for the Plaintiff to prepare medical records, medical depositions, etc. At this time, Plaintiff still does not feel she is prepared to go forward and would respectfully ask that the matter be rescheduled for the next term. Besides problems involving the schedule for Plaintiff's Attorney, there has been some concern for the costs of prosecution (medical reports, depositions, etc.), and Plaintiff just had a baby last week.

Facts

An automobile accident occurred on August 24, 2001. At that time, the Defendant was driving north on State Route 219 in the Borough of Grampian. At the intersection of S.R. 219 and S.R. 729, he ran through a stop light, crashing into the vehicle owned by the Plaintiffs, being driven lawfully, and in a lawful manner, by Plaintiff, Valerie Welder. As a result of this collision, she suffered serious injury.

Damages

Valerie Welder's injuries included: a broken fracture of the posterior portion of the left 4th rib; a partial collapse of the lung (requiring a chest tube); a broken hip; a contusion of the left hand; and closed head injury – specifically, a small cerebellar

vermis hematoma, a petechial hemorrhage in the tectum of the midbrain, and a concussion. The broken hip will likely result in early onset arthritis; the chest injury and collapsed lung predict future cardio-pulmonary problems. But the head injury has resulted in problems of a serious nature affecting her now.

Plaintiff was not (before or at the time of the accident), and is not, employed outside the home. Given her present condition it is unlikely she could ever retain gainful employment. But, because of her injuries, she has difficulty functioning as a housewife and mother of three children, the oldest of whom was fifteen years old. At the time of the accident. Because of her head injury, she is having difficulty performing what is required of her. She was examined regarding the affects of her head injury by Dr. William J. Fernan, who found that she was an individual of at least average intelligence but currently functioning in the low average range as a result of mild to moderate impairment of brain behavior relationship resulting from her head injury. I found significant residual symptoms including delayed memory, impaired motoric speed with her dominant (right) hand. In addition, he found a major depressive disorder directly attributable to the head injury. This has caused the necessity of certain medications. However, those are not available to her during her current pregnancy.

Plaintiff's Legal Theory For Recovery

Defendant's negligence (running a traffic signal) was the sole cause of the accident.

Defendant's Legal Theory for Defense and Counterclaim

Defendant is claiming the signal malfunctioned.

Stipulations

None

Extraordinary Legal and Evidentiary Issues

None

Special Points for Charge

None

Names and Addresses of Witness; Purpose of Their Testimony

- 1) Valerie Welder
- 2) Russell Welder
- 3) Harry Hall
P.O. Box 91
Grampian, PA 16838
814-236-2617
[Accident Eyewitness]

4) Dr. William J. Fernan, Ph.D.
90 Beaver Drive, Box 10
DuBois, PA 15801
814-371-8707

[Testimony by deposition. Diagnosis of Plaintiff's neurological deficits resulting from accident.]

5) Dr. Rodolfo S. Polintan, M.D.
807 Turnpike Avenue
Clearfield, PA 16830
814-765-8590

[Testimony by deposition. Treatment of Plaintiff's hip and pelvic fracture.]

6) Dr. Richard N. Townsend
UPMC Presbyterian/Trauma Department
200 Lothrop Street
Pittsburgh, PA 15213-2582

[Testimony by deposition. Emergency Diagnosis and treatment]

7) NeuroPsychiatric Associates of Indiana
Steven B. Gelfand, M.D.
101 Airport Professional Center
1380 Rt. 286 Hwy. E., Ste. 101
Indiana, PA 15701-9222
(724-464-0270)

[Testimony by deposition. Diagnosis of Plaintiff's neurological deficits resulting from accident.]

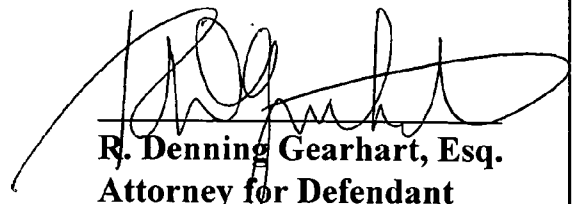
Exhibits

- 1) Photographs
- 2) Diagram based on police report

Estimated Time For Trial

Two Days

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Denning Gearhart', written over a horizontal line.

**R. Denning Gearhart, Esq.
Attorney for Defendant
Supreme Court No. 26540
215 East Locust Street
Clearfield, PA 16830
(814)765-1581**

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 02-240-CD

RUSSELL WELDER and VALERIE L.
WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor, Plaintiffs

vs.
STEPHEN G. BELL, Defendants

PLAINTIFF'S PRE-TRIAL STATEMENT

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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①

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Nicole Hanak Bankovich
S. Casey Bowers

April 7, 2004

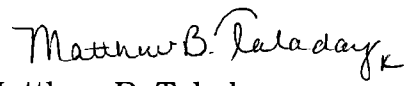
David S. Meholick
Court Administrator
Suite 228
230 East Market Street
Clearfield, PA 16830

Re: Welder, et al. vs. Bell
No. 02-240-CD

Dear Mr. Meholick:

Enclosed please find Defendant's Pre-Trial Statement.
Kindly note that by copy of this letter I have forwarded a copy to
Denning Gearhart, Attorney for Plaintiffs. If you have any questions
concerning the enclosed, please contact me.

Sincerely,


Matthew B. Taladay

MBT:kam

Enc.

cc: R. Denning Gearhart, Esq.
Donald Armstrong
Claim No. 010110405103

RECEIVED

APR 08 2004

**COURT ADMINISTRATOR'S
OFFICE**

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE	:	Type of Case: Civil Action
L. WELDER, husband and wife,	:	
individually and as the natural	:	No. 02-240-CD
parents and guardians of SARA	:	
WELDER, a minor,	:	Type of Pleading:
Plaintiffs	:	
	:	Supplemental Pre-Trial
-vs-	:	Statement
	:	
STEPHEN G. BELL,	:	Filed on Behalf of:
Defendant	:	
	:	Defendant
	:	
	:	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

RECEIVED

APR 08 2004

COURT ADMINISTRATOR'S
OFFICE

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

SUPPLEMENTAL PRE-TRIAL STATEMENT
ON BEHALF OF DEFENDANT

Special Damages

Defendant contends that special damages are limited by application of the Pennsylvania Motor Vehicle Financial Responsibility Act, 75 Pa.C.S. §§1720 & 1722. Based on information provided by Pennsylvania Department of Welfare which is attached hereto, it is believed that this lien is in the amount of \$2,272.50.

Stipulations

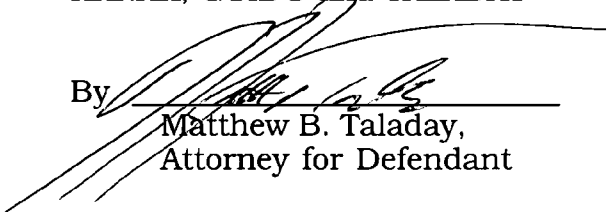
Defendant will stipulate to responsibility for Pennsylvania DPW medical lien. This item need not be submitted to the jury.

Respectfully submitted,

HANAK, GUIDO and TALADAY

Dated: 04/07/04

By


Matthew B. Taladay,
Attorney for Defendant



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF FINANCIAL OPERATIONS
TPL SECTION - CASUALTY UNIT
PO BOX - 8486
HARRISBURG PA 17105-8486

January 26, 2004

STATEMENT OF CLAIM SUMMARY

NAME	WELDER, VALERIE
ID	340 101 373

UPDATE TO PREVIOUS SOC DATED 04/11/2002

MEDICAL	USUAL CHARGES	AMT APPROVED
PREVIOUS SOC	14,991.00	1,376.40
CURRENT SOC	6,321.00	896.10
TOTAL	21,312.00	2,272.50

CASH	PERIOD COVERED	DOLLAR AMOUNT
PREVIOUS SOC	--	.00
CURRENT SOC	--	.00
TOTAL		.00

REIMBURSEMENT TO DPW	2,272.50
----------------------	----------

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Pre-Trial
Statement

Filed on Behalf of:

Defendant

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

RECEIVED

JAN 15 2004

**COURT ADMINISTRATORS
OFFICE**

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

PRE-TRIAL STATEMENT ON BEHALF OF DEFENDANT

A Background

On August 24, 2001, Steven Bell was driving north on State Route 219 approaching the intersection with Route 729 in Grampian, Clearfield County, Pennsylvania. As Mr. Bell approached the intersection, the signal for his lane of travel showed a green light and then apparently malfunctioned, showing no signal. As the Bell vehicle entered the intersection, it collided with a vehicle operated by Valerie L. Welder.

The Plaintiffs have filed suit against Stephen G. Bell for money damages, including economic and non-economic damages, and loss of consortium. A motion for partial summary judgment was granted, limiting the claims of ^{Valerie}~~Sarah~~ Welder, a minor, to strictly economic damages, by virtue of the application of the limited tort threshold.

B. Witnesses

1. Stephen G. Bell
R.R. #1, Box 458
Mahaffey, PA 15757
2. James Stephenson
R.R. #1, Box 468
Mahaffey, PA 15757
3. Robert Snyder
P.O. Box 4
Mahaffey, PA 15757

Defendant reserves the right to call any and all witnesses listed in the Pre-Trial Statement of Plaintiffs.

C. Exhibits

- (a) Photographs of vehicles involved
- (b) Photographs of accident scene

D. Plot or Plans

None

E. Hypothetical Questions

None

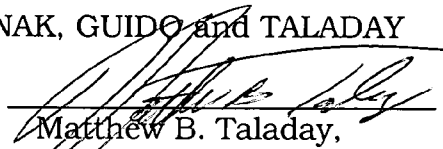
F. Unusual Questions of Law Anticipated

It is submitted that Plaintiffs are bound by the limited tort threshold and Defendant will request the standard jury instruction regarding limited tort.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay,
Attorney for Defendant

(C)

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

Nicole Hanak Bankovich
S. Casey Bowers

January 14, 2004

David S. Meholick
Court Administrator
Suite 228
230 East Market Street
Clearfield, PA 16830

Re: Welder, et al. vs. Bell
No. 02-240-CD

Dear Dave:

Enclosed please find Defendant's Pre-Trial Statement in the above referenced matter. Kindly note that by copy of this letter I have forwarded a copy to Denning Gearhart, Attorney for Plaintiffs. If you require anything further on this, please do not hesitate to contact me.

Sincerely,



Matthew B. Taladay

MBT:kam

Enc.

cc: R. Denning Gearhart, Esq.
Donald Armstrong
Claim No. 010110405103

RECEIVED
JAN 15 2004
COURT ADMINISTRATORS
OFFICE

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, a minor, :
Plaintiffs :

VS. :

NO. 02-240-CD

STEPHEN G. BELL, :
Defendant :

CASE NUMBER: 02-240 -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: PLAINTIFF'S PRETRIAL STATEMENT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

RECEIVED

JAN 19 2004

COURT ADMINISTRATOR'S
OFFICE

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

RUSSELL WELDER and VALERIE L.	:	
WELDER, husband and wife,	:	
individually and as the natural parents	:	
and guardians of SARA WELDER, a minor,	:	
Plaintiffs	:	
	:	
VS.	:	NO. 02-240-CD
	:	
STEPHEN G. BELL,	:	
Defendant	:	

PLAINTIFF'S PRETRIAL STATEMENT

Procedural History

Suit was filed by Russell Welder and Valerie Welder, individually, and as the natural parents of Sara Welder. Summary judgment was requested by the Defendant, based on the Plaintiffs' election to take the "limited tort" option on their automobile insurance. Following Briefs and Arguments, the Court found that neither Russell Welder nor Sara Welder suffered "serious bodily injury", such that their election to take "limited tort" would allow them to proceed. However, the Court did agree there was a question whether Valerie Welder's bodily injuries were serious. Therefore, the case proceeds with her as the only Plaintiff.

Facts

An automobile accident occurred on August 24, 2001. At that time, the Defendant was driving north on State Route 219 in the Borough of Grampian. At the intersection of S.R. 219 and S.R. 729, he ran through a stop light, crashing into the vehicle owned by the Plaintiffs, being driven lawfully, and in a lawful manner, by Plaintiff, Valerie Welder. As a result of this collision, she suffered serious injury.

Damages

Valerie Welder's injuries included: a broken fracture of the posterior portion of the left 4th rib; a partial collapse of the lung (requiring a chest tube); a broken hip; a contusion of the left hand; and closed head injury – specifically, a small cerebellar vermis hematoma, a petechial hemorrhage in the tectum of the midbrain, and a concussion. The broken hip will likely result in early onset arthritis; the chest injury and collapsed lung predict future cardio-pulmonary problems. But the head injury has resulted in problems of a serious nature affecting her now.

Plaintiff was not (before or at the time of the accident), and is not, employed outside the home. Given her present condition it is unlikely she could ever retain gainful employment. But, because of her injuries, she has difficulty functioning as a housewife and mother of three children, the oldest of whom was fifteen years old.

At the time of the accident. Because of her head injury, she is having difficulty performing what is required of her. She was examined regarding the affects of her head injury by Dr. William J. Fernan, who found that she was an individual of at least average intelligence but currently functioning in the low average range as a result of mild to moderate impairment of brain behavior relationship resulting from her head injury. I found significant residual symptoms including delayed memory, impaired motoric speed with her dominant (right) hand. In addition, he found a major depressive disorder directly attributable to the head injury. This has caused the necessity of certain medications. However, those are not available to her during her current pregnancy.

Plaintiff's Legal Theory For Recovery

Defendant's negligence (running a traffic signal) was the sole cause of the accident.

Defendant's Legal Theory for Defense and Counterclaim

Defendant is claiming the signal malfunctioned.

Stipulations

None

Extraordinary Legal and Evidentiary Issues

None

Special Points for Charge

None

Names and Addresses of Witness; Purpose of Their Testimony

1) Valerie Welder

2) Russell Welder

3) Harry Hall
P.O. Box 91
Grampian, PA 16838
814-236-2617
[Accident Eyewitness]

4) Dr. William J. Fernan, Ph.D.
90 Beaver Drive, Box 10
DuBois, PA 15801
814-371-8707
[Testimony by deposition. Diagnosis of Plaintiff's neurological deficits resulting from accident.]

5) Dr. Rodolfo S. Polintan, M.D.
807 Turnpike Avenue
Clearfield, PA 16830
814-765-8590
[Testimony by deposition. Treatment of Plaintiff's hip and pelvic fracture.]

6) Dr. Richard N. Townsend
UPMC Presbyterian/Trauma Department
200 Lothrop Street
Pittsburgh, PA 15213-2582

[Testimony by deposition. Emergency Diagnosis and treatment]

7) NeuroPsychiatric Associates of Indiana
Steven B. Gelfand, M.D.
101 Airport Professional Center
1380 Rt. 286 Hwy. E., Ste. 101
Indiana, PA 15701-9222
(724-464-0270)

[Testimony by deposition. Diagnosis of Plaintiff's neurological deficits resulting from accident.]

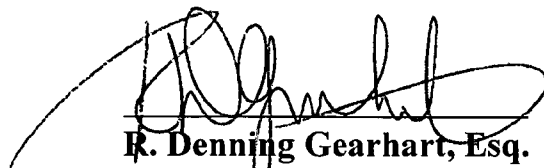
Exhibits

- 1) Photographs
- 2) Diagram based on police report

Estimated Time For Trial

Two Days

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Denning Gearhart', written over a horizontal line.

**R. Denning Gearhart, Esq.
Attorney for Defendant
Supreme Court No. 26540
215 East Locust Street
Clearfield, PA 16830
(814)765-1581**

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 02-240-CD

RUSSELL WELDER and VALERIE L.
WELDER, husband and wife,
individually and as the natural
parents and guardians of
SARA WELDER, a minor,
Plaintiffs

vs.
STEPHEN G. BELL,
Defendant

PLAINTIFF'S PRETRIAL STATEMENT

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

R. Denning Gearhart

Attorney & Counselor at Law



215 E. Locust Street
Clearfield, PA 16830

814-765-1581

(fax) 814-765-6745
<http://www.dgearhartpalaw.com>

January 19, 2004

David S. Meholick
Court Administrator
Office of the Court Administrator
Court House
Clearfield, PA 16830

Re: Welder, et. al. vs. Bell - No. 02-240-CD

Dear Mr. Meholick:

Enclosed please find the Pre-Trial Statement for the Plaintiff. Please note that I have faxed a copy of the same to Attorney Taladay.

Sincerely,

R. Denning Gearhart

RDG:kar
Enclosure

cc: Delivered by Fax to: Matthew B. Taladay (with copy of Pre-Trial Statement)

RECEIVED

JAN 19 2004

COURT ADMINISTRATORS
OFFICE

94---

Paul Cherry

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

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural parents
and guardians of SARA WELDER,
a minor

:
:
:
:
:
:
:
:
:
:

No. 02 - 240 - CD

-vs-

STEPHEN G. BELL

ORDER

NOW, this 11th day of December, 2002, following argument and briefs into Motion for Partial Summary Judgment filed on behalf of Defendant above-named, and this Court being satisfied that the injuries to Plaintiff Sara Welder do not rise to the level of serious injury as defined by the Motor Vehicle Financial Responsibility Law, it is the ORDER of this Court that said Motion be and is hereby granted and Plaintiff Sara Welder precluded from recovering non-economic damages.

By the Court,

President Judge

May be current.

STATUS

*Placed on trial list for 2004 Winter Term
See next page*

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

RUSSELL WELDER and VALERIE	:
L. WELDER, husband and wife,	:
individually and as the natural parents	:
and guardians of SARA WELDER,	:
a minor	:
Plaintiffs	:
Vs.	: No. 02-240-CD
STEPHEN G. BELL,	:
Defendant	:

ORDER

AND NOW, THIS 11th day of August, 2003, upon consideration of the foregoing Motion for Continuance, it is the ORDER of this Court that the above captioned case is hereby removed from the 2003 Fall Civil Trial List and it shall be placed on the Civil Trial List for the 2004 Winter Term.

BY THE COURT

JUDGE

FILED

AUG 11 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Brief in Support of
Motion for Partial
Summary Judgment

Filed on Behalf of:

Defendant

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

RECEIVED

OCT 14 2002

COURT ADMINISTRATOR'S
OFFICE

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

**BRIEF IN SUPPORT OF DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

The present lawsuit arises out of an accident which occurred in the Borough of Grampian, Pennsylvania, on August 24, 2001. On that date, Stephen G. Bell, was operating an automobile north on Route 219 approaching the intersection with Route 729. The Bell vehicle traveled into the intersection beneath a malfunctioning traffic light and collided with an automobile operated by Valerie L. Welder. Sara Welder, then 2-1/2 years old, was a passenger in the vehicle operated by her mother.

Following the collision, Sara Welder was transported to Clearfield Hospital. She was seen in the emergency room by Rodolfo S. Polintan, M.D. where she was diagnosed with a mild to moderately displaced fracture of the left distal tibia and fibia. She was splinted in the emergency room and subsequently admitted. She underwent a close reduction of the fracture on August 25, 2001 at the Clearfield

Hospital. The narrative report of Dr. Rodolfo S. Polintan dated December 17, 2001, attached hereto as Exhibit "A".¹

Sara Bell was discharged from the hospital prior to her mother's discharge on August 29, 2001 (Deposition transcript of Valerie Welder, p. 28, attached hereto as Exhibit "B".) Sara's cast was removed on October 12, 2001. As of December 17, 2001, Dr. Polintan reported that the child had a slight limp but was improving. She was last seen by Dr. Polintan in March of 2002 at which time she was released without any restrictions on her activities. (Valerie Welder, T. 29-30.)

Currently Sara appears to play normally like a 3 year old. (Valerie Welder, T. 31.) Occasionally when the weather changes, Sara has a temporary limp. (Russell Welder Deposition transcript, p. 19, copy of which is attached as Exhibit "C".) However, Sara is no longer under any medical care for any conditions that her parents believe are related to the accident. (Valerie Welder, T. 32.)

B. Discussion

Under the Pennsylvania Motor Vehicle Financial Responsibility Law at 75 Pa.C.S. §1705(d)(1), a person who is subject to the limited tort threshold but intends to recover non-economic damages must prove that his/her injury is a "serious injury". The law goes on to define "serious injury" as injury "resulting in death, serious

¹The medical records and reports provided by Plaintiffs in response to discovery and attached hereto are not provided under oath or signed by the treating physician, nor do they contain a statement relating to unsworn falsification to authorities. However, Defendant does not object to the Court considering these documents for purposes of summary judgment motion only. See Washington vs. Baxter footnote.

impairment of body function or permanent serious disfigurement". 75 Pa.C.S. §1702.

In the present case, the only potentially applicable basis on which the Plaintiffs could claim serious injury would be under the claim of serious impairment of body function.

In considering a motion for summary judgment on the issue of whether a limited tort plaintiff has suffered a "serious injury", the Pennsylvania Supreme Court has held that only in the "clearest of cases should the court make this threshold determination using a traditional summary judgment standard where reasonable minds could not differ as to the outcome." Washington vs. Baxter, 719 A.2d 733 (Pa. 1998). In all other cases, the question of serious injury is for the jury.

The Washington court, in considering whether a plaintiff's injuries were serious, adopted the standard set forth in the Michigan case of DiFranco vs. Pickard, 427 Mich. 32, 398 N.W. 2nd 896 (1986). These guidelines for determining serious injury include:

- (1) What body function was impaired;
- (2) Was the impairment serious?

In deciding seriousness, the fact finder is to determine how the injury affects the body function, including the existence, extent and permanency of the impairment. Factors include (1) extent of the impairment; (2) length of time the impairment lasted; (3) treatment required to correct the impairment; and (4) any other relevant factors. Washington vs. Baxter, 719 A.2d 733.

In applying these standards, the Washington court considered a plaintiff's injuries which included cervical strain/sprain,

cuts and contusions, right foot sprain/strain and who missed four or five days from his full time job and one to two months from a part time job, received a Cortisone injection, and had some limited range of motion. One year post-accident the plaintiff's residual problems included weekly pain and swelling of the ankle and the claimant was no longer able to use a push lawnmower. In applying the DiFranco standard, the Washington court found that this plaintiff's injuries were not serious and therefore were barred by the limited tort threshold.

In considering a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. Pennsylvania State University vs. County of Centre, 532 Pa. 142, 615 A.2d 303 (1992). With this standard in mind, a review of the injuries of each of the three plaintiffs involved in the present case is required.

In considering the injuries of Sara Welder in light of the standards set forth in Washington, the linchpin determination is whether reasonable minds could differ on the question of whether this child suffered serious injuries. While it is not disputed that the ankle fracture temporarily impaired the child's ability to walk, however, for purposes of summary judgment consideration, the foremost consideration is whether the impairment was serious.

In considering the seriousness of this injury with regard to the extent of impairment, it is necessary to review the impact that the impairment had on the child's functioning. It is clear that because of the ankle fracture Sara was unable to walk normally for a period of several months. She also walked with a limp for a period of time

thereafter. All indications are, however, that she quickly recovered to normal childhood functions.

In considering the question of whether an impairment is "serious", it is pertinent to consider the duration of the impairment. In the case of Sara Welder, it should be noted that although her mobility was limited for a period of time which understandably would cause difficulty for a 2-1/2 year old, after the cast was removed, she, in her mother's words, "Up and went." (T. 29). She was able to play normally with her siblings and roam about the neighborhood. (Valerie Welder, T. 30-31). Under these circumstances, the length of time of Sara's impairment could not plausibly classify her fractured ankle as a serious injury.

It must be noted that virtually everyone who has the good fortune to pass from childhood to adulthood also has the bad fortune of enduring the inconveniences and "rights of passage" that often accompany childhood. These include the previously common childhood illnesses, such as mumps, measles and chicken pox, the not uncommon medical procedures of tonsillectomy and appendectomy and the not infrequent inconvenience of a fractured limb. The ancient exhortation that holds "young bones knit quickly" has likely been heard by both youngsters, either directed at them personally or at a sibling or close friend. The relatively brief healing period during which Sara Welder's ankle mended is not easily differentiated from some of the other unforeseen and unwelcome childhood events noted above.

When viewing the extent of Sara Welder's injuries with regard to the Washington standard, it may be instructive to the court

to review ruling of other common pleas jurisdictions following the Supreme Court's ruling in Washington vs. Baxter. In Summer vs. Slowik, 72 Bucks County L. R., 178 (1999), it was held that plaintiff who experienced low back and wrist pain, neck pain and was in a cast for five weeks but had no residual impairment could not break the summary judgment threshold of serious impairment of bodily function.

The Court of Common Pleas of Bucks County found that a plaintiff who suffered cervical strain and sprain, trapezius myofascitis, post-traumatic cephalgia, contusion, flexion of the knee, and underwent surgery, six months post-accident, still incurred pain in the knee after long periods of walking, but was no longer taking pain medication, did not sustain serious injury and reasonable minds could not differ on this issue. Piwonski vs. Choe, 72 Bucks County L.R., 93 (1999).

In Franklin County it was held that injuries including fractured ribs, facial lacerations, fractured ankle, ankle surgeries, and the inability to go up and down steps for several months, as well as four months missed work was not sufficient to break the limited tort threshold on the summary judgment motion. Little vs. Riffe, 16 Franklin County L. J. 108 (1998).

The Erie County case of Johnson vs. Gutfreund, 82 Erie County L. J. 138 (1999) found the court granting summary judgment for defendant on the issue of serious injury where the plaintiff had a broken ankle, head laceration and shoulder injury resulting in difficulty climbing stairs, cleaning and walking.

Finally, in a case very similar to the one at present, the late Judge Vernon D. Roof of the 59th Judicial District issued an Opinion

and Order regarding the case in the Elk County Branch, Crowder vs. Huggler, wherein he considered the injuries of a four year old minor plaintiff who suffered a closed, slightly oblique fracture of the right femur. This minor plaintiff had a pin placed in her leg and was in traction for two weeks. She was discharged in a double hip cast which she wore for approximately 1-1/2 months. Thereafter, she attended physical therapy three times a week for four weeks. Following the physical therapy, the minor plaintiff complained of suffering from nightmares and occasional leg pain. However, the minor plaintiff in Crowder did learn how to walk again and "was able to interact with her friends and do the things that kids normally do even though she has legs of unequal length".

Based on these facts and considering the Washington standard, Judge Roof ruled that summary judgment denying the availability of non-economic damages under the limited tort provisions of the financial responsibility law was appropriate. A copy of the full text of the Memorandum and Order of Court in the Crowder vs. Huggler is attached here.

In light of the current and controlling law and the testimony and documentation regarding the injuries of Sara Welder, reasonable minds could not differ as to whether Sara Welder sustained serious impairment of a bodily function as defined in the Pennsylvania Motor Vehicle Financial Responsibility Law. Because of the applicability of the limited tort provisions of this law, the claims on behalf of Sara Welder should be limited to documentable economic losses only.

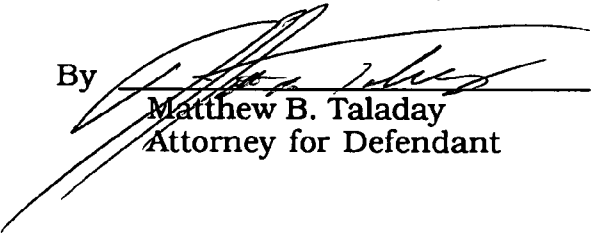
C. Conclusion

For the foregoing reasons, Defendant respectfully requests that partial summary judgment be granted.

Respectfully submitted,

Hanak, Guido and Taladay

By



Matthew B. Taladay
Attorney for Defendant

Rec'd
12/20/01

Rodolfo S. Polintan, M.D., P.C.

807 Turnpike Avenue
Clearfield, Pennsylvania 16830

Telephone (814) 765-8590

Fellow:
American College of Surgeons
American Academy of Orthopaedic Surgeons
American Academy of
Neurological and Orthopaedic Surgeons
International College of Surgeons

December 17, 2001

Elizabeth Cunningham, Esquire
26 South Second Street
Clearfield, PA 16830

RE: Sara Welder

Dear Attorney Cunningham:

This is in response to your letter requesting a narrative report in regards to Sara Welder.

CHIEF COMPLAINT: Injury to the left leg.

HPI: Sara is a 2-1/2 year old Caucasian female who was involved in a two-vehicle accident on 8-24-01. Her mother sustained multiple trauma and she was Life Flighted to Pittsburgh. The patient essentially sustained injury to the left lower extremity. She sustained a mild to moderately displaced fracture of the left distal tibia and fibula close to the growth plate.

ORTHOPEDIC EXAMINATION: On 8-24-01 the orthopedic examination showed the left lower leg was swollen, tender, and there was inversion of the foot. There was no tenderness on the hips, no tenderness on the right leg.

DIAGNOSTIC TESTS: X-rays taken at that time showed Salter II fracture of the distal tibia and fibula on the left ankle.

TREATMENT: On 8-25-01 Sara was taken to the operating room of the Clearfield Hospital, and under general anesthesia, a closed reduction of the fracture of the left distal tibia and fibula was done and application of a long leg cast. She had regular orthopedic follow up in my office after being discharged from the hospital, and the cast was removed on October 12, 2001.

Her fractures are healing at present and she is still being

EXHIBIT "A"

Elizabeth Cunningham, Esquire
RE: Sara Welder
December 17, 2001
Page Two

followed in the office periodically.

I will now answer your questions:

(1) Length of time the impairment lasted or is expected to last: Sara will need follow up for a long time, at least until she is skeletal mature. Since the fracture is around the growth plate, she might develop deformity that might need correction.

(2) Treatment required to correct the impairment: This is discussed above.

(3) Extent of pain suffered by Sara: Since pain is subjective, I cannot measure the pain that Sara has experienced; however, basing on past experience, a fracture of the distal tibia and fibula is usually on average accompanied by a significant amount of pain initially.

(4) Extent of victim's impairment: The patient had a fracture and she needed to be casted for several weeks to almost two months, and she was unable to walk without a cast. As of now she is still having a slight limp but she is improving.

(5) Treatment from date of accident provided by whom and dates of treatment: This is discussed above, and she is still being followed in the office on a regular basis.

(6) Medications: I am sorry I cannot tell you what medication I prescribed for her while she was in the hospital. This could be obtained by getting the medical records from the hospital.

(7) Physical therapy: No physical therapy was ordered.

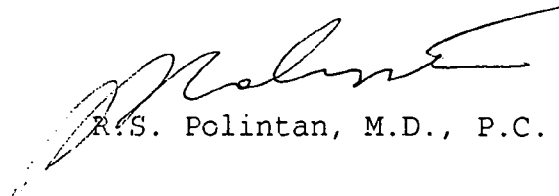
(8) Dates of examinations and treatments: I saw her daily in the hospital from 8-24-01 until she was discharged. I saw her in the office on the following dates, 8-31-01, 9-05-01, 9-19-01, 10-12-01, and lastly on 11-16-01. She will be followed in the office

Elizabeth Cunningham, Esquire
RE: Sara Welder
December 17, 2001
Page Three

in the Spring of next year with an x-ray of the left tibia shaft.
If any problems arise before that, the family was told to call my
office for an appointment.

I trust that this information is sufficient. Should you have
any questions, please feel free to let me know.

Sincerely,



R. S. Polintan, M.D., P.C.

RSP/jed

CLEARFIELD HOSPITAL, P.O. BOX 992, CLEARFIELD, PA 16830
REPORT OF OPERATION

PATIENT: WELDER, SARA LYNN

MR# 158908

LOCATION: PSR

PROCEDURE DATE: 08/25/2001

SURGEON: RODOLFO S. POLINTAN, M.D.

PREOPERATIVE DIAGNOSIS: Fracture, Salter II left distal tibia and fracture of the distal metaphysis of the left fibula.

POSTOPERATIVE DIAGNOSIS: Same.

ANESTHESIA: General.

OPERATIVE PROCEDURE: Closed reduction of the fracture left distal tibia and fibula and application of long leg cast.

HISTORY AND FINDINGS: Sara is a 2½-year-old Caucasian female who was involved in a two vehicle accident with her mother on 08/24/01. The patient's mother was life flighted to Pittsburgh. The father went with her. The brother of the father has power-of-attorney for this emergency and before the surgery was done the uncle was told about the possibility of Sara developing deformity on the left leg due to the nature of the injury which is involving the growth plate. Other risks involved discussed like problem with the nerve and vessels, swelling, etc.

OPERATIVE TECHNIQUE AND FINDINGS: With the patient properly identified in a supine position she was placed under general anesthesia. Clinically there is adduction deformity of the foot in relation to the leg. On x-ray examination there is varus deformity of the distal fibula and also the distal tibia. The fracture on the distal tibia is a Salter type II.

The deformity was reversed with appropriate pressure. A well padded long leg casted was applied placing the knee in about 15 degrees of flexion, the ankle at 90 degrees of dorsiflexion and while the cast was hardening pressure and counterpressure applied to reverse the varus deformity of the ankle. After the cast had hardened post reduction x-ray AP, lateral view and oblique view showed improvement in the alignment. I felt that this is quite satisfactory.

The patient tolerated the procedure well. No apparent complication. She was sent to the recovery room in satisfactory condition.

DATE _____	SIGNATURE _____
D: 08/25/2001	T: 08/28/2001
PR: (*Y1)	RSP / MLM

CLEARFIELD HOSPITAL, P.O. BOX 992, CLEARFIELD, PA 16830
HISTORY AND PHYSICAL

PATIENT: WELDER, SARA LYNN
LOCATION: PSR 201 A-
RODOLFO S. POLINTAN, M.D.

MR# 158908
ADM: 08/24/2001

CHIEF COMPLAINT: Trauma to the left leg.

HISTORY OF PRESENT ILLNESS: The patient is a 2½-year-old Caucasian female who was involved in a two vehicle accident on 08/24/01. Her mother sustained multiple trauma and she was Life-Flighted to Pittsburgh. The patient essentially sustained trauma to the left lower extremity. There is a mild to moderately displaced fracture of the left distal tibia and fibula close to the growth plate. The patient was splinted in the emergency room and subsequently admitted. She had x-ray of the cervical spine. CT scan of the brain reported essentially within normal limits by the radiologist.

PAST MEDICAL/SURGICAL HISTORY: Taken from the uncle. The patient's health has been good. No known medical problems and no prior surgery. She had the usual childhood illnesses for her age.

PSYCHOSOCIAL/FAMILY HISTORY: The patient resides with her family.

SYSTEM REVIEW: Essentially unremarkable except for the present injury to the left lower leg.

PHYSICAL EXAMINATION:

GENERAL: The patient is alert. Not in acute distress. Quite comfortable. Age 2½. Temperature 37, pulse rate 140, respirations 24 per minute, BP 104/56.

HEENT: Head normocephalic. No evidence of any head injuries. Eyes: PERRLA. Sclerae nonicteric. Ears, nose and throat unremarkable.

NECK: Supple without any tenderness. No step off deformity on the cervical spine.

CHEST: Benign. No rib tenderness.

HEART: Sinus tachycardia.

LUNGS: Clear to auscultation.

BACK: Nontender.

ABDOMEN: Soft and nontender.

EXTREMITIES: The left lower extremity showed the leg is with a long leg posterior splint. There is some inversion of the foot noted. There is tenderness of the lower leg. There is no tenderness of the hips. No apparent trauma to the right leg.

IMPRESSIONS:

CLEARFIELD HOSPITAL, P.O. BOX 992, CLEARFIELD, PA 16830
HISTORY AND PHYSICAL

PATIENT: WELDER, SARA LYNN
LOCATION: PSR 201 A-

MR# 158908
ADM: 08/24/2001

1. Mild to moderately displaced fracture Salter II distal tibia.
2. Fracture of distal shaft of the fibula with angulation in a varus position.

PLAN: See orders.

DATE	SIGNATURE
D: 08/25/2001	T: 08/25/2001
PR: (*Y1)	RSP / SLG

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

RUSSELL WELDER and VALERIE L. * CIVIL ACTION - LAW
WELDER, husband and wife, *
individually and as the *
natural parents and guardians *
of SARA WELDER, a minor, *
Plaintiffs *
vs. *
STEPHEN G. BELL, *
Defendant * NO. 02-240-CD
* * *

Deposition of : VALERIE LYNN WELDER

Date : Thursday, August 29, 2002
10:26 a.m.

Place : Law Offices of
Colavecchi, Ryan & Colavecchi
221 East Market Street
Clearfield, PA 16830

Reported by : Elizabeth Schreiber Nissel
RPR and Notary Public

A P P E A R A N C E S:

R. DENNING GEARHART, Esquire
appeared on behalf of the Plaintiffs

MATTHEW B. TALADAY, Esquire
appeared on behalf of the Defendant

SCHREIBER REPORTING SERVICE
P.O. Box 997
St. Marys, PA 15857
(814) 834-5337

1 you believe is related to the accident?

2 A. No.

3 Q. Does Sara have any other type of problems or
4 illnesses?

5 A. No.

6 Q. Has she started any type of preschool yet?

7 A. No.

8 Q. How are your medical bills from this accident paid?

9 A. I believe the majority of it was through medical
10 assistance.

11 Q. In addition to medical assistance, have you or your
12 husband received any cash assistance since the time of
13 this accident?

14 A. No.

15 Q. Are you currently on or have you ever applied for
16 Social Security disability?

17 A. No.

18 (Brief recess taken.)

19 BY MR. TALADAY:

20 Q. Just a few more questions, ma'am. Prior to the
21 accident would you in any way assist your husband with the
22 operation of his business?

23 A. Yes.

24 Q. In what ways?

25 A. Mostly to do the books. Also I helped him -- you

1 know, hand him tools or whatever he needed in the garage.

2 Q. Based on what you've already testified to, it's my
3 understanding that you still do the books, but it's more
4 difficult for you. Is that right?

5 A. Yes.

6 Q. Do you still assist your husband by handing him
7 tools and that sort of thing?

8 A. Mostly no. I make a trip out and ask him if he
9 needs coffee, but mostly I'm pretty much not in the
10 garage.

11 Q. Were there any other ways in which you assisted
12 your husband in his business prior to the accident that
13 have been affected by the accident?

14 A. Well, I used to go and get his parts for him when
15 he was so busy that he wasn't able to take care of that,
16 and I would do it for him.

17 Q. Has that in any way been impacted by the wreck?

18 A. Yes.

19 Q. In what way?

20 A. Because I can't drive that far to go and do what he
21 needs me to do now.

22 Q. Where would you customarily go to get parts for
23 your husband?

24 A. Clearfield.

25 Q. Was there a particular store that he deals with in

1 Clearfield?

2 A. Clearfield Auto Parts.

3 Q. Are you testifying that you have not driven to
4 Clearfield Auto Parts since the accident?

5 A. Yes.

6 Q. Have you made any claim against your insurance
7 policy for either lost wages or lost earnings based on
8 your injuries in this accident?

9 A. No.

10 MR. TALADAY: That's all the questions I have.

11 Thank you.

12 THE WITNESS: Okay.

13 MR. GEARHART: I have none.

14 (The deposition was concluded at 11:28 a.m.)

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1 CERTIFICATE OF COURT REPORTER

2 I, Elizabeth Schreiber
3 Nissel, a notary public in and for the Commonwealth of
4 Pennsylvania, do hereby certify that the witness,
5 **VALERIE LYNN WELDER**, was by me duly sworn to testify the
6 truth, the whole truth, and nothing but the truth; that
7 the foregoing deposition was taken at the time and place
8 stated herein; and that the proceedings are contained
9 fully and accurately, to the best of my ability, in the
10 notes taken by me on the deposition of the above petition
11 and that it is a correct transcript of the same.

12

13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and affixed my seal of office this 12th day of
16 September, 2002.


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Elizabeth Schreiber Nissel,
RPR and Notary Public

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NOTARIAL SEAL
Elizabeth S. Nissel, Notary Public
City of St. Marys, County of Elk
My Commission Expires Dec. 07, 2004

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

RUSSELL WELDER and VALERIE L. * CIVIL ACTION - LAW
WELDER, husband and wife, *
individually and as the *
natural parents and guardians *
of SARA WELDER, a minor, *
Plaintiffs *

vs. *

STEPHEN G. BELL, *
Defendant * NO. 02-240-CD

* * *

Deposition of : RUSSELL WELDER

Date : Thursday, August 29, 2002
11:30 a.m.

Place : Law Offices of
Colavecchi, Ryan & Colavecchi
221 East Market Street
Clearfield, PA 16830

Reported by : Elizabeth Schreiber Nissel
RPR and Notary Public

A P P E A R A N C E S:

R. DENNING GEARHART, Esquire
appeared on behalf of the Plaintiffs

MATTHEW B. TALADAY, Esquire
appeared on behalf of the Defendant

SCHREIBER REPORTING SERVICE
P.O. Box 997
St. Marys, PA 15857
(814) 834-5337

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INDEX OF WITNESS, RUSSELL WELDER

DIRECT	CROSS	REDIRECT	RECROSS
3 (Taladay)			

1 A. Yes. Instead of me walking away now, I'll stay
2 there and I'll talk to her, and we'll usually get it
3 worked out, you know.

4 Q. I wanted to talk a little bit about your daughter
5 Sara. Your wife testified that Sara was treated by Dr.
6 Polintan, and after her cast was removed she had some
7 trouble walking for a while.

8 A. Right.

9 Q. But she was released from Dr. Polintan's care last
10 March.

11 A. Right.

12 Q. Or March of this year. Is that correct?

13 A. Correct.

14 Q. Since that time, have you noticed any problems that
15 she's had regarding the ankle or leg?

16 A. Well, when the weather changes, she'll get up and
17 she'll have like a limp. And it will last maybe for a
18 half a day or something like that, and then it will go
19 away. Other than that, she's been having nightmares. At
20 nighttime she'll wake up yelling and screaming and seeing
21 that stupid Stephen Bell, but other than that --

22 Q. She mentions him by name.

23 A. Oh yeah, yeah.

24 Q. How does she know Mr. Bell?

25 A. Because her (sic) mom is my nurse at my doctor's,

received
07-18-01

IN THE COURT OF COMMON PLEAS OF THE FIFTY-NINTH
JUDICIAL DISTRICT OF PENNSYLVANIA

MICHAEL CROWDER, BECKY M.
CROWDER, Individually and on behalf of
BRIANA J. CROWDER, a minor,
Plaintiffs

v.

KATHERINE W. HUGGLER
Defendant

* COUNTY BRANCH - ELK
*
*
*
* CIVIL ACTION - LAW
*
*
* NO. 2000-621

MEMORANDUM OPINION
AND ORDER OF COURT

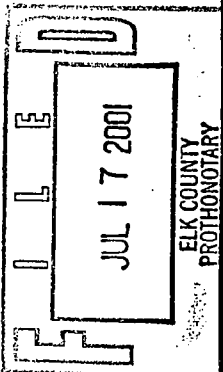
Presently before the Court is defendant's motion for partial summary judgment.

STATEMENT OF FACTS

This cause of action arose out of an automobile accident occurring on September 12 1998, in the City of St. Marys, Elk County, Pennsylvania, when the defendant apparently fell asleep at the wheel, crossed the centerline and collided with the plaintiffs' vehicle. Plaintiffs filed their complaint on August 28, 2000, seeking economic and non-economic damages. The plaintiff's insurance had lapsed at the time of the accident leaving them uninsured, and as such, they are bound by the limited tort threshold as set forth in the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701, *et seq* ("MVFRL"). Accordingly, the plaintiffs may only recover non-economic damages if their injuries were "serious" as that term is defined under the MVFRL. It is defendant's position that none of the plaintiffs have suffered a serious injury and, thus, denies recoverability of non-economic damages.

DISCUSSION

When ruling on a motion for summary judgment, the court may consider pleadings, depositions, answers to interrogatories, admissions on file, supporting affidavits and reports



signed by an expert witness. Pa.R.C.P. No. 1035.1. In order to prevail in a motion for summary judgment, the moving party has the burden of proving that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Pa.R.C.P. No. 1035.2; *Butterfield v. Giuntoli*, 448 Pa.Super. 1, 670 A.2d 646 (1995) *reargument denied, appeal denied*, 546 Pa. 635, 683 A.2d 875; *Thompson Coal Co. v. Pike Coal Co.*, 448 Pa. 198, 412 A.2d 466 (1979).

Summary judgment is only to be granted in cases where the right to judgment is clear and free from doubt, with any existing doubts to be resolved in favor of the non-moving party. *Marks v. Tasman*, 527 Pa. 132, 589 A.2d 205 (1991). Once a motion for summary judgment is made and supported under the above principles, a nonmoving party may not rest upon the mere allegations or denials of their pleadings but, rather, must set forth facts demonstrating that there is a genuine issue for trial. Pa.R.C.P. No. 1035.3; *Kniaz v. Benton Borough*, 164 Pa.Cmwlth. 109, 642 A.2d 551 (1994).

When considering a motion for summary judgment on the issue of whether a limited tort plaintiff has suffered a serious injury, "the threshold determination [is] not to be made routinely by the trial court judge..., but rather [is] to be left to a jury *unless* reasonable minds could not differ on the issue of whether a serious injury [has] been sustained." *Washington v. Baxter*, 553 Pa. 434, 719 A.2d 733, 740 (1998) (emphasis added). Summary judgment may therefore be granted in only the clearest of cases. *Id.* Accordingly, the sole issue to be determined by the Court *sub judice* is whether or not the plaintiffs have suffered serious injury such that they may recover non-economic damages.

"Serious injury" is defined as "[a] personal injury resulting in death, serious impairment of body function or permanent serious disfigurement." 75 Pa.C.S.A. §1702. Instantly, there was no death and there appears to be no claim that any of the plaintiffs suffer any permanent serious

disfigurement. With regard to what constitutes "serious impairment of body function," the *Washington* court, citing *DiFranco v. Pickard*, 427 Mich. 32, 398 N.W. 2d 896, 900 (1986), stated the following:

"The "serious impairment of body function" threshold contains two inquiries:

- a) What body function, if any, was impaired because of injuries sustained in a motor vehicle accident?
- b) Was the impairment of the body function serious? The focus of these inquiries is not on the injuries themselves, but on how the injuries affected a particular body function. Generally, medical testimony will be needed to establish the existence, extent, and permanency of the impairment.... In determining whether the impairment was serious, several factors should be considered: the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors. An impairment need not be permanent to be serious."

Washington, 719 A.2d at 740.

In *Washington*, the court found that the plaintiff's injuries to his right foot, which consisted of contusions, strains and sprains, were not serious. In making this determination, the court considered the fact that plaintiff's injuries were diagnosed as being mild by the emergency room physician; that plaintiff was discharged from the emergency room within a few hours after the accident; that plaintiff only missed a four or five days of work at his full-time job where he was required to perform most of his work while on his feet and missed approximately four of his weekly shifts at his part-time job; that the treatment of plaintiff's injuries was not extensive; and that the injuries to plaintiff appeared to have little or no impact on his job performance or daily activities. See also, *McGee v. Muldowney*, Pa.Super., 750 A.2d 912 (2000), where plaintiff did not suffer serious injury where he was examined and treated on several occasions for a cervical strain and sprain during the six months following the automobile accident, but did not seek any medical attention during the next five and one-half years excepting on two occasions, and during that time period was employed full time as an electrician. Compare, *Robinson v. Upole*,

Pa. Super., 750 A.2d 339 (2000), *Hellings v. Bowman*, Pa. Super. 744 A.2d 274 (1999), *Kelly v. Ziolk*, Pa. Super., 734 A.2d 893 (1999), and *Furman v. Shapiro*, Pa. Super., 721 A.2d 1125 (1998) where the court found that reasonable minds could differ as to the seriousness of plaintiffs' injuries.

In *Robinson*, plaintiff was able to resume work with limitations, but was unable to do many physical activities including housework and recreation without pain and could not sleep. In *Hellings*, plaintiff's herniated disc caused him to suffer numbness in his knee, sharp pain in his hip and spasms in his back, and his injuries prevented him from riding in his wife's car, engaging in various physical activities, and fully interacting with his children. In *Kelly*, the plaintiff's herniated disc caused back pain when he engaged in physical activity or sat for long periods of time, prevented him from running, and made playing with his children difficult. In *Furman*, the plaintiff's bulging disc caused her to reduce her work schedule because she could not stay in one position for long periods of time, and prevented her from walking more than one block and bathing her daughter.

Instantly, we have three plaintiffs alleging injury. The injuries sustained by Brianna Crowder, as alleged in plaintiffs' complaint, consisted of "a femul [sic] fracture and multiple abrasions and lacerations." Plaintiff's complaint, para.6(C)(i). Brianna was approximately four years old at the time of the accident. The discharge summary from the St. Marys Regional Medical Center states that "[Brianna] suffered no significant injuries other than a closed, slightly oblique fracture of the right femur.... physical examination was unremarkable except for painful swelling of the right femur on admission." Defendant's brief, Appendix F. The summary also indicates that Brianna suffered from superficial lacerations and abrasions. *Id.* Brianna was admitted to the hospital on September 12, 1998, when a pin was placed in her leg and was put in

traction for approximately two weeks. *Id.*; Deposition of Becky Crowder, p. 30. Thereafter, Brianna was discharged from the hospital on September 25, 1998, after being placed in a "double hip spica cast" the previous day. Defendant's brief, Appendix F. After the casts were removed approximately one and a half months later, Brianna attended physical therapy three times a week for approximately four weeks. Deposition of Becky Crowder, p. 32. After the physical therapy concluded, Brianna was able to walk. *Id.* Mrs. Crowder also testified that her daughter suffered from nightmares, but they did not occur very often; that Brianna stated her leg "hurts once in a while;" and that Brianna has unequal leg lengths. *Id.*, pp 33-34, 36. However, since Brianna learned how to walk again "she has been able to interact with her friends and do things that kids normally do" even though her legs are of unequal lengths. *Id.*, pp. 35-37.

Based on the record, we cannot find that Brianna has suffered from a serious impairment of body injury. Within a few months after the accident, she resumed normal childhood activities. Treatment for her broken leg ended approximately three months after the accident. The fact that her legs are of unequal lengths has not prevented her from engaging in activities and Mrs. Crowder indicated that the doctor told her that Brianna's right leg, even though shorter, is normal. Deposition of Becky Crowder, p. 36. However, there is no medical documentation of record as to the shortness of the leg, the extent of any shortness, or its adverse affect on Brianna. Further, there is no allegation in the complaint alleging the shortness of the leg as a disfigurement nor is there any response or opposing affidavit filed or medical testimony indicating that this condition is permanent or of a serious nature. See, Pa.R.C.P. No. 1035.3. Defendant's motion for summary judgment is therefore granted as it relates to recovery of non-economic damages for Brianna.

With regard to Becky Crowder, we also find that she has not suffered a serious impairment of body function. According to the complaint, Mrs. Crowder suffered from fractured ribs, multiple abrasions and lacerations and swelling and pain in her left knee. The discharge summary from St. Marys Regional Medical Center indicates that Mrs. Crowder's injuries include fractured right ribs, facial contusions and bilateral knee contusions, abrasions and lacerations. Defendant's brief, Appendix D. She was admitted to the hospital on September 12, 1998, and was discharged either the same day or the next after being kept for observation.¹ *Id.* The discharge summary states that the "only pertinent data of significance was the rib fractures documented on x-ray of the right fifth and sixth ribs." *Id.* According to Mrs. Crowder, she wore a "wrap" around her ribs for approximately two months at which time the pain subsided. Deposition of Becky Crowder, pp. 14-15, 19. With regard to the injury to her knee, Mrs. Crowder testified that she didn't really receive treatment for her knee, that physical therapy was not prescribed and that it hampered her ability to walk for approximately six months. *Id.*, p. 17. Mrs. Crowder also complained of injury to her elbow and shoulder and treatment consisted of wearing a sling. *Id.* pp. 19-20. This injury hampered her ability to pick up her daughter for a period of time and required her to receive occasional cortisone shots, the last one of record being in September or October 2000. *Id.* pp. 20-21. However, Mrs. Crowder is unsure as to what exactly is the problem with her shoulder. *Id.* p. 20. Mrs. Crowder was also prescribed pain medications which she took for approximately two months after the accident. *Id.* p. 23. According to Mrs. Crowder, she is a homemaker and her injuries did not affect her ability to work around the house. *Id.* She further testified that she has been depressed and anxious since

¹ It is unclear from the discharge summary when Mrs. Crowder was actually discharged. On the first page it indicates she was discharged on September 12, 1998; however, elsewhere in the report, it appears to indicate that she was admitted for observation and discharged the following day. Regardless, it is clear that Mrs. Crowder was in the hospital for only a short period of time.

the accident and was prescribed Prozac by her family doctor which does affect her ability to work around the house. *Id.* p. 24. No medical documentation has been provided to support this claim.

Based on the record, we cannot find that Mrs. Crowder has suffered from a serious impairment of body injury. Within six months after the accident, her injuries had healed. While she may suffer some occasional discomfort in her shoulder, there is no evidence that this discomfort hinders her in any way. Defendant's motion for summary judgment is therefore granted as it relates to recovery of non-economic damages for Mrs. Crowder.

With regard to Michael Crowder, however, we find that reasonable minds could differ as to whether or not he has suffered serious impairment of body function. According to the complaint, Mr. Crowder's injuries include compression fracture of his spine, along with multiple lacerations and abrasions. While the discharge summary for Mr. Crowder appears to indicate he was admitted to the hospital on September 12, 1998, and discharged the following day, Mr. Crowder testified that he believes he was in the hospital for a couple of days. Defendant's brief, Appendix B; Deposition of Michael Crowder, p. 13. Mr. Crowder was off work for a period of approximately three to four months. Deposition of Michael Crowder, p. 24. A letter from Mr. Crowder's employer indicates he was off work from September 12, 1998, through December 9, 1998. Defendant's brief, Appendix G. During that time period, Mr. Crowder's physical activity was restricted such that he was confined to bed except to use the bathroom, and he was unable to do any lifting, including lifting his daughter. Deposition of Michael Crowder, pp. 16-17. Even though Mr. Crowder returned to work on December 9, 1998, he was still experiencing back pain and the pain continues, but has become progressively better. *Id.* p. 17. When he went back to work, Mr. Crowder had to work slower and take more breaks. *Id.* p. 29. Because of his back

injury, Mr. Crowder was unable to hunt, an activity which he previously enjoyed, in the fall of 1998, and while he did go to New York State hunting, he sat in the truck and did not actually participate. *Id.* 18-19. With regard to his current situation as of October 2000, Mr. Crowder testified that:

“Q What’s your understanding of your back condition right now, sir?

A Well, I know [my back is] not like it used to be. As far as my work background goes, it’s not good at all. I’ve even talked to Tom [Wolf] there about going back to school just because I can’t do this line of work no more and it’s just—it’s horrible some mornings, you know, just getting out of bed. It’s sucks, there again, it just sucks.

Q What type of sensations, if you can describe to me what you feel in your back?

A There’s constant pressure. It’s just—it’s just there, you know, it’s [sic] pain.”

Id., p. 22.

From the foregoing, we find that reasonable minds could differ as to the seriousness of Mr. Crowder’s injuries. He suffered from a compression fracture of his spine and, for the most part, was confined to bed for a period of three to four months. Mr. Crowder was unable to work for a period of four months. He continues to suffer from back pain and discomfort. Accordingly, defendant’s motion for summary judgment is denied as it relates to the claim for non-economic damages for Mr. Crowder.

Based on the foregoing, we enter the following:


**MICHAEL CROWDER, BECKY M.
CROWDER, Individually and on behalf of
BRIANA J. CROWDER, a minor,
Plaintiffs**

KATHERINE W. HUGGLER
Defendant

CIVIL ACTION - LAW

NO. 2000-621

By the Court:


Vernon D. Roof President Judge

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

RUSSELL WELDER and VALERIE L. :
WELDER, husband and wife, :
individually and as the natural parents :
and guardians of SARA WELDER, a minor, :
Plaintiffs :

VS. :

NO. 02-240-CD

STEPHEN G. BELL, :
Defendant :

CASE NUMBER: 02-240-CD

TYPE OF CASE: CIVIL

TYPE OF PLEADING: BRIEF IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

FILED ON BEHALF OF: PLAINTIFFS

COUNSEL OF RECORD
FOR THIS PARTY:

R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, Pa., 16830
(814) 765-1581

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COURT ADMINISTRATOR'S
OFFICE

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

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WELDER, husband and wife,	:	
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Plaintiffs	:	
	:	
VS.	:	NO. 02-240-CD
	:	
STEPHEN G. BELL,	:	
Defendant	:	

BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Essentially, Plaintiffs agree with the Background recited in Defendant's Brief. An accident occurred on August 24, 2001, in Grampian Borough, when the vehicle the Defendant was driving, failed to stop at the stop light, traveled through the intersection and struck the vehicle operated by Valerie L. Welder. Plaintiffs were variously injured and have commenced this suit.

At the time of the accident, Plaintiffs were operating their vehicle while covered by an insurance policy issued by Travelers Property Casualty, for which they had chosen the 'limited tort' option. As such, they are bound by the limited tort threshold set forth by the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL). Accordingly, they are limited to recovery of non-economic damages only for serious injuries. Thus, the issue before Your Honorable Court is whether or not the Plaintiffs' injuries meet that threshold.

"Serious injury" under the MVFRL is defined as a "personal injury resulting in death, serious impairment of body function or permanent serious disfigurement." 75

Pa.C.S.A. § 1702; Washington v. Baxter, 719 A.2d 733 (PA, 1998). The Court in Washington, supra – the Case relied upon by the Defendant in her Brief – said clearly that the determination of whether serious injury exists should be made by the jury in all but the clearest of cases. In other words, unless reasonable minds can not differ as to whether the plaintiff sustained a serious injury, summary judgment is not appropriate. See also, Kelly v Ziolkko, 734 A.2d 893 (PA. Super, 1999).

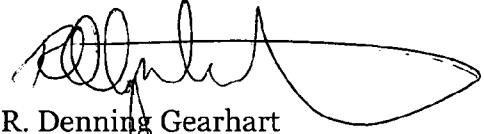
With that as the guidepost, it would not be appropriate to grant the Motion For Summary Judgment. Plaintiff Valerie Welder suffered a closed head injury; fractured ribs with small left apical pneumothorax; compression fractures of the rights transverse processes of L3-4 and Possibly L5; CT scan of the abdomen did show a left inferior ramus fracture and a right-sided acetabular fracture. She suffers from, and continues to suffer from 'post-concussion syndrome for which she continues to treat with Dr. William Fernan and Neuropsychiatric Associates, P.C. This has caused serious cognitive deficiencies and coordination problems as outlined by the report of Dr. Fernan attached hereto as Exhibit I. In addition, she was in the debilitating pain that only one who has been hurt in this manner can imagine. Her injury caused a serious impairment of her bodily function and, although this loss need not be permanent [Leonelli v. McMullen, 700 A.2d 525 (Pa. Super. Ct. 1997)], a jury can and should also consider the permanency of Ms. Welder's pain and the resulting debilitation.

Similarly, the injuries to Sara Welder are, at the least, of such a serious nature that reasonable minds can differ. As stated in Defendant's Brief, Sara Welder suffered a fracture of the distal tibia and fibula on the left ankle. It is possible, if not probable, that this fracture can lead to an early onset of arthritis.

Serious injuries? Those are issues to be left to a jury.

For that reason, Defendant's Motion for Summary Judgment should be denied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. Denning Gearhart', with a long, sweeping horizontal stroke extending to the right.

R. Denning Gearhart
Attorney for Plaintiffs

NEUROPSYCHOLOGICAL EXAMINATION

NAME: Valerie L. Welder

DATE OF BIRTH: 02/14/66

REFERRED BY: R. Denning Gearhart, Attorney at Law

REFERRAL REASON: Request neuropsychological examination to assist in determining the extent of the cognitive difficulties she has experienced since she was involved in an automobile accident on 08/24/01.

DATE OF EXAM: 02/12/02

TESTS USED: Wechsler Adult Intelligence Scale-III, Wide Range Achievement Test-Revised, Reading Comprehension Subtest of the Peabody Individual Achievement Test, Wechsler Memory Scale-Revised, Halstead-Reitan Neuropsychological Examination and Minnesota Multiphasic Personality Inventory.

TEST BEHAVIOR AND BACKGROUND INFORMATION:

The client was friendly and cooperative, maintaining good eye contact and initiating conversation. She was not overly anxious or withdrawn, but she seemed dependent on her husband. Her affect was appropriate. Her speech was spontaneous and normal and her hygiene and grooming were good with appropriate dress. Her posture, bearing and gait were normal and she exerted good effort on all tasks.

Valerie was attending Purchase-Line High School, in Commodore, PA when she terminated her education in the 10th grade in approximately 1982. She received good grades until she was in the 9th grade, with her then having an extreme distance to travel to school, while strongly disliking school, but even then her grades remained above average. She feels she had good peer and teacher relations.

The client was involved in an automobile accident on 08/24/01, with the other vehicle striking her door and her being rendered unconscious and experiencing amnesia for 5 days. She was hospitalized at the University of Pittsburgh Medical Center, in Pittsburgh, PA until 08/29/01. Since her head injury, Valerie has had great difficulty concentrating and remembering while being very forgetful. She carries a pen and notepad so she can write everything down, she is unable to remember things she was told and she is often unable to retrieve the correct word.

In addition to her head injury, Valerie received lung damage and she fractured her left lower hip and pelvis. She still experiences significant pain in her left low back and hip, and it radiates into her leg, especially her knee. She also has pain in her foot and left hand, while her left side is numb and cold to the touch chronically.

The client states she had always been very happy and she enjoyed life. She easily cared for her family and home. Since her accident she has been very easily irritated and significantly depressed with her frequently being tearful, she has poor appetite and difficulty initiating or enjoying any activities. With even minor stress she yells, screams and throws things. Her depression fluctuates from mild to severe.

Valerie was married in 1988 and 3 children have been born to this union. She denies any drug and alcohol, military, work or legal history.

TEST RESULTS:

I. Intelligence:

On the Wechsler Adult Intelligence Scale-III, Valerie was found to be functioning in the low average range of intelligence with a Verbal IQ Score of 86, a Performance IQ Score of 87 and a Full Scale Score of 86. Her subtest scores are as follows:

VERBAL SUBTEST-SCALED SCORE		PERFORMANCE SUBTEST-SCALED SCORE	
Vocabulary	7	Picture Completion	7
Similarities	4	Digit Symbol - Coding	7
Arithmetic	9	Block Design	10
Digit Span	11	Matrix Reasoning	10
Information	8	Picture Arrangement	7
Comprehension	7		

Analysis of her subtest scores shows average visual organization for abstract materials, arithmetic ability and concentration, matrix reasoning and attention and immediate memory; low average general knowledge, well below average sorting of essential from nonessential details, vocabulary, motoric speed and sustained attention, understanding of social relations and anticipation of consequences and moral knowledge and judgement and severely impaired abstract thinking.

II. Achievement:

On the Wide Range Achievement Test-Revised, Valerie was found to be recognizing what she reads 6 points above the 12th grade level, at the 50th percentile and at a standard score of 100; spelling 5 points above the 12th grade level, at the 70th percentile and at a standard score of 108

and completing arithmetic at the beginning of the 9th grade level, at the 27th percentile and at a standard score of 91. On the Peabody Individual Achievement Test she was found to be comprehending what she reads at the 6.2 grade level, at approximately the 6th percentile and at a standard score of approximately 77. Therefore, she was found to have good reading recognition, achievement for spelling and mathematical skills, but very poor reading comprehension.

III. Memory:

On the Wechsler Memory Scale-Revised, Valerie was found to have very good attention/concentration with an index score of 113. She showed good verbal, visual and general memory with index scores of 96, 95 and 94. However, her delayed memory was very significantly below expectations with an index score of only 85.

IV. Neuropsychological Examination:

On the Halstead-Reitan Neuropsychological Examination, Valerie was found to have a mild to moderate impairment in brain-behavior relationships with a general neuropsychological deficit scale (NDS) score of 36. A score of 26 or higher indicates significant neurological difficulties, while a score of 41 or higher shows a moderate impairment. No significant difference between her left and right cerebral hemispheres was noted with her left NDS score being 7, while her right NDS score was 9.

On the Halstead Tests, Valerie received an impairment index score of 0.6. That is, she was found to be in the impaired range on 4 of the 7 subtests which comprise this index, including poor simple motoric speed with her dominant (right) hand, very poor organizing and planning skills, ability to sustain strength and speed of movement while forming a visual map from tactile stimuli and simple motoric speed with her non-dominant (left) hand; extremely poor incidental memory and severely impaired logic, problem solving ability and ability for new learning.

On other components of this examination, Valerie showed good speed and flexibility of thinking, ability to deal with sequential material and ability to deal with several concepts simultaneously. Her strength of grip was good, bilaterally. On the Sensory Perceptual Exam she had no difficulty dealing with visual or simple tactile stimuli and her field of vision was normal. She had very mild difficulty dealing with auditory stimuli with her right ear and with complex tactile stimuli, bilaterally. On the Aphasia Screening Exam she showed constructional dyspraxia, dyscalculia and dysgraphia.

V. Objective Personality Assessment:

On the Minnesota Multiphasic Personality Inventory, Valerie received a valid profile with elevated scales 2, 8, 4, 7 and 0. Her profile pattern would be seen as indicating that she is very lacking in self esteem and confidence, while being significantly withdrawn and alienated. She is experiencing

severe depression and very significant anxiety, while having somewhat poor impulse control. She would tend to deal with life situations in a direct manner, not being overly dependent, being adequately assertive and having no psychosomatic tendencies. There was no evidence of a thought disorder, confusion or other significant psychopathology.

SUMMARY:

Valerie was an individual of at least average intelligence who currently functions only in the low average range, the result of a mild to moderate impairment in brain-behavior relationships, the result of the head injury she received in an automobile accident on 08/24/01. Significant residual symptoms of her head injury include her delayed memory being very inconsistent with other scores and well below expectations, poor moral knowledge and judgement and vocabulary (the combination of which indicates significant problems with verbal expression), understanding of social relations and anticipation of consequences, sorting of essential from nonessential details, sustained attention, drawing ability, writing ability and simple motoric speed with her dominant (right) hand; very poor reading comprehension, organizing and planning skills, ability to sustain strength and speed of movement while forming a visual map from tactile stimuli and simple motoric speed with her non-dominant (left) hand; extremely poor incidental memory (which would be most likely expressed by forgetfulness) and severely impaired logic, problem solving ability, ability for new learning and abstract thinking.

In addition to her cognitive deficits which have been present since the accident, Valerie's awareness of her cognitive problems, combined with her chronic pain and physical and mental limitations has led to a significant loss of confidence, with her withdrawing, feeling alienated and experiencing severe depression and very significant anxiety. She also appears to have experienced a disinhibition of her behavior as a result of her head injury, but her easily becoming verbally aggressive and throwing things may be the result of her depression rather than the head injury. If this behavior continues after her depression has been resolved, it would be seen as being the result of her head injury.

PROGNOSIS:

Poor, given the severity of her cognitive deficits, despite the significant amount of time which has passed since her head injury.

DIAGNOSIS:

Axis I. 294.1 Dementia due to Head Trauma
296.22 Major Depressive Disorder, Single Episode, Moderate
300.00 Anxiety Disorder NOS
R/O 310.1 Personality Change due to Head Injury, Aggressive type
Axis II. V71.09

Valerie L. Welder

Page 5


Axis III. 854.00 Head Injury and injury to hip, pelvis and left hand with chronic pain

Axis IV. Problems with the social environment

Axis V. GAF = 50 (current)

RECOMMENDATIONS:

1. Pharmacotherapy for her significant symptoms of anxiety and depression.
2. Individual psychotherapy with efforts being made to reduce Valerie's level of anxiety, depression and withdrawal. In treatment she needs to learn stress and pain management techniques and self control strategies should be taught. Increased social and recreational involvement needs to be fostered and encouraged, while aiding her in dealing more effectively with the residual effects of her head and other physical injuries. Finally, she should be aided in raising her self esteem and confidence.
3. Speech therapy with efforts being made to attempt to improve Valerie's verbal expression, reading comprehension, organizing and planning skills, thinking ability and sustained attention on performance type tasks, while assisting her in learning to work around her significant memory problems.


William J. Fernan, Ph.D.
Licensed Psychologist

WJF/smf

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R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE :
L. WELDER, husband and wife, :
individually and as the natural :
parents and guardians of SARA :
WELDER, a minor, :
Plaintiffs :

-vs- :

STEPHEN G. BELL, :
Defendant :

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Petition for
Discontinuance of
Minor's Case

Filed on Behalf of:

Defendant

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

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William A. Shaw
Prothonotary/Clerk of Courts
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~~Judge~~

20 Judge Cherry

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

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,

Plaintiffs

No. 02-240-CD

-vs-

STEPHEN G. BELL,

Defendant

ORDER

AND NOW, this 3rd day of June, 2004,
upon Petition of mother and father, parents and guardians of Sara
Welder as presented by their counsel, R. Denning Gearhart,

IT IS HEREBY ORDERED AND DECREED that leave for
settlement and discontinuance with prejudice of the claims of Sara
Welder be and hereby is granted.

BY THE COURT,

Paul E. Cherry
J

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William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL WELDER and VALERIE	:	
L. WELDER, husband and wife,	:	
individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

DISCONTINUANCE OF MINOR'S CASE

AND NOW, comes the Petitioners Russell Welder and Valerie L. Welder, parent and guardians of Sara Welder, a minor, by and through their attorneys, R. Denning Gearhart, and hereby petitions the Court for discontinuance of a minor's case as follows:

1. The above referenced claim arises out of an automobile accident of August 24, 2001, which occurred in the Borough of Grampian, Clearfield County, Pennsylvania.
2. The above captioned action included personal injury claims on behalf of Russell Welder, Valerie L. Welder and Sara Welder.
3. By Order of this Court dated December 11, 2002, partial summary judgment was granted in favor of the Defendant in that the Court ruled that the injuries of Russell Welder and Sara Welder did not constitute serious injuries as a matter of law and were therefore subject to the mandatory exclusion of non-economic damages.

4. The personal injury claims of Valerie L. Welder were scheduled to proceed to trial during the Spring, 2004 term. However, at a pre-trial conference of April 15, 2004 a settlement agreement was reached.

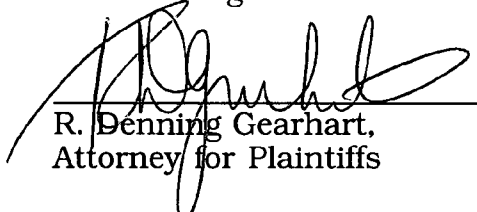
5. The parties now wish to settle and discontinue all claims, including the claims of the minor child, Sara Welder.

6. There are no unpaid medical liens, out-of-pocket expenses, unsatisfied subrogation claims or other unpaid economic claims arising out of the injuries of Sara Welder.

7. Sara Welder is believed to suffer from no residual symptoms or disabilities arising out of this incident.

8. Plaintiffs seek leave of Court to mark the above captioned action settled and discontinued with prejudice.

WHEREFORE, it is respectfully requested that the within Petition for Discontinuance of Minor's Case be granted.



R. Denning Gearhart,
Attorney for Plaintiffs

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

RUSSELL WELDER and	:	
VALERIE L. WELDER, husband and	:	
wife, individually and as the natural	:	
parents and guardians of SARA	:	
WELDER, a minor,	:	
	:	
Plaintiffs	:	No. 02-240-CD
	:	
vs.	:	
	:	
STEPHEN G. BELL,	:	
	:	
Defendants	:	

CONSENT TO PETITION FOR DISCONTINUANCE OF MINOR'S CASE

We do hereby consent to the within Petition for Discontinuance of Minor's
Case.

Russell L. Welder
Russell Welder, individually and as
A Parent of Sara Welder

Valerie L. Welder
Valerie L. Welder, individually and as
A Parent of Sara Welder

DATE: May 28, 2004

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

-vs-

STEPHEN G. BELL,
Defendant

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Consent and
Joinder

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
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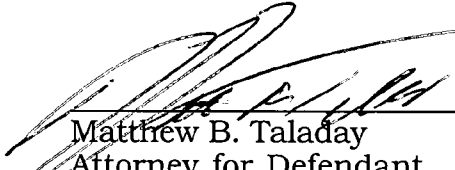
(814) 371-7768

IN THE COURT OF COMMON PLEAS
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CIVIL ACTION

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individually and as the natural	:	
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WELDER, a minor,	:	
Plaintiffs	:	No. 02-240-CD
	:	
-vs-	:	
	:	
STEPHEN G. BELL,	:	
Defendant	:	

CONSENT AND JOINDER

The undersigned counsel for Defendant in the above captioned matter hereby consents to and joins in Petition for Discontinuance of Minor's Case and hereby requests this Honorable Court to grant said Petition.


Matthew B. Taladay
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 02-240-CD

RUSSELL WELDER and VALERIE L.
WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,
Plaintiffs

vs.
STEPHEN G. BELL,
Defendant

PETITION FOR DISCONTINUANCE
OF MINOR'S CASE

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

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FILED
JUN 03 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL WELDER and VALERIE :
L. WELDER, husband and wife, :
individually and as the natural :
parents and guardians of SARA :
WELDER, a minor, :
Plaintiffs :

-vs- :

STEPHEN G. BELL, :
Defendant :

Type of Case: Civil Action

No. 02-240-CD

Type of Pleading:

Praecipe for
Discontinuance

Filed on Behalf of:

Plaintiffs

Counsel of Record for This
Party:

R. Denning Gearhart, Esq.
Supreme Court No. 26540
215 East Locust Street
Clearfield, PA 16830

(814) 765-1581

FILED

JUL 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

RUSSELL WELDER and VALERIE
L. WELDER, husband and wife,
individually and as the natural
parents and guardians of SARA
WELDER, a minor,

Plaintiffs

No. 02-240-CD

-vs-

STEPHEN G. BELL,

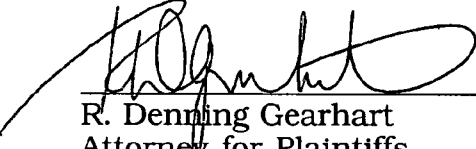
Defendant

PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Kindly mark the above referenced matter settled, ended
and discontinued with prejudice as to all Plaintiffs.

Dated: 7/8/04


R. Denning Gearhart
Attorney for Plaintiffs

FILED

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JUL 15 2004

Act. of Disc.
to Atty's General, T. A. G. G.

Approved by the Court
copy to C/A

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

COPY

**Russell Welder and Valerie L. Welder,
husband and wife, individually and as
the natural parents and guardians of
Sara Welder, a minor**

Vs.

No. 2002-00240-CD

Stephen G. Bell

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 15, 2004, marked:

Settled, Ended and Discontinued with Prejudice as to all Plaintiffs

Record costs in the sum of \$80.00 have been paid in full by R. Denning Gearhart.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of July A.D. 2004.

William A. Shaw, Prothonotary