

02-258-CD
RUSSELL OBERHIER -vs- ELMCO ENGINEERING, INC. et al

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

THIS IS A MAJOR JURY CASE.
ASSESSMENT OF DAMAGES
HEARING IS REQUIRED.

Attorney for Plaintiff

~~RUSSELL OBERTHER~~
101 Taft Avenue
Elkland, PA 16920

COUNTY OF LYCOMING
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

Plaintiff

v.

NO.: 01-01421

~~ELMCO ENGINEERING, INC.~~
6107 Churchman Bypass
Indianapolis, IN 46203

and

~~ELMCO PA, INC.~~
700 Bigler Avenue
Clearfield, PA 16830

Defendants

CC: *[Signature]*
AUG 20 1984
FILED
LYCOMING COUNTY CLERK'S OFFICE
JURY TRIAL DEMANDED

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defense 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.

SUSQUEHANNA LEGAL SERVICES
416 PINE STREET
WILLIAMSPORT, PA 17701
LAWYER REFERRAL SERVICE
PENNSYLVANIA LAWYER REFERRAL SERVICE
1-800-692-7375

Attorney to Serve

PP
8/10/84

CIVIL ACTION

1. Plaintiff Russell Oberther is an adult individual and resident of the Commonwealth of Pennsylvania residing therein at 101 Taft Avenue, Elkland, PA 16920.
2. Defendant Elmco Engineering, Inc. is a Delaware corporation with its principal place of business located at 6107 Churchman Bypass, Indianapolis, IN 46203.
3. Defendant Elmco PA, Inc. is a branch facility/operation of Elmco Engineering, Inc.
4. Based on information and belief, Plaintiff avers that Elmco PA, Inc. is a Pennsylvania corporation with its principal place of business located at 700 Bigler Avenue, Clearfield, PA 16830.
5. Defendants Elmco Engineering, Inc. and Elmco PA, Inc. regularly do business in the Commonwealth of Pennsylvania and in the County of Lycoming.
6. Defendants Elmco Engineering, Inc. and Elmco, PA, Inc. have serviced, repaired, rebuilt and retrofittted press equipment and machinery for customers located in Lycoming County.
7. Defendants Elmco Engineering, Inc. and Elmco, PA, Inc. have sold press machinery and equipment to customers located in Lycoming County.
8. Defendant Elmco Engineering, Inc. is engaged in the business of designing and manufacturing new press equipment and machinery.
9. Defendant Elmco Engineering, Inc. is also in the business of designing, manufacturing, rebuilding, refurbishing and modernizing existing press equipment of various makes and sizes.

10. Defendant Elmco Engineering, Inc. is also in the business of providing custom engineering design services for owners of pre-owned press equipment and machinery.

11. Based on information and belief, Plaintiff avers that Defendant Elmco Engineering, Inc. is also in the business of selling, distributing and placing into the stream of commerce replacement parts, components, such as control panels and systems for multi-motion molding and standard molding presses.

12. Based on information and belief, Plaintiff avers that Defendant Elmco PA, Inc., as a branch facility/operation of Defendant Elmco Engineering, Inc., is engaged in the same services and business provided by Defendant Elmco Engineering, Inc. as set forth in paragraphs 6 through 8 above.

13. Alternatively, Plaintiff avers that Defendant Elmco PA, Inc. is regularly engaged in the business of industrial machinery repair, rebuilding, retrofitting, reassembling and modernizing of presses including but not limited to multi-motion compacting presses, multi-motion molding presses and standard molding presses.

14. Based on information and belief, Plaintiff avers that in 1999 and 2000, Defendant Elmco Engineering, Inc. sold, supplied and/or otherwise distributed to SMC Powder Metallurgy replacement parts for a Cincinnati Rigid Reflex Compacting Press model no. 200-C2 6, serial no. 39425 with a SMC asset identification no. M-100.

15. Based on information and belief, Plaintiff avers that in the latter part of 1999, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. were requested by SMC Powder Metallurgy to evaluate, assess, review and study the operation, function, performance and safety of compacting presses located at SMC Powder Metallurgy facility in Galton, PA.

16. Based on information and belief, one of the compacting presses Defendants were requested to evaluate and assess was a Cincinnati Rigid Reflex Compacting Press model no. 200-C2 6, serial no. 39425.

17. Based on information and belief, as consideration for the performance of the evaluation, assessment, retrofitting, rebuilding, upgrading and modernization services for the aforementioned Cincinnati Rigid Reflex Compacting Press, Defendants were paid in excess of \$142,200.

18. Based on information and belief, Plaintiff avers that part of the services performed by Defendants on the aforementioned Cincinnati rigid reflex compacting press machine was to completely strip it down to its frame by the removal of original component parts and their wiring that was originally provided with the press by the original manufacturer.

19. Based on information and belief, Plaintiff avers that Defendant Elmco Engineering, Inc., as part of its overhauling, rebuilding and refurbishing of the aforementioned Cincinnati Rigid Reflex Compacting Press, retrofitted the equipment with a completely new electrical schematic hardware and software system that included an Allen Bradley drive controller and system module.

20. Based on information and belief, Plaintiffs aver that Defendants, through their employees, agents and/or servants, spent more than 500 hours of manpower stripping, rebuilding, assembling, retrofitting and upgrading the aforementioned compacting press.

21. Based on information and belief, Defendants sold, assembled and installed a computerized control system for the subject press as part of the retrofit and upgrading services provided.

22. Based on information and belief, at all times material hereto, Defendants Elmco Engineering, Inc. and Elmco PA, Inc., through its employees, servants and/or agents, represented themselves to be experts in the rebuilding, overhauling, modernization, safety performance evaluations, assembly, retrofits and upgrading of compacting presses including the Cincinnati press in question.

23. Based on information and belief, at or before the time that Defendants turned over the subject machine to SMC Powder Metallurgy, and after said equipment was overhauled, rebuilt, modernized and retrofitted, Defendants knew or had reason to know that the press was in a dangerous condition because it did not have appropriate barrier guards for its moving parts that included the top punch hold down device.

24. Based on information and belief, at or before the time that Defendants turned over the subject machine to SMC Powder Metallurgy, and after said equipment was overhauled, rebuilt, modernized and retrofitted, Defendants knew or had reason to know that the aforementioned press was in a dangerous condition because the top punch hold down did not have a redundant system designed to prevent it from misfiring, malfunctioning or repeating during its cycle.

25. Based on information and belief, Defendants turned over and supplied the aforementioned press to SMC Powder Metallurgy, Inc. in a condition which was not safe and one which would have been corrected had it used reasonable care.

26. Based on information and belief, at or before the time Defendants Elmco Engineering, Inc. and Elmco PA, Inc. turned over the subject machine to SMC Powder Metallurgy, Inc. and after said equipment was modernized, rebuilt and/or retrofitted, Defendants knew or should have known through reasonable care that those who subsequently would use the

subject machine would not realize the dangers presented by the conditions presented including the lack of a redundancy or fail safe system for the punch hold down device.

27. Based on information and belief, the components that Defendant Elmco Engineering, Inc. sold and installed on and onto the aforementioned press machine were selected and chosen by Defendants.

28. Based on information and belief, SMC Powder Metallurgy relied on Defendants Elmco Engineering, Inc. and Elmco PA, Inc. to overhaul, rebuild, refurbish, retrofit and modernize the aforementioned press machine so that it was in a safe condition to operate and use.

29. On July 18, 2000, Plaintiff Russell Oberther was employed by SMC Powder Metallurgy as a die setter/machine operator. On said date, Plaintiff was assigned to set-up, use and operate the aforementioned Cincinnati Compacting Press machine.

30. On July 18, 2000, Plaintiff, while in the course of his employment, was operating the aforementioned Cincinnati Rigid Reflex Compacting Press machine when, due to the negligence, carelessness and/or wrong doing of Defendants Elmco Engineering, Inc. and Elmco PA, Inc. and the defective and unsafe condition of the aforementioned machine, Plaintiff suffered severe painful personal injuries when the top hold down device malfunctioned, misfired and/or repeated such that it came down upon and trapped and crushed Plaintiff's dominant left hand.

31. At all relevant times material hereto, the aforementioned Cincinnati Rigid Reflex Compacting Press and its component parts were being used for the purposes for which this machine was designed, manufactured, overhauled, rebuilt, retrofitted and modernized by Defendants.

32. As a direct and proximate result of the carelessness, negligence and defective condition of the aforementioned Cincinnati press and its component parts, Plaintiff Russell Oberther suffered severe and disabling crushing injuries to his left hand that involved the displaced fracture of the middle phalanx of the index finger and non-displaced fracture of the middle phalanx of the middle finger, laceration of these fingers, tendon damage, scar adhesion and disfigurement which has caused him to undergo extensive medical care and treatment with great physical pain, suffering and anxiety, the full extent of which injuries are not yet known, some or all of which are permanent in nature.

33. As a direct and proximate result of the carelessness, negligence and wrong doing of the Defendants and the defective and unsafe condition of the aforementioned Cincinnati Rigid Reflex Compacting Press, Plaintiff Russell Oberther has in the past, and will in the future, continue to suffer from the above conditions as well as scarring, deformity, pain, mental anguish, humiliation, embarrassment, disfigurement, loss of well being, loss of enjoyment of life's pleasures, restrictions, inability to engage in normal and everyday activities and inability to pursue and enjoy the normal ordinary benefits of life.

34. As a direct and proximate result of the carelessness, negligence and wrong doing of Defendants and the defective and unsafe condition of the aforementioned Cincinnati Rigid Reflex Compacting Press and its component parts, Plaintiff Russell Oberther has required and will in the future require medical care, rehabilitative care and other medical costs and treatment to treat and/or attempt to treat his condition and will incur and has incurred substantial expenses for such care and treatment.

35. As a direct and proximate result of the carelessness, negligence and wrong doing of Defendants and the defective and unsafe condition of the aforementioned Cincinnati rigid

reflex compacting press and its component parts, Plaintiff has in the past and will continue in the future to be prevented from performing his full and usual duties, life's avocations and occupations and has suffered a loss of past earnings, earning capacity, loss of future earnings and loss of life's pleasures.

COUNT I – NEGLIGENCE

PLAINTIFFS V. DEFENDANTS **ELMCO ENGINEERING, INC. AND ELMCO PA, INC.**

For his First Count, Plaintiff alleges as follows:

36. Plaintiff hereby incorporates and repeats in each and every paragraph as though set forth fully here at length.

37. Based on information and belief, at all relevant times hereto, Defendants knew or should have had reason to know, through the exercise of reasonable care, that operators or users of this rebuilt, retrofitted and modernized Cincinnati press machine would be in the vicinity of the machine operation area that included the top punch hold down at one point or another during the machine operation, set-up and use.

38. Based on information and belief, at all relevant times hereto, Defendants knew or, through the exercise of reasonable care, should have known that the design and condition of the aforementioned rebuilt, retrofitted and modernized Cincinnati machine was such that an operator could suffer injury to his or her hands in the event of a failure, malfunction or recycle of the top hold punch hold down device.

39. Based on information and belief, at all relevant times hereto, Defendants knew or, through the exercise of reasonable care, should have known that the moving parts of the Cincinnati compacting press, including its top punch hold down device, raised a risk of injury to the machine's intended and reasonably foreseeable users and operators.

40. Based on information and belief, at all relevant times hereto, Defendants knew, or through the exercise of reasonable care, should have known that the aforementioned Cincinnati compacting press was unsafe for operation due to their failure to incorporate the necessary and appropriate point-of-operation guarding and other safety component features to prevent misfiring, recycling or malfunctioning of the press.

41. The aforementioned accident and injuries to Plaintiff was caused by the negligence and wrong doing of Defendants that consisted of the following acts and omissions:

- a. Failure to design, remanufacture, rebuilt, upgrade, reassemble, retrofit and modernize the aforementioned Cincinnati press and its component parts with the appropriate safety devices and features to prevent injury to its operators and users;
- b. Failure to properly and safely test and inspect the aforementioned rebuilt, modernized and retrofitted Cincinnati compacting press machine and its component parts to determine whether they could be used without injuring their users and operators;
- c. Failure to warn or adequately warn and/or train operators and users of this product and its component parts of the dangers associated with its operation, use and set-up;
- d. Failure to provide an operator's, service and/or instruction manual with the rebuilt, retrofitted and/or modernized Cincinnati compacting press;
- e. Failure to provide proper and adequate safety devices and/or guards to enclose the point-of-operation area;
- f. Failure to provide a back-up or redundant system to prevent the top punch hold down device or other point-of-operation devices from misfiring, malfunctioning, repeating, recycling and/or engaging an unintended or uninitiated cycle;

- g. Failure to minimize to the fullest extent possible the known hazards and risks of injury associated with the intended and foreseeable uses of the subject rebuilt, overhauled and modernized Cincinnati compacting press machine and its component parts;
- h. Failure to properly and adequately assess, evaluate and eliminate potential known dangers of the subject product and its component parts as part of the overhauling, retrofitting and modernization of said machine;
- i. Failure to provide every element necessary to make this rebuilt, overhauled and retrofitted product safe for its intended and foreseeable uses;
- j. Failure to equip the subject product and its component parts with appropriate warnings, instructions and directions for its safe operation, use and set-up;
- k. Failure to rebuild, retrofit, modernize and/or reinstall the subject machine in a safe condition;
- l. Selling and/or supplying a overhauled, rebuilt and modernized machine and its component parts in an unreasonably condition to its users and operators;
- m. Failure to properly follow reasonable industry practice and protocol for rebuilding, overhauling and retrofitting any industrial equipment and machinery with the necessary safety devices and safety features to make the product safe for its use and operation;
- n. Failure to provide redundant circuit for the top punch hold down and dual upper punch.

42. By rebuilding, overhauling, upgrading, repairing and modernizing the aforementioned Cincinnati press, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. are liable to Plaintiff as a supplier of equipment under Section 403 of the Restatement (Second) of Torts.

43. As a result of rebuilding, refurbishing, repairing, overhauling and modernizing the aforementioned Cincinnati compacting press, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. are liable to Plaintiff pursuant to Section 404 of the Restatement (Second) of Torts.

44. As a result of rebuilding, refurbishing, repairing, overhauling and modernizing the aforementioned Cincinnati compacting press, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. increased the potential risk of injury to Plaintiff by failing to incorporate a redundancy, fail safe system for the top punch hold down and, therefore, are liable to Plaintiff pursuant to Section 323 of the Restatement (Second) of Torts.

45. As a direct and proximate result of Defendants' negligence and wrong doing, Plaintiff suffered the following injuries and damages:

- a. Severe crush injury to his left dominant hand including fractures of his index and long fingers, tendon, ligament and nerve damage and damage to the nervous system in the sequelae thereof;
- b. Great pain, suffering, loss of life's pleasures, past and future;
- c. Medical, hospital and rehabilitative expenses, past and future;
- d. Loss of earnings and earning capacity.

COUNT II – BREACH OF CONTRACT

PLAINTIFF V. DEFENDANTS **ELMCO ENGINEERING, INC. AND ELMCO PA, INC.**

For his Second Count, Plaintiff alleges as follows:

46. Plaintiff hereby incorporates and repeats each and every paragraph as though set forth fully here at length.

47. At some time prior to July 18, 2000, and well known to Defendants Elmco Engineering, Inc. and Elmco PA, Inc., Defendants represented in another manner expressed

warranties that the aforementioned Cincinnati compacting press that was overhauled, rebuilt, retrofitted and modernized was safe for use for the purposes intended and was of merchantable quality.

48. At some time prior to July 18, 2000, and well known to Defendants Elmco Engineering, Inc. and Elmco PA, Inc., Defendants warranted by implication that the aforementioned rebuilt, overhauled, retrofitted and/or modernized Cincinnati compacting press machine was reasonably fit for purposes intended and was of merchantable quality.

49. Based on information and belief, at all relevant times, Defendants had reason to know that those who used the overhauled and retrofitted Cincinnati press would be relying upon Defendants' skilled judgment and services in furnishing a piece of equipment that was safe for its particular purpose and which was of merchantable quality.

50. Based on information and belief, Defendants breached implied warranties of merchantability and fitness for the particular purpose by placing into the stream of commerce a defective product which possessed inherent dangers realized which caused Plaintiff's injuries and damages as set forth above.

51. Based on information and belief, prior to July 18, 2000, and well known to Defendants, Defendants warranted by implication that the aforementioned rebuilt, overhauled, modernized and retrofitted Cincinnati compacting press was reasonably fit for the purposes intended and was of merchantable quality.

52. That the said representations and warranties set forth in the preceding paragraphs form part of the bargain for the rebuilding, overhauling, retrofitting and modernizing of said press for the service work performed by Defendants and was relied upon by Plaintiff's employer and by Plaintiff.

53. Based on information and belief, that in truth and in fact, said representations and said warranties were false.

54. As a direct and proximate result of the respective breaches of expressed and implied warranties, Plaintiff sustained the following injuries and damages:

- a. Severe crush injury to his left dominant hand including fractures of his index and long fingers, tendon, ligament and nerve damage and damage to the nervous system in the sequelae thereof;
- b. Great pain, suffering, loss of life's pleasures, past and future;
- c. Medical, hospital and rehabilitative expenses, past and future;
- d. Loss of earnings and earning capacity.

COUNT III – STRICT LIABILITY

PLAINTIFF V. DEFENDANTS
ELMCO ENGINEERING, INC. AND ELMCO PA, INC.

For his Third Count, Plaintiff avers as follows:

55. Based on information and belief, at all relevant times herein, Defendants were in the business of designing, remanufacturing, rebuilding, refurbishing, retrofitting and selling rebuilt multi-motion compacting presses, multi-motion molding presses and standard molding presses.

56. By rebuilding, overhauling, remanufacturing, retrofitting and reassembling the aforementioned Cincinnati compacting press machine, Defendants did replace or redistribute into the stream of commerce a rebuilt product that was eventually involved in Plaintiff's accident.

57. Based on information and belief, at the time the aforementioned Cincinnati compacting press was redesigned, remanufactured, rebuilt, reinstalled and retrofitted by Defendants, it was a new product.

58. Based on information and belief, Defendants sold, distributed and placed into the stream of commerce a new electrical and computerized programmable logic control system for the aforementioned rebuilt press that included new electrical schematic hardware and software system.

59. The aforementioned electrical programmable system was defective and unsafe because it did not contain a fail safe or redundant system to prevent the top punch hold down from misfiring, malfunctioning and/or engaging in an unintended or unauthorized cycle. Defendants are strictly liable to Plaintiff for his injuries and damages pursuant to Section 402A of the Restatement (Second) of Torts.

60. As a direct and proximate result of the rebuilt, overhauled and retrofitted product defects, Plaintiff was injured and suffered the following injuries and damages:

- a. Severe crush injury to his left dominant hand including fractures of his index and long fingers, tendon, ligament and nerve damage and damage to the nervous system in the sequelae thereof;
- b. Great pain, suffering, loss of life's pleasures, past and future;
- c. Medical, hospital and rehabilitative expenses, past and future;
- d. Loss of earnings and earning capacity.

WHEREFORE, for all of which damages, Plaintiff demands judgment against Defendants, individually and jointly, in a sum exceeding fifty thousand dollars (\$50,000.00), exclusive of interest and costs. Plaintiff further seeks interest and costs from Defendants, individually and jointly.

Respectfully submitted,

GALFAND BERGER, LLP

BY:

Richard M. Jurewicz
RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

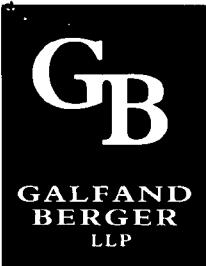
Date: 8.28.01

VERIFICATION

I verify that the statements made in the foregoing Complaint and any attachments thereto are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.A. § 4904, relating to unsworn falsification to authorities.


RUSSELL OERther

DATE: 7-20-01



August 28, 2001

LAW OFFICES

1818 MARKET STREET
SUITE 2300
PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

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PARALEGAL
llynch@galfandberger.com

JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
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ROBERT G. MANGOLD •
MICHAEL W. MCGURRIN
ARTHUR L. BUGAY •
THOMAS J. O'BRIEN
KELLY F. MELCHER
WAYNE A. HAMILTON •
SANDRA W. MORRIS
JOSEPH S. VINESKI
• MEMBER OF NJ BAR

† BOARD CERTIFIED IN
CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER

S. HARRY GALFAND
(1947-1993)

MARTHA J. HAMPTON
(1991-1999)

Prothonotary
Lycoming County Courthouse
43 West Third Street
Williamsport, PA 17701

RE: Oberther v. Elmco Engineering, Inc., et al.

Dear Sir/Madam:

Enclosed please find an original and two copies of Plaintiff's Complaint for filing in the above captioned matter. Also enclosed find our check in the amount of \$60.00. Kindly return to me to me a time stamped copy of the cover sheet and two time stamped copies of the complaint in the envelope provided for your convenience.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lorianne Lynch'.
LORIANNE LYNCH
PARALEGAL

LAL/lal
Enclosure

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ABATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER :
Plaintiff :
v. :
ELMCO ENGINEERING, INC. :
and :
ELMCO PA, INC. :
Defendants :

COUNTY OF LYCOMING
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

NO.: 01-01421

WILLIAM J. BURD
PROTHONOTARY
CLERK OF COURTS

LYCOMING COUNTY
FILED

Oct 8 2001

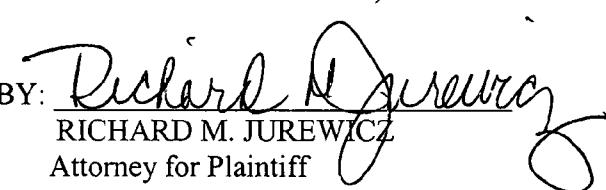
AFFIDAVIT OF SERVICE

Richard M. Jurewicz, Esquire, being duly sworn according to law deposes and says that:

1. On August 30, 2001 he did file a Complaint in the Court Common Pleas of Lycoming County;
2. On September 7, 2001 a copy of said Civil Action Complaint was sent to Defendant Elmco Engineering, Inc., Indianapolis, IN by Certified Mail, Return Receipt Requested. See Exhibit "A";
3. On September 18, 2001 he did receive Return Receipts which indicate that representatives from Defendant Elmco Engineering, Inc., Indianapolis, IN received said Civil Action Writ of Summons on September 11, 2001. See Exhibit "B".

GALFAND BERGER, LLP

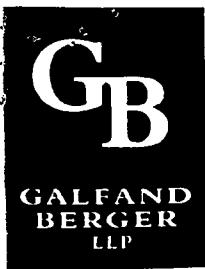
BY:


RICHARD M. JUREWICZ
Attorney for Plaintiff

Sworn to and subscribed
before me this day
of , 2001.

NOTARY PUBLIC

EXHIBIT "A"



LAW OFFICES

1818 MARKET STREET
SUITE 2300
PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

September 7, 2001

ELMCO Engineering, Inc.
6107 Churchman Bypass
Indianapolis, IN 46203

JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
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COUNSEL TO THE FIRM:
NORMAN M. BERGER
S. HARRY GALFAND
(1947-1993)
MARTHA J. HAMPTON
(1991-1999)

RE: Oberther v. ELMCO Engineering, Inc.

Dear Sir or Madam:

:

Please be advised that a Civil Action has been filed against your Company in the Court of Common Pleas of Lycoming County on August 30, 2001 bearing the caption of Russell Oberther v. Elmco Engineering, Inc. and Elmco PA, Inc., No. 01-01421; a copy of which I am enclosing herein.

I suggest that you forward this Civil Action to your liability insurance carrier and have their attorney enter a written appearance on behalf of your Company and file an Answer to the Civil Action within 20 days after this Civil Action is served upon your Company.

You are warned that if you fail to do so, the case may proceed without your Company and the Court may enter a judgment against your Company without further notice for any money claimed in this Civil Action or for any other relief claimed in the Civil Action.

Your prompt attention to this matter will be greatly appreciated.

Very truly yours,


LORIANNE LYNCH
Paralegal to Richard M. Jurewicz

/lal

Enclosure

C.M.R.R.R.

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ABATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

EXHIBIT "B"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Elenco Engineering
Inc
6107 Churchman Drives
St. Louis 46303

2. Article Number (Copy from service label)

1099-3400001556715134

PS Form 3811, July 1999

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery
Vicki K. Duffel 9-11-01

C. Signature

Vicki Duffel

Agent
 Addressee
 Yes
 No

D. Is delivery address different from item 1? If YES, enter delivery address below:

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

102595-00-M-0952

Domestic Return Receipt

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

45134

45135

45136

45137

45138

45139

Postage \$ 463

Certified Fee

210

Return Receipt Fee
Endorsement Required

150

Postmark

Restricted Delivery Fee
Endorsement Required

Total Postage & Fees \$ 463

Recipient's Name (Please Print Clearly to be completed by mailer)

Elenco Engineering Inc
6107 Churchman Drives
St. Louis, Mo 46303

City, State, ZIP-4

PS Form 3800, February 2000

See Reverse for Instructions



GALFAND
BERGER
LLP

LAW OFFICES

1818 MARKET STREET
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TEL: (215) 665-1600

LORIANNE LYNCH

PARALEGAL

lynch@galfandberger.com

October 3, 2001

JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
PETER M. PATTON
ROBERT G. MANGOLD *
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† BOARD CERTIFIED IN
CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER

S. HARRY GALFAND
(1947-1993)

MARTHA J. HAMPTON
(1991-1999)

Prothonotary
Lycoming County Courthouse
43 West Third Street
Williamsport, PA 17701

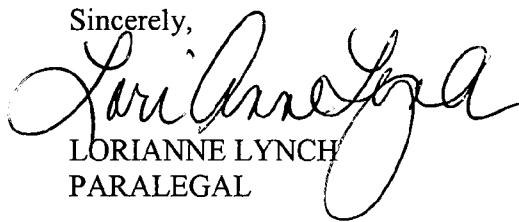
RE: Oberther v. Elmco Engineering, Inc., et al.

Dear Sir/Madam:

Enclosed please find an Affidavit of Service for filing in the above captioned matter. Kindly return to me a time stamped copy for my records.

Thank you.

Sincerely,



LORIANNE LYNCH
PARALEGAL

LAL/lal
Enclosure

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ARABE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER :
Plaintiff :
v. :
ELMCO ENGINEERING, INC. :
and :
ELMCO PA, INC. :
Defendants :

COUNTY OF LYCOMING
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

NO.: 01-01421

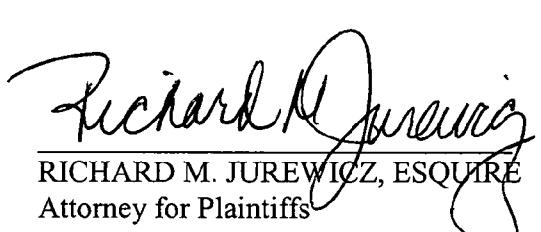
PRAECIPE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY:

Kindly reinstate the Complaint filed in the above captioned matter.

GALFAND BERGER, LLP

BY:

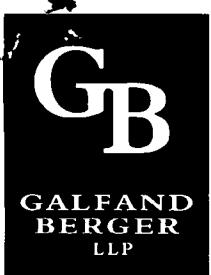

RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiffs

SEP 27 3 32 PM '01
FILED
PRO
CLERK
JURIS

FILED
LYCOMING COUNTY

Revised to Sheriff 9/27/01

BB
25



September 18, 2001

LAW OFFICES

1818 MARKET STREET
SUITE 2300
PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

LORIANNE LYNCH
PARALEGAL
lynch@galfandberger.com

JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
PETER M. PATTON
ROBERT G. MANGOLD *
MICHAEL W. MCGURRIN
ARTHUR L. BUGAY *
THOMAS J. O'BRIEN
KELLY F. MELCHER
WAYNE A. HAMILTON *
SANDRA W. MORRIS
JOSEPH S. VINESKI

* MEMBER OF NJ BAR

† BOARD CERTIFIED IN
CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER

S. HARRY GALFAND
(1947-1993)

MARTHA J. HAMPTON
(1991-1999)

RE: Oberther v. Elmco Engineering, Inc., et al.

Dear Sir/Madam:

Enclosed please find a Praeclipe to Reinstate Complaint in the above captioned matter. Kindly forward the reinstated Complaint to the Sheriff of Lycoming County for Deputized Service to the Sheriff of Clearfield County and return a time stamped reinstated copy to the undersigned.

Thank you.

Sincerely,

LoriAnne Lynch
LORIANNE LYNCH
PARALEGAL

LAL/lal
Enclosure

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ABATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

9/21/01
Fee to reinstate
compl. is \$8.25

LYCOMING COUNTY COURT OF COMMON PLEAS
LOCAL RULE L206 COVER SHEET

OBERTHER

v.

Elmco Engineering, Inc. and
Elmco PA, Inc.

01-01421

Docket No. 99-01582

Case Assigned to Judge _____

None x

1. Name of Filing Party Elmco Engineering Inc. and Elmco PA, Inc.
2. Filing party's attorney: Jeffrey S. Lee, Esquire
3. Type of Filing Preliminary Objections to Plaintiff's Complaint; Brief in Support Thereof

<p>4. The following is/are required:</p> <p><input type="checkbox"/> Issuance of a rule to show cause <input type="checkbox"/> Argument <input type="checkbox"/> Factual Hearing <input type="checkbox"/> Court conference <input type="checkbox"/> Entry of an order in an uncontested matter or upon agreement of the parties (attach all supporting documentation) <input type="checkbox"/> Expedited consideration. State the basis: <u>x</u> <u>Oral Argument is not requested.</u></p> <p>_____ _____ _____</p>	<p>6. Name and addresses of all counsel of record and unrepresented parties. (Continue on separate sheet)</p> <p>Jeffrey S. Lee, Esquire Attorney for Defendants 401 Penn Street, Suite 100 Reading, PA 19601</p> <p>Richard M. Jurewicz, Esquire Attorney for Plaintiff Galfand Berger, LLP 1818 Market Street, Suite 2300 Philadelphia, PA 19103</p> <p>10/30/01</p>
<p>5. Time Required: _____</p>	

ORDER

An argument (factual hearing) (court conference) is scheduled for November 5, 2001
at 4:00 P m. in courtroom no. 3

Briefs (are) (are not) required. Filing party's brief is due _____ submitted herewith

Responding brief(s) is (are) due 7 days before argument

THE FILING PARTY SHALL SERVE A COPY OF THIS EXECUTED SCHEDULING ORDER ON
ALL COUNSEL OR UNREPRESENTED PARTIES.

Jeffrey S. Lee 10/32/01
Judge

C. Touch

LAW OFFICES OF RALPH F. TOUCH

By: Jeffrey S. Lee, Esquire
Attorney I.D. No. 69952
401 Penn Street, Suite 100
Reading, PA 19601
Tel. 610-320-4248 Fax 610-320-4767

Attorney for Defendants

IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PENNSYLVANIA

RUSSELL OBERTHER)	CIVIL DIVISION
Plaintiff)	NO. 01-01421
)	
v.)	
)	
ELMCO ENGINEERING, INC.)	
and ELMCO PA, INC.)	
Defendants)	
)	
)	

ORDER

AND NOW this day of 2001, it is hereby ORDERED and
DECREED that the Preliminary Objections of Defendant, ELMCO ENGINEERING,
INC. AND ELMCO PA, INC., are granted and this case is transferred to the Court of
Common Pleas of Potter County Pennsylvania, or in the alternative, transfer this action to
Tioga or Clearfield County.

J.

LAW OFFICES OF RALPH F. TOUCH

By: Jeffrey S. Lee, Esquire
Attorney I.D. No. 69952
401 Penn Street, Suite 100
Reading, PA 19601
Tel. 610-320-4248 Fax 610-320-4767

Attorney for Defendants

IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PENNSYLVANIA

RUSSELL OBERTHER)	CIVIL DIVISION
Plaintiff)	NO. 01-01421
)	
v.)	
)	
ELMCO ENGINEERING, INC.)	
and ELMCO PA, INC.)	
Defendants)	
)	
)	

FILED
LYCOMING COUNTY
Oct 8 4 21 PM '01
Wm PRO
CLE, 2001
RD
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**PRELIMINARY OBJECTIONS OF DEFENDANT, ELMCO ENGINEERING,
INC. AND ELMCO PA, INC.**

Defendants, Elmco Engineering, Inc. and Elmco PA, Inc., by and through it's attorney, Jeffrey S. Lee, Esquire, hereby files Preliminary Objections to Plaintiffs' Complaint pursuant to P.A.R.C.P 1028(a)(1) and in support thereof avers the following:

1. According to Plaintiffs' Complaint on July 18, 2000, the Plaintiff was employed by SMC Powder Metallurgy. At that time, he allegedly sustained injuries during the operation of a Cincinnati Compacting Press Machine. These injuries are more fully set forth in Plaintiff's Complaint. A copy of the Complaint is attached hereto and incorporated herein as Exhibit "A" and made a part hereof.

2. An action against a corporation may only be brought in the county where its registered office or principle place of business is located, or where it regularly conducts business, or in the county where the cause of action arose. Pa. R.C.P 2179(a).

3. SMC Powder Metallurgy is located in Galton, Potter County, PA., therefore the incident giving rise to this matter occurred in Potter County, PA.

4. Any alleged witnesses to the accident/incident would, therefore, be located in Potter County, PA.

5. The Plaintiff is a resident of Elkland, Tioga County, PA.

6. The Defendant., Elmco Engineering, Inc. is a Delaware Corporation with a principal place of business at 6107 Churchman Bypass, Indianapolis, IN 46203.

7. The Defendant, Elmco PA, Inc. maintains a place of business at 700 Bigler Avenue, Clearfield, PA 16830, which is located in Clearfield County, PA.

8. The Defendants, Elmco Engineering, Inc. and Elmco PA, Inc. do not have a registered office in Lycoming County, Pennsylvania and do not have a place of business in Lycoming County, Pennsylvania.

9. The Defendants, Elmco Engineering, Inc. and Elmco Pa., Inc. do not have any business clients located in Lycoming County, Pennsylvania.

10.. Any machinery that was designed, manufactured, rebuilt, refurbished, and/or modernized that eventually ended up in Lycoming County Pennsylvania would only include incidental instances.

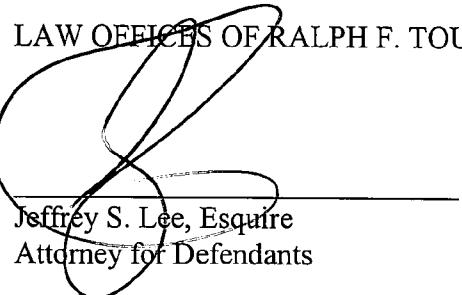
11. Business contacts must be judged on the basis of their "quality" and "quantity". "Quality of acts" are "those directly furthering or essential to corporate objectives; they do not include incidental acts." Quantity refers to those acts which are "so continuance and sufficient to be general or habitual." Purcell v. Bryn Mawr Hospital, 525 Pa. 237, 559 A.2d 1282, 1285 (1990); Shanke v. Delaware and Hudson Railroad Co., 388 Pa. 280, 135 A. 755 (1927).

12. The incidental instances where the defendants' machinery ended up in Lycoming County cannot be deemed habitual nor can it be deemed essential to the corporation's existence. Therefore, venue in Lycoming County, Pennsylvania is improper.

WHEREFORE, Defendants, Elmco Engineering, Inc. and Elmco, Pa., Inc. respectfully request that this Honorable Court transfer the Plaintiff's Complaint to Potter County, (where the accident took place and where potential witnesses are located), or in the alternative, transfer this action to Tioga County (where the Plaintiff resides), or Clearfield County (where the Defendants have a registered office).

Respectfully submitted,

LAW OFFICES OF RALPH F. TOUCH


Jeffrey S. Lee, Esquire
Attorney for Defendants

LAW OFFICES OF RALPH F. TOUCH

By: Jeffrey S. Lee, Esquire
Attorney I.D. No. 69952
401 Penn Street, Suite 100
Reading, PA 19601
Tel. 610-320-4248 Fax 610-320-4767

Attorney for Defendants

IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PENNSYLVANIA

RUSSELL OBERTHER) CIVIL DIVISION
Plaintiff) NO. 01-01421
)
v.)
)
ELMCO ENGINEERING, INC.)
and ELMCO PA, INC.)
Defendants)
)
)

LYCOMING COUNTY
COURT

MEMORANDUM OF LAW

Defendant, Elmco Engineering, Inc. and Elmco PA, Inc., hereby submits and incorporates this Memorandum of Law in support of it's Preliminary Objections.

FACTS

According to Plaintiffs' Complaint on July 18, 2000, the Plaintiff, Russell Oberther was injured as a result of operating a Cincinnati Compacting Press Machine. This injury occurred while the Plaintiff was working for his employer SMC Powder Metallurgy in Galeton, Potter County, Pennsylvania. Therefore, this cause of action and any witnesses thereto will also be located in Potter County, Pennsylvania. The Plaintiff has filed this action in Lycoming County, Pennsylvania, alleging that the Defendants are

liable in negligence; breach of contract and strict liability. The Plaintiff resides in Elkland, Tioga County, Pennsylvania. The respective defendants have business locations in Clearfield County, Pennsylvania and Indianapolis, Indiana. This accident the defendants do not have commerce in Lycoming County Pennsylvania, and therefore, do not have sufficient business ties to this county.

STATEMENT OF LAW

Pennsylvania Rule of Civil Procedure 2179(a) sets forth the requirements for venue over a corporate defendant. The rule states in pertinent part:

[A] personal action against a corporation or similar entity may only be brought in and only in:

- (1) the county where its registered office or principle place of business is located;
- (2) a county where it regularly conducts business;
- (3) the county where the cause of action arose;
- (4) a county where a transaction or occurrence took place out of which the cause of action arose.

Pa.R.C.P. 2179 (a). In this case, the cause of action/accident occurred in Galeton, Potter County, Pennsylvania. The Plaintiff is a resident of Elkland, Tioga County, Pennsylvania. Defendants have offices in Clearfield County, Pennsylvania and Indianapolis, Indiana, and do not have customers and/or regular business contacts in Lycoming County, Pennsylvania.

The Pennsylvania Supreme Court set forth the test for determining if a corporation is regularly conducting business for the purpose of determining venue in Purcell v. Bryn Mawr Hospital, 525 Pa. 237, 579, A.2d 1282 (1990). Bryn Mawr Hospital is located in Montgomery County. The Plaintiffs resided in Chester County. The Purcells brought suit in Philadelphia County charging that the hospital was negligent in the death of their infant daughter. The hospital filed Preliminary Objections to venue. The trial court found venue proper. The court held that the hospital was regularly

conducting business in Philadelphia because it had contractual affiliations with residency programs of teaching hospitals in Philadelphia. Id at 283. It also recruited and employed medical residents from Philadelphia hospitals. It purchased goods and services from businesses in Philadelphia County. It maintained and paid for an advertisement listing in the Philadelphia County Yellow Pages and maintained and paid for advertisements in the White Pages. The hospital placed continual advertisements in the Philadelphia Inquirer and accepted a portion of its income from residents of Philadelphia who choose Bryn Mawr Hospital for treatment. Id at 1284. The Superior Court affirmed holding that the hospital's contacts with Philadelphia County were of sufficient quality and quantity to enable Philadelphia County to adjudicate the dispute. The Supreme Court reversed.

The Pennsylvania Supreme Court held that before jurisdiction can be acquired over a domestic or foreign corporation, the corporation must be "doing business" in the county where the suit was brought. The court defined that term on the basis of the "quality and quantity" of the corporation's contact with the county. Id at 1285.

"A single act is not enough," while "each case must depend on its own facts". "Quality of acts" means "those directly, furthering or essential to, corporate objects; they do not include incidental acts:.. Quantity means those acts that are "so continuance and sufficient to be general or habitual" ...[A]cts of the corporation must be distinguished: those in "aid of a main purpose" are collateral and incidental, while "those necessary to its existence" are "direct."

Purcell, 579 A.2d at 1285 citing Shambe v. Delaware and Hudson Railroad Company, 288 Pa. 240, 135 A. 755 (1927) (citations omitted).

The Purcell court held that the above enumerated test used for determining jurisdiction should be used to determine if a corporation was regularly conducting business for the purpose of venue. Id at 1285. After reviewing the facts, the court determined that venue was improper in Philadelphia County on the grounds that the hospital did not meet the quality-quantity test. Id at 1286. The use of medical personnel

from Philadelphia hospitals was essentially an education process that did not amount to the quality of business activity necessary for venue. Further, the court did not believe the arrangement with medical schools was anything but an incidental contact and not essential to the hospital. The hospital had its own permanent staff which alone would be capable of treating patients. The mere purchase of hospital supplies from Philadelphia merchants cannot form a satisfactory rational for confirming venue. The court was also dissuaded by arguments based on advertisements in Philadelphia phone books, newspapers and solicitation of business. Id at 1287.

Applying the Purcell quality-quantity test to the facts of this case reveals that venue is improper in Lycoming County. The defendants do not have customers or regular business activities within Lycoming County, Pennsylvania. Any and all contacts with Lycoming County Pennsylvania are the results of an incidental nature and cannot be characterized as essential to corporate objectives. Likewise, the existence of incidental pieces of machinery cannot be deemed to be a habitual activity on the part of the Defendants. Thus venue is improper in Lycoming County.

For all of the above reasons, Defendant, Elmco Engineering, Inc. and Elmco PA, Inc. respectfully requests this Honorable Court transfer Plaintiffs' Complaint to Potter County, (where the accident took place and where potential witnesses are located), or in the alternative, transfer this action to Tioga County (where the Plaintiff resides), or Clearfield County (where the Defendants have a registered office).

LAW OFFICES OF RALPH F. TOUCH

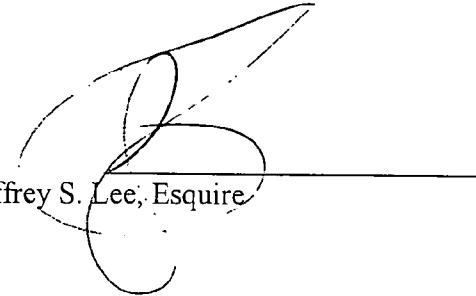
BY: _____

Jeffrey S. Lee, Esquire

VERIFICATION

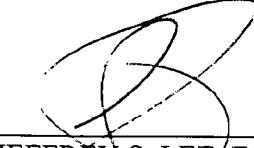
The undersigned, being duly sworn according to law, deposes and says that he is counsel for the party or parties indicated on the preceding page as being represented by said counsel, that he has examined the pleadings and the entire investigative file made on behalf of said party or parties, that he is taking this verification to assure compliance with the pertinent rules pertaining to timely filing of pleadings and other documents described by said rules; and that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 PA C.S.A. SECTION 4904 relating to unsworn falsification to authorities.

Date: October 8, 2001


Jeffrey S. Lee, Esquire

CERTIFICATION OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all other parties or their attorneys by Regular Mail on.



JEFFREY S. LEE, ESQUIRE
Attorney for Defendant(s)

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

**THIS IS A MAJOR JURY CASE.
ASSESSMENT OF DAMAGES
HEARING IS REQUIRED.**

Attorney for Plaintiff

**COUNTY OF LYCOMING
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION**

NO.: 01-0142

RUSSELL OBERTHER
101 Taft Avenue
Elkland, PA 16920

Plaintiff :

v. ;

ELMCO ENGINEERING, INC.
6107 Churchman Bypass
Indianapolis, IN 46203

and

~~ELMCO PA, INC.~~
700 Bigler Avenue
Clearfield, PA 16830

Defendants :

JURY TRIAL DEMANDED

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defense 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.

**SUSQUEHANNA LEGAL SERVICES
416 PINE STREET
WILLIAMSPORT, PA 17701
LAWYER REFERRAL SERVICE
PENNSYLVANIA LAWYER REFERRAL SERVICE
1-800-692-7375**

Attorney-to-Serve

CIVIL ACTION

1. Plaintiff Russell Oberther is an adult individual and resident of the Commonwealth of Pennsylvania residing therein at 101 Taft Avenue, Elkland, PA 16920.
2. Defendant Elmco Engineering, Inc. is a Delaware corporation with its principal place of business located at 6107 Churchman Bypass, Indianapolis, IN 46203.
3. Defendant Elmco PA, Inc. is a branch facility/operation of Elmco Engineering, Inc.
4. Based on information and belief, Plaintiff avers that Elmco PA, Inc. is a Pennsylvania corporation with its principal place of business located at 700 Bigler Avenue, Clearfield, PA 16830.
5. Defendants Elmco Engineering, Inc. and Elmco PA, Inc. regularly do business in the Commonwealth of Pennsylvania and in the County of Lycoming.
6. Defendants Elmco Engineering, Inc. and Elmco, PA, Inc. have serviced, repaired, rebuilt and retrofittted press equipment and machinery for customers located in Lycoming County.
7. Defendants Elmco Engineering, Inc. and Elmco, PA, Inc. have sold press machinery and equipment to customers located in Lycoming County.
8. Defendant Elmco Engineering, Inc. is engaged in the business of designing and manufacturing new press equipment and machinery.
9. Defendant Elmco Engineering, Inc. is also in the business of designing, manufacturing, rebuilding, refurbishing and modernizing existing press equipment of various makes and sizes.

10. Defendant Elmco Engineering, Inc. is also in the business of providing custom engineering design services for owners of pre-owned press equipment and machinery.

11. Based on information and belief, Plaintiff avers that Defendant Elmco Engineering, Inc. is also in the business of selling, distributing and placing into the stream of commerce replacement parts, components, such as control panels and systems for multi-motion molding and standard molding presses.

12. Based on information and belief, Plaintiff avers that Defendant Elmco PA, Inc., as a branch facility/operation of Defendant Elmco Engineering, Inc., is engaged in the same services and business provided by Defendant Elmco Engineering, Inc. as set forth in paragraphs 6 through 8 above.

13. Alternatively, Plaintiff avers that Defendant Elmco PA, Inc. is regularly engaged in the business of industrial machinery repair, rebuilding, retrofitting, reassembling and modernizing of presses including but not limited to multi-motion compacting presses, multi-motion molding presses and standard molding presses.

14. Based on information and belief, Plaintiff avers that in 1999 and 2000, Defendant Elmco Engineering, Inc. sold, supplied and/or otherwise distributed to SMC Powder Metallurgy replacement parts for a Cincinnati Rigid Reflex Compacting Press model no. 200-C2 6, serial no. 39425 with a SMC asset identification no. M-100.

15. Based on information and belief, Plaintiff avers that in the latter part of 1999, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. were requested by SMC Powder Metallurgy to evaluate, assess, review and study the operation, function, performance and safety of compacting presses located at SMC Powder Metallurgy facility in Galton, PA.

16. Based on information and belief, one of the compacting presses Defendants were requested to evaluate and assess was a Cincinnati Rigid Reflex Compacting Press model no. 200-C2 6, serial no. 39425.

17. Based on information and belief, as consideration for the performance of the evaluation, assessment, retrofitting, rebuilding, upgrading and modernization services for the aforementioned Cincinnati Rigid Reflex Compacting Press, Defendants were paid in excess of \$142,200.

18. Based on information and belief, Plaintiff avers that part of the services performed by Defendants on the aforementioned Cincinnati rigid reflex compacting press machine was to completely strip it down to its frame by the removal of original component parts and their wiring that was originally provided with the press by the original manufacturer.

19. Based on information and belief, Plaintiff avers that Defendant Elmco Engineering, Inc., as part of its overhauling, rebuilding and refurbishing of the aforementioned Cincinnati Rigid Reflex Compacting Press, retrofitted the equipment with a completely new electrical schematic hardware and software system that included an Allen Bradley drive controller and system module.

20. Based on information and belief, Plaintiffs aver that Defendants, through their employees, agents and/or servants, spent more than 500 hours of manpower stripping, rebuilding, assembling, retrofitting and upgrading the aforementioned compacting press.

21. Based on information and belief, Defendants sold, assembled and installed a computerized control system for the subject press as part of the retrofit and upgrading services provided.

22. Based on information and belief, at all times material hereto, Defendants Elmco Engineering, Inc. and Elmco PA, Inc., through its employees, servants and/or agents, represented themselves to be experts in the rebuilding, overhauling, modernization, safety performance evaluations, assembly, retrofits and upgrading of compacting presses including the Cincinnati press in question.

23. Based on information and belief, at or before the time that Defendants turned over the subject machine to SMC Powder Metallurgy, and after said equipment was overhauled, rebuilt, modernized and retrofitted, Defendants knew or had reason to know that the press was in a dangerous condition because it did not have appropriate barrier guards for its moving parts that included the top punch hold down device.

24. Based on information and belief, at or before the time that Defendants turned over the subject machine to SMC Powder Metallurgy, and after said equipment was overhauled, rebuilt, modernized and retrofitted, Defendants knew or had reason to know that the aforementioned press was in a dangerous condition because the top punch hold down did not have a redundant system designed to prevent it from misfiring, malfunctioning or repeating during its cycle.

25. Based on information and belief, Defendants turned over and supplied the aforementioned press to SMC Powder Metallurgy, Inc. in a condition which was not safe and one which would have been corrected had it used reasonable care.

26. Based on information and belief, at or before the time Defendants Elmco Engineering, Inc. and Elmco PA, Inc. turned over the subject machine to SMC Powder Metallurgy, Inc. and after said equipment was modernized, rebuilt and/or retrofitted, Defendants knew or should have known through reasonable care that those who subsequently would use the

subject machine would not realize the dangers presented by the conditions presented including the lack of a redundancy or fail safe system for the punch hold down device.

27. Based on information and belief, the components that Defendant Elmco Engineering, Inc. sold and installed on and onto the aforementioned press machine were selected and chosen by Defendants.

28. Based on information and belief, SMC Powder Metallurgy relied on Defendants Elmco Engineering, Inc. and Elmco PA, Inc. to overhaul, rebuild, refurbish, retrofit and modernize the aforementioned press machine so that it was in a safe condition to operate and use.

29. On July 18, 2000, Plaintiff Russell Oberther was employed by SMC Powder Metallurgy as a die setter/machine operator. On said date, Plaintiff was assigned to set-up, use and operate the aforementioned Cincinnati Compacting Press machine.

30. On July 18, 2000, Plaintiff, while in the course of his employment, was operating the aforementioned Cincinnati Rigid Reflex Compacting Press machine when, due to the negligence, carelessness and/or wrong doing of Defendants Elmco Engineering, Inc. and Elmco PA, Inc. and the defective and unsafe condition of the aforementioned machine, Plaintiff suffered severe painful personal injuries when the top hold down device malfunctioned, misfired and/or repeated such that it came down upon and trapped and crushed Plaintiff's dominant left hand.

31. At all relevant times material hereto, the aforementioned Cincinnati Rigid Reflex Compacting Press and its component parts were being used for the purposes for which this machine was designed, manufactured, overhauled, rebuilt, retrofitted and modernized by Defendants.

32. As a direct and proximate result of the carelessness, negligence and defective condition of the aforementioned Cincinnati press and its component parts, Plaintiff Russell Oberther suffered severe and disabling crushing injuries to his left hand that involved the displaced fracture of the middle phalanx of the index finger and non-displaced fracture of the middle phalanx of the middle finger, laceration of these fingers, tendon damage, scar adhesion and disfigurement which has caused him to undergo extensive medical care and treatment with great physical pain, suffering and anxiety, the full extent of which injuries are not yet known, some or all of which are permanent in nature.

33. As a direct and proximate result of the carelessness, negligence and wrong doing of the Defendants and the defective and unsafe condition of the aforementioned Cincinnati Rigid Reflex Compacting Press, Plaintiff Russell Oberther has in the past, and will in the future, continue to suffer from the above conditions as well as scarring, deformity, pain, mental anguish, humiliation, embarrassment, disfigurement, loss of well being, loss of enjoyment of life's pleasures, restrictions, inability to engage in normal and everyday activities and inability to pursue and enjoy the normal ordinary benefits of life.

34. As a direct and proximate result of the carelessness, negligence and wrong doing of Defendants and the defective and unsafe condition of the aforementioned Cincinnati Rigid Reflex Compacting Press and its component parts, Plaintiff Russell Oberther has required and will in the future require medical care, rehabilitative care and other medical costs and treatment to treat and/or attempt to treat his condition and will incur and has incurred substantial expenses for such care and treatment.

35. As a direct and proximate result of the carelessness, negligence and wrong doing of Defendants and the defective and unsafe condition of the aforementioned Cincinnati rigid

reflex compacting press and its component parts, Plaintiff has in the past and will continue in the future to be prevented from performing his full and usual duties, life's avocations and occupations and has suffered a loss of past earnings, earning capacity, loss of future earnings and loss of life's pleasures.

COUNT I – NEGLIGENCE

PLAINTIFFS V. DEFENDANTS
ELMCO ENGINEERING, INC. AND ELMCO PA, INC.

For his First Count, Plaintiff alleges as follows:

36. Plaintiff hereby incorporates and repeats in each and every paragraph as though set forth fully here at length.

37. Based on information and belief, at all relevant times hereto, Defendants knew or should have had reason to know, through the exercise of reasonable care, that operators or users of this rebuilt, retrofitted and modernized Cincinnati press machine would be in the vicinity of the machine operation area that included the top punch hold down at one point or another during the machine operation, set-up and use.

38. Based on information and belief, at all relevant times hereto, Defendants knew or, through the exercise of reasonable care, should have known that the design and condition of the aforementioned rebuilt, retrofitted and modernized Cincinnati machine was such that an operator could suffer injury to his or her hands in the event of a failure, malfunction or recycle of the top hold punch hold down device.

39. Based on information and belief, at all relevant times hereto, Defendants knew or, through the exercise of reasonable care, should have known that the moving parts of the Cincinnati compacting press, including its top punch hold down device, raised a risk of injury to the machine's intended and reasonably foreseeable users and operators.

40. Based on information and belief, at all relevant times hereto, Defendants knew, or through the exercise of reasonable care, should have known that the aforementioned Cincinnati compacting press was unsafe for operation due to their failure to incorporate the necessary and appropriate point-of-operation guarding and other safety component features to prevent misfiring, recycling or malfunctioning of the press.

41. The aforementioned accident and injuries to Plaintiff was caused by the negligence and wrong doing of Defendants that consisted of the following acts and omissions:

- a. Failure to design, remanufacture, rebuilt, upgrade, reassemble, retrofit and modernize the aforementioned Cincinnati press and its component parts with the appropriate safety devices and features to prevent injury to its operators and users;
- b. Failure to properly and safely test and inspect the aforementioned rebuilt, modernized and retrofitted Cincinnati compacting press machine and its component parts to determine whether they could be used without injuring their users and operators;
- c. Failure to warn or adequately warn and/or train operators and users of this product and its component parts of the dangers associated with its operation, use and set-up;
- d. Failure to provide an operator's, service and/or instruction manual with the rebuilt, retrofitted and/or modernized Cincinnati compacting press;
- e. Failure to provide proper and adequate safety devices and/or guards to enclose the point-of-operation area;
- f. Failure to provide a back-up or redundant system to prevent the top punch hold down device or other point-of-operation devices from misfiring, malfunctioning, repeating, recycling and/or engaging an unintended or uninitiated cycle;

g. Failure to minimize to the fullest extent possible the known hazards and risks of injury associated with the intended and foreseeable uses of the subject rebuilt, overhauled and modernized Cincinnati compacting press machine and its component parts;

h. Failure to properly and adequately assess, evaluate and eliminate potential known dangers of the subject product and its component parts as part of the overhauling, retrofitting and modernization of said machine;

i. Failure to provide every element necessary to make this rebuilt, overhauled and retrofitted product safe for its intended and foreseeable uses;

j. Failure to equip the subject product and its component parts with appropriate warnings, instructions and directions for its safe operation, use and set-up;

k. Failure to rebuild, retrofit, modernize and/or reinstall the subject machine in a safe condition;

l. Selling and/or supplying a overhauled, rebuilt and modernized machine and its component parts in an unreasonably condition to its users and operators;

m. Failure to properly follow reasonable industry practice and protocol for rebuilding, overhauling and retrofitting any industrial equipment and machinery with the necessary safety devices and safety features to make the product safe for its use and operation;

n. Failure to provide redundant circuit for the top punch hold down and dual upper punch.

42. By rebuilding, overhauling, upgrading, repairing and modernizing the aforementioned Cincinnati press, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. are liable to Plaintiff as a supplier of equipment under Section 403 of the Restatement (Second) of Torts.

43. As a result of rebuilding, refurbishing, repairing, overhauling and modernizing the aforementioned Cincinnati compacting press, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. are liable to Plaintiff pursuant to Section 404 of the Restatement (Second) of Torts.

44. As a result of rebuilding, refurbishing, repairing, overhauling and modernizing the aforementioned Cincinnati compacting press, Defendants Elmco Engineering, Inc. and Elmco PA, Inc. increased the potential risk of injury to Plaintiff by failing to incorporate a redundancy, fail safe system for the top punch hold down and, therefore, are liable to Plaintiff pursuant to Section 323 of the Restatement (Second) of Torts.

45. As a direct and proximate result of Defendants' negligence and wrong doing, Plaintiff suffered the following injuries and damages:

- a. Severe crush injury to his left dominant hand including fractures of his index and long fingers, tendon, ligament and nerve damage and damage to the nervous system in the sequelae thereof;
- b. Great pain, suffering, loss of life's pleasures, past and future;
- c. Medical, hospital and rehabilitative expenses, past and future;
- d. Loss of earnings and earning capacity.

COUNT II – BREACH OF CONTRACT

PLAINTIFF V. DEFENDANTS ELMCO ENGINEERING, INC. AND ELMCO PA, INC.

For his Second Count, Plaintiff alleges as follows:

46. Plaintiff hereby incorporates and repeats each and every paragraph as though set forth fully here at length.

47. At some time prior to July 18, 2000, and well known to Defendants Elmco Engineering, Inc. and Elmco PA, Inc., Defendants represented in another manner expressed

warranties that the aforementioned Cincinnati compacting press that was overhauled, rebuilt, retrofitted and modernized was safe for use for the purposes intended and was of merchantable quality.

48. At some time prior to July 18, 2000, and well known to Defendants Elmco Engineering, Inc. and Elmco PA, Inc., Defendants warranted by implication that the aforementioned rebuilt, overhauled, retrofitted and/or modernized Cincinnati compacting press machine was reasonably fit for purposes intended and was of merchantable quality.

49. Based on information and belief, at all relevant times, Defendants had reason to know that those who used the overhauled and retrofitted Cincinnati press would be relying upon Defendants' skilled judgment and services in furnishing a piece of equipment that was safe for its particular purpose and which was of merchantable quality.

50. Based on information and belief, Defendants breached implied warranties of merchantability and fitness for the particular purpose by placing into the stream of commerce a defective product which possessed inherent dangers realized which caused Plaintiff's injuries and damages as set forth above.

51. Based on information and belief, prior to July 18, 2000, and well known to Defendants, Defendants warranted by implication that the aforementioned rebuilt, overhauled, modernized and retrofitted Cincinnati compacting press was reasonably fit for the purposes intended and was of merchantable quality.

52. That the said representations and warranties set forth in the preceding paragraphs form part of the bargain for the rebuilding, overhauling, retrofitting and modernizing of said press for the service work performed by Defendants and was relied upon by Plaintiff's employer and by Plaintiff.

53. Based on information and belief, that in truth and in fact, said representations and said warranties were false.

54. As a direct and proximate result of the respective breaches of expressed and implied warranties, Plaintiff sustained the following injuries and damages:

- a. Severe crush injury to his left dominant hand including fractures of his index and long fingers, tendon, ligament and nerve damage and damage to the nervous system in the sequelae thereof;
- b. Great pain, suffering, loss of life's pleasures, past and future;
- c. Medical, hospital and rehabilitative expenses, past and future;
- d. Loss of earnings and earning capacity.

COUNT III – STRICT LIABILITY

PLAINTIFF V. DEFENDANTS **ELMCO ENGINEERING, INC. AND ELMCO PA, INC.**

For his Third Count, Plaintiff avers as follows:

55. Based on information and belief, at all relevant times herein, Defendants were in the business of designing, remanufacturing, rebuilding, refurbishing, retrofitting and selling rebuilt multi-motion compacting presses, multi-motion molding presses and standard molding presses.

56. By rebuilding, overhauling, remanufacturing, retrofitting and reassembling the aforementioned Cincinnati compacting press machine, Defendants did replace or redistribute into the stream of commerce a rebuilt product that was eventually involved in Plaintiff's accident.

57. Based on information and belief, at the time the aforementioned Cincinnati compacting press was redesigned, remanufactured, rebuilt, reinstalled and retrofitted by Defendants, it was a new product.

58. Based on information and belief, Defendants sold, distributed and placed into the stream of commerce a new electrical and computerized programmable logic control system for the aforementioned rebuilt press that included new electrical schematic hardware and software system.

59. The aforementioned electrical programmable system was defective and unsafe because it did not contain a fail safe or redundant system to prevent the top punch hold down from misfiring, malfunctioning and/or engaging in an unintended or unauthorized cycle. Defendants are strictly liable to Plaintiff for his injuries and damages pursuant to Section 402A of the Restatement (Second) of Torts.

60. As a direct and proximate result of the rebuilt, overhauled and retrofitted product defects, Plaintiff was injured and suffered the following injuries and damages:

- a. Severe crush injury to his left dominant hand including fractures of his index and long fingers, tendon, ligament and nerve damage and damage to the nervous system in the sequelae thereof;
- b. Great pain, suffering, loss of life's pleasures, past and future;
- c. Medical, hospital and rehabilitative expenses, past and future;
- d. Loss of earnings and earning capacity.

WHEREFORE, for all of which damages, Plaintiff demands judgment against Defendants, individually and jointly, in a sum exceeding fifty thousand dollars (\$50,000.00), exclusive of interest and costs. Plaintiff further seeks interest and costs from Defendants, individually and jointly.

Respectfully submitted,

GALFAND BERGER, LLP

BY:

Richard M. Jurewicz
RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

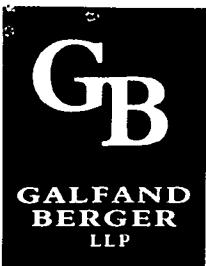
Date: 8/27/01

VERIFICATION

I verify that the statements made in the foregoing Complaint and any attachments thereto are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.A. § 4904, relating to unsworn falsification to authorities.


RUSSELL OBERTHER

DATE: 7-20-01



August 28, 2001

LAW OFFICES

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PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

LORIANNE LYNCH
PARALEGAL
lynch@galfandberger.com

JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
PETER M. PATTON
ROBERT G. MANGOLD •
MICHAEL W. MCGURRIN
ARTHUR L. RUGAY •
THOMAS J. O'BRIEN
KELLY F. MELCHER
WAYNE A. HAMILTON •
SANDRA W. MORRIS
JOSEPH S. VINESKI
• MEMBER OF NJ BAR

† BOARD CERTIFIED IN
CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER

S. HARRY Galfand
(1947-1993)

MARTHA J. HAMPTON
(1991-1999)

Prothonotary
Lycoming County Courthouse
43 West Third Street
Williamsport, PA 17701

RE: Oberther v. Elmco Engineering, Inc., et al.

Dear Sir/Madam:

Enclosed please find an original and two copies of Plaintiff's Complaint for filing in the above captioned matter. Also enclosed find our check in the amount of \$60.00. Kindly return to me to me a time stamped copy of the cover sheet and two time stamped copies of the complaint in the envelope provided for your convenience.

Thank you.

Sincerely,



LORIANNE LYNCH
PARALEGAL

LAL/lal
Enclosure

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ARAITE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

AMONG THE RECORDS AND PROCEEDINGS enrolled in the Court of Common Pleas in and for the COUNTY OF LYCOMING in the Commonwealth of Pennsylvania to No. 01-01421, is contained the following:

02-258-60

RUSSELL OBERTHER

vs.

ELMCO ENGINEERING INC
ELMCO PA INC

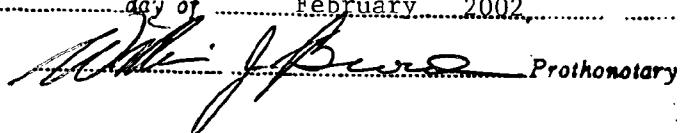
(Originals of all case documents are attached hereto)

FILED

FEB 21 2002
01301 Atty Javelice
William A. Shaw pd 57008
Prothonotary

State of Pennsylvania, } ss:
Lycoming County }

Certified from the Records of the Court of Common Pleas of Lycoming County, under my hand and seal of said Court, at the city of Williamsport, this 13th day of February 2002.

 Prothonotary

RUSSELL OBERTHER

VS

ELMCO ENGINEERING INC
ELMCO PA INC*****

8/30/2001	COMPLAINT IN A CIVIL ACTION FILED.	Richard M. Jurewicz
9/27/2001	PRAECIPE TO REINSTATE COMPLAINT FILED.	Richard M. Jurewicz
10/08/2001	AFFIDAVIT OF SERVICE FILED.	Richard M. Jurewicz
10/08/2001	PRELIMINARY OBJECTIONS FILED.	Jeffrey S. Lee
10/08/2001	MEMORANDUM OF LAW FILED.	Jeffrey S. Lee
10/11/2001	PRAECIPE TO ENTER APPEARANCE OF COUNSEL FILED.	Jeffrey S. Lee
10/15/2001	ORDER DIRECTING HEARING FILED.	Judge William S. Kieser
10/15/2001	NOTICE UNDER PRCP 236 ISSUED.	William J. Burd, Proth.
10/22/2001	SHERIFF'S RETURN FILED.	
10/31/2001	ANSWER TO PRELIMINARY OBJECTIONS FILED.	Richard M. Jurewicz
11/05/2001	ORDER DIRECTING HEARING FILED.	Judge William S. Kieser
11/05/2001	NOTICE UNDER PRCP 236 ISSUED.	William J. Burd, Proth.
2/05/2002	STIPULATION OF COUNSEL FILED.	Richard M. Jurewicz
2/05/2002	ORDER RE MOTION FOR CHANGE OF VENUE OR VENIRE FILED.	Judge William S. Kieser
2/05/2002	NOTICE UNDER PRCP 236 ISSUED.	William J. Burd, Proth.

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER :
Plaintiff :
v. :
ELMCO ENGINEERING, INC. :
and :
ELMCO PA, INC. :
Defendants :

COUNTY OF LYCOMING
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

NO.: 01-01421

STIPULATION TO TRANSFER CASE FROM
LYCOMING COUNTY TO CLEARFIELD COUNTY

It is hereby agreed on this 15th day of January, 2002 between Richard M. Jurewicz, Esquire, counsel for Plaintiff Russell Oberther and Jeffrey Lee, Esquire, counsel for Defendants Elmco Engineering, Inc., and Elmco PA, Inc. that the above-captioned matter of Russell Oberther v. Elmco Engineering, Inc., et al CCP of Lycoming County Civil Action No. 01-01421 is hereby transferred from the Court of Common Pleas of Lycoming County to the Court of

Common Pleas of Clearfield County, which is the principle place of business of Defendant

Elmco PA, Inc. Plaintiff to pay all costs, without prejudice to seek reimbursement as costs of the proceedings.

LYCOMING COUNTY
CLERK OF COURT
WILLIAM PROTHONOTARY
FEB 5 8 49 AM
2002
FILED
CLERK OF COURT

GALFAND BERGER, LLP

BY:



Richard M. Jurewicz

RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff Russell Oberther
Atty. I.D.#: 039436
Tel#:215-665-6829

LAW OFFICES OF RALPH F. TOUCH

BY:



Jeffrey Lee

JEFFREY LEE, ESQUIRE
Attorney for Defendants Elmco
& Elmco Engineering
401 Penn Street, Ste. 100 Reading, PA
19601



Jeffrey Lee

02/01/03 J.
das

cc J. Lee Esq. ~~02/01/03~~
Jurewicz

LAW OFFICES OF RALPH F. TOUCH

RALPH F. TOUCH
EDWARD J. CERMANSKI
JEFFREY S. LEE
RAYMOND A. SWAN

401 PENN STREET, SUITE 100
READING, PENNSYLVANIA 19601
TELEPHONE (610) 320-4780
FAX (610) 320-4767

FRANKLIN W. NOLL, III
(1966-1999)

A STAFF COUNSEL OFFICE OF
CNA INSURANCE COMPANIES

January 21, 2002

Lycoming County Prothonotary
48 West 3rd Street
Williamsport, PA 17701

Re: Oberther v. Elmco Engineering, Inc.
Court of Common Pleas Lycoming County, PA / 01-01421
File No.: 101300075

Dear Sir or Madam:

Enclosed please find an original and one copy of the following pleading in the above-captioned matter:

STIPULATION TO TRANSFER CASE

Kindly file the original and return a time-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your courtesy in this matter.

Respectfully submitted,


Jeffrey S. Lee, Esquire

JSL/ED
Enclosures
cc: Richard M. Jurewicz, Esquire

LYCOMING COUNTY COURT OF COMMON PLEAS
LOCAL RULE L206 COVER SHEET

Russell Oberther

Docket No. 01-01421

vs.

Case assigned to Judge William Kieser

Elmco Engineering, Inc. and Elmco PA, Inc.

none

1. Name of filing party Plaintiff Russell Oberther
2. Filing party's attorney Richard M. Jurewicz
3. Type of filing Plaintiff's Response and Brief In Opposition to Defendants' Preliminary Objections

4. The following is/are required:
 Issuance of a rule to show cause - See Pa.R.C.P. No. 206.5 for form)
 Argument
 Evidentiary Hearing
 Court conference
 Entry of order in an uncontested matter or upon agreement of the parties (attach order and all supporting documentation)
 Expedited consideration. State the basis:
~~Argument scheduled before Hon. William Kieser on November 5, 2001 at 4:00 pm, courtroom # 3~~
Time required: _____

6. Name and addresses of all counsel of record and unrepresented parties (Continue on separate sheet.)

Jeffrey Lee, Esquire
Law Offices of Ralph F. Touch
401 Penn Street - Suite 100
Reading, PA 19601
Attorney for Defendants

WILLIAM KIESER, JUDGE
LYCOMING COUNTY CLERK
NOV 5 10 50 AM '01
FILING COPY & SERIALIZED

ORDER

1. An argument factual hearing court conference is scheduled for January 28 2002 at 1:30 pm in courtroom no. #3, Lycoming County Courthouse, Williamsport, PA.

2. Briefs are to be filed by the following dates:

Filing party _____

Responding party(ies) _____

3. A rule to show cause or other order is issued as attached.

4. THE FILING PARTY SHALL SERVE A COPY OF THIS EXECUTED SCHEDULING ORDER ON ALL COUNSEL OR UNREPRESENTED PARTIES AND ALSO
ON _____

Judge

11/02/01
Date

cc: All parties
Court Scheduling Technician

R. Jurewicz

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF LYCOMING
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
	:	
v.	:	NO.: 01-01421
	:	
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
	:	
Defendants	:	

ORDER

It is further **ORDERED** that Defendants shall file their Answer to Plaintiff's Complaint within twenty (20) days from the date of this Order or risk the entry of judgment by default.

BY THE COURT:

J.
a

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF LYCOMING
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
	:	
v.	:	NO.: 01-01421
	:	
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
	:	
Defendants	:	

ORDER

BY THE COURT:

J.

**GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600**

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF LYCOMING
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
	:	
v.	:	NO.: 01-01421
	:	
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
	:	
Defendants	:	

ORDER

BY THE COURT:

J.

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER :
Plaintiff :
v. :
ELMCO ENGINEERING, INC. :
and :
ELMCO PA, INC. :
Defendants :

**COUNTY OF LYCOMING
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION**

NO.: 01-01421

PLAINTIFF'S ANSWER TO PRELIMINARY OBJECTIONS OF DEFENDANTS

Plaintiff, by and through his attorney, Galfand Berger, hereby answers Defendants' Preliminary Objections as follows:

1. **Admitted in part; denied in part.** Plaintiff admits only that he was injured on or about July 18, 2000 while employed by SMC Metallurgy. The injuries that Plaintiff suffered were due to a compacting press machine malfunctioning. Said compacting press was completely overhauled, redesigned and rebuilt by Defendants Elmco Engineering, Inc. and Elmco PA, Inc.

2. **Admitted.**

3. **Admitted.**

4. **Denied as stated.** Plaintiff specifically denies that any and all witnesses to this accident would be located in Potter County. To the contrary, based on investigation and information, Plaintiff states that witnesses that may be deposed or called for trial would include the four to six employees of Defendant Elmco PA, Inc. that spent more than 500 hours of combined man power rebuilding the equipment involved in Plaintiff's accident. Based on

information and belief, these witnesses may reside in Clearfield, Clinton and Lycoming Counties.

5. **Admitted.**

6. **Admitted.**

7. **Admitted.**

8-9. **Denied as stated.** Plaintiff has averred and Defendants do not deny that they conduct business in Lycoming County, Pennsylvania. As is evident from Defendants' web page and Dunn & Bradstreet, Defendants are in the business of manufacturing and rebuilding presses by providing custom engineering, field service and on-site training to their customers. Defendants have more than 150 clients who do business internationally. (See Exhibit "A").

10. **Denied** for the reasons set forth in Plaintiff's response to paragraphs 8-9 above, which are incorporated herein by reference.

11. **Denied.** This is an erroneous conclusion of law. With regard to Plaintiff's choice for venue, it is well established that that choice should be respected, honored and rarely disturbed. Korn v. Marvin Fives Food Equipment Company, 362 Pa. Super. 559, 524 A.2d 1380 (1987). Furthermore, the criteria to determine whether a defendant's business activities are sufficient to subject it to venue is whether said activities are considered to be recurrent. In Canter v. American Honda Motor Corporation, 426 Pa. 38, 231 A.2d 140 (1967) 1% of a corporation's business within a county was sufficient in quality to subject it to venue there.

12. **Denied.** Defendants do not deny that equipment that they rebuild, service, maintain or sell does not end up for use in Lycoming County. Defendants also do not dispute that they provide various engineering services (design, training, field service, replacement parts and customer engineering) for areas that include Lycoming County. (See Exhibit "A").

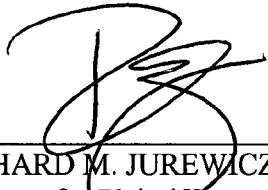
Accordingly, venue in Lycoming County is proper as Defendants do not deny doing business there.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to overrule Defendants' Preliminary Objections and issue an Order attached hereto. Alternatively, Plaintiff requests this Honorable Court to grant leave to the parties to conduct discovery on Defendants' contacts with Lycoming County. Lastly, in the event that this Court grants Defendants' Preliminary Objections, then this matter should be transferred to Clearfield County, the principal place of business for Defendant Elmco PA, Inc.

Respectfully submitted,

GALFAND BERGER, LLP

BY:


RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
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Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF LYCOMING
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
	:	
v.	:	NO.: 01-01421
	:	
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
	:	
Defendants	:	

01-01421
Plaintiff
v.
ELMCO ENGINEERING, INC.
and
ELMCO PA, INC.
Defendants

FILED
LYCOMING COUNTY
CLERK'S OFFICE
MAY 4 2001

**PLAINTIFF'S MEMORANDUM OF LAW (BRIEF) IN
OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFENDANTS**

I. STATEMENT OF CASE

This products liability action arises as a result of a crushing injury that Plaintiff suffered to his dominant left hand when it was injured as a result of a compacting press machine malfunctioning on July 18, 2000. The press in question was located at Plaintiff's employer's facility SMC Power Metallurgy in Galton, PA.

Less than six months prior to Plaintiff's accident, Defendants were hired by Plaintiff's employer to evaluate this compacting press. Based on recommendations made by Defendants, the subject press was completely redesigned, overhauled and rebuilt by Defendants' employees. These four to six employees of Defendants spent more than 500 hours of total man power over a one month period overhauling and rebuilding this piece of equipment. Based on investigation, information and belief, Plaintiff states that Defendants' employees lived in Clearfield, Clinton and Lycoming Counties. These individuals will be witnesses for deposition and trial.

Plaintiff has plead in his Complaint, specifically paragraphs 5 through 7, that Defendants have regularly engaged and were conducting business in the County of Lycoming. Defendants' business activities included servicing, repairing, rebuilding and retrofitting press equipment and machinery. Defendants' business activities in Lycoming County also included selling and servicing press machinery to customers located in Lycoming County. As is evident by Defendants' web site page and business information obtained from Dunn & Bradstreet, Defendants do provide various engineering services internationally to more than 150 customers. Defendants do not dispute that they conduct business in Lycoming County.

Pursuant to Pa.R.C.P. 2179, venue in Lycoming County is proper since Defendants regularly do business in this county as documented by Exhibit "A".

II. LEGAL ARGUMENT

The Pennsylvania Rules of Civil Procedure clearly provide that a plaintiff has several options as to where to commence his or her civil action. These choices for venue must be respected, honored and rarely disturbed. Gulf Oil v. Gilbert, 330 U.S. 501 (1947); Korn v. Marvin Fives Food Equipment Company, 362 Pa. Super. 559, 524 A.2d 1380 (1987).

In the present matter, which involves corporate defendants, venue is established by Rule 2179(a) which states as follows:

Except as otherwise provided by an act of assembly or by subdivision (b) of this Rule, a personal action against a corporation or a similar entity may be brought in and only in (1) the county where its registered office or principal place of business is located; (2) the county where it regularly conducts business; (3) the county where the cause of action arose; or (4) the county where a transaction or occurrence took place out of which the cause of action arose.

The choice of forum among these possibilities belongs to the Plaintiff. Petty v. Suburban General Hospital, 363 Pa. Super. 277, 525 A.2d 1230 (1987). It is well established that the party

challenging venue bears the burden of establishing that venue is improper. Id. In determining the existence of venue, the convenience of the parties and the location of the plaintiff are irrelevant and entitled to no consideration. Smerk v. Philadelphia Suburban Transportation Company, 13 D.&C.2d 454 (Phila. 1957).

The word "regularly" as used by Rule 2179(a)(2) does not refer to where the corporate defendant "principally", "substantially" or even "usually" conducts business. It simply requires of a corporate defendant that it have some ongoing business activity within a county such that its business actions are considered to be recurrent. Monaco v. Montgomery Cab Company, Inc., 417 Pa. 135, 208 A.2d 252 (1965).

In Monaco, the action involved a defendant who was a corporate common carrier. Although defendant Montgomery Cab was not permitted to pick passengers up within the County of Philadelphia, it was permitted to take them into Philadelphia County from Montgomery County. Approximately 5% of defendant Montgomery Cab's fares were for transporting people into the City of Philadelphia. On appeal, the Pennsylvania Supreme Court specifically found that the trial court could not have reasonably concluded under the facts that the defendant cab company did not regularly conduct business within Philadelphia County.

The Pennsylvania Supreme Court in Monaco supported its decision by looking at other corporate common carrier cases and cited Iannetti v. Philadelphia Suburban Transportation Company, 61 Pa. D.&C. 276 (1947), Lallone v. Philadelphia Suburban Transportation Company, 61 D.&C. 248 (1947) and Smerk v. Philadelphia Suburban Transportation Company, supra.

In particular, the Pennsylvania Supreme Court noted:

You must remember that it is the word "regularly" which we are construing and not "principally". A corporation may perform acts "regularly" even though these acts make up a small part of its total activities. [Citation omitted]. Nor does

"regularly" necessarily mean, as defendant contends, the acts must be performed on a fixed schedule or, when driving is involved, over a fixed route. The questions whether the acts are being "regularly" performed within the context of a particular business.

Id. 417 Pa. 143, 144, 208 A.2d at 256.

It was noted in the Monaco case that the acts of driving into Philadelphia at the request of customers and collecting fares there and then driving customers back to Montgomery County were actions directly essential and in furtherance of the corporate objectives of the defendant cab company's business. Since these actions were routinely performed, they were of sufficient quantity for venue purposes.

Other cases have held that as low as 1% of a corporation's business revenue to be sufficient business activity contacts to subject itself to venue in a particular county. See, Canter v. American Honda Motor Corporation, 426 Pa. 38, 231 A.2d 140 (1967) (1% of a corporation's business within a county is sufficient in quality to subject it to revenue there), Burdett Oxygen Company v. I.R. Wolfe & Sons, Inc., 433 Pa. 291, 249 A. 299 (1969) (same).

Defendants' reliance upon Purcell v. Bryn Mawr Hospital, 525 Pa. 237, 579 A.2d 1282 (1990) is misplaced. Purcell principally concerned a question of jurisdiction, although venue was also objected to by the defendants. In Purcell, the Pennsylvania Superior Court was reversed based on its holding that the defendant hospital's residential practice was not an integral part of the defendant hospital's corporate activities.

In this matter, Defendants are not disputing that they, in fact, have done or do business in Lycoming County. Defendants are only disputing the quantitative amount of contacts in Lycoming County. However, as evident by Defendants' web site and Dunn & Bradstreet Report, it offers engineering services that include field service, field training, sale of replacement parts

and customer engineering internationally to more than 150 clients/customers, which also includes Lycoming County.

Just because Plaintiff's cause of action did not arise in Lycoming County or that Defendants are not physically located in Lycoming County is not a reason for finding that venue does not exist.

In the event that this Honorable Court feels that the current record is insufficient to enable it to decide Defendants' Preliminary Objections, then Plaintiff requests that the parties be given an opportunity to establish that Defendants do, in fact, have recurrent business activities in Lycoming County that would be essential to its business purposes.

Alternatively, if this Court believes that discovery is not necessary to rule on Defendants' Preliminary Objections, then Plaintiff would request that in the event that this Court finds that venue is improper in Lycoming County, that this matter be transferred to Clearfield County. Defendants acknowledge that Defendant Elmco PA, Inc. maintains its principal place of business at 700 Bigler Avenue in Clearfield, PA. Clearly, Defendants do not dispute that venue would be proper in Clearfield County.

III. CONCLUSION

Plaintiff requests this Honorable Court to deny Defendants' Preliminary Objections or, in the alternative, grant the parties to conduct discovery on this issue or transfer this matter to Clearfield County.

Respectfully submitted,

GALFAND BERGER, LLP

BY:


RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

CERTIFICATE OF SERVICE

I, Richard M. Jurewicz, Esquire, counsel for Plaintiffs, do hereby certify that a true and correct copy of Plaintiff's Answer to Defendants' Preliminary Objections was sent by first-class mail, postage pre-paid on this 23rd day of October, 2001, upon counsel listed below:

Jeffrey S. Lee, Esquire
Law Offices of Ralph F. Touch
401 Penn Street, Suite 100
Reading, PA 19601

Attorney for Defendants

GALFAND BERGER, LLP

BY:

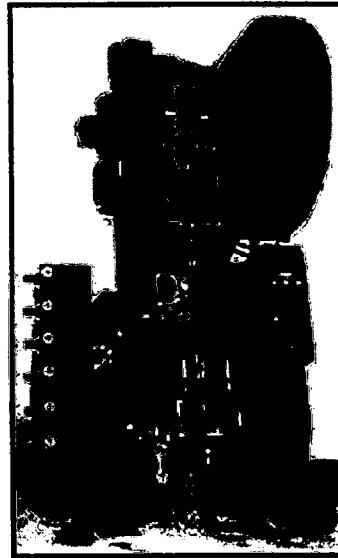
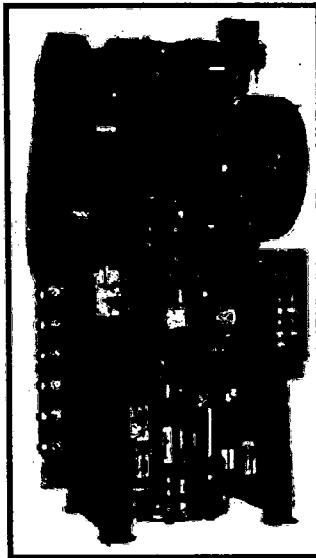
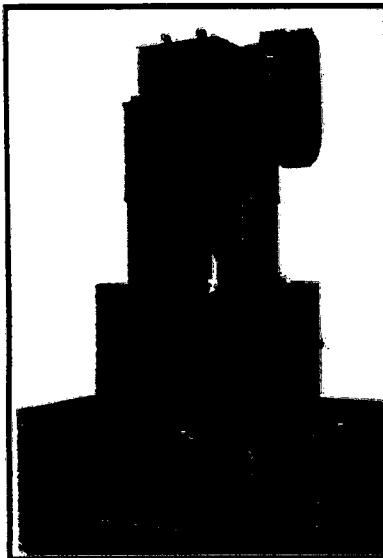

RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff

Exhibit A



ELMCO ENGINEERING INC.

"Engineered Solutions For All Your Pressing Needs"



ELMCO ENGINEERING INC. is a leading manufacturer of new and rebuilt P/M equipment of all makes and sizes. We service all makes of presses, and have an extensive parts inventory. ELMCO also offers custom engineering for special applications.

Services offered at ELMCO ENGINEERING INC.:

- Manufacture of New Powdered Metal Compacting and Sizing Presses
- Rebuilding / Modernization of Existing Presses
- Custom Engineering
- Field Service
- Replacement Part Sales
- Training



Business Information ReportTM

Page 1 of 7

For: APRIL
Galfand Berger Lurie BrighamMay 3, 2001
11: 41 am**BUSINESS SUMMARY**

ELMCO ENGINEERING INC	DUNS: 79-819-1763	RATING	1R3
6107 CHURCHMAN BYPASS AND BRANCH(ES) OR DIVISION(S) INDIANAPOLIS IN 46203 TEL: 317 788-4114	MFG MACHINE SHOP SIC NO. 3599	STARTED SALES EMPLOYS HISTORY FINANCING	1992 \$5,000,000 40(40 HERE) CLEAR SECURED

CHIEF EXECUTIVE: LARRY E EMERY, PRES

CUSTOMER SERVICE

If you have questions about this report, please call our Customer Service Center at 1-800-234-3867 from anywhere within the U.S. If you are outside the U.S. contact your local D&B office.

*** Additional Decision Support Available ***

Additional D&B products, credit recommendations and specialized investigations are available to help you evaluate this company or its industry. Call Dun & Bradstreet's Solution Center at 1-800-362-3425 from anywhere within the U.S.

SUMMARY ANALYSIS

The Summary Analysis section reflects information in D&B's file as of April 30, 2001.

RATING SUMMARY

The "1R" portion of the Rating (the Rating Classification) indicates business size of 10 or more employees for this company. The "3" on the right (Composite Credit Appraisal) indicates an overall "fair" credit appraisal. This credit appraisal was assigned because the payment information in D&B's file on this company indicates slowness in meeting trade obligations and the presence of "Secured Financing" in D&B's file.

Below is an overview of the company's D&B Rating(s) since 01/07/93:

For: APRIL

Galfand Berger Lurie Brigham

May 3, 2001

11:41 am

OPERATION

12/01/00

Operates as a manufacturer of machine shop (100%).
Terms are net 30 days. Has 150 account(s). Sells to manufacturers.
Territory : International.
Nonseasonal.

EMPLOYEES: 40 which includes officer(s). 40 employed here.

FACILITIES: Leases 35,000 sq. ft. in one story steel building.

LOCATION: Industrial section on side street.

BRANCHES: Maintains a branch located at 700 Bigler Ave.

Clearfield, PA.

Telephone: 814 765-6414.

Another located at 731 Glenn St, Van Wert, OH.

Telephone: 419 238-1100.

Duns: 03-615-1749.

05-03(1TQ /889) 00000

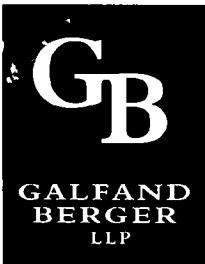
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INTERNET ACCESS TO YOUR FAVORITE D&B REPORTS
- AND MORE -
IS JUST A KEYSTROKE AWAY

Are you interested in a quicker, easier way to order D&B products and services? D&B's web site at www.dnb.com can offer you the convenience of immediate on-line access to the information you need, when you need it. There's no software to buy or install. A web browser and internet access are all that's required to search our database, order reports, request an investigation - and more. Explore this exciting new way to do business with D&B. Visit www.dnb.com today!

-- END OF REPORT --



LAW OFFICES

1818 MARKET STREET
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PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

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MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
PETER M. PATTON
ROBERT G. MANGOLD *
MICHAEL W. MCGURREN
ARTHUR L. BUGAY *
THOMAS J. O'BRIEN
KELLY F. MELCHER
WAYNE A. HAMILTON *
SANDRA W. MORRIS
JOSEPH S. VINESKI

* MEMBER OF NJ BAR

† BOARD CERTIFIED IN
CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER

S. HARRY GALFAND
(1947-1993)

MARTHA J. HAMPTON
(1991-1999)

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ABATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

October 26 2001

RICHARD M. JUREWICZ
rjurewicz@galfandberger.com

41023-1

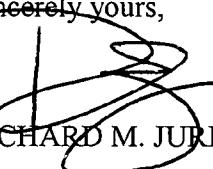
Prothonotary
Lycoming County Courthouse
43 West Third Street
Williamsport, PA 17701

RE: Oberther v. Elmco Engineering, Inc., et al.
Lycoming Cty. CCP, No. 01-01421

Dear Sir/Madam:

Enclosed please find an original and two (2) copies of Plaintiff Russell Oberther's Answer and Brief in Response to Defendant Elmco Engineering, Inc.'s Preliminary Objections.

Kindly time-stamp the extra copy of the cover sheet enclosed and return it to me in the self-addressed, stamped envelope provided.

Sincerely yours,

RICHARD M. JUREWICZ

RMJ/aaw
Enclosures
cc: Jeffrey S. Lee, Esquire (w/encl.)

SHERIFF'S RETURN

RUSSELL OBERTHER,

PLAINTIFF
vs.
ELMCO ENGINEERING, INC. and
ELMCO PA., INC.,
DEFENDANT

IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY

No. 01-01421 Term, 20

COMPLAINT IN CIVIL ACTION

Issued August 30, 2001

Returnable

REINSTATED: 9/27/01

NOW, September 28, 2001, I, Charles T. Brewer,

High Sheriff of Lycoming County, Pennsylvania, do hereby deputize the Sheriff of Clearfield County, Pennsylvania, to execute this Writ. This deputation being made at the request and risk of the Plaintiff.

Defendant's alleged address is Elmco Pa., Inc., 700 Bigler Avenue, Clearfield, Pa. 16830.

Charles T. Brewer

Sheriff, Lycoming County, Pennsylvania

AFFIDAVIT OF SERVICE

October 17, 2001, see return endorsed hereon by Sheriff of Clearfield County, Pa., and made a part of this return.

So Answers,

Charles T. Brewer
Charles T. Brewer,
SHERIFF OF LYCOMING COUNTY, PENNA.

SHERIFF'S COSTS: \$57.34

PAID.

Oct 22 9 40 AM '01
P.M.
C.L.

10.41

LYCOMING COUNTY
FILED

IN THE COURT OF
COMMON PLEAS
OF LYCOMING COUNTY
SHERIFF'S RETURN

No. 01-01421 TERM, 20

RUSSELL OBERTHER,

PLAINTIFF

vs.

ELMCO ENGINEERING, INC.,
and ELMCO PA, INC.,

DEFENDANT

COMPLAINT IN CIVIL ACTION

GALFAND BERGER, LLP
Richard M. Jurewicz
1818 Market Street, Suite 2300
Philadelphia, Pa. 19103

ATTORNEY

In The Court of Common Pleas of ~~Clearfield~~ County, Pennsylvania

Sheriff Docket # 11588

OBERTHER, RUSSELL

01-1421

VS.

ELMCO ENGINEERING, INC. AI

COMPLAINT

SHERIFF RETURNS

NOW OCTOBER 3, 2001 AT 12:04 PM DST SERVED THE WITHIN COMPLAINT ON
ELMCO PA. INC., DEFENDANT AT EMPLOYMENT, 700 BIGLER AVE., CLEARFIELD,
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO HARLAN SYLVESTER,
MACHINE SHOP FOREMAN A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING

Return Costs

Cost	Description
20.34	SHFF. HAWKINS PAID BY: ATTY.

Sworn to Before Me This

5th Day Of October 2001

J. Kendrick
Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

*Chester A. Hawkins
by Marilyn Harris*
Chester A. Hawkins
Sheriff

LAW OFFICES OF RALPH F. TOUCH

By: Jeffrey S. Lee, Esquire
Attorney I.D. No. 69952
401 Penn Street, Suite 100
Reading, PA 19601
Tel. 610-320-4248 Fax 610-320-4767

Attorney for Defendants

IN THE COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PENNSYLVANIA

RUSSELL OBERTHER)	CIVIL DIVISION
Plaintiff)	NO. 01-01421
)	
v.)	
)	
ELMCO ENGINEERING, INC.)	
and ELMCO PA, INC.)	
Defendants)	
)	
)	

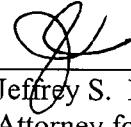
Per 11
37
11
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ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-entitled matter on behalf of the Defendants, Elmco Engineering, Inc. and Elmco PA, Inc.

Dated : October 8, 2001


Jeffrey S. Lee, Esquire
Attorney for Defendants

**JURY TRIAL DEMANDED
PANEL OF TWELVE JURORS REQUESTED**

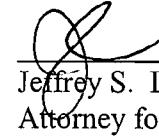
CERTIFICATION OF SERVICE

I hereby certify that I have served a copy of the **ENTRY OF APPEARANCE** upon all parties, their attorneys or representatives, and all other relevant organizations, in the manner(s) set forth below:

By first-class, United States mail, postage prepaid:

Richard M. Jurewicz, Esquire
Galfand, Berger
1818 Market Street
Philadelphia, PA 19103

Dated: October 8, 2001



Jeffrey S. Lee,
Attorney for Defendants

LAW OFFICES OF RALPH F. TOUCH

RALPH F. TOUCH
EDWARD J. CERMANSKI
JEFFREY S. LEE
RAYMOND A. SWAN

401 PENN STREET, SUITE 100
READING, PENNSYLVANIA 19601
TELEPHONE (610) 320-4780
FAX (610) 320-4767

FRANKLIN W. NOLL, III
(1966-1999)

A STAFF COUNSEL OFFICE OF
CNA INSURANCE COMPANIES

October 8, 2001

Lycoming County Court of Common Pleas
Attn: Prothonotary
48 W. Third Street
Williamsport, PA 17701

Re: Oberther v. Elmco Engineering, Inc.
Court of Common Pleas Lycoming County, PA / 01-01421
File No.: 101300075

Dear Sir or Madam:

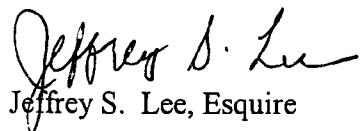
Enclosed please find an original and one copy of the following pleading in the above-captioned matter:

ENTRY OF APPEARANCE

Kindly file the original and return a time-stamped copy to me in the enclosed self-addressed stamped envelope.

Thank you for your courtesy in this matter.

Respectfully submitted,


Jeffrey S. Lee, Esquire

JSL/ed
Enclosures
cc: Richard M. Jurewicz, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL OBERTHER,) CIVIL DIVISION
PLAINTIFF,) NO. No. 02-258-CD
VS.) ISSUE NO.
ELMCO ENGINEERING, INC. AND) **PRAECIPE FOR SUBSTITUTION OF**
ELMCO PA, INC.,) **COUNSEL**
DEFENDANTS.)
)
)
)
) FILED ON BEHALF OF:
) DEFENDANTS
)
) COUNSEL OF RECORD FOR PARTY:
) JOHN V. DEMARCO
) PA. I.D. #46888
)
) SUITE 1750, TWO CHATHAM CENTER
) PITTSBURGH, PA 15219-3421
)
)
) (412)560-3416

FILED

MAR 14 2002

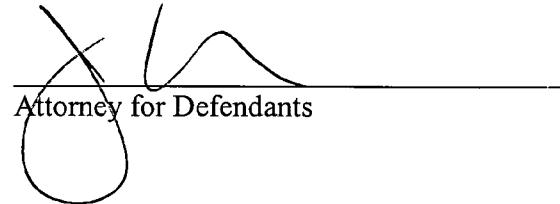
William A. Shaw
Prothonotary

PRAECIPE FOR SUBSTITUTION OF COUNSEL

TO: PROTHONOTARY

Kindly substitute the undersigned, **John V. DeMarco**, in place of Jeffrey S. Lee as counsel on behalf of the defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., in the within captioned case.

JOHN V. DeMARCO



Attorney for Defendants

A handwritten signature of "JOHN V. DeMARCO" is written over a horizontal line. Below the line, the text "Attorney for Defendants" is written in a smaller, printed font.

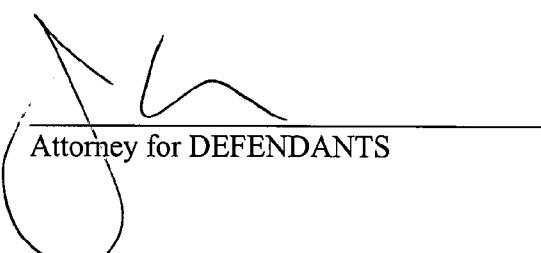
CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within **Praecipe for Substitution of Counsel** upon:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff, Russell Oberther)

by first class mail, postage prepaid in the above-referenced case on this 12th day of March, 2002.

JOHN V. DEMARCO



Attorney for DEFENDANTS

FILED

MAR 14 2002
MAR 14 2002
NO
cc

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL OBERTHER,

) CIVIL DIVISION

PLAINTIFF,

) NO. No. 02-258-CD

VS.

) ISSUE NO.

ELMCO ENGINEERING, INC. AND
ELMCO PA, INC.,

) ANSWER AND NEW MATTER

DEFENDANTS.

)

)

) FILED ON BEHALF OF:

) DEFENDANTS

) COUNSEL OF RECORD FOR PARTY:

) JOHN V. DEMARCO

) PA. I.D. #46888

) SUITE 1750, TWO CHATHAM CENTER

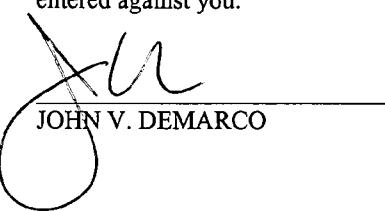
) PITTSBURGH, PA 15219-3421

)

) (412)560-3416

TO ALL PARTIES:

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


JOHN V. DEMARCO

FILED

MAY 01 2002

112:03/ncc

William A. Shaw
Prothonotary



ANSWER AND NEW MATTER

AND NOW, come the defendants, ELMCO ENGINEERING, INC. and ELMCO PA, INC., by and through their counsel, John V. DeMarco, Esquire and file the following answer to the plaintiff's complaint and in support thereof, aver as follows:

1. As to the averments of paragraph 1 of the plaintiff's complaint, these defendants aver that after reasonable investigation they are without knowledge or information sufficient to form a belief as to the truth of the same, and therefore, said allegations are deemed denied and proof thereof is demanded at trial.
2. Admitted.
3. Defendants deny the allegations of paragraph 3 in accordance with Pa. R.P.C. 1029(e).
4. Admitted.
5. Admitted in part and denied in part. Defendants admit that they regularly do business in the Commonwealth of Pennsylvania, but deny that they do business in Lycoming County.
6. Defendants deny the allegations of paragraph 6 in accordance with Pa. R.C.P. 1029(e).
7. Defendants deny the allegations of paragraph 7 in accordance with Pa. R.C.P. 1029(e).
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

12. Admitted in part and denied in part. It is admitted that defendant, Elmco Pa., Inc., is engaged in the same services of business as provided by defendant, Elmco Engineering, Inc.; however, it is denied that Elmco Pa., Inc. is a branch facility/operation of Elmco Engineering, Inc. as Elmco Pa., Inc. is a separate corporation and not a branch facility/operation as alleged in paragraph 12.

13. Admitted.

14. Admitted.

15. Admitted in part and denied in part. It is admitted that defendants were requested by SMC Powder Metallurgy to perform various services which included repairs, rebuilding and re-manufacturing of various compacting presses located at SMC Powder Metallurgy facility in Galton, Pennsylvania. These defendants deny that SMC Powder Metallurgy requested these defendants to perform the services as set forth in paragraph 15 of the plaintiff's complaint and as such, these allegations are denied by the defendants in accordance with Pa. R.C.P. 1029(e).

16. Admitted in part and denied in part. The defendants deny paragraph 16 as stated in accordance with Pa. R.C.P. 1029(e). By way of a further response, defendants admit that plaintiff's employer requested that certain work be performed to the Cincinnati Rigid Reflex Compacting Press model no. 200-C2 6, serial no. 39425 in an attempt to improve the reliability of this machine as it had been in service at the plaintiff's employer's facility for many years prior to the events that gave rise to this lawsuit.

17. Admitted in part and denied in part. It is admitted that defendants performed work to the aforementioned compacting press at the request of the plaintiff's

employer and that they were paid in excess of \$142,200. Defendants deny the remaining allegations as stated in paragraph 17 in accordance with Pa. R.C.P. 1029(e).

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Defendants deny the allegations in paragraph 22 in accordance with Pa. R.C.P. 1029(e). To the extent that a response is required, defendants aver that they are experts in the powder metal compacting press field.

23. Defendants deny the allegations of paragraph 23 in accordance with Pa. R.P.C. 1029(e). To the extent that a response is required, defendants aver that the compacting press in question was not defective and reasonably safe for its intended use.

24. Defendants deny the allegations of paragraph 24 in accordance with Pa. R.P.C. 1029(e). To the extent that a response is required, defendants aver that the compacting press in question was not defective and reasonably safe for its intended use.

25. Defendants deny the allegations of paragraph 25 in accordance with Pa. R.P.C. 1029(e). To the extent that a response is required, defendants aver that the compacting press in question was not defective and reasonably safe for its intended use.

26. Defendants deny the allegations of paragraph 26 in accordance with Pa. R.P.C. 1029(e). To the extent that a response is required, defendants aver that the compacting press in question was not defective and reasonably safe for its intended use.

27. Admitted in part and denied in part. It is admitted that defendants installed component parts that were selected by the defendants, however, defendants aver that

some of the component parts were selected by the plaintiff's employer and strict proof to the contrary is demanded at the time of trial.

28. Defendants are advised and informed that the allegations of paragraph 28 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure.

29. As to the averments of paragraph 29 of the plaintiff's complaint, these defendants aver that after reasonable investigation they are without knowledge or information sufficient to form a belief as to the truth of the same, and therefore, said allegations are deemed denied and proof thereof is demanded at trial.

30. Defendants deny the allegations of paragraph 30 in accordance with Pa. R.P.C. 1029(e).

31. Defendants deny the allegations of paragraph 31 in accordance with Pa. R.P.C. 1029(e).

32. Defendants deny the allegations of paragraph 32 in accordance with Pa. R.P.C. 1029(e).

33. Defendants deny the allegations of paragraph 33 in accordance with Pa. R.P.C. 1029(e).

34. Defendants deny the allegations of paragraph 34 in accordance with Pa. R.P.C. 1029(e).

35. Defendants deny the allegations of paragraph 35 in accordance with Pa. R.P.C. 1029(e).

WHEREFORE, defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., requests that plaintiff's complaint against them be dismissed with prejudice and with costs to be assessed against plaintiff.

COUNT I - NEGLIGENCE

36. The defendants incorporate by reference paragraphs 1 through 35 inclusive of this answer as though the same were set forth herein at length and verbatim.
37. Defendants deny the allegations of paragraph 37 in accordance with Pa. R.P.C. 1029(e)
38. Defendants deny the allegations of paragraph 38 in accordance with Pa. R.P.C. 1029(e)
39. Defendants deny the allegations of paragraph 39 in accordance with Pa. R.P.C. 1029(e)
40. Defendants deny the allegations of paragraph 40 in accordance with Pa. R.P.C. 1029(e)
41. Defendants deny the allegations of paragraph 41 in accordance with Pa. R.P.C. 1029(e)
42. Defendants are advised and informed that the allegations of paragraph 42 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of a further response, defendants deny the allegations of paragraph 42 in accordance with Pa. R.P.C. 1029(e)
43. Defendants are advised and informed that the allegations of paragraph 43 represent conclusions of law and as such, no response is required in accordance with the

Pennsylvania Rules of Civil Procedure. By way of a further response, defendants deny the allegations of paragraph 43 in accordance with Pa. R.P.C. 1029(e)

44. Defendants are advised and informed that the allegations of paragraph 44 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of a further response, defendants deny the allegations of paragraph 44 in accordance with Pa. R.P.C. 1029(e)

45. Defendants are advised and informed that the allegations of paragraph 45 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of a further response, defendants deny the allegations of paragraph 45 in accordance with Pa. R.P.C. 1029(e)

WHEREFORE, defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., requests that plaintiff's complaint against them be dismissed with prejudice and with costs to be assessed against plaintiff.

COUNT II – BREACH OF CONTRACT

46. The defendants incorporate by reference paragraphs 1 through 45 inclusive of this answer as though the same were set forth herein at length and verbatim.

47. Defendants deny the allegations of paragraph 47 in accordance with Pa. R.P.C. 1029(e). By way of a further response, defendants aver that express warranties were provided to the plaintiff's employer through written agreements forwarded to the plaintiff's employer prior to the commencement of any work by these defendants. The agreements set forth limited express agreements and also excluded any and all implied warranties not listed therein.

48. Defendants deny the allegations of paragraph 48 in accordance with Pa. R.P.C. 1029(e). By way of a further response, defendants aver that express warranties were

provided to the plaintiff's employer through written agreements forwarded to the plaintiff's employer prior to the commencement of any work by these defendants. The agreements provided for limited express agreements and also excluded any and all implied warranties not listed therein.

49. Admitted.

50. Defendants are advised and informed that the allegations of paragraph 50 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. By way of a further response, defendants deny the allegations of paragraph 50 in accordance with Pa. R.P.C. 1029(e)

51. Defendants deny the allegations of paragraph 51 in accordance with Pa. R.P.C. 1029(e). By way of a further response, defendants aver that express warranties were provided to the plaintiff's employer through written agreements forwarded to the plaintiff's employer prior to the commencement of any work by these defendants. The agreements provided for limited express agreements and also excluded any and all implied warranties not listed therein.

52. Defendants are advised and informed that the allegations of paragraph 50 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure.

53. Defendants deny the allegations of paragraph 53 in accordance with Pa. R.P.C. 1029(e)

54. Defendants are advised and informed that the allegations of paragraph 54 represent conclusions of law and as such, no response is required in accordance with the

Pennsylvania Rules of Civil Procedure. By way of a further response, defendants deny the allegations of paragraph 55 in accordance with Pa. R.P.C. 1029(e).

WHEREFORE, defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., requests that plaintiff's complaint against them be dismissed with prejudice and with costs to be assessed against plaintiff.

COUNT III – STRICT LIABILITY

55. Admitted.

56. Defendants are advised and informed that the allegations of paragraph 56 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. To the extent that a response is required, defendants deny the allegations of paragraph 56 in accordance with Pa. R.C.P. 1029(e).

57. Defendants are advised and informed that the allegations of paragraph 57 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. To the extent that a response is required, defendants deny the allegations of paragraph 57 in accordance with Pa. R.C.P. 1029(e).

58. Defendants are advised and informed that the allegations of paragraph 58 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. To the extent that a response is required, defendants deny the allegations of paragraph 58 in accordance with Pa. R.C.P. 1029(e).

59. Defendants are advised and informed that the allegations of paragraph 59 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. To the extent that a response is required, defendants deny the allegations of paragraph 59 in accordance with Pa. R.P.C. 1029(e).

60. Defendants are advised and informed that the allegations of paragraph 60 represent conclusions of law and as such, no response is required in accordance with the Pennsylvania Rules of Civil Procedure. To the extent that a response is required, defendants deny the allegations of paragraph 60 in accordance with Pa. R.C.P.1029(e).

WHEREFORE, defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., requests that plaintiff's complaint against them be dismissed with prejudice and with costs to be assessed against plaintiff.

NEW MATTER

61. The plaintiff has failed to state a cause of action upon which relief can be granted.

62. Plaintiff's cause of action against the defendants is barred as the cause of action was not commenced within the applicable statute of limitations.

63. The injuries, losses, and damages allegedly sustained by the plaintiff were caused and/or contributed to by the negligence, carelessness, recklessness on the part of other individuals or entities for whom the defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., are neither liable nor responsible.

64. The injuries, losses, and damages allegedly sustained by the plaintiff were the result of independent or intervening cause or causes over which the defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., had no control or in any way participated.

65. If it is established at trial that the Cincinnati Rigid Reflex Compacting Press allegedly involved in the accident complained of was manufactured, distributed or sold by defendants, ELMCO ENGINEERING, INC. AND ELMCO PA, INC., the defendants allege that the CINCINNATI RIGID REFLEX COMPACTING PRESS was in every way properly

designed, manufactured and assembled and free from any and all defects whatsoever when it left the possession of the defendants, ELMCO ENGINEERING, INC. AND ELMCO PA, INC.

66. If it is established that the CINCINNATI RIGID REFLEX COMPACTING PRESS involved in this accident was manufactured, distributed or sold by defendants, then defendants allege that at the time the said CINCINNATI RIGID REFLEX COMPACTING PRESS left the possession of the defendants it contained no defect making it defective as to any user or consumer, nor was it unreasonably dangerous to the user or consumer.

67. If defendants manufactured, distributed or sold the said CINCINNATI RIGID REFLEX COMPACTING PRESS, and if the defect existed in said CINCINNATI RIGID REFLEX COMPACTING PRESS at the time of the incident complained of, the said defect or defective condition was the result of the improper maintenance and usage of said CINCINNATI RIGID REFLEX COMPACTING PRESS by persons whose identity is unknown to defendants, ELMCO ENGINEERING, INC. AND ELMCO PA, INC., who had the CINCINNATI RIGID REFLEX COMPACTING PRESS in their possession after the CINCINNATI RIGID REFLEX COMPACTING PRESS left the possession of the defendants.

68. If the defendants manufactured, distributed or sold the CINCINNATI RIGID REFLEX COMPACTING PRESS involved in the accident complained of and if it is proved that a defect or defective condition existed at the time of the accident, then the said defect or defective condition was a result of the CINCINNATI RIGID REFLEX COMPACTING PRESS having been changed, altered and abused in an abnormal manner and in a manner unintended and unforeseeable by these defendants.

69. By way of further answer to plaintiff's Complaint, defendants state that if they manufactured, distributed or sold the CINCINNATI RIGID REFLEX COMPACTING

PRESS involved in the accident complained of that said CINCINNATI RIGID REFLEX COMPACTING PRESS was in every way merchantable and fit for the particular purpose or purposes intended and without a defect.

WHEREFORE, defendants, ELMCO ENGINEERING, INC. and ELMCO, PA, INC., requests that plaintiff's complaint against them be dismissed with prejudice and with costs to be assessed against plaintiff.

JURY TRIAL DEMANDED

Respectfully submitted


JOHN V. DeMARCO
Attorney for Defendants

VERIFICATION BY CORPORATE PARTY

I certify that the facts set forth in this Answer and New Matter, are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

I am authorized to make this Verification on behalf of Elmco PA, Inc., because of my position as President.

Date:

4/24/02

David E. Lilly

VERIFICATION BY CORPORATE PARTY

I certify that the facts set forth in this Answer and New Matter, are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

I am authorized to make this Verification on behalf of Elmco Engineering, Inc., because of my position as Vice President.

Date:

4/24/02

David E. Lilly

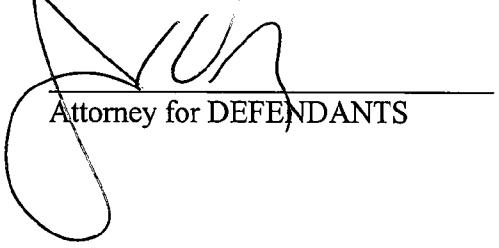
CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within **Answer and New Matter** upon:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff, Russell Oberther)

by first class mail, postage prepaid in the above-referenced case on this 29th day of April, 2002.

JOHN V. DEMARCO


Attorney for DEFENDANTS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL OBERTHER,) CIVIL DIVISION
)
 PLAINTIFF,) NO. 02-258-CD
)
 VS.) ISSUE NO.
)
 ELMCO ENGINEERING, INC. AND) PLAINTIFF'S ANSWER TO NEW
 ELMCO PA, INC.,) MATTER OF DEFENDANTS
)
 DEFENDANTS.)
)
)
)
) FILED ON BEHALF OF:
) PLAINTIFF
)
) COUNSEL OF RECORD FOR PARTY:
) RICHARD M. JUREWICZ, ESQUIRE
) PA. I.D. #39436
)
) GALFAND BERGER, LLP
) 1818 MARKET STREET, SUITE 2300
) PHILADELPHIA, PA 19103
)
)
) (215) 665-1600

FILED

MAY 10 2002
110:321noc
William A. Shaw
Prothonotary
WAS

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF CLEARFIELD
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
	:	
v.	:	NO.: 02-258-CD
	:	
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
	:	
Defendants	:	

PLAINTIFF'S ANSWER TO NEW MATTER OF DEFENDANTS ELMCO
ENGINEERING AND ELMCO, PA., INC.

Plaintiff hereby responds to the New Matter of Defendants as follows:

61-62. Denied. The averments contained in paragraphs 61 and 62 of Defendants' New Matter are pure conclusions of law to which no responsive pleading is required under the rules. To the extent a response is required, Plaintiff denies that he has failed to set forth causes of action against Defendants or that his lawsuit was not filed within two years from date of his accident.

63-64. Denied. The averments contained in paragraphs 63 and 64 are denied. The averments contained in paragraphs 63 and 64 contain are conclusions of law as such no responsive pleading is required. In the event a responsive pleading is somehow deemed necessary, Plaintiff denies that his accident and injuries were caused solely by the negligence, carelessness and/or recklessness of entities over whom answering Defendants had no control nor

right to control. Plaintiff further denies that his accident, injuries and damages were caused solely by the independent or intervening actions of others whom Defendants had no control nor right to control.

65. Denied. This averment is a conclusion of law to which no responsive pleading is required. However, should a responsive pleading be required, Plaintiff denies that the subject press was free of any and all defects as designed, manufactured and assembled by Defendants.

66. Denied. This is a conclusion of law to which no responsive pleading is required. In the event a responsive pleading is required, Plaintiff denies that as manufactured, rebuilt, distributed, sold and assembled that the subject press was not unreasonably dangerous.

67. Denied. This averment contains mixed conclusions of both fact and law to which no responsive pleading is required as to the legal averment. With regard to the factual averment, Plaintiff denies that the subject press was improperly maintained or that the defective condition was as a result of improper maintenance and usage.

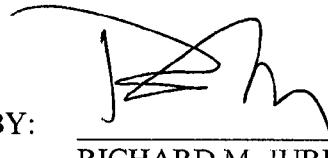
68. Denied. This averment contains mixed conclusions of both law and fact as such no responsive pleading is required as to the legal averment. As for the factual averment, Plaintiff denies that the subject press was changed, altered, abused or in any manner used abnormally.

69. Denied. This averment contains a pure conclusion of law to which no responsive pleading is required. In the event a responsive pleading is required, Plaintiff denies that the subject press was merchantable and fit for the particular purpose for which it was designed, manufactured and rebuilt.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor.

Respectfully submitted,

GALFAND BERGER, LLP

BY: 

5/16/02

RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

VERIFICATION

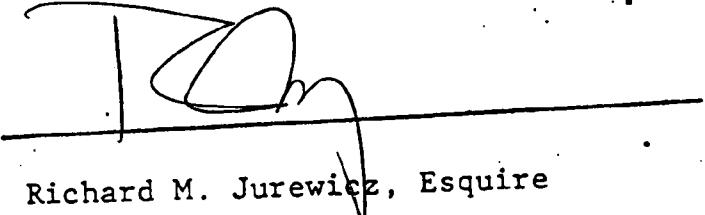
The undersigned, having read the attached pleading, verifies that the within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies that he has read the within pleading and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, verifier has relied upon counsel in taking this verification. This verification is made subject to the penalties of 18 Pa. R.C.P. §4904 relating to unsworn falsification to authorities.


RUSSELL OBERTHER

COMMONWEALTH OF PENNSYLVANIA:
ss
COUNTY OF

Richard M. Jurewicz, Esq. deposes and says as follows:

1. I am the attorney for the within-named Plaintiff.
2. The facts set forth in the foregoing ANSWER TO NEW MATTER are true to the best of my knowledge, information, and belief.
3. I am aware and hereby certify that this Affidavit is made subject to the penalties of 18 Pa. C. S. A. §4904 relating to unsworn falsification to authorities.



Richard M. Jurewicz, Esquire

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103-3623
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER

: **COUNTY OF CLEARFIELD**
: **COURT OF COMMON PLEAS**
: **CIVIL TRIAL DIVISION**
: **NO.: 02-258-CD**

Plaintiff,

v.

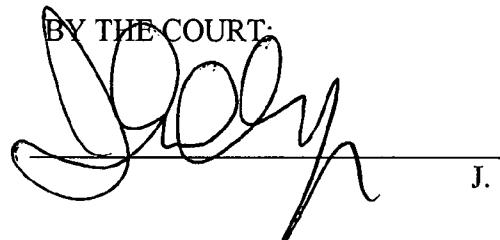
ELMCO ENGINEERING, INC.
and
ELMCO PA, INC.

ORDER

AND NOW, THIS 11 of June, 2002, upon consideration of Plaintiff Russell Oberther's Motion to Compel Discovery Responses from Defendants Elmco Engineering, Inc. and Elmco Pa, Inc., it is hereby **ORDERED** and **DECREED** that Defendants Elmco Engineering, Inc. and Elmco Pa, Inc. shall answer fully and completely Plaintiff's Interrogatories and Request for Production of Documents within (20) days of the date of his Order.

It is further **ORDERED** and **DECREED** that if said Interrogatory answers and documents are not produced within the thirty (30) days from the date of this Order, Defendants shall be subject to sanctions upon application by Plaintiff.

BY THE COURT:



J.

FILED

JUN 11 2002
m/10:40/icc atty Jurewicz
William A. Shaw
Prothonotary
KEY

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103-3623
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER

Plaintiff,

v.

ELMCO ENGINEERING, INC.
and
ELMCO PA, INC.

: COUNTY OF CLEARFIELD
: COURT OF COMMON PLEAS
: CIVIL TRIAL DIVISION
: NO.: 02-258-CD
:
:
:

PLAINTIFF RUSSELL OBERTHER'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS ADDRESSED TO DEFENDANTS ELMCO ENGINEERING, INC. AND
ELMCO PA, INC.

Plaintiff Russell Oberther through and his attorney respectfully requests that this Honorable Court enter an Order compelling Defendants to serve full and complete verified answers to Plaintiff's Interrogatories and respond to his Request for Production of Documents and in support thereof represents that:

1. This is a products liability lawsuit arising out of a crushing injury that Plaintiff suffered to his hand on July 18, 2000 when a compacting press machine redesigned, rebuilt and refurbished by Defendants malfunction.
2. On February 5, 2002, pursuant to P.R.C.P. 4005 and 4009, counsel for Defendants Elmco Engineering, Inc. and Elmco PA, Inc. were each served with a set of Interrogatories and Request for Production of Documents. (See attached letter marked Exhibit "A").
3. On March 13, 2002, counsel for Plaintiff wrote a letter to counsel for Defendants inquiring as to when he may receive Defendants' discovery responses. (See attached letter marked Exhibit "B").

FILED

JUN 10 2002

m 11:13 | cc atty
William A. Shaw
Prothonotary
E. Jurewicz
REX

4. Since that time, Plaintiff has made additional requests on Defendants to respond to Plaintiff's outstanding discovery.

5. More than four months has passed since service of Plaintiff's discovery on Defendants. They have failed to provide answers and responses to Plaintiff's Interrogatories and Request for Production of Documents.

6. Without the requested discovery, Plaintiff is prejudice in that he is unable to conduct any meaning discovery in this case.

7. Plaintiff is also in the process of scheduling depositions of corporate designees of Defendants. Without the technical documents that are part of Plaintiff's Request to Produce and Interrogatory answers, Plaintiff will be unable to take the deposition of Defendants.

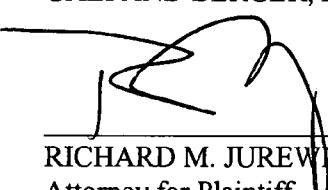
8. At this stage of proceedings a court order is necessary to compel Defendants to respond to Plaintiff's overdue discovery.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an Order requiring Defendants Elmco Engineering, Inc, and Elmco PA, Inc. to provide full and complete verified answers to Plaintiff's Interrogatories and respond to his Request for Production of Documents within thirty (30) days from the date of the Order.

Respectfully submitted,

GALFAND BERGER, LLP

BY:


RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street
Suite 2300
Philadelphia, PA 19103-3623
(215) 665-1600

GALFAND BERGER, LLP
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(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF CLEARFIELD
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
v.	:	NO.: 02-258-CD
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	

**PLAINTIFF RUSSELL OBERTHER'S MEMORANDUM OF LAW (BRIEF) IN
SUPPORT OF HIS MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENT ADDRESSED TO DEFENDANTS**

Pennsylvania Rule of Civil Procedure 4019(a)(1) provides in pertinent apart:

The court may, on motion, make an appropriate order if a party fails to serve answers, sufficient answers or objections to written interrogatories under Rule 4005.

Pennsylvania Rule of Civil Procedure 4006(a)(2) provides in relevant part:

...The answering party shall serve a copy of the answers, and objections, if any, within thirty (30) days after the service of the interrogatories...

Pursuant to Pa.R.C.P. 4005 a party in a civil action in Pennsylvania is entitled to serve written interrogatories on any other party to the action. Within thirty (30) days from service of the Interrogatories, the responding party is obligated by the rule to furnish its written responses to the discovery per Pa.R.C.P. 4006 (a)(2). In this case, Plaintiff served a set of Interrogatories on each Defendant on February 5, 2002. No answers have been forthcoming despite the passage of over four months.

A party in a civil action in Pennsylvania is also entitled to serve on any other party a request to produce and permit the requesting party to inspect and copy any designated documents requested. See Pa.R.C.P. 4009.1. The party upon whom the request to produce has been served has thirty (30) days after the service of a request to produce or make available for inspection the documents requested. As required by Pa.R.C.P. 4009.12.

In this case, a request for production was served on Defendants' counsel on February 5, 2002 and no documents have been provided to date.

This Court is empowered to enter an appropriate order if a party fails to provide answers to written interrogatories or respond to a request to produce. See Pa.R.C.P. 4019. At this stage of the proceedings, a court Order directing Defendants to fully and completely comply with the request to produce and answer Interrogatories within thirty (30) days is appropriate. An order is necessary to provide Plaintiff with discovery sought in a timely fashion. Without such discovery Plaintiff will be prejudiced in that he will not be able to prosecute his case without this information.

WHEREFORE, we respectfully request this Honorable Court to issue the attached Order.

Respectfully submitted,

GALFAND BERGER, LLP

BY:

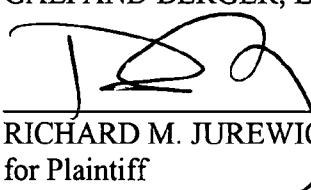
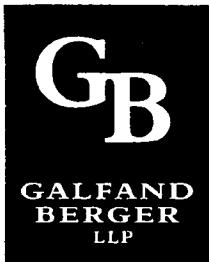

RICHARD M. JUREWICZ, ESQUIRE
for Plaintiff
Identification No.: 39436
1818 Market Street
Suite 2300
Philadelphia, PA 19103-3623
(215) 665-1600

EXHIBIT “A”



February 5, 2002

LAW OFFICES

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www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

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JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
PETER M. PATTON
ROBERT G. MANGOLD *
MICHAEL W. MCGURRIN
ARTHUR L. BUGAY *
THOMAS J. O'BRIEN
KELLY F. MELCHER
WAYNE A. HAMILTON *
SANDRA W. MORRIS
JOSEPH S. VINESKI

* MEMBER OF NJ BAR

† BOARD CERTIFIED IN
CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER
S. HARRY Galfand
(1947-1993)
MARTHA J. HAMPTON
(1991-1999)

Jeffrey Lee, Esquire
Law Offices of Ralph F. Touch
401 Penn Street, Suite 100
Reading, PA 19601

**RE: Russell Oberther v. Elmco Engineering Company and
ELMCO, PA
Civil Docket #: 01-01421**

Dear Mr. Lee:

Enclosed please find the following:

1. Plaintiff's Interrogatories Addressed to Defendant ELMCO Engineering, Inc.
2. Plaintiff's Interrogatories Addressed to Defendant ELMCO, PA;
3. Plaintiff's Request for Production of documents Addressed to Defendant ELMCO Engineering, Inc.
4. Plaintiff's request for Production of Documents Addressed to Defendant ELMCO, PA.

Please note that until such time as I get a new civil action number from Clearfield County, I will continue using the Lycoming county Court Term and Number. Please respond to this discovery within thirty (30) days.

Thank you.

Sincerely yours,

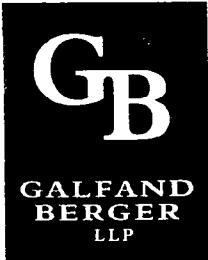

RICHARD M. JUREWICZ

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ABATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

RMJ/lal
Enclosure

EXHIBIT “B”



March 13, 2002

LAW OFFICES

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PETER M. PATTON
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WAYNE A. HAMILTON *
SANDRA W. MORRIS
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* MEMBER OF NJ BAR

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CIVIL TRIAL LAW AND
ADVOCACY BY THE
NATIONAL BOARD OF
TRIAL ADVOCACY

COUNSEL TO THE FIRM:
NORMAN M. BERGER
S. HARRY Galfand
(1947-1993)
MARTHA J. HAMPTON
(1991-1999)

Jeffrey Lee, Esquire
Law Offices of Ralph F. Touch
401 Penn Street, Suite 100
Reading, PA 19601

**RE: Russell Oberther v. Elmco Engineering Company and
ELMCO, PA
Civil Docket #: 01-01421**

Dear Mr. Lee:

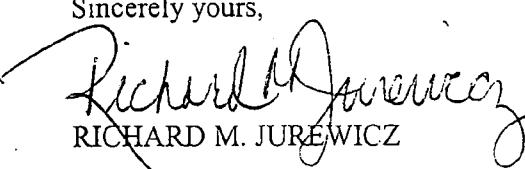
A review of our file reveals that Defendant's Responses to Plaintiff's Interrogatories and Request for Production of Documents are now overdue.

Kindly provide your client's responses within ten (10) days so that no motions need be filed.

I have enclosed a copy of the discovery with the Clearfield County civil action number for your file.

Thank you.

Sincerely yours,


RICHARD M. JUREWICZ

RMJ/lal
Enclosure

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA. 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ABATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

CERTIFICATE OF SERVICE

I, Richard M. Jurewicz, Esquire counsel for Plaintiff, do hereby certify that a true and correct copy of *Plaintiff's Motion to Compel* was served on counsel for Defendants listed below by first-class mail, postage pre-paid, on this 5th day of June, 2002, upon counsel listed below:

John V. DeMarco, Esquire
Law Offices of Thomas R. Doyle
Two Chatham Center
Suite 1750
Pittsburgh, PA 15219-3421

GALFAND BERGER, LLP

BY: 

RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff
Identification No.: 39436
1818 Market Street
Suite 2300
Philadelphia, PA 19103-3623
(215) 665-1600

(215) 665-1600
1818 MARKET STREET, SUITE 2300
PHILADELPHIA, PA 19103-3623
GALFAND BERGER, LLP

COUNTY OF CLEARFIELD
COURT OF COMMON PLEAS

RUSSELL OBERTHER

v.

ELMCO ENGINEERING, INC.
AND
ELMCO PA, INC.

PLAINTIFF RUSSELL OBERTHER'S MOTION
TO COMPEL ANSWERS TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
ADDRESSED TO DEFENDANTS ELMCO ENGINEERING,
INC. AND ELMCO PA, INC. AND PLAINTIFF
RUSSELL OBERTHER'S MEMORANDUM OF LAW
(BRIEF) IN SUPPORT OF HIS MOTION
TO COMPEL ANSWERS TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
ADDRESSED TO DEFENDANTS



LAW OFFICES
1818 MARKET STREET, SUITE 2300
PHILADELPHIA, PA 19103-3623
(215) 665-1600
RICHARD M. JUREWICZ, ESQUIRE

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL OBERTHER,) CIVIL DIVISION
)
 PLAINTIFF,) NO. No. 02-258-CD
)
 VS.) ISSUE NO.
)
 ELMCO ENGINEERING, INC. AND) NOTICE OF SERVICE OF ANSWERS TO
 ELMCO PA, INC.,) INTERROGATORIES AND RESPONSE
) TO REQUEST FOR PRODUCTION OF
) DOCUMENTS
)
)
 DEFENDANTS.)
)
)
)
) FILED ON BEHALF OF:
) DEFENDANTS
)
) COUNSEL OF RECORD FOR PARTY:
) JOHN V. DEMARCO
) PA. I.D. #46888
)
) SUITE 1750, TWO CHATHAM CENTER
) PITTSBURGH, PA 15219-3421
)
)
) (412)560-3416

FILED

JUL 11 2002

7/11/02 11:00 AM
William A. Shaw
Prothonotary
KAT

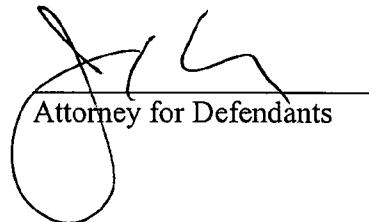
**NOTICE OF SERVICE OF ANSWERS TO
INTERROGATORIES AND
RESPONSE TO REQUEST FOR PRODUCTION**

TO: PROTHONOTARY

I hereby certify that on July 9, 2002, the original Answers to Interrogatories and an original Response to Request for Production were served on the plaintiff by mailing the same to:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103

JOHN V. DEMARCO



Attorney for Defendants

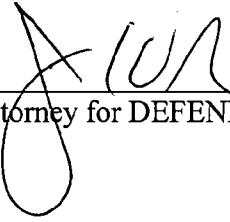
CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES AND RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS upon:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff, Russell Oberther)

by Airborne Express in the above-referenced case on this 9th day of July, 2002.

JOHN V. DEMARCO



Attorney for DEFENDANTS

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF CLEARFIELD
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
v.	:	NO.: 02-258-CD
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
Defendants	:	
Defendants	:	

**CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, plaintiff certified that

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty (20) days prior to the date on which the subpoena is sought to be served,
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- (3) No objection to the subpoena has been received, and
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: Aug 16, 2002

FILED

AUG 20 2002

11/31/2002
William A. Shaw
Prothonotary

Richard Jurewicz
RICHARD M. JUREWICZ, Esquire
Attorney for Plaintiffs

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF LYCOMING
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
 v.	:	 NO.: 01-01421
 ELMCO ENGINEERING, INC.	:	 and
ELMCO PA, INC.	:	
 Defendants	:	

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND
THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Date: 7-17-02


RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiffs

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Russell Oberther

Plaintiff(s)

Vs.

*

No. 2002-00258-CD

Elmco Engineering Inc.

*

Elmco PA, Inc.

*

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: SMC Metallurgy

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Addendum attached hereto.

At: Galfand Berger, LLP
1818 Market Street, Suite 2300 (Address)
Philadelphia, PA 19103

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Richard M. Jurewicz, Esquire

ADDRESS: 1818 Market Street, Suite 2300
Philadelphia, PA 19103

TELEPHONE: 215-665-1600

SUPREME COURT ID # 39436

ATTORNEY FOR: Plaintiff

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, July 15, 2002

Seal of the Court


William A. Shaw
Prothonotary/Clerk, Civil Division

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER

COUNTY OF CLEARFIELD
COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

Plaintiff

NO.: 02-258-CD

v.

ELMCO ENGINEERING, INC.
and
ELMCO PA, INC.

Defendants

SUBPOENA ADDENDUM

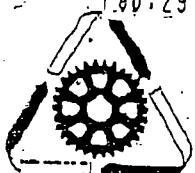
Produce hard printed copies of all electrical schematics, drawings and/or diagrams contained on the working copy of software that was provided to SMC Power Metallurgy for the new Elmco control panel on SMC's Cincinnati Press No. 200-C2-6, serial number 39425 (M-100)as set forth and referenced in Elmco Engineering, Inc.'s letter of February 24, 2000 attached hereto as Exhibit A.

This records subpoena document request requires SMC Metallurgy to provide and produce hard copies of the Allen Bradley PLC Programming information software that includes, but is not limited to, ladder control diagrams and schematics for the electrical sequential logic design of the operation and movement of the top punch holddown, dual upper punch, feeder extend function, ram, ram guide, adjusting plate and/or table, continuous mode, press running, special run press running, special run mode, top punch holddown safety, top punch hold down

valve, clutch valve, and any other schematics that would sequentially illustrate by control logic the cycling of the subject press as rebuilt by Elmco with its Allen Bradley PLC system.

This document request further requires production of hard copies for the cycle delay function features, powder sensor feature, and part sensor and/or feeder sensor functions.

EXHIBIT A



ELMCO ENGINEERING INC.

February 24, 2000

*PM 12
OKAY TO
SEND
JL
3/4/00*

Jud Duell
SMC Powder Metallurgy
1251 Route 6 West
P.O. Box 229
Galeton, PA 16922

Dear Jud,

Thank you for your request on obtaining a working copy of software provided with your new Elmco control installed on your 200-C2-6 SN 39425.

Please note that in order to provide such a copy, a release from responsibility must be signed, dated and returned to ELMCO ENGINEERING, INC.

We, SMC Powder Metallurgy, shall release ELMCO ENGINEERING, INC. from all responsibility/liability stemming from the issue and usage of the software copy provided.

We accept any and all responsibility/liability for safety and correct operation due to any changes or modification made.

We further agree to release and hold harmless ELMCO ENGINEERING, INC. and it's employees from any damages, financial or otherwise, from such usage. We understand that any changes to the software made, without prior approval of ELMCO ENGINEERING, INC. will alter the machine function.

The copy provided is for customer use only. No reproduction, alteration, use on any other machine or resale of the contents is allowed without expressed written consent by ELMCO ENGINEERING, INC.

Please sign below and return to ELMCO ENGINEERING, INC.

Larry Emery

Larry Emery
President

SIGNED

TITLE

DATED

ACCEPTED AT ELMCO

Stephen J. Goyel

V.P. / GEN. MGR.

03/01/00

*Stephen J. Goyel
3/4/00*



GALFAND
BERGER
LLP

July 17, 2002

LAW OFFICES

1818 MARKET STREET
SUITE 2300
PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

RICHARD M. JUREWICZ
rjurewicz@galfandberger.com

JOSEPH LURIE
MARC S. JACOBS
ERIC J. SWAN
RICHARD M. JUREWICZ †
DEBRA A. JENSEN
PETER M. PATTON
ROBERT G. MANGOLD
MICHAEL W. MCGURRIN
ARTHUR L. BUGAY
THOMAS J. O'BRIEN
KELLY F. MELCHER
WAYNE A. HAMILTON
MICHAEL FANNING

John V. DeMarco, Esquire
Law Offices of Thomas R. Doyle
Two Chatham Center
Suite 1750
Pittsburgh, PA 15219-3421

RE: Russell Oberther v. Elmco Engineering Company
Your File No.: 102200021/JVD

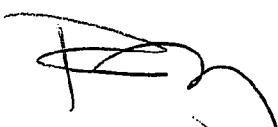
Dear Mr. DeMarco:

Pursuant to the Pennsylvania Rules of Civil Procedure governing Subpoenas, enclosed please find a Notice of Intent to Serve a Subpoena to Produce Records and Things for Discovery Pursuant to Rule 4009.21.

Also enclosed please find a copy of the Subpoena which is directed to SMC Metallurgy. Please advise me if you have any objection to service of this Subpoena and whether or not you will agree to waive the twenty (20) day notice.

Thank you for your cooperation in this matter.

Sincerely yours,



RICHARD M. JUREWICZ

RMJ:al
Enclosure

READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ARABE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519

CP

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF CLEARFIELD
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
	:	
v.	:	NO.: 02-258-CD
	:	
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
	:	
Defendants	:	

PRAECIPE FOR LOCAL RULE 212.1 – STATUS SCHEDULING CONFERENCE

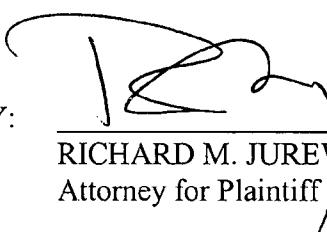
TO THE PROTHONOTARY:

Pursuant to Local Rule 212.1, kindly issue a Rule Returnable for a Scheduling Status Conference with regard to the above-captioned matter.

Respectfully submitted,

GALFAND BERGER, LLP.

BY:


RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff

FILED

OCT 25 2002

William A. Shaw
Prothonotary

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF CLEARFIELD
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
v.	:	NO.: 02-258-CD
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
Defendants	:	

RULE RETURNABLE

Upon Praeclipe filed by Plaintiff Russell Oberther for a Rule 212.1 Scheduling Status Conference, it is hereby **ORDERED** that Defendants ELMCO Engineering, Inc. and ELMCO PA, Inc. are hereby directed to show cause why scheduling of a Status Conference in this case should not be scheduled.

The rule returnable is due:

Date: November 25, 2002 Time: 10:00 A.M.

Courtroom No: 1



FILED

OCT 31 2002

William A. Shaw
Prothonotary

FILED

CC

01205421

Oct 31 2002

Attn: T. J. Lewellen

William A. Shaw
Prothonotary

WAS

CERTIFICATE OF SERVICE

I, Richard M. Jurewicz, Esquire, counsel for Plaintiff, do hereby certify that a true and correct copy of the foregoing Praeclipe and the Rule Returnable was served upon counsel for Defendants listed below at the following address by first-class mail, postage pre-paid on this 23rd day of October, 2002, as follows:

John V. DeMarco, Esquire
Law Offices of Thomas R. Doyle
Suite 1750
Pittsburgh, PA 15219-3421

*Counsel for Defendants Elmco Engineering, Inc. and
Elmco, PA, Inc.*

GALFAND BERGER, LLP

BY: 

RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff

FILED

1cc

Oct 11 2002

Atty Turewicz

William A. Shaw
Prothonotary

678

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL OBERTHER,) CIVIL DIVISION
PLAINTIFF,) NO. No. 02-258-CD
VS.) ISSUE NO.
ELMCO ENGINEERING, INC. AND) NOTICE OF SERVICE OF REQUEST
ELMCO PA, INC.,) FOR PRODUCTION OF DOCUMENTS
DEFENDANTS.)
)
)
)
) FILED ON BEHALF OF:
) DEFENDANTS
)
) COUNSEL OF RECORD FOR PARTY:
) JOHN V. DEMARCO
) PA. I.D. #46888
)
) SUITE 1750, TWO CHATHAM CENTER
) PITTSBURGH, PA 15219-3421
)
)
) (412)560-3416

FILED

JAN 06 2003

William A. Shaw
Prothonotary

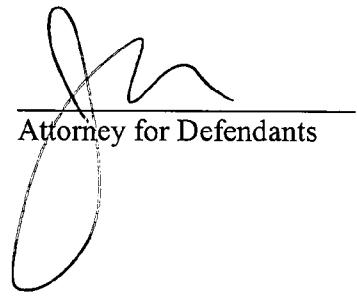
**NOTICE OF SERVICE OF
REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: PROTHONOTARY

I hereby certify that on January 2, 2003, the original Request for Production of Documents was served on the plaintiff by mailing the same to:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103

JOHN V. DEMARCO



Attorney for Defendants

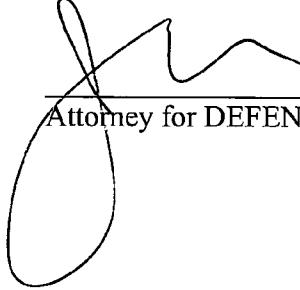
CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within **NOTICE OF SERVICE OF REQUEST FOR PRODUCTION OF DOCUMENTS** upon:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff, Russell Oberther)

by regular U.S. Mail in the above-referenced case on this 2nd day of January, 2003.

JOHN V. DEMARCO



Attorney for DEFENDANTS

FILED

111674
JAN 6 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL OBERTHER,) CIVIL DIVISION
PLAINTIFF,) No. 02-258-CD
VS.)
ELMCO ENGINEERING, INC. AND) CERTIFICATE PREREQUISITE TO
ELMCO PA, INC.,) SERVICE OF A SUPOENA PURSUANT
DEFENDANTS.) TO RULE 4009.22
)
)
)
) FILED ON BEHALF OF:
) DEFENDANTS
)
) COUNSEL OF RECORD FOR PARTY:
) JOHN V. DEMARCO
) PA. I.D. #46888
)
) SUITE 1750, TWO CHATHAM CENTER
) PITTSBURGH, PA 15219-3421
)
) (412)560-3416

FILED

MAR 10 2003

William A. Shaw
Prothonotary

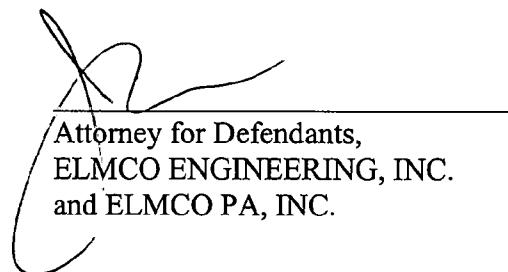
**CERTIFICATE PREREQUISITE TO SERVICE
OF A SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, John V. DeMarco certifies that

- (1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least 20 days prior to the date on which the subpoena is sought to be served,
- (2) a copy of the notice of intent, including the proposed subpoena is attached to this certificate, and
- (3) no objection to the subpoena has been received, and
- (4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

JOHN V. DeMARCO

DATE: 3-5-03



Attorney for Defendants,
ELMCO ENGINEERING, INC.
and ELMCO PA, INC.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

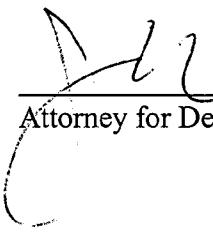
RUSSELL OBERTHER,)
Plaintiff,) CIVIL DIVISION
)
-vs-) NO. 02-258-CD
)
ELMCO ENGINEERING, INC. and)
ELMCO PA, INC.)
Defendants.)

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Defendants, Elmco Engineering, Inc. and Elmco PA, Inc., intend to serve a subpoena identical to the one that is attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned any objection to the Subpoena. If no objection is made, the Subpoena may be served.

JOHN V. DeMARCO

Date: February 12, 2003



Attorney for Defendants

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

RUSSELL OBERTHER,)
Plaintiff,)
)
-vs-) No. 02-258-CD
)
ELMCO ENGINEERING, INC. and)
ELMCO PA, INC.,)
Defendants.)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Patsy Pifer, SMC Powder Metallurgy, 1251 Route 6 West, Galeton, PA 16922

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are order by the court to produce the following document or things: including but not limited to all safety records, safety manuals and/or booklets, information regarding any seminars held on any safety issues, general plant safety rules, and everything related to the safe operation of the machine which is the subject of this lawsuit.

at The Law Offices of John V. DeMarco, Two Chatham Center, Suite 1750, Pittsburgh, Pennsylvania 15219.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John V. DeMarco, Esquire
ADDRESS: Two Chatham Center-Suite 1750
Pittsburgh, PA 15219
TELEPHONE: 412/560-3416
SUPREME COURT ID # 46888
ATTORNEY FOR: Defendants

BY THE COURT:

Date: _____

Prothonotary/Clerk, Civil Division

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT RULE 4009.21 upon:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff, Russell Oberther)

by first class mail, postage prepaid in the above-referenced case on this 12 day of February, 2003..

JOHN V. DEMARCO



Attorney for DEFENDANTS

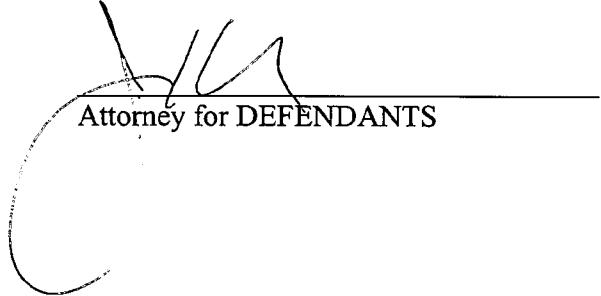
CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within **Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22** upon:

Richard M. Jurewicz, Esquire
Galfand, Berger, Lurie, Brigham, Jacobs, Swan, Jurewicz, Jensen, Ltd
1818 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff, Russell Oberther)

by first class mail, postage prepaid in the above-referenced case on this 6th day of March, 2003.

JOHN V. DEMARCO

Attorney for DEFENDANTS


FILED

No
cc

371-2034
MAR 10 2003

cc
for William A. Shaw
Plaintiff

GALFAND BERGER, LLP
BY: RICHARD M. JUREWICZ, ESQUIRE
IDENTIFICATION NO.: 39436
1818 Market Street, Suite 2300
Philadelphia, PA 19103
(215) 665-1600

Attorney for Plaintiff

RUSSELL OBERTHER	:	COUNTY OF CLEARFIELD
	:	COURT OF COMMON PLEAS
Plaintiff	:	CIVIL TRIAL DIVISION
v.	:	NO.: 02-258-CD
ELMCO ENGINEERING, INC.	:	
and	:	
ELMCO PA, INC.	:	
Defendants	:	

PRAECIPE TO SETTLE, DISCONTINUE AND END

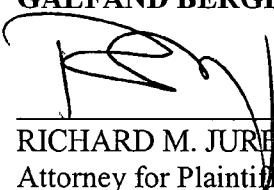
TO THE PROTHONOTARY:

Kindly mark the above-captioned matter settled, discontinued and ended upon payment of your costs only.

Respectfully submitted,

GALFAND BERGER, LLP.

BY:


RICHARD M. JUREWICZ, ESQUIRE
Attorney for Plaintiff

FILED

SEP 02 2003

William A. Shaw
Prothonotary

FILED

M 1:35 PM 1200 1 CL
To do w/
SEP 02 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Russell Oberther

Vs.

Elmco Engineering Inc.
Elmco PA, Inc.

No. 2002-00258-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 2, 2003, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$\$106.00 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 2nd day of September A.D. 2003.

William A. Shaw, Prothonotary