

02-112-CD
LINDA DURRBY et ux -vs- WILLIAM EVANS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

CIVIL DIVISION

No.: 02-412-CO

Issue:

CODE:

COMPLAINT IN CIVIL ACTION

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN & LEVINE, P.C.
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

AL045806.1

FILED

MAR 20 2002
01/15/02 by Drexler
William A. Shaw pd 80.00
Prothonotary
B&G
KCS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiff,

v.

CIVIL DIVISION

No.:

Issue:

CODE:

WILLIAM EVANS,

Defendant.

COMPLAINT IN CIVIL ACTION

NOTICE TO DEFEND

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE

1 North Second Street
Clearfield, PA 16830
(814) 765-2641 ext. 32

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

CIVIL DIVISION

No.:

Plaintiff,

v.

WILLIAM EVANS,

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, Linda Duttry and Carl Duttry, by and through their attorneys, Ainsman & Levine, P.C., and Stephen P. Drexler, Esquire, and file the following Complaint in Civil Action:

1. Plaintiffs, Linda Duttry and Carl Duttry, are adult individuals who reside in Clearfield County at 105 Chestnut Street, DuBois, Pennsylvania 15801.
2. Defendant, William Evans, is an adult individual who resides in Clearfield County at 40 Ross Street, DuBois, Pennsylvania 15801.
3. At all times relevant to this action, Plaintiff, Linda Duttry, was a named insured on an automobile insurance policy with full tort coverage and, therefore, is entitled, under 75 PA. CONS. STAT. §1705(a)(1)(B), to be compensated for all of her losses.
4. At all times pertinent hereto, Plaintiff, Linda Duttry, acted with all due care and regard for her own safety and well-being.
5. The events hereinafter described occurred on or about May 31, 2000, at approximately 8:00 p.m., on Dixon Avenue in Clearfield County, Sandy Township, Pennsylvania.

6. At that time and place, Plaintiff, Linda Duttry, was driving her vehicle east on Dixon Avenue when the Defendant, who was traveling in the opposite direction, entered Plaintiff's lane of travel to make a left turn into a parking lot and hit Plaintiff head on.

7. As a result of this accident, Plaintiff, Linda Duttry, sustained the following injuries all of which are or may be permanent in nature:

- a. Cervical Strain;
- b. Lateral meniscal tear of the right knee;
- c. Posttraumatic headaches;
- d. Temporary memory loss;
- e. Shoulder injury;
- f. Upper front tooth injury;
- g. Decreased flexibility and strength in her neck; and
- h. Possible other serious and/or permanent injuries.

8. As a result of these injuries, Plaintiff, Linda Duttry, has sustained the following damages:

- a. She has endured and may continue to endure pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma;
- b. She has been and may continue to be required to expend large sums of money for medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- c. Her general health, strength, and vitality have been impaired;
- d. She has and may continue to suffer lost wages and/or future earning capacity; and
- e. She has been and may in the future be unable to enjoy various pleasures of life that she previously enjoyed.

COUNT I
Linda Duttry v. William Evans
NEGLIGENCE

9. Paragraphs one (1) through and including eight (8) are hereby incorporated as if fully set forth herein.

10. The losses, injuries, and damages to Plaintiff, Linda Duttry, as detailed above, were caused by the negligence of Defendant, William Evans, in some or all of the following particulars:

- a. In failing to operate and have his vehicle under proper control;
- b. In failing to exercise due care and in acting without due regard for the rights and safety of other drivers;
- c. In violating Section 3322 of the Pennsylvania Motor Vehicle Code;
- d. In failing to yield to oncoming traffic when making a left turn;
- e. In failing to remain attentive to the traffic around him;
- f. In failing to keep a proper lookout;
- g. In failing to observe with reasonable care the traffic and road conditions, including the location of plaintiffs' vehicle; and
- h. In failing to stop, slow, or turn his vehicle aside when he knew or, by the exercise of reasonable care, should have known that if the said vehicle were permitted to proceed a collision with Plaintiff's vehicle would result;

WHEREFORE, Plaintiff, Linda Duttry, demands judgment against the Defendant, William Evans, for compensatory and punitive damages in an amount in excess of the Arbitration limits of this County plus costs and interest.

COUNT II

Carl Duttry v. William Evans

LOSS OF CONSORTIUM

11. Paragraphs one (1) through and including ten (10) are hereby incorporated as if fully set forth herein.

12. At all times relevant to this action, Plaintiff, Carl Duttry, is and was married to Plaintiff, Linda Duttry, and resides with her at 105 Chestnut Street, DuBois, Pennsylvania.

13. Solely as a result of the negligence of Defendant, Plaintiff, Carl Duttry, has suffered the following damages:

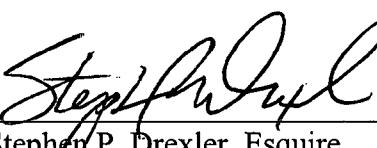
- a. He has been and may continue to be required to expend large sums of money for his wife's medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- b. He has been and may in the future be deprived of the services, assistance, and companionship of his wife.

WHEREFORE, Plaintiff, Carl Duttry, demands judgment against the Defendant, William Evans, for an amount that does not exceed the Arbitration limits of this County plus costs and interest.

Respectfully submitted,

Ainsman & Levine, P.C.

By:


Stephen P. Drexler, Esquire
Counsel for Plaintiff

By:

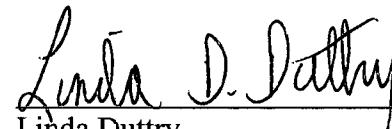

Erin J. Fucci Esquire
Counsel for Plaintiff

JURY TRIAL DEMANDED

VERIFICATION

I verify that the statements made in the COMPLAINT IN CIVIL ACTION are true and correct; that the attached COMPLAINT IN CIVIL ACTION is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in the preparation of the lawsuit. The language of the COMPLAINT IN CIVIL ACTION is that of counsel and not the plaintiff. I have read the COMPLAINT IN CIVIL ACTION and to the extent that the COMPLAINT IN CIVIL ACTION is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the COMPLAINT IN CIVIL ACTION is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements herein made are subject to the penalties of 18 PA. CONS. STAT. §4904 relating to the unsworn falsification to authorities.

DATED: 3-12-02



Linda Duttry

DATED: 3-12-02



Carl Duttry

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

LINDA DUTTRY and CARL DUTTRY,
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

No. 02-412-C.D.

TYPE OF PLEADING:
**PRAECIPE FOR ENTRY
OF APPEARANCE**

TYPE OF CASE: CIVIL
FILED ON BEHALF OF:
DEFENDANT

COUNSEL OF RECORD FOR
FOR THIS PARTY:
JAMES M. HORNE, ESQ.
I.D. NO. 26908
KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926
FAX#(814) 238-9624

FILED

APR 8 2002
MIA:221n0CL
William A. Shaw
Municipal Secretary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

PRAECIPE FOR ENTRY OF APPEARANCE

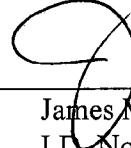
TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, WILLIAM EVANS, in the
above-captioned matter.

We are authorized to accept service on his behalf.

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

Dated: April 4, 2002

By: 

James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

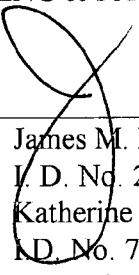
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of our Praeclipe for Entry of Appearance on behalf the Defendant, in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 9th day of April, 2002, to the attorney of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219
(412) 338-9030

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

By: 

James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY,
her husband,
Plaintiffs,
v.
WILLIAM EVANS,
Defendant.

TYPE OF PLEADING:
ANSWER WITH NEW MATTER

TYPE OF CASE: CIVIL
FILED ON BEHALF OF:
DEFENDANT

COUNSEL OF RECORD FOR
FOR THIS PARTY:
JAMES M. HORNE, ESQ.
I.D. NO. 26908
KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926
FAX#(814) 238-9624

FILED

APR 25 2002

10:30/00 CC
William A. Shaw
Prothonotary 9/02

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

NOTICE TO PLEAD

TO: Linda Duttry and Carl Duttry, her husband
% Stephen P. Drexler, Esquire

YOU ARE HEREBY notified to plead to the within New Matter within twenty (20) days
from the date of service hereof or a default judgment may be entered against you.

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

Dated: April 24, 2002

By: 

James M. Horne, Esquire

I.D. No. 26908

Katherine V. Oliver, Esquire

I.D. No. 77069

811 University Drive

State College, PA 16801

(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,
v.

WILLIAM EVANS,
Defendant.

**ANSWER WITH NEW MATTER OF
DEFENDANT, WILLIAM EVANS**

AND NOW, comes Defendant, William Evans, by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and responds to Plaintiffs' Complaint as follows:

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1. The same are therefore denied and strict proof thereof demanded.
2. Admitted.
3. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3. The same are therefore denied and strict proof thereof demanded.
4. Denied.
5. Admitted in part and denied in part. It is admitted that the accident at issue took place on or about 8:00 p.m. on Dixon Avenue in Sandy Township, Clearfield County, Pennsylvania, on May 31, 2000. With regard to the allegation as to the "events hereinafter described," that allegation is denied as stated. Defendant incorporates herein by reference, the same as though set forth at length, his responses to the preceding and succeeding paragraphs of

the Complaint.

6. Denied as stated. To the contrary, at or about the time and place alleged, Defendant was operating his vehicle in a westerly direction on Dixon Avenue for the purpose of responding to a fire call. Defendant's vehicle was equipped with a blue light, which blue light was activated and in use at all times. As Defendant approached the fire hall parking lot located on Dixon Avenue, with his left turn signal activated, he attempted to make a left hand turn from Dixon Avenue into the parking lot area. At that time, contact occurred between Defendant's vehicle and the vehicle operated by Plaintiff. Plaintiff was, prior to the accident, operating her vehicle in an easterly direction on Dixon Avenue.

7. (a) - (h). After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 7(a) through 7(h), inclusive. The same are therefore denied and strict proof thereof demanded.

8. (a) - (e). After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 8(a) through 8(e). The same are therefore denied and strict proof thereof demanded.

COUNT I
Linda Duttry v. William Evans
NEGLIGENCE

9. Defendant incorporates herein by reference, the same as though set forth at length, his responses to paragraphs 1 through 8, inclusive.

10. (a) - (h). Denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant William Evans requests that Plaintiff Linda Duttry's Complaint be dismissed, with prejudice and costs of suit.

COUNT II
Carl Duttry v. William Evans
LOSS OF CONSORTIUM

11. Defendant incorporates herein by reference, the same as though set forth at length, his responses to paragraphs 1 through 10, inclusive.

12. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12. The same are therefore denied and strict proof thereof demanded.

13. (a) and (b). After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 13 (a) and (b), inclusive. The same are therefore denied and strict proof thereof demanded.

WHEREFORE, Defendant William Evans requests that the Complaint of Carl Duttry be dismissed, with prejudice and costs of suit.

NEW MATTER

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

15. To the extent Plaintiffs were insured under a policy of insurance bearing the limited tort option, Plaintiffs claims are barred or reduced accordingly.

16. To the extent Plaintiffs' medical expenses, if any, have been paid or are payable under a policy of insurance, the same may not be plead, proven or recovered in the instant action.

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

18. At the time of the accident in question, Defendant was responding to a fire call

with his blue light activated and was otherwise acting in the scope of his duties as a volunteer fireman.

19. At the time of the accident in question, Defendant was acting within the scope of his employment as a volunteer fireman.

20. At the time of the accident in question, Defendant was acting as an employee of a local agency within the parameters of 42 Pa. C.S. §§ 8501, *et seq.*

21. Defendant hereby asserts and raises all those defenses and/or limitations on damages available to him by reason of the terms and provisions of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §§ 8541, *et seq.*

22. Defendant hereby raises the defenses of government immunity and/or official immunity pursuant to the provisions of 42 Pa. C.S.A. §§ 8541, 8545, and 8546.

23. Plaintiffs' claims for damages are limited and/or otherwise circumscribed by 42 Pa. C.S.A. §§ 8549 and 8553.

24. Plaintiffs' claims for pain and suffering are barred by 42 Pa. C.S.A. § 8553 in that Plaintiff has not suffered permanent loss of bodily function, permanent disfigurement, or permanent dismemberment.

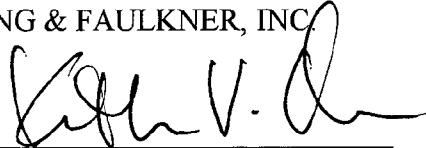
25. To the extent Plaintiff is entitled to receive benefits under any policy of insurance other than life insurance, for injuries and/or losses allegedly incurred as a result of the accident in question, Plaintiff is barred from recovering the same under the provisions of 42 Pa. C.S.A. § 8553.

26. Pursuant to the provisions of 42 Pa. C.S.A. § 8553, Defendant hereby asserts the benefit of the cap on damages which may be recovered.

WHEREFORE, Defendant William Evans requests that the Complaint filed by Plaintiffs Linda Duttry and Carl Duttry be dismissed, with prejudice and costs of suit.

Respectfully submitted,

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

By: 

James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

Dated: April 24, 2002

VERIFICATION

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

William W. Evans
WILLIAM EVANS

Dated: April 22, 2002

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

LINDA DUTTRY and CARL DUTTRY,
her husband, No. 02-412-C.D.

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer with New Matter of Defendant William Evans in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 24th day of April, 2002, to the attorney of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219
(412) 338-9030

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

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY,
her husband,

Plaintiff,

v.

WILLIAM EVANS,

Defendant.

No. 02-412-C.D.

TYPE OF PLEADING:

Certificate of Service

TYPE OF CASE: CIVIL

FILED ON BEHALF OF:

DEFENDANT

COUNSEL OF RECORD FOR
FOR THIS PARTY:

JAMES M. HORNE, ESQ.

I.D. NO. 26908

KATHERINE V. OLIVER, ESQ.

I.D. NO. 77069

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

811 University Drive

State College, PA 16801

PH# (814) 238-4926

FAX#(814) 238-9624

FILED

APR 20 2002

011101 NOCC

William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :

v. :

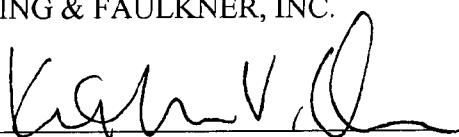
WILLIAM EVANS, :
Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of our Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery directed to Alexander A. Krot, D.O., Laun R. Hallstrom, M.D., DuBois Regional Medical Center, John J. Bellomo, D.O., and Hartford Life in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 25th day of April, 2002, to the attorney/party of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219

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

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY,
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

: No. 02-412-C.D.
:
: TYPE OF PLEADING:
: *Second Request for Production of*
: *Documents and Tangible Things Directed*
: *to Plaintiffs*
:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
: **DEFENDANT**
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

APR 26 2002

m1228/ncc
William A. Shaw
Prothonotary

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

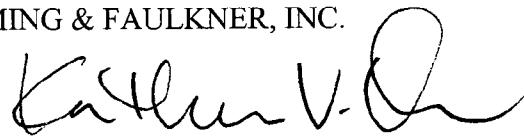
LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
: Plaintiffs, :
v. :
: WILLIAM EVANS, :
: Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Second Request For Production of Documents and Tangible Things By Defendant Directed to Plaintiffs in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 25th day of April, 2002, to the attorney of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219

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

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY,
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

: No. 02-412-C.D.

: TYPE OF PLEADING:

: *Interrogatories and Request for Production
of Documents for Answer by Plaintiffs
(Set One)*

: TYPE OF CASE: CIVIL

: FILED ON BEHALF OF:

: **DEFENDANT**

: COUNSEL OF RECORD FOR

: FOR THIS PARTY:

: JAMES M. HORNE, ESQ.

: I.D. NO. 26908

: KATHERINE V. OLIVER, ESQ.

: I.D. NO. 77069

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

: 811 University Drive

: State College, PA 16801

: PH# (814) 238-4926

: FAX#(814) 238-9624

FILED

APR 26 2002

m12281nc
William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :

v. :

WILLIAM EVANS, :

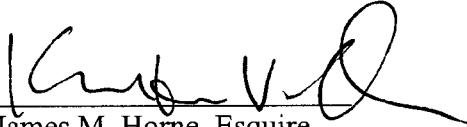
Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Interrogatories Propounded by Defendant for Answer By Plaintiffs (One) and Request for Production (Set One) in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 25th day of April, 2002, to the attorney of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219
(412) 338-9030

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

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12265

DUTTRY, LINDA & CARL

02-412-CD

VS.

EVANS, WILLIAM

COMPLAINT

SHERIFF RETURNS

**NOW APRIL 4, 2002 AT 10:14 AM EST SERVED THE WITHIN COMPLAINT ON
WILLIAM EVANS, DEFENDANT AT RESIDENCE, 40 ROSS ST., DUBOIS,
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM EVANS
A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE
KNOWN TO HIM THE CONTENTS THEREOF.**

SERVED BY: COUDRIET

Return Costs

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

Sworn to Before Me This

7th Day Of May 2002
William A. Shaw

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

So Answers,

Chester Hawkins
by Marilyn Hamer
Chester A. Hawkins
Sheriff

FILED

MAY 07 2002
0110:35
William A. Shaw
Prothonotary

*E
KWD*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiffs,

v.

CIVIL DIVISION

No.: 02-412-C.D.

Issue:

CODE:

WILLIAM EVANS,

REPLY TO NEW MATTER

Defendant.

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN & LEVINE, P.C.
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

FILED

AL047687.1

MAY 09 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,
Plaintiff,

v.

WILLIAM EVANS,

Defendant.

CIVIL DIVISION

No.: 02-412-C.D.

CODE:

REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, Linda Duttry and Carl Duttry, her husband, by and through their attorneys, Ainsman & Levine, P.C. and Stephen P. Drexler, Esquire, and file the following Reply to New Matter.

1. The averments contained in Paragraphs 14 through 18 of Defendant's New Matter state conclusions of law to which no response is required. Should a response be deemed necessary, these averments are denied and strict proof is demanded.
2. After reasonable investigation, the Plaintiffs are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 19 of Defendant's New Matter. Therefore, these averments are denied and strict proof is demanded.
3. The averments contained in Paragraphs 20 through 26 of Defendant's New Matter state conclusions of law to which no response is required. Should a response be deemed necessary, these averments are denied and strict proof is demanded.

WHEREFORE, Plaintiffs request this Honorable Court to enter judgment in their favor and against the Defendant, together with costs and interest.

Ainsman & Levine, P.C.

By: Stephen P. Drexler
Stephen P. Drexler, Esquire
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, does hereby certify that a true and correct copy of the foregoing of Plaintiffs' Reply to New Matter has been served on all interested parties, via First Class Mail, on this 3rd day of May, 2002.

AINSMAN & LEVINE, P.C.

By: Stacy B. Dore

FILED
MAY 10 2002
MAY 09 2002
NO CC
KAF

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

CIVIL DIVISION

No.: 02-412-C.D.

Issue:

CODE:

**NOTICE OF SERVICE OF
DISCOVERY REQUESTS**

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN & LEVINE, P.C.
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

FILED

MAY 09 2002

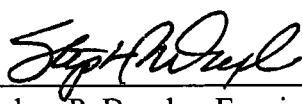
AL047703.1

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I, STEPHEN P. DREXLER, the undersigned, do hereby certify that a true and correct copy of the foregoing Notice of Service has been served on all interested parties, by U.S. First Class Mail, on this 3rd day of May, 2002.

AINSMAN & LEVINE, P.C.

By: 
Stephen P. Drexler, Esquire

FILED

NOV 11 2002
MAY 09 2002
RECEIVED
KBA

William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :

v. :

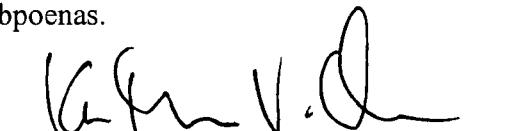
WILLIAM EVANS, :

Defendant. :

**CERTIFICATE PREREQUISITE TO SERVICE
OF SUBPOENAS PURSUANT TO RULE 4009.22**

As a prerequisite to service of subpoenas for documents and things pursuant to Rule 4009.22, Defendant certifies that:

- (1) a Notice of Intent to Serve the Subpoenas with a copy of the subpoenas attached thereto was mailed or delivered to each party at least 20 days prior to the date on which the subpoenas are sought to be served;
- (2) a copy of the Notice of Intent, including the proposed subpoenas, is attached to this Certificate;
- (3) no objections to the subpoenas have been received; and,
- (4) the subpoenas which will be served are identical to the subpoenas which are attached to the Notice of Intent to Serve the Subpoenas.



Katherine V. Oliver
Attorney for Defendant
WILLIAM EVANS

Dated: May 16, 2002

FILED

MAY 17 2002
111:33/noCC
William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, :
Defendant. :
:

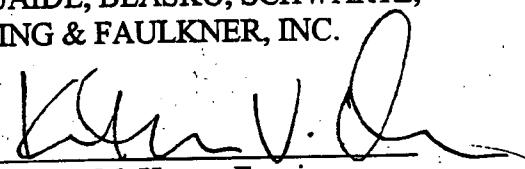
NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendant intends to serve subpoenas identical to those that are 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 subpoenas. If no objection is made, the subpoenas may be served.

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

Date: April 25, 2002

By: 

James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801-6699
(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband. : :

Plaintiffs, : **Defendants,**

V.

WILLIAM EVANS,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of our Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery directed to Alexander A. Krot, D.O., Laun R. Hallstrom, M.D., DuBois Regional Medical Center, John J. Bellomo, D.O., and Hartford Life in the above-captioned matter was mailed by U.S. First Class Mail, postage prepaid, on this 25th day of April, 2002, to the attorney/party of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219

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

By:

James M. Horne, Esquire

I. D. No. 26908

Katherine V. Oliver, Esquire

I.D. No. 77069

811 University Drive

State College, PA 16801

(814) 238-4926

Attnorneys for Defendant

— *Люблю я вас в земле*

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS, :
Defendant.

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

TO: *John J. Bellomo, D.O.*

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all medical records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

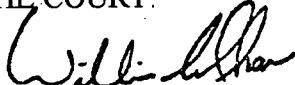
You may deliver or mail legible copies of the documents or produce things by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek, in advance, the reasonable cost of preparing the copies or producing the things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

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

NAME: *Katherine V. Oliver, Esquire*
ADDRESS: *811 University Drive, State College, PA 16801*
TELEPHONE: *(814) 238-4926*
SUPREME CT ID#: *77069*
ATTORNEY FOR: *Defendant*

BY THE COURT:



William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: April 26, 2002

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS, :
Defendant.

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

TO: *Laun R. Hallstrom, M.D.*

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all medical records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

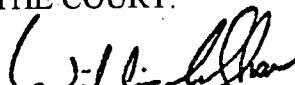
You may deliver or mail legible copies of the documents or produce things by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek, in advance, the reasonable cost of preparing the copies or producing the things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

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

NAME: *Katherine V. Oliver, Esquire*
ADDRESS: *811 University Drive, State College, PA 16801*
TELEPHONE: *(814) 238-4926*
SUPREME CT ID#: *77069*
ATTORNEY FOR: *Defendant*

BY THE COURT:



William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: April 26, 2002

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS, :
Defendant.

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

TO: *Alexander A. Krot, D.O.*

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all medical records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

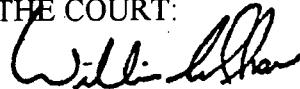
You may deliver or mail legible copies of the documents or produce things by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek, in advance, the reasonable cost of preparing the copies or producing the things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

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

NAME: *Katherine V. Oliver, Esquire*
ADDRESS: *811 University Drive, State College, PA 16801*
TELEPHONE: *(814) 238-4926*
SUPREME CT ID# *77069*
ATTORNEY FOR: *Defendant*

BY THE COURT:



William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: April 26, 2002

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS, :
Defendant.

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

TO: *DuBois Regional Medical Center*

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all medical records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

You may deliver or mail legible copies of the documents or produce things 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 ordering compelling you to comply with it.

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

NAME: *Katherine V. Oliver, Esquire*
ADDRESS: *811 University Drive, State College, PA 16801*
TELEPHONE: *(814) 238-4926*
SUPREME CT ID# *77069*
ATTORNEY FOR: *Defendant*

BY THE COURT:



William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: April 26, 2002

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs, :

v.

WILLIAM EVANS, :
Defendant. :

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

TO: *Hartford Life*

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all disability claim records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47, policy number GLT043104.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

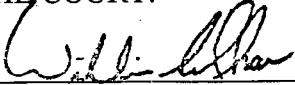
You may deliver or mail legible copies of the documents or produce things by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek, in advance, the reasonable cost of preparing the copies or producing the things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

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

NAME: *Katherine V. Oliver, Esquire*
ADDRESS: *811 University Drive, State College, PA 16801*
TELEPHONE: *(814) 238-4926*
SUPREME CT ID# *77069*
ATTORNEY FOR: *Defendant*

BY THE COURT:



William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: *April 24, 2002*

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :
v. :

WILLIAM EVANS, :

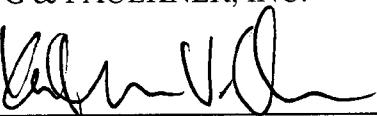
Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
DuBois Regional Medical Center in the above-captioned matter was mailed by regular mail,
postage prepaid, at the Post Office, State College, Pennsylvania, on this 16th day of May, 2002, to
the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAY 17 2002
m11341ncc
William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :

v. :

WILLIAM EVANS, :

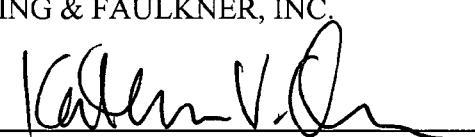
Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
John J. Bellomo, D.O. in the above-captioned matter was mailed by regular mail, postage
prepaid, at the Post Office, State College, Pennsylvania, on this 16th day of May, 2002, to the
attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAY 17 2002

111341 NOCC
William A. Shaw
Prothonotary

REG

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

v. : Plaintiffs,

WILLIAM EVANS, : v.

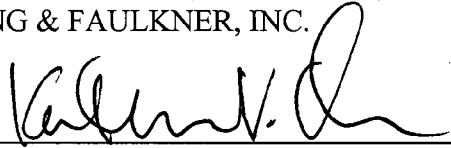
Defendant. : Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
Alexander A. Krot, D.O. in the above-captioned matter was mailed by regular mail, postage
prepaid, at the Post Office, State College, Pennsylvania, on this 16th day of May, 2002, to the
attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAY 17 2002
m11:341/nocc
William A. Shaw
Prothonotary


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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

v. : Plaintiffs,

WILLIAM EVANS, : Defendant.

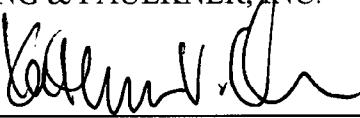
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
Laun R. Hallstrom, M.D. in the above-captioned matter was mailed by regular mail, postage
prepaid, at the Post Office, State College, Pennsylvania, on this 16th day of May, 2002, to the
attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: _____


Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAY 17 2002

m11341/nocc
William A. Shaw
Prothonotary



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

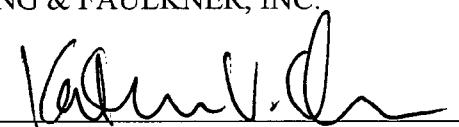
LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
:
Plaintiffs, :
v. :
:
WILLIAM EVANS, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
Hartford Life in the above-captioned matter was mailed by regular mail, postage prepaid, at the
Post Office, State College, Pennsylvania, on this 16th day of May, 2002, to the attorney(s) of
record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAY 17 2002
m/134/noc
William A. Shaw
Prothonotary
ERG

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

LINDA DUTTRY and CARL DUTTRY,
her husband,
Plaintiffs,
v.
WILLIAM EVANS,
Defendant.

: No. 02-412-C.D.
: JURY TRIAL DEMANDED
: TYPE OF PLEADING
: *Defendant's Answers to Plaintiffs'*
: *Interrogatories*
: FILED ON BEHALF OF
: DEFENDANT
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

MAY 31 2002
m 11:22 nd cc
William A. Shaw
Prothonotary

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

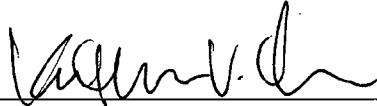
LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
: Plaintiffs, :
v. :
: WILLIAM EVANS, : JURY TRIAL DEMANDED
: Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Answers to Plaintiffs' Interrogatories in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 30th day of May, 2002, to the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

LINDA DUTTRY and CARL DUTTRY,
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

: No. 02-412-C.D.

: TYPE OF PLEADING:

: *Defendant's Responses to Plaintiffs'*
: *Request for Production of Documents*

: TYPE OF CASE: CIVIL

: FILED ON BEHALF OF:

: DEFENDANT

: COUNSEL OF RECORD FOR

: FOR THIS PARTY:

: JAMES M. HORNE, ESQ.

: I.D. NO. 26908

: KATHERINE V. OLIVER, ESQ.

: I.D. NO. 77069

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

: 811 University Drive

: State College, PA 16801

: PH# (814) 238-4926

: FAX#(814) 238-9624

FILED

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William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :
v. :

WILLIAM EVANS, :
:

Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Responses to Plaintiffs' Request for Production of Documents in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 30th day of May, 2002, to the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
2201 Grant Building
Pittsburgh, PA 15219

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

By: Katherine V. Oliver *kp*
Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

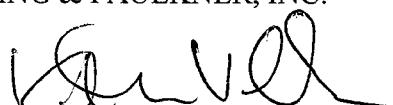
LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notice of Intent to Serve
Subpoenas to Produce Documents and Things for Discovery directed to Scott Casteel, D.C., and
Stephen A. Gick, M.D. in the above-captioned matter was mailed by regular mail, postage
prepaid, at the Post Office, State College, Pennsylvania, on this 8th day of October, 2002, to the
attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED
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cc
OCT 09 2002

William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, : JURY TRIAL DEMANDED
v. :
: TYPE OF PLEADING
WILLIAM EVANS, : CERTIFICATE OF SERVICE OF
Defendant. : NOTICE OF PLAINTIFFS'
: DEPOSITIONS AND REQUEST FOR
: PRODUCTION OF DOCUMENTS
: FILED ON BEHALF OF
: DEFENDANT
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

OCT 25 2002

William A. Shaw
Prothonotary

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

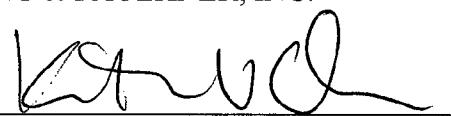
LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
: Plaintiffs, :
v. :
: WILLIAM EVANS, :
: Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notice Of Plaintiffs' Depositions And Request For Production Of Documents in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 24th day of October, 2002, to the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

*no
cc*

*M 11:2 P 68
OCT 25 2002*

William A. Shaw
Prothonotary

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, : JURY TRIAL DEMANDED
Defendant. :
:

CERTIFICATE PREREQUISITE TO SERVICE
OF SUBPOENAS PURSUANT TO RULE 4009.22

As a prerequisite to service of subpoenas for documents and things pursuant to Rule 4009.22, Defendant certifies that:

- (1) a Notice of Intent to Serve Subpoenas with copies of the subpoenas 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 subpoenas, are attached to this Certificate;
- (3) no objection to the subpoenas has been received; and,
- (4) the subpoenas which will be served are identical to the subpoenas which is attached to the Notice of Intent to Serve the Subpoena.

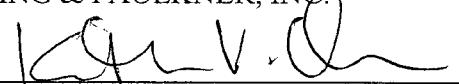
FILED

OCT 30 2002

William A. Shaw
Prothonotary

DATED: 10-29-02

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.

her husband,

Plaintiffs, :

v.

WILLIAM EVANS, :

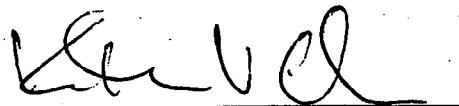
Defendant. :

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

Defendant William Evans intends to serve subpoenas identical to those 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 subpoenas. If no objection is made, the subpoenas may be served.

Respectfully submitted,

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

By: 

Katherine V. Oliver
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

DATED: 10-8-02

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY,
her husband, : No. 02-412-C.D.

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

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

TO: Scott B. Casteel, D.C.

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

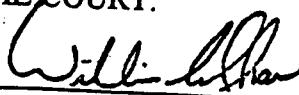
You may deliver or mail legible copies of the documents or produce things by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek, in advance, the reasonable cost of preparing the copies or producing the things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

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

NAME: Katherine V. Oliver, Esquire
ADDRESS: 811 University Drive, State College, PA 16801
TELEPHONE: (814) 238-4926
SUPREME CT ID# 77069
ATTORNEY FOR: Defendant

BY THE COURT:


William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: April 26, 2002

Scott B. Casteel, D.C.

DOCUMENTS TO BE PRODUCED

Any and all medical records for as long as you retain same and regardless of treating physician on Linda Duttry, (SS# 170-40-1241; DOB: February 14, 1947), including but not limited to, treatment notes, reports, history/physical examination, progress notes, laboratory reports, x-ray/CT scan/MRI reports, consultation reports, physical/occupational/rehabilitation therapy progress notes (inpatient and outpatient), prognosis for future care and treatment, prescription records, any and all correspondence pertaining to Linda Duttry's health status (regardless of source), etc.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS, :
Defendant.

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

TO: Stephen A. Gick, M.D.

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: *a true and correct copy of any and all records/documents in your possession pertaining to Linda D. Duttry, SS#170-40-1241, Date of Birth: 2/14/47.*

at: *McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801*

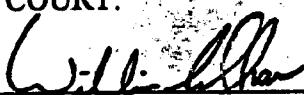
You may deliver or mail legible copies of the documents or produce things by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek, in advance, the reasonable cost of preparing the copies or producing the things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

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

NAME: *Katherine V. Oliver, Esquire*
ADDRESS: *811 University Drive, State College, PA 16801*
TELEPHONE: *(814) 238-4926*
SUPREME CT ID# *77069*
ATTORNEY FOR: *Defendant*

BY THE COURT:


William A. Shaw, Prothonotary/Clerk
Civil Division
[Seal of the Court]

Dated: *April 26, 2002*

Stephen A. Gick, M.D.

DOCUMENTS TO BE PRODUCED

Any and all medical records for as long as you retain same and regardless of treating physician on Linda Duttry, (SS# 170-40-1241; DOB: February 14, 1947), including but not limited to, treatment notes, reports, history/physical examination, progress notes, laboratory reports, x-ray/CT scan/MRI reports, consultation reports, physical/occupational/rehabilitation therapy progress notes (inpatient and outpatient), prognosis for future care and treatment, prescription records, any and all correspondence pertaining to Linda Duttry's health status (regardless of source), etc.

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, :
Defendant. :
:

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
OR, ALTERNATIVELY, FOR PARTIAL SUMMARY JUDGMENT**

AND NOW comes Defendant, William Evans, by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and respectfully moves this Court pursuant to Pennsylvania Rule of Civil Procedure 1035.2 to enter summary judgment in favor of Defendant, or alternatively, to enter partial summary judgment in favor of Defendant on Plaintiffs' claims for pain and suffering damages. In support of his Motion, Defendant avers as follows:

Background

1. Plaintiffs instituted this motor vehicle negligence action by Complaint filed on March 20, 2002. Defendant filed an Answer with New Matter on April 24, 2002, raising the defenses and damages limitations under the Political Subdivision Tort Claims Act and the Motor Vehicle Financial Responsibility Law, inter alia. Plaintiffs filed a Reply to Defendant's New Matter, thereby closing the pleadings. (True and correct copies of the aforementioned pleadings are attached hereto as Exhibit "A-1" through "A-3").

FILED

OCT 16 2003

William A. Shaw
Prothonotary/Clerk of Courts

2. The automobile accident giving rise to this action occurred on Dixon Avenue in DuBois, Clearfield County, Pennsylvania on May 31, 2000. (See . Exh. A-1).

3. Defendant in this case is William Evans. Mr. Evans is, and at all times material hereto was, a volunteer fireman for the Sandy Hose Company No. 1, an officially recognized fire company for Sandy Township, Clearfield County, Pennsylvania. (See Aff. of William Beers, Jr., attached hereto as Exhibit "B," and Township of Sandy Ordinance No. 5-1998, attached hereto as Exhibit "C").

4. The accident at issue in this case occurred at approximately 8:00 p.m. or shortly before. (See Exh. A-1 ¶ 5).

5. At approximately 7:50 p.m., a fire alarm was issued to the volunteer firefighters for the Sandy Hose Company No. 1 to respond to a possible structure fire. (See Exh. B).

6. At the time of the accident, Defendant William Evans was responding to the aforementioned fire alarm within the scope of his duties as a volunteer fireman for Sandy Hose Company No. 1.

7. Mr. Evans was on his way to the fire station of Sandy Hose Company No. 1 in response to the alarm when the accident happened. (See Exh. B; W. Evans Depo., attached hereto as Exhibit "D," at 17-20). The accident occurred on Dixon Avenue just in front of the Sandy Hose Company No. 1 fire station. (See id. and Exh. B).

Political Subdivision Tort Claims Act Issues
Pain and Suffering Claim

8. Sandy Hose Company No. 1 is, and at all times material hereto has been, a volunteer fire company legally recognized as one of the official fire companies of the Township of Sandy in Dubois, Clearfield County, Pennsylvania. (See Exh. C).

9. Accordingly, Sandy Hose Company No. 1 is a "local agency" as defined under section 8501 of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8501. See Guinn v. Alburtis Fire Co., 531 Pa. 500, 614 A.2d 218 (1992).

10. In responding to the Sandy Hose Company No. 1 fire alarm at the time of the accident in the case at bar, Defendant William Evans was acting in fulfillment of his duties as a volunteer fireman for the Sandy Hose Company No. 1. (See Exhibit "C").

11. Under the Political Subdivision Tort Claims Act, (hereinafter "PSTCA"), an "employee" includes any person who is acting or has acted on behalf of a government unit, including a local agency, whether compensated or not, and whether within or without the territorial boundaries of the government unit, including any volunteer fireman. 42 Pa. C.S.A. §8501.

12. Consequently, at the time of the accident, Defendant was an "employee" of a "local agency" acting within the scope of his official duties.

13. The PSTCA limits the damages recoverable in actions against employees of a local agency when the act causing the alleged injury was within the scope of the employee's office or duties, or if the employee in good faith reasonably believed that the act was within the scope of his office or duties. See id.

14. Under the PSTCA, pain and suffering damages in suits against employees of local agencies acting within the scope of their duties are only recoverable in cases involving death or permanent loss of bodily function, permanent disfigurement or permanent dismemberment where medical and dental expenses exceed \$1,500. 42 Pa.C.S.A. §8553.

15. The case at bar does not involve claims for death, permanent disfigurement or permanent dismemberment. (See Exh. A-1).

16. To demonstrate a "permanent loss of bodily function" as defined by the PSTCA, a plaintiff must prove the following two elements: (1) the plaintiff must prove that she is unable to do a bodily act or acts that she was able to do prior to the injury; and (2) the plaintiff must prove that the loss of such ability is permanent. See Walsh v. City of Philadelphia, 526 Pa. 227, 585 A.2d 445, 452 (1991).

17. Moreover, a plaintiff must present expert testimony to meet her burden of proof with respect to the alleged permanency of injuries and any related disability. See McCabe v. Derry Township, 227 Dauph. Co. Rptrs. 373 (1997).

18. Discovery in this case has revealed that Plaintiff Linda Duttry has not suffered a "permanent loss of bodily function" as that phrase is defined under the PSTCA.

19. Plaintiff Linda Duttry claims to have sustained injuries to her upper front tooth, her neck, shoulder and right knee. (See Exh. A-1, ¶ 7; L. Duttry Depo., at 50-52, 99-100, attached hereto as Exhibit "E"). Ms. Duttry also claims that the accident aggravated a long-standing psychiatric condition. (Exh. E, at 22, 28-29, 50-51).

20. With respect to the physical injury claims, Plaintiff treated with the following providers: DuBois Regional Medical Center (pertinent portions attached hereto as Exhibit "F"); Dr. John Bellomo (pertinent portions attached hereto as Exhibit "G"); Dr. Laun Hallstrom (pertinent portions attached hereto as Exhibit "H"); and Dr. Alexander Krot (attached hereto as Exhibit "I"). (See Exh. E, at 64-65).

21. As of the time of her deposition on December 16, 2002, Plaintiff's medical records pertaining to any physical injury claims reflected that these ostensible injuries had resolved. Plaintiff was no longer treating at that time for any of her alleged injuries, (Exh. E. at 85), nor has she treated since the time of her deposition. (See correspondence from Plaintiffs' counsel, attached hereto as Exhibit "J").

22. Plaintiff's alleged tooth injury was very limited in nature and completely resolved after Plaintiff had a root canal within three months after the accident. (See Exh. E, at 99-100).

23. Plaintiff's medical records document that her shoulder and neck complaints also largely, if not wholly, resolved. (See Exh. G, at 4-5; Exh H). Her testimony confirmed that she is not precluded from performing any bodily acts because of these injuries although she does still have subjective complaints of being "sore somewhat." (Exh. E, at 50-54).¹

¹ As referenced in Plaintiff's deposition testimony cited, Plaintiff was experiencing restrictions on account of having ruptured discs in her back. This condition is not related to the motor vehicle accident, and Plaintiff does not claim the condition as an injury in the case at bar. (See Exh. E at 20-21, 52-53).

24. Plaintiff's medical records also document that, notwithstanding her claim that her psychiatric problems were worsened by the accident, (Exh. E at 22, 28-29, 50-51), her treating specialists did not find any significant change as a result of the accident. (See Exhibit "K," miscellaneous records of psychiatric care).

25. Finally, with respect to the knee injury claim, treatment records document that care for Plaintiff's ostensibly accident-related knee condition ended in August of 2001 following arthroscopic surgery performed by Dr. Krot on June 22, 2001. (See Exhibit I, at 3-6). Dr. Krot's records following the surgery show that Plaintiff was making satisfactory progress, and that she had very little discomfort and had good range of motion as of her last visit on August 15, 2001. (See *id.* at 4).

26. Although Ms. Duttry testified during her deposition to ongoing subjective knee complaints, she has never produced any documentation of ongoing accident-related care. In fact, as of the time of Ms. Duttry's last visit with Dr. Krot, he was clearly of the opinion that any accident related knee injury would resolve, and that Ms. Duttry might continue to suffer complaints due to a progressive degenerative arthritic condition unrelated to the motor vehicle accident. (See Exh. I, at 3).

27. Likewise, records from Dr. Hallstrom, the physician who referred Plaintiff to Dr. Krot, show his opinion that any disability would be temporary. (See Exh. H, at 16.)

28. Moreover, although Plaintiff testified that she is limited in her ability to walk distances of one mile, to be on her feet for lengthy periods, and to line dance because her knee bothers her, (see Exh. E., at 103-109), there is no evidence that Plaintiff is unable to perform any

bodily acts that she could perform prior to the accident, let alone that any such loss of bodily function is the result of the May 31, 2000 vehicle accident.

29. Plaintiffs have not produced any expert medical reports to support a claim of ongoing problems related to the motor vehicle accident, let alone showing any accident-related injury resulting in the permanent loss of a bodily function.

30. In light of the above, Plaintiff Linda Duttry cannot meet her burden of demonstrating a "permanent loss of bodily function" as required by the Political Subdivision Tort Claims Act, and is therefore precluded from recovering damages for pain and suffering in this action.

WHEREFORE, Defendant, William Evans, respectfully requests that summary judgment be granted in his favor with respect to Plaintiffs' pain and suffering claims, and that all such claims be dismissed from this action, with prejudice.

Motor Vehicle Financial Responsibility Law Issues

31. Section 1722 of the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S.A. §1701, et seq., prohibits recovery of medical expenses and/or wage loss paid or payable under a policy of insurance. 75 Pa.C.S.A. §1722.

32. At the time of the May 31, 2000 vehicle accident, Plaintiff Linda Duttry was insured under an automobile insurance policy which provided \$50,000.00 in first party medical expense coverage, and wage loss coverage of \$1,500.00 per month with a \$25,000.00 cap. (See CNA Policy Endorsement Coverage Summary, attached hereto as Exhibit "L").

33. Plaintiff Linda Duttry never exhausted the \$50,000.00 in first party medical coverage, and all medical expenses for injuries allegedly related to the accident have been paid by her automobile insurance carrier. (See Exh. E, at 101-102).

34. Consequently, Plaintiffs are precluded from recovering any medical expenses at trial of this case. See 75 Pa.C.S.A. §1722; Carlson v. Bubash, 432 Pa. Super. 514, 639 A.2d 458, 461 (1994).

35. Additionally, Plaintiff was totally disabled due to pre-existing physical and mental health problems at the time of the accident, and she had been totally disabled for some time. (See Pls'. Interrog. Resp., attached hereto as Exhibit "M," Nos. 6-12).

36. Although Plaintiff Linda Duttry apparently claims that she could be working but for subjective knee pain complaints, (see Exh. E, at 23-24, 32-35), Plaintiffs have not produced any competent evidence relating Plaintiff's subjective complaints to a medical condition attributable to the accident, or otherwise demonstrating that Plaintiff suffers from accident-related activity and/or employment restrictions. In fact, Plaintiff's deposition testimony established that she was working after the accident as a volunteer answering phones for the American Cancer Society and then as a beautician's assistant in a nursing home. (See Exh. E, at 69-72).

37. In addition to the above, Plaintiffs have not provided any information throughout discovery of this case that would support a wage loss or loss of earning capacity claim.

38. Thus, the evidence adduced in discovery makes clear that Plaintiffs cannot come forward with sufficient evidence to present a wage loss claim to the jury. Even assuming,

without conceding, that Plaintiff Linda Duttry has a viable wage loss claim, Plaintiff would be precluded from proving or recovering such losses to the extent they were payable under her own automobile insurance policy.

39. Plaintiff's discovery responses reveal that Plaintiff never received wage loss payments under her own automobile policy, (Exh. L at No. 45), such that the wage loss coverage available under the policy cannot have been exhausted. Documents produced by Plaintiff further indicate that Plaintiff never made any wage loss claim under her own policy. (See Application for Benefits-Personal Injury Protection, attached hereto as Exhibit "N").

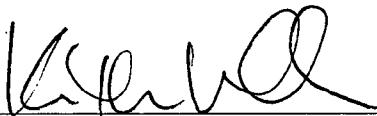
40. In sum, discovery reveals that all medical expenses have been paid under Plaintiffs' automobile insurance policy, and that Plaintiffs have wage loss coverage available under that same policy that was never exhausted. Thus, Defendant submits that Plaintiffs cannot come forward with evidence of recoverable special damages in this case, and Defendant is therefore entitled to summary judgment with respect to any such claims.

WHEREFORE, Defendant William Evans respectfully requests that summary judgment be granted in his favor with respect to any claims for special damages, such as wage loss (past, present, or future) or medical expenses, because the evidence adduced in discovery shows that

Plaintiff cannot present competent proof of recoverable losses of this nature, and because Plaintiffs are precluded from recovering the same under section 1722 of the Motor Vehicle Financial Responsibility Law.

Respectfully submitted,

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

By: 

Katherine V. Oliver, Esquire
I.D. No. 77069
11 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
WILLIAM EVANS

DATED: 10/15/03



04/04/02 THU 13:51 FAX
APR-04-2002 12:07, FROM: STEPHANI INDOSH

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P.004/010

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband.

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

CIVIL DIVISION

No.: 02-412-CO

Issue:

CODE:

COMPLAINT IN CIVIL ACTION

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN & LEVINE, P.C.
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

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

MAR 20 2002

AL045806.1

Attest.

Lucie L. Drexler
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiff.

CIVIL DIVISION

No.:

Issue:

CODE:

v.

WILLIAM EVANS,

Defendant.

COMPLAINT IN CIVIL ACTION

NOTICE TO DEFEND

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE

1 North Second Street
Clearfield, PA 16830
(814) 765-2641 ext. 32

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

CIVIL DIVISION

No.:

Plaintiff,

v.

WILLIAM EVANS,

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, Linda Duttry and Carl Duttry, by and through their attorneys, Ainsman & Levine, P.C., and Stephen P. Drexler, Esquire, and file the following

Complaint in Civil Action:

1. Plaintiffs, Linda Duttry and Carl Duttry, are adult individuals who reside in Clearfield County at 105 Chestnut Street, DuBois, Pennsylvania 15801.
2. Defendant, William Evans, is an adult individual who resides in Clearfield County at 40 Ross Street, DuBois, Pennsylvania 15801.
3. At all times relevant to this action, Plaintiff, Linda Duttry, was a named insured on an automobile insurance policy with full tort coverage and, therefore, is entitled, under 75 PA. CONS. STAT. §1705(a)(1)(B), to be compensated for all of her losses.
4. At all times pertinent hereto, Plaintiff, Linda Duttry, acted with all due care and regard for her own safety and well-being.
5. The events hereinafter described occurred on or about May 31, 2000, at approximately 8:00 p.m., on Dixon Avenue in Clearfield County, Sandy Township, Pennsylvania.

6. At that time and place, Plaintiff, Linda Duttry, was driving her vehicle east on Dixon Avenue when the Defendant, who was traveling in the opposite direction, entered Plaintiff's lane of travel to make a left turn into a parking lot and hit Plaintiff head on.

7. As a result of this accident, Plaintiff, Linda Duttry, sustained the following injuries all of which are or may be permanent in nature:

- a. Cervical Strain;
- b. Lateral meniscal tear of the right knee;
- c. Posttraumatic headaches;
- d. Temporary memory loss;
- e. Shoulder injury;
- f. Upper front tooth injury;
- g. Decreased flexibility and strength in her neck; and
- h. Possible other serious and/or permanent injuries.

8. As a result of these injuries, Plaintiff, Linda Duttry, has sustained the following damages:

- a. She has endured and may continue to endure pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma;
- b. She has been and may continue to be required to expend large sums of money for medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- c. Her general health, strength, and vitality have been impaired;
- d. She has and may continue to suffer lost wages and/or future earning capacity; and
- e. She has been and may in the future be unable to enjoy various pleasures of life that she previously enjoyed.

COUNT I
Linda Duttry v. William Evans
NEGLIGENCE

9. Paragraphs one (1) through and including eight (8) are hereby incorporated as if fully set forth herein.

10. The losses, injuries, and damages to Plaintiff, Linda Duttry, as detailed above, were caused by the negligence of Defendant, William Evans, in some or all of the following particulars:

- a. In failing to operate and have his vehicle under proper control;
- b. In failing to exercise due care and in acting without due regard for the rights and safety of other drivers;
- c. In violating Section 3322 of the Pennsylvania Motor Vehicle Code;
- d. In failing to yield to oncoming traffic when making a left turn;
- e. In failing to remain attentive to the traffic around him;
- f. In failing to keep a proper lookout;
- g. In failing to observe with reasonable care the traffic and road conditions, including the location of plaintiffs' vehicle; and
- h. In failing to stop, slow, or turn his vehicle aside when he knew or, by the exercise of reasonable care, should have known that if the said vehicle were permitted to proceed a collision with Plaintiff's vehicle would result;

WHEREFORE, Plaintiff, Linda Duttry, demands judgment against the Defendant, William Evans, for compensatory and punitive damages in an amount in excess of the Arbitration limits of this County plus costs and interest.

COUNT II

Carl Duttry v. William Evans
LOSS OF CONSORTIUM

11. Paragraphs one (1) through and including ten (10) are hereby incorporated as if fully set forth herein.

12. At all times relevant to this action, Plaintiff, Carl Duttry, is and was married to Plaintiff, Linda Duttry, and resides with her at 105 Chestnut Street, DuBois, Pennsylvania.

13. Solely as a result of the negligence of Defendant, Plaintiff, Carl Duttry, has suffered the following damages:

- a. He has been and may continue to be required to expend large sums of money for his wife's medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- b. He has been and may in the future be deprived of the services, assistance, and companionship of his wife.

WHEREFORE, Plaintiff, Carl Duttry, demands judgment against the Defendant, William Evans, for an amount that does not exceed the Arbitration limits of this County plus costs and interest.

Respectfully submitted,

Ainsman & Levine, P.C.

By:


Stephen P. Drexler, Esquire
Counsel for Plaintiff

By:


Erin J. Fucci Esquire
Counsel for Plaintiff

JURY TRIAL DEMANDED

VERIFICATION

I verify that the statements made in the COMPLAINT IN CIVIL ACTION are true and correct; that the attached COMPLAINT IN CIVIL ACTION is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in the preparation of the lawsuit. The language of the COMPLAINT IN CIVIL ACTION is that of counsel and not the plaintiff. I have read the COMPLAINT IN CIVIL ACTION and to the extent that the COMPLAINT IN CIVIL ACTION is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the COMPLAINT IN CIVIL ACTION is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements herein made are subject to the penalties of 18 PA. CONS. STAT. §4904 relating to the unsworn falsification to authorities.

DATED: 3-12-02
Linda Duttry
Linda DuttryDATED: 3-12-02
Carl Duttry
Carl Duttry

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

LINDA DUTTRY and CARL DUTTRY,
her husband,
Plaintiffs,

No. 02-412-C.D.

TYPE OF PLEADING:
ANSWER WITH NEW MATTER

v.

WILLIAM EVANS,
Defendant.

TYPE OF CASE: CIVIL
FILED ON BEHALF OF:
DEFENDANT

COUNSEL OF RECORD FOR
FOR THIS PARTY:
JAMES M. HORNE, ESQ.
I.D. NO. 26908
KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926
FAX#(814) 238-9624

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

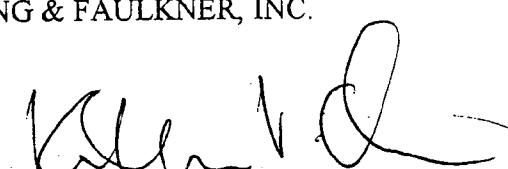
NOTICE TO PLEAD

TO: Linda Duttry and Carl Duttry, her husband
% Stephen P. Drexler, Esquire

YOU ARE HEREBY notified to plead to the within New Matter within twenty (20) days
from the date of service hereof or a default judgment may be entered against you.

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

Dated: April 24, 2002

By: 

James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,
v.

WILLIAM EVANS,
Defendant.

**ANSWER WITH NEW MATTER OF
DEFENDANT, WILLIAM EVANS**

AND NOW, comes Defendant, William Evans, by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and responds to Plaintiffs' Complaint as follows:

1. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1. The same are therefore denied and strict proof thereof demanded.
2. Admitted.
3. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3. The same are therefore denied and strict proof thereof demanded.
4. Denied.
5. Admitted in part and denied in part. It is admitted that the accident at issue took place on or about 8:00 p.m. on Dixon Avenue in Sandy Township, Clearfield County, Pennsylvania, on May 31, 2000. With regard to the allegation as to the "events hereinafter described," that allegation is denied as stated. Defendant incorporates herein by reference, the same as though set forth at length, his responses to the preceding and succeeding paragraphs of

the Complaint.

6. Denied as stated. To the contrary, at or about the time and place alleged, Defendant was operating his vehicle in a westerly direction on Dixon Avenue for the purpose of responding to a fire call. Defendant's vehicle was equipped with a blue light, which blue light was activated and in use at all times. As Defendant approached the fire hall parking lot located on Dixon Avenue, with his left turn signal activated, he attempted to make a left hand turn from Dixon Avenue into the parking lot area. At that time, contact occurred between Defendant's vehicle and the vehicle operated by Plaintiff. Plaintiff was, prior to the accident, operating her vehicle in an easterly direction on Dixon Avenue.

7. (a) - (h). After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 7(a) through 7(h), inclusive. The same are therefore denied and strict proof thereof demanded.

8. (a) - (e). After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 8(a) through 8(e). The same are therefore denied and strict proof thereof demanded.

COUNT I
Linda Duttry v. William Evans
NEGLIGENCE

9. Defendant incorporates herein by reference, the same as though set forth at length, his responses to paragraphs 1 through 8, inclusive.

10. (a) - (h). Denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant William Evans requests that Plaintiff Linda Duttry's Complaint be dismissed, with prejudice and costs of suit.

COUNT II
Carl Duttry v. William Evans
LOSS OF CONSORTIUM

11. Defendant incorporates herein by reference, the same as though set forth at length, his responses to paragraphs 1 through 10, inclusive.

12. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12. The same are therefore denied and strict proof thereof demanded.

13. (a) and (b). After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 13 (a) and (b), inclusive. The same are therefore denied and strict proof thereof demanded.

WHEREFORE, Defendant William Evans requests that the Complaint of Carl Duttry be dismissed, with prejudice and costs of suit.

NEW MATTER

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

15. To the extent Plaintiffs were insured under a policy of insurance bearing the limited tort option, Plaintiffs claims are barred or reduced accordingly.

16. To the extent Plaintiffs' medical expenses, if any, have been paid or are payable under a policy of insurance, the same may not be plead, proven or recovered in the instant action.

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

18. At the time of the accident in question, Defendant was responding to a fire call

with his blue light activated and was otherwise acting in the scope of his duties as a volunteer fireman.

19. At the time of the accident in question, Defendant was acting within the scope of his employment as a volunteer fireman.

20. At the time of the accident in question, Defendant was acting as an employee of a local agency within the parameters of 42 Pa. C.S. §§ 8501, *et seq.*

21. Defendant hereby asserts and raises all those defenses and/or limitations on damages available to him by reason of the terms and provisions of the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §§ 8541, *et seq.*

22. Defendant hereby raises the defenses of government immunity and/or official immunity pursuant to the provisions of 42 Pa. C.S.A. §§ 8541, 8545, and 8546.

23. Plaintiffs' claims for damages are limited and/or otherwise circumscribed by 42 Pa. C.S.A. §§ 8549 and 8553.

24. Plaintiffs' claims for pain and suffering are barred by 42 Pa. C.S.A. § 8553 in that Plaintiff has not suffered permanent loss of bodily function, permanent disfigurement, or permanent dismemberment.

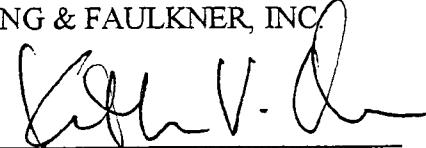
25. To the extent Plaintiff is entitled to receive benefits under any policy of insurance other than life insurance, for injuries and/or losses allegedly incurred as a result of the accident in question, Plaintiff is barred from recovering the same under the provisions of 42 Pa. C.S.A. § 8553.

26. Pursuant to the provisions of 42 Pa. C.S.A. § 8553, Defendant hereby asserts the benefit of the cap on damages which may be recovered.

WHEREFORE, Defendant William Evans requests that the Complaint filed by Plaintiffs Linda Duttry and Carl Duttry be dismissed, with prejudice and costs of suit.

Respectfully submitted,

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

By: 

James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

Dated: April 24, 2002

VERIFICATION

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

William W. Evans
WILLIAM EVANS

Dated: April 22, 2002

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs,

v.

WILLIAM EVANS,

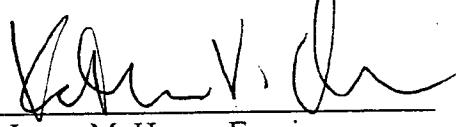
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer with New Matter of Defendant William Evans in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 24th day of April, 2002, to the attorney of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street, Suite 2201
Pittsburgh, PA 15219
(412) 338-9030

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

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiffs,

v.

CIVIL DIVISION

No.: 02-412-C.D.

Issue:

CODE:

WILLIAM EVANS,

REPLY TO NEW MATTER

Defendant.

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN & LEVINE, P.C.
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,
Plaintiff,

CIVIL DIVISION

No.: 02-412-C.D.

v.

CODE:

WILLIAM EVANS,

Defendant.

REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, Linda Duttry and Carl Duttry, her husband, by and through their attorneys, Ainsman & Levine, P.C. and Stephen P. Drexler, Esquire, and file the following Reply to New Matter.

1. The averments contained in Paragraphs 14 through 18 of Defendant's New Matter state conclusions of law to which no response is required. Should a response be deemed necessary, these averments are denied and strict proof is demanded.

2. After reasonable investigation, the Plaintiffs are without sufficient knowledge or information to form a belief as to the truth of the averments contained in Paragraph 19 of Defendant's New Matter. Therefore, these averments are denied and strict proof is demanded.

3. The averments contained in Paragraphs 20 through 26 of Defendant's New Matter state conclusions of law to which no response is required. Should a response be deemed necessary, these averments are denied and strict proof is demanded.

WHEREFORE, Plaintiffs request this Honorable Court to enter judgment in their favor and against the Defendant, together with costs and interest.

Ainsman & Levine, P.C.

By: Stephen P. Drexler
Stephen P. Drexler, Esquire
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, does hereby certify that a true and correct copy of the foregoing of Plaintiffs' Reply to New Matter has been served on all interested parties, via First Class Mail, on this 3rd day of May, 2002.

AINSMAN & LEVINE, P.C.

By: Stacy B. Reed

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

LINDA DUTTRY and CARL DUTTRY,
her husband,

Plaintiffs,
v. No. 02-412-C.D

WILLIAM EVANS,

Defendant.

AFFIDAVIT OF WILLIAM BEERS, JR.

W.B. JR.
AND NOW, comes William Beers, having been duly sworn according to law and deposes and states as follows:

1. I, William Beers, am Chief of the Sandy Hose Company No. 1, an officially recognized fire company for Sandy Township, Clearfield County, Pennsylvania. I was Chief of Sandy Hose Company No. 1 on May 31, 2000 as well. William Evans was an active volunteer firefighter for the Sandy Hose Company No. 1 at that time. William Evans remains an active volunteer firefighter for the Sandy Hose Company No. 1 today.

2. On May 31, 2000 at approximately 7:50 p.m. a fire alarm/page was issued to the volunteer firemen for the Sandy Hose Company No. 1 to respond to a possible structure fire. William Evans responded to that alarm in accordance with his duties as a volunteer fireman for Sandy Hose Company No. 1. While in the process of responding to the alarm pursuant to his duties, William Evans was involved in a vehicle accident in front of the fire station.

William Beers, Jr.
WILLIAM BEERS, JR.
w.b. jr.

SWORN TO AND SUBSCRIBED
before me, a Notary Public, this

15th day of September, 2003.

Marlene E. Duttry
NOTARY PUBLIC

NOTARIAL SEAL
Marlene E. Duttry, Notary Public
City of Du Bois, Clearfield County
My commission expires August 22, 2006



I, Barbara D. Hopkins, certify that the foregoing Ordinance was advertised in the Courier Express on December 9, 1998, a newspaper of general circulation in the municipality, and was duly enacted and approved as set forth at a Regular Meeting of Sandy Township held on December 16, 1998.

Barbara D. Hopkins
Secretary (SEAL)

TOWNSHIP OF SANDY ORDINANCE NO. 5-1998

AN ORDINANCE OF THE TOWNSHIP OF SANDY RECOGNIZING SANDY HOSE COMPANY NO. 1, OKLAHOMA CIVIL DEFENSE, ADRIAN SANDY HOSE COMPANY NO. 3, AND SABULA FIRE COMPANY AS AUTHORIZED VOLUNTEER FIRE COMPANIES TO OPERATE WITHIN THE TOWNSHIP OF SANDY; GRANTING AUTHORITY THERETO; ESTABLISHING REQUIREMENTS.

The TOWNSHIP OF SANDY hereby ordains:

Section 601. Purpose.

The purpose of this Part is to recognize four (4) fire companies as the official fire companies of the Township of Sandy.

Section 602. Fire Company Recognized.

The Sandy Hose Company No. 1, Oklahoma Civil Defense, Adrian Sandy Hose Company NO. 3 and Sabula Fire Company, organized and existing in Sandy Township, Clearfield County, Pennsylvania, are hereby designated as the officially recognized fire companies for the Township and are hereafter referred to in this Ordinance as the "Fire Company".

Section 603. Authorized Activities of the Fire Company.

- A. The Fire Company is hereby authorized to provide such services to the Township as may be necessary for the protection of property and persons situated therein, which include, by way of example and not of limitation, the extinguishment of fires and prevention of loss of life and property from fire, automobile accidents, medical emergencies, hazardous materials incidents and other dangerous situations.
- B. The Fire Company may also provide non-emergency and public service functions, which may include, by way of example and not of limitations removing water from property after storms, and assisting in the removal, abatement and prevention of damage or injury to persons or property, whether through natural causes or man-made situations.
- C. The Fire Company may also conduct and participate in such training activities and drills, either within or outside of the Township as may be deemed necessary by the officers of the Fire Company to maintain proficiency in providing service.

- D. The Fire Company may also respond to calls and provide services to municipalities outside of the Township in the nature of mutual aid calls.

Section 604. Authorized Activities of Members of the Fire Company.

In addition, to actually participating in the activities of the Fire Company as authorized above, or in going to or returning from any activity, the members of the Fire Company are also authorized to do the following things:

- A. Engage in any type of drill, training, ceremony, practice, or test when duly called for or authorized by the Department Fire Chief and by Sandy Township;
- B. Engage in lawful fund-raising activities for the Fire Company, when authorized by the Department Fire Chief and Sandy Township;

Section 605. Effective Date

This Ordinance shall become effective on the 21st day of December, 1998.

ORDAINED, ENACTED AND ADOPTED THIS 16TH DAY OF DECEMBER, 1998.

ATTEST:

Barbara D. Hopkins

TOWNSHIP OF SANDY:

Dee B. Dill

Troy Anderson

Robert C. Rutherford

Michael F. Belmy

Sherry L. Davis



1 IN THE COURT OF COMMON PLEAS OF
2 CLEARFIELD COUNTY, PA
3 CIVIL DIVISION

4 * * * * *

5 LINDA DUTTRY AND *
6 CARL DUTTRY, HER *
7 HUSBAND, *
8 Plaintiffs * No. 02-412 C.D.
9 vs. *
10 WILLIAM EVANS, *
11 Defendant *

12 * * * * *

13
14 DEPOSITION OF
15 WILLIAM EVANS
16 DECEMBER 16, 2002

17

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23 Any reproduction of this transcript
24 is prohibited without authorization
25 by the certifying agency

COPY

1 DEPOSITION
2 OF
3

4 WILLIAM EVANS was taken on behalf of
5 the Plaintiffs herein, pursuant to
6 the Rules of Civil Procedure, taken
7 before me, the undersigned, Tammie
8 B. Elias, a Registered Professional
9 Reporter and Notary Public in and
10 for the Commonwealth of
11 Pennsylvania, at Sargent's Court
12 Reporting Service, Inc., 106 North
13 Second Street, Clearfield,
14 Pennsylvania, on Monday, December
15 16, 2002, at 12:20 P.M.

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1 A P P E A R A N C E S
2

3 STEPHEN P. DREXLER, ESQUIRE

4 Ainsman & Levine, P.C.

5 330 Grant Street, Suite 2201

6 Pittsburgh, PA 15219

7 COUNSEL FOR PLAINTIFFS
8

9 KATHERINE V. OLIVER, ESQUIRE

10 McQuaide, Blasko, Schwartz, Fleming

11 & Faulkner, Inc.

12 811 University Drive

13 State College, PA 16801

14 COUNSEL FOR DEFENDANT
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1 I N D E X

2 WITNESS: WILLIAM EVANS

3 EXAMINATION

4 By Attorney Drexler

7 - 40

5 CERTIFICATE

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EXHIBIT PAGEPAGE

NUMBER	<u>IDENTIFICATION</u>	<u>IDENTIFIED</u>
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4 No Exhibits

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1 OBJECTION PAGE2 ATTORNEY2 PAGE

3 NONE.

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1 P R O C E E D I N G S

2 - - - - -
3 WILLIAM EVANS, HAVING FIRST BEEN
4 DULY SWORN, TESTIFIED AS FOLLOWS:
5 - - - - -

6 EXAMINATION

7 BY ATTORNEY DREXLER:8 Q. Would you give us your
9 full name for the record, please?

10 A. William Warner Evans.

11 Q. Mr. Evans, my name is
12 Steve Drexler, we just met a moment
13 or two ago before your deposition
14 commenced. I'm the attorney who
15 represents Mr. and Mrs. Duttry in
16 this lawsuit. And I'm going to ask
17 you a series of questions concerning
18 a motor vehicle accident and the
19 circumstances surrounding it, as
20 well as a very small smattering of
21 personal information. If at any
22 time I ask a question that you do
23 not hear or you do not understand
24 for some reason, please stop me and
25 let me know that and I'll be happy

1 to repeat or rephrase the question.
2 We want to make sure that any answer
3 that you give is answering the
4 question that you fully heard or
5 fully understood, fair enough?

6 A. Yes.

7 Q. Also, this young lady here
8 is our Court Reporter, and she's
9 taking down everything that we say
10 here in this room on her little
11 machine. And she's then going to
12 produce a written transcript of
13 everything that's said. For her
14 purposes, it's important that we
15 follow a couple of rules. First of
16 all, you have to give me a verbal
17 response to any of my questions.
18 You can't answer merely with a nod
19 of the head or a shrug of the
20 shoulders or some other gesture.
21 You may use those gestures, but you
22 have to give some words along with
23 them so she can take them down,
24 okay?

25 A. Yes.

1 Q. Also, if you could in
2 answering questions of a yes or no
3 variety, please use yes or no rather
4 than uh-huh (yes), uh-uh (no), those
5 can easily be misunderstood and
6 misinterpreted, and again we want to
7 make sure that your answers are
8 accurately recorded, okay?

9 A. Yes.

10 Q. Also, if you need to
11 consult with counsel at any point,
12 just say so and we'll give you an
13 opportunity to do that. How old are
14 you, Mr. Evans?

15 A. 37.

16 Q. And your current address?

17 A. 40 Ross Street, DuBois,
18 Pennsylvania, 15801.

19 Q. How long have you lived at
20 that address?

21 A. Seven years.

22 Q. Have you lived in the
23 DuBois area all your life?

24 A. No.

25 Q. When did you move to the

1 DuBois area?

2 A. 1986.

3 Q. Prior to that?

4 A. I lived at --- it was a
5 Penfield address. I lived at
6 Elliott State Park. My father was
7 an employee for the forestry.

8 Q. A Pennsylvania State Park?

9 A. Yes.

10 Q. Briefly I want to ask you
11 about your educational background.
12 Let's start with high school. Are
13 you a high school graduate?

14 A. Yes.

15 Q. What year?

16 A. 1983.

17 Q. From which high school?

18 A. Clearfield.

19 Q. And did you take any
20 educational courses, whether it be
21 college or business school or even
22 just some on-the-job training since
23 graduating high school in '83?

24 A. No.

25 Q. Are you currently

1 employed?

2 A. Yes.

3 Q. Where are you employed?

4 A. Weyerhaeuser.

5 Q. That's

6 W-E-Y-E-R-H-A-E-U-S-E-R?

7 A. That's correct.

8 Q. What do you do for
9 Weyerhaeuser?

10 A. I run a packaging line for
11 raw envelopes.

12 Q. That's a paper mill?

13 A. Yeah. Well, not a mill,
14 it's a converting facility. We get
15 the rolls in from the mill and we
16 convert them either into cut sheet
17 or envelope paper.

18 Q. And how long have you been
19 doing that job?

20 A. That particular position?

21 Q. Well, how long have you
22 been employed by Weyerhaeuser?

23 A. Nine years.

24 Q. You have been involved in
25 various positions with them?

1 A. Yes.

2 Q. Have you ever served in
3 the military?

4 A. No.

5 Q. Have you ever been
6 convicted of a crime?

7 A. No.

8 Q. Did you review any
9 documents in preparation for today's
10 deposition?

11 A. I don't understand. I
12 don't understand what you mean by
13 documents.

14 Q. Any piece of paper, any
15 police report, a statement, any
16 notes that you may have written,
17 anything at all that you might have
18 looked at in order to prepare for
19 this deposition?

20 A. I did see a police report.

21 Q. When was that?

22 A. Friday.

23 Q. Any other documents that
24 you looked at other than the police
25 report in order to prepare for this

1 deposition?

2 A. No.

3 Q. Did you talk with anyone,
4 other than your attorney, in
5 preparation for this deposition?

6 A. No.

7 Q. Let's turn to the date of
8 May 31st, 2000. That's the date
9 that is listed on the police report
10 for a motor vehicle accident that
11 you were involved in. Do you recall
12 being involved in an accident on
13 that date?

14 A. Yes.

15 Q. And that's the accurate
16 date?

17 A. Yes.

18 Q. Do you recall what time of
19 day the accident occurred?

20 A. Approximately 7:54 p.m.

21 Q. Okay. That's pretty
22 precise for an approximate, but good
23 enough. Can you describe the
24 weather conditions at that time, was
25 there, first of all, any

1 precipitation?

2 A. No.

3 Q. Was it still light out at
4 that time?

5 A. Yes.

6 Q. Was there any
7 precipitation on the roadway, even
8 if it wasn't raining at that time?

9 A. No.

10 Q. What road were you
11 traveling on when this accident
12 occurred?

13 A. Dixon Avenue.

14 Q. And Dixon Avenue is, do
15 you know, approximately how long it
16 is, is it a lengthy road?

17 A. No.

18 Q. Do you have any idea of
19 approximately how long it is?

20 A. No.

21 Q. What vehicle were you
22 driving?

23 A. 1988 Ford Ranger.

24 Q. And had you had that
25 vehicle since it was new?

1 A. No.

2 Q. When did you purchase it?

3 A. 1994.

4 Q. Did that vehicle have a
5 current inspection sticker on it at
6 the time?

7 A. Yes.

8 Q. And were you experiencing
9 any mechanical problems with that
10 vehicle prior to this accident?

11 A. No.

12 Q. Was there any damage, body
13 damage, to that vehicle prior to
14 this accident?

15 A. No.

16 Q. You indicated that you
17 were traveling on Dixon Street.

18 According to the police report, that
19 is in Sandy Township, is that your
20 understanding?

21 A. Yes.

22 Q. Do you know what the speed
23 limit is on Dixon Street in the area
24 where you were travelling just prior
25 to the accident?

1 A. No.

2 Q. What type of a road is
3 that, in other words, is it two
4 lane, four lane?

5 A. Two lane.

6 Q. One in each direction?

7 A. Yes.

8 Q. Do you know if it's
9 east-west, north-south?

10 A. No.

11 Q. Were there any other
12 vehicles on Dixon Road that you
13 observed prior to the accident?

14 A. No.

15 Q. Where were you coming from
16 and where were you going to at the
17 time of the accident or intending to
18 go to?

19 A. I was coming from the
20 intersection of Main Street and
21 Dixon Avenue.

22 Q. What is in --- what is at
23 Main Street and Dixon Avenue?

24 A. Dixon Avenue runs between
25 State Route 219 and Main Street. We

1 talked before, I don't know the
2 exact length. I turned off of Main
3 Street onto Dixon to get to the fire
4 hall.

5 Q. Do you live on Main Street
6 or work on Main Street?

7 A. No, I live on Wayne Road,
8 which is another street off of Main
9 Street.

10 Q. Were you coming from your
11 house?

12 A. Yes.

13 Q. So you're telling me the
14 route you took, but you were
15 actually coming from your house?

16 A. Yes.

17 Q. And you were intending to
18 go where?

19 A. Turn into the fire hall
20 parking lot.

21 Q. That fire hall is on Dixon
22 Street at Smithfield?

23 A. Yes.

24 Q. I'm sorry, Dixon Avenue?

25 A. Dixon Avenue, yes.

1 Q. Is that the Sandy Township
2 Fire Department?

3 A. Yes.

4 Q. Are you a member of the
5 Sandy Township Fire Department?

6 A. Yes.

7 Q. How long have you been a
8 member?

9 A. Five and a half years.

10 Q. You have been a member
11 currently for the past five and a
12 half years?

13 A. Yes.

14 Q. So at the time of this
15 accident you had only been a member
16 for maybe three and a half years?

17 A. About three.

18 Q. And did you have a
19 position with the fire department in
20 other words, a rank or ---

21 A. No.

22 Q. --- a title? Okay. And
23 that's a volunteer company?

24 A. Yes.

25 Q. So you don't get paid for

1 responding to calls?

2 A. No.

3 Q. Now, in that stretch of
4 road after you turned off of Main
5 Street onto Dixon Avenue, did you
6 notice any other cars ahead of you?

7 A. No.

8 Q. Did you notice any cars
9 coming in the other direction?

10 A. No.

11 Q. Is that a hilly road,
12 Dixon Avenue?

13 A. Not really, no.

14 Q. So it's relatively flat?

15 A. It's relatively flat.

16 Q. Is it straight or does it
17 have a lot of curves and bends in
18 it?

19 A. Straight.

20 Q. What was your purpose in
21 going to the fire hall at that time?

22 A. We were being paged to
23 respond to a possible structure fire
24 in Treasure Lake.

25 Q. You say we, was there

1 anyone else in the vehicle with you?

2 A. No, we as a department.

3 Q. And you were responding to
4 that call in your vehicle?

5 A. Yes.

6 Q. And is that typically what
7 you do if you get a fire call over
8 the radio, is that what you have, a
9 radio?

10 A. It's a pager.

11 Q. And then you respond to
12 the fire hall and then take the fire
13 engine from the fire hall to the
14 scene of the accident?

15 A. Yes.

16 Q. Or I'm sorry, fire, is
17 that right?

18 A. Yes.

19 Q. Do you know how fast you
20 were traveling on Dixon Avenue from
21 the point in time that you turned
22 from Main Street?

23 A. No, I don't recall.

24 Q. Were you in a hurry?

25 A. No.

1 Q. Did you have any thing on
2 your vehicle that identified you as
3 a volunteer fire fighter?

4 A. Yes.

5 Q. What did you have?

6 A. I have a rotating beacon
7 on the top of my pickup.

8 Q. So when you say a beacon?

9 A. A blue light is what we
10 call them.

11 Q. Is that one of those like
12 a flashing, it rotates like on top
13 of a police car?

14 A. Yes.

15 Q. Except this is blue?

16 A. Yes.

17 Q. Is this one that's
18 permanently stationed on top of the
19 vehicle or is that something with a
20 magnet you can just pop on there?

21 A. It's a magnetic mount.

22 Q. And when you say on top of
23 the vehicle, do you mean on the roof
24 of the vehicle above the passenger
25 compartment?

1 A. Above the vehicle in the
2 center. On the top of the cab in
3 the middle.

4 Q. Okay. So above the
5 passenger compartment?

6 A. Yes.

7 Q. Is that a single rotating
8 blue light?

9 A. No, it has two rotating
10 lights and a flash mirror.

11 Q. And that's mounted on
12 there you said?

13 A. Yes, it's all one piece.
14 It has four magnets and it just
15 sticks to the top of the truck.

16 Q. Like mounted like on a
17 rack?

18 A. No, no this just has four
19 magnets on the base right to the
20 sheet metal.

21 Q. And that's not something
22 that you take off and take on, that
23 stays on there permanently?

24 A. Correct.

25 Q. When was it that you had

1 turned on that blue light?

2 A. Right before I turned onto
3 Dixon Avenue for Main Street.

4 Q. Is there any reason why
5 you didn't have it on when you were
6 on Main Street or on the street
7 where you live?

8 A. Yes.

9 Q. What was that?

10 A. I have a scanner at home
11 and they called the Sandy Township
12 Police Department and told them that
13 they were going to dispatch the fire
14 units to Treasure Lake for a
15 possible structure fire. I knew the
16 call was coming ahead of time.

17 Q. So you heard a police
18 transmission and you started out
19 toward the fire hall?

20 A. From my house.

21 Q. Before you were even
22 formerly called by your department,
23 is that correct?

24 A. Right.

25 Q. So when the formal call or

1 page came to you, that's when you
2 actually turned on the blue lights?

3 A. Yes.

4 Q. Now, what is it that you
5 have to do in order to get these
6 blue lights on your vehicle?

7 A. If you --- once you join
8 the fire department, and you have
9 all of your formal training, your
10 fire school and whatnot, you have to
11 --- there's no formal request, I
12 don't believe. You check with the
13 chief and tell him you want to run a
14 blue light. And they have a blue
15 light sheet that you fill in the
16 make of your truck, the year, and
17 the model and such and you turn it
18 into the chief. And they will tell
19 you yes or no at the time.

20 Q. Whether you're allowed to
21 carry one on your vehicle?

22 A. Yes.

23 Q. Does the fire department
24 buy that for you or do you have to
25 go buy that yourself?

1 A. I buy it.

2 Q. And is there any training
3 that you go through in the operation
4 of this light?

5 A. No.

6 Q. Are there any guidelines
7 that you are asked to follow in
8 using this light by the fire
9 department?

10 A. Just standard traffic
11 procedures, there's no specialized
12 training in running a blue light.

13 Q. Are there any written
14 guidelines about when you're to use
15 the light and when you're not to use
16 it and how you're to use it or
17 anything like that?

18 A. Not that I'm aware of.

19 Q. You never received
20 anything from your fire department?

21 A. No.

22 Q. And you're not aware of
23 any such thing existing?

24 A. No.

25 Q. Did anybody at the fire

1 department talk to you, your chief
2 or assistant chief about the proper
3 operation of this light, when to use
4 it, when not to use it?

5 A. Just when you do use it,
6 you have the permission to use it in
7 responding to a call, either to
8 scene or to the hall. However which
9 way you go, you're to obey traffic
10 laws. It does not give you specific
11 rights to speed, things like that.

12 Q. You have to obey all the
13 regular traffic regulations?

14 A. Yes.

15 Q. And was that something
16 that was told to you by your chief
17 or assistant chief or whom?

18 A. No one in particular, just
19 it's kind of like a common knowledge
20 thing.

21 Q. So that's your ---?

22 A. Anybody that ever run one
23 can tell you that, any line officer
24 can tell you that also.

25 Q. So that's something that

1 you just picked up somewhere, you
2 don't recall specifically from whom?

3 A. Yes.

4 Q. And that was your
5 understanding of the way things were
6 prior to May 31st of 2000?

7 A. Yes.

8 Q. So you were coming along
9 Dixon Avenue with your blue light
10 on, you don't recall how fast you
11 were traveling, if I recall your
12 prior testimony. Why don't you pick
13 it up from there and describe what
14 happened from that point forward?

15 A. After I turned onto Dixon
16 Avenue traveling down towards the
17 fire hall, I looked clear to the end
18 of Dixon Avenue. After you turn
19 onto Dixon Avenue, you go a little
20 wee bit, 100 feet you can see clear
21 down to the red light at the other
22 end where State Route 219 is. I
23 didn't see any vehicles coming,
24 there was none in front of me. I
25 was proceeding to the fire hall, and

1 another friend of mine come up
2 Smithfield Street in his personal
3 vehicle and he pulled into the far
4 end of the parking lot where I was
5 going to go. That's when I decided
6 to pull onto the Smithfield side of
7 the parking lot, put my turn signal
8 on and went to turn, and there she
9 was. I did not see her until I
10 started the turn.

11 Q. Was your attention drawn
12 prior to your attempting to turn,
13 was your attention drawn to this
14 other fellow fire fighter who was
15 pulling into the parking lot from
16 Smithfield Street?

17 A. Yes.

18 Q. And you decided then to
19 make a turn on to Smithfield Street?

20 A. Into the parking lot,
21 which borders Smithfield Street.

22 Q. Okay.

23 A. The way the parking lot is
24 designed, the parking lot kind of
25 flows right into Smithfield Street.

1 You have to turn into Smithfield
2 Street to get to the near --- from
3 my prospective, the near edge of the
4 parking lot. And it's a sharp drop
5 down to get to it.

6 Q. If I'm understanding your
7 prior testimony correctly, and you
8 know, please, correct me if I'm
9 wrong in that understanding. But
10 you were intending to go one place
11 in that parking lot and then when
12 you saw your fellow fire fighter
13 pull into there ahead of you, you
14 changed your mind as to where you
15 were going to go?

16 A. Yes.

17 Q. Did that change your mind
18 as to where you were going to turn
19 because you had to make a left turn,
20 correct?

21 A. Yes.

22 Q. Did that change your mind
23 as to where you were going to make
24 that left turn?

25 A. Actually, no. It's tough

1 to remember.

2 Q. Let me ask you this
3 question and see if this helps out.
4 If it didn't change your mind as to
5 where you were going to turn, did it
6 change your mind as to what you were
7 going to do immediately after you
8 turned?

9 A. Yes.

10 Q. And that was with respect
11 to where you were going to be able
12 to park your vehicle in the parking
13 lot of the fire hall?

14 A. Yeah, the turn was going
15 to happen regardless to get to that
16 parking lot.

17 Q. It's just what you were
18 going to do after the turn?

19 A. Yeah. It is my second
20 choice, since my fellow fire fighter
21 pulled in the first spot, I would
22 had to turn a little sharper to get
23 into Smithfield Street and then into
24 the parking lot.

25 Q. So you turned at the same

1 place that you had intended to turn,
2 it was a sharper turn than you had
3 intended it to be?

4 A. Yes.

5 Q. When you first saw the
6 other vehicle that you impacted in
7 this accident, where was it?

8 A. Where was the vehicle?

9 Q. Yes.

10 A. Very close. We --- I
11 can't give you a footage estimate
12 because I just can't guesstimate
13 that fast. But I started into my
14 turn and I looked up and there she
15 was. We were that close.

16 Q. Did you even have time to
17 apply your brakes?

18 A. No.

19 Q. Do you know if she applied
20 her brakes before the impact?

21 A. I do not believe so.

22 Q. Was it the front passenger
23 corner of your pickup truck that
24 impacted with her vehicle?

25 A. Yes.

1 Q. And what was the point of
2 impact on her vehicle?

3 A. Pretty much center the
4 front of her vehicle.

5 Q. How much damage was done
6 to your vehicle, do you know?

7 A. No. They totaled it,
8 that's pretty much all I know.

9 Q. Did you get a check from
10 your insurance company for the value
11 of the vehicle?

12 A. Yes.

13 Q. Do you know how much it
14 was?

15 A. Approximately 25 hundred
16 dollars.

17 Q. So whatever the damage was
18 to your vehicle, it was in excess of
19 25 hundred dollars, is that correct?

20 A. Yes.

21 Q. Now, you said that it was
22 not dark out at the time of this
23 accident, is that correct?

24 A. Right.

25 Q. And was it light enough

1 that you had to have your headlights
2 on?

3 A. No.

4 Q. So you didn't have your's
5 on?

6 A. No.

7 Q. Did you notice if the
8 vehicle, the other vehicle involved
9 in the accident, if the headlights
10 were on in that vehicle?

11 A. No, they weren't.

12 Q. What happened then after
13 the impact?

14 A. I shut my truck off, took
15 the keys out, put them on the
16 floor. I got out and I was
17 concerned that she may be hurt. I
18 wasn't hurt. I got out of the truck
19 and asked her if she was all right,
20 if she was hurt. And she was upset
21 and she kept telling me, look what
22 you did to my pretty car. And I
23 asked her three times if she was
24 hurt. And that's all she had to
25 say. I got her after she was out of

1 her car --- we kind of got out at
2 the same time. I got her to sit
3 over on the curb for fear of
4 somebody else coming in and adding a
5 third vehicle to the accident. And
6 she sat there for a little wee bit,
7 maybe half a minute and then got
8 up. And she told me there was a lit
9 cigarette in her car and she wasn't
10 sure where it was. I tried and
11 looked in her car and I saw the dust
12 off the air bags, but at the time I
13 wasn't sure if that was smoke or
14 dust. At the time I went in and I
15 ducked in her car a little wee bit
16 to try to look for it and I couldn't
17 find it. And then I apologized to
18 her I don't know how many times but,
19 you know, by that time everybody
20 else is getting to the fire hall and
21 taking the trucks and going. One
22 guy stayed behind, he pulled our
23 squad out just to slow the traffic
24 down.

25 Q. Your squad being?

1 A. Rescue vehicle.

2 Q. Okay. Just pulled it out
3 on the highway to slow other
4 traffic?

5 A. Yeah.

6 Q. Did you have any other
7 conversation with the woman at this
8 time?

9 A. Just that I told you
10 before, I asked her a couple of
11 times if she was hurt. She was
12 walking around, she didn't seem to
13 be injured. But she was visibility
14 upset, we both were. As far as at
15 the actual accident scene, no, I
16 don't believe we did. I did, like I
17 said, I went in to look for the
18 cigarette, I couldn't find it.
19 After that it's kind of a blur until
20 everything was --- until the police
21 showed up and everything was
22 settled.
23 Q. So other than what you
24 have already told me, you don't
25 recall any other conversation with

1 this woman at the scene of the
2 accident?

3 A. No.

4 Q. Do you recall her having
5 conversation with anyone else, such
6 as the police officer or any of the
7 other volunteer fire fighters that
8 you might have overheard?

9 A. No.

10 Q. Do you know if she had a
11 conversation with any of the other
12 fire fighters from them having said
13 something to you about it?

14 A. No.

15 Q. Have you ever had a
16 conversation with her since then?

17 A. She called me
18 approximately two or three days
19 later to tell me she was not angry
20 with me, her and her husband were
21 not angry with me and I apologized
22 to her again. I said, I don't know
23 what to tell you except I just
24 didn't see you until we were right
25 there. And since that I have not

1 heard from her, I have not seen her.

2 Q. Did she say anything else
3 to you in the conversation other
4 than that she wasn't angry with you?

5 A. I did ask her if she was
6 okay, I think. And she said she
7 was.

8 Q. Did she mention whether or
9 not she had received any medical
10 treatment?

11 A. I can't remember exactly
12 what was said. She did go to the
13 hospital on her own, but I do not
14 recall if she told me that or not.

15 Q. At some point you became
16 aware of the fact that she went to
17 the hospital?

18 A. Yes, but I can't remember
19 if she told me or not.

20 Q. She did not leave the
21 scene of the accident in an
22 ambulance?

23 A. No.

24 Q. Do you recall if anyone
25 came to the accident scene to give

1 her a lift home or to the hospital
2 or wherever she might have gone?

3 A. Her husband was there,
4 whether he took her to the hospital
5 I do not know because her vehicle
6 was driven from the scene.

7 Q. Her vehicle was driveable?

8 A. For a very short
9 distance. One of the officers took
10 her vehicle and drove it over to
11 Murray Ford's body repair shop,
12 which is roughly two blocks away.

13 Q. So they were able to drive
14 it that way?

15 A. Yeah, because I believe
16 her radiator was expelled.

17 Q. Do you recall what make
18 and model vehicle she was driving?

19 A. 1997 Mercury Sable.

20 Q. Did you have any
21 conversation with her husband at the
22 scene of the accident?

23 A. No, I have never spoken to
24 him, I don't believe so.

25 Q. This telephone

1 conversation that occurred several
2 days after the accident, did she ask
3 you for any insurance information,
4 do you recall?

5 A. No.

6 Q. And you don't recall if
7 she discussed her medical condition
8 or medical treatment at that point?

9 A. No, I don't believe she
10 did.

11 Q. Have you had any other
12 conversations with her since then?

13 A. No.

14 Q. Now, you did not know this
15 woman before the accident, correct?

16 A. Correct.

17 Q. Are you aware of any
18 conversations that anyone else may
19 have had with Mrs. Duttry that they
20 may have recounted to you?

21 A. No.

22 Q. According to your Answers
23 to Interrogatories, you indicated
24 that you were charged with a left
25 turn violation, is that correct?

1 A. Failure to yield
2 right-of-way.

3 Q. Oh, okay.

4 A. I believe it was.

5 Q. And was there a hearing
6 for that or what happened?

7 A. No. I was cited and I
8 paid the fine.

9 Q. And that was it, you
10 didn't have to go to the
11 magistrate's office or anything?

12 A. No.

13 Q. Just mail in your ---?

14 A. Yes.

15 ATTORNEY DREXLER:

16 I have nothing
17 further, thanks. Do you
18 want him to read or
19 waive?

20 ATTORNEY OLIVER:

21 He's going to waive.

22 * * * * *

23 DEPOSITION CONCLUDED AT 12:56 P.M.

24 * * * * *

25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF INDIANA)

3 C E R T I F I C A T E

4 I, Tammie B. Elias, RPR, a Notary Public in and
5 for the Commonwealth of Pennsylvania, do hereby
6 certify:

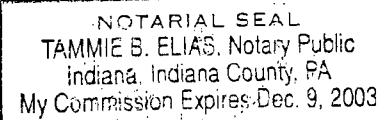
7 That the witness was first duly sworn to testify
8 to the truth, the whole truth, and nothing but the
9 truth; that the foregoing deposition was taken at the
10 time and place stated herein; and that the said
11 deposition was taken stenographically by me and
12 reduced to typewriting, and constitutes a true and
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing
15 of said depositions were (not) waived by counsel for
16 the respective parties and by the witness.

17 I further certify that I am not a relative,
18 employee or attorney of any of the parties, nor a
19 relative or employee of counsel, and that I am in no
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and stamp this 26th day of Dec 2002.

23 *Tammie B. Elias*



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

* * * * *

LINDA DUTTRY AND *
CARL DUTTRY, HER *
HUSBAND, *
Plaintiffs * No. 02-412 C.D.
vs. *
WILLIAM EVANS, *
Defendant *

* * * * *

DEPOSITION OF

LINDA DUTTRY

DECEMBER 16, 2002

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by the certifying agency

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1 DEPOSITION	1 I N D E X
2 OF	2 WITNESS: LINDA DUTTRY
3	3 EXAMINATION
4 LINDA DUTTRY was taken on behalf of	4 By Attorney Oliver 7 - 116
5 the Defendant herein, pursuant to	5 By Attorney Drexler 117 - 118
6 the Rules of Civil Procedure, taken	6 CERTIFICATE 119
7 before me, the undersigned, Tammie	7
8 B. Elias, a Registered Professional	8
9 Reporter and Notary Public in and	9
10 for the Commonwealth of	10
11 Pennsylvania, at Sargent's Court	11
12 Reporting Service, Inc., 106 North	12
13 Second Street, Clearfield,	13
14 Pennsylvania, on Monday, December	14
15 16, 2002, at 9:55 A.M.	15
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2	2 PAGE
3 STEPHEN P. DREXLER, ESQUIRE	3 NUMBER IDENTIFICATION IDENTIFIED
4 Ainsman & Levine, P.C.	4 #1 Statement --
5 330 Grant Street, Suite 2201	5 #2a Medical History Form --
6 Pittsburgh, PA 15219	6 #2b Claimant Questionnaire --
7 COUNSEL FOR PLAINTIFFS	7 #2c Claimant Questionnaire --
8	8
9 KATHERINE V. OLIVER, ESQUIRE	9
10 McQuaide, Blasko, Schwartz, Fleming	10
11 & Faulkner, Inc.	11
12 811 University Drive	12
13 State College, PA 16801	13
14 COUNSEL FOR DEFENDANT	14
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1 OBJECTION PAGE

2 ATTORNEY PAGE

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1 way you feel that this accident has
 2 affected you.
 3 If at any point you don't
 4 hear my question or if I ask
 5 something in a way that's confusing,
 6 you need me to repeat it or rephrase
 7 it, anything like that, please ask
 8 me to do so.

9 The Court Reporter here is
 10 taking down everything we say, so
 11 it's important that we be on the
 12 same page. If you go ahead and
 13 answer a question that I have asked,
 14 I'm going to have to assume that you
 15 have understood it and you have
 16 heard it, and you're answering
 17 truthfully and honestly and
 18 completely to the best of your
 19 ability. Is that fair to you?

20 A. Yes, it is.

21 Q. Your attorney is here with
 22 you, Mr. Drexler, if you need to
 23 take a break at any point, feel free
 24 do that. I would ask if there's a
 25 question kind of on the table, if

1 PROCEEDINGS

2 -----

3 LINDA DUTTRY, HAVING FIRST BEEN DULY
 4 SWORN, TESTIFIED AS FOLLOWS:

5 -----

6 EXAMINATION

7 BY ATTORNEY OLIVER:

8 Q. Mrs. Duttry, my name is
 9 Katie Oliver. We met just a few
 10 minutes ago before this deposition
 11 began. I represent William Evans in
 12 this lawsuit that you and your
 13 husband have brought against him.
 14 Let me start out, I guess, just by
 15 asking, have you ever given
 16 deposition testimony before?

17 A. No, I haven't.

18 Q. Well, I'll start out with
 19 a few ground rules then, if you
 20 will. Today is my opportunity to
 21 ask you some questions about the
 22 motor vehicle accident that gives
 23 rise to this suit, about the claims
 24 that you have brought today, about
 25 the injuries that you claim, and the

1 you're able to answer it before we
 2 take the break, that you go ahead
 3 and do it. If you need to use the
 4 rest room, talk with your attorney,
 5 anything like that, I'll do my best
 6 to accommodate you.

7 A. Okay.

8 Q. I guess that's about it.
 9 I should have you start out by
 10 stating your full name though for
 11 the record, please?

12 A. Linda Darlene Duttry.

13 Q. And are you taking any
 14 medications today, ma'am, that might
 15 effect your ability to testify
 16 completely and truthfully?

17 A. I'm taking medications,
 18 but they won't interfere.

19 Q. Another thing we didn't go
 20 over, and I saw you hesitate for
 21 just a minute. We have to try very
 22 carefully, you need to let me finish
 23 the question before you begin to
 24 answer.

25 A. Okay.

1 Q. So you're sure you know
2 what I'm asking. And I'll try to do
3 the same and try not to talk over
4 you while you're answering.
5 A. Okay.
6 Q. It keeps the record clear
7 and also just to make sure we're on
8 the same page with things. Where do
9 you live?
10 A. 105 Chestnut Street,
11 DuBois, PA.
12 Q. And how long have you
13 lived there?
14 A. Three years.
15 Q. What about just before the
16 Chestnut Street address, where did
17 you live?
18 A. We lived at 16 and a half
19 West Fourth Street, Emporium, PA.
20 Q. For how long?
21 A. At that address, two
22 years.
23 Q. I'm sorry, you said you
24 have lived at that Chestnut Street
25 address for three years?

1 marriage?
2 A. No, it's not.
3 Q. How many times have you
4 been married before?
5 A. This is my second
6 marriage.
7 Q. And what was your first
8 husband's name?
9 A. Douglass Lynn Galford.
10 Q. Could you spell Galford,
11 please?
12 A. G-A-L-F-O-R-D.
13 Q. And how long were you and
14 Douglass Galford married?
15 A. 15 years.
16 Q. And before marrying Carl
17 Duttry, did you go by the name
18 Galford?
19 A. Yes, I did.
20 Q. So that was Linda Galford?
21 A. Yes.
22 Q. And when were you
23 divorced?
24 A. We were divorced in '84.
25 Q. Where does Mr. Galford

1 A. That's correct.
2 Q. And how about just before
3 the Emporium address?
4 A. We lived in Emporium. I
5 have lived in Emporium for 30 some
6 years.
7 Q. That's continuously up
8 until the time you moved to DuBois?
9 A. Yes.
10 Q. Where were you born?
11 A. I was born in Renovo, PA.
12 Q. How old are you?
13 A. I'm 55.
14 Q. And your date of birth?
15 A. 2/12/47.
16 Q. And I know that you're
17 married?
18 A. Yes.
19 Q. Could you give us your
20 husband's name, please?
21 A. Carl Louis Duttry.
22 Q. How long have you been
23 married to Carl?
24 A. Six years.
25 Q. Is this your first

1 live?
2 A. Deceased.
3 Q. Do you have any children?
4 A. Yes, I have three sons.
5 Q. Could you give me their
6 names and ages, please?
7 A. Douglass Galford, Junior,
8 is 34. Jeffrey Allan Galford is
9 33. Brandon Galford, Brandon Lee
10 Galford, is 20.
11 Q. Do any of your sons live
12 in the area?
13 A. They all live in Emporium.
14 Q. Any grandchildren?
15 A. Yes, I have a grandson,
16 Dennis Charles Galford.
17 Q. Just the one?
18 A. Yes.
19 Q. How old is Dennis?
20 A. Ten.
21 Q. And whose son is he?
22 A. Jeff's.
23 Q. Do you currently live with
24 your husband?
25 A. Yes, I do.

1 Q. And within the last four years, have you lived with anybody other than your husband?

4 A. No.

5 Q. Are you a high school graduate, Mrs. Duttry?

7 A. Yes, I am.

8 Q. Where did you graduate from high school?

10 A. Port Allegheny Senior High, Port Allegheny, PA.

12 Q. And did you ever go to college?

14 A. I went to business school.

15 Q. Where was that?

16 A. DuBois Business College.

17 Q. Did you get a certificate or degree of any kind?

19 A. I guess an associate degree, legal secretarial.

21 Q. When was that?

22 A. I graduated in 19 ---, I

23 believe, it was 1988.

24 Q. Have you ever worked as a legal assistant or secretary?

1 Q. Is it bipolar disorder of some type?

3 A. Yes.

4 Q. Are you under the care of a psychiatrist?

6 A. Yes, I am.

7 Q. Who is that?

8 A. Doctor Turkin.

9 Q. Is he the only

10 psychiatrist that you have seen in the last five years?

12 A. No.

13 Q. When is the first time you were diagnosed with a bipolar disorder?

16 A. I was diagnosed with bipolar in September of 2000.

18 Q. After your disability began?

20 A. Yes, before I was diagnosed as clinically depressed.

22 But then I was told I was bipolar.

23 Q. So you're saying you have another medical condition as well or 25 --- I'm sorry, what ---?

1 A. For a month.

2 Q. What year was that, do you know?

4 A. 1988.

5 Q. Are you working now?

6 A. No, I'm on disability.

7 Q. When is the last time that you worked outside of your home?

9 A. November of 1999.

10 Q. Are you sure that's 1999, not 1998?

12 A. Could have been '98.

13 Q. We can check on that.

14 That we can verify by records.

15 A. It was '98. And they held my job until 1999.

17 Q. Who's they?

18 A. GKN Sinter Metals.

19 Q. What is the reason that you're on disability?

21 A. Mental and physical.

22 Q. Let's start with the mental. What is the mental disability?

25 A. Bipolar.

1 A. No, I was just

2 misdiagnosed.

3 Q. Prior to September of

4 2000, you're telling me that you were diagnosed with clinical

6 depression?

7 A. Yes.

8 Q. And then after that, the 9 doctors have now said that actually 10 it's bipolar, is that right?

11 A. Yes. No, it was 1999 I 12 was diagnosed bipolar.

13 Q. So September of 2000 is 14 incorrect?

15 A. Correct.

16 Q. Do you have any other

17 mental conditions related to your 18 disability other than the bipolar 19 disorder?

20 A. No, I do not.

21 Q. Now, that's something you 22 have been hospitalized for on

23 occasion, right?

24 A. That's correct.

25 Q. How many times have you

1 been hospitalized for that?
 2 A. I don't know.
 3 Q. Am I correct that you had
 4 been hospitalized not too far before
 5 this May of 2000 accident happened?
 6 A. That's correct.
 7 Q. For bipolar condition?
 8 A. That's correct.
 9 Q. And how long was that
 10 hospitalization, do you know?
 11 A. Ten days.
 12 Q. As far as the --- you said
 13 that you were on disability because
 14 of a mental and a physical
 15 condition. What is the physical
 16 condition that causes you to be on
 17 disability?
 18 A. I have osteoporosis, and I
 19 was told I couldn't lift over ten
 20 pounds. And that prevents me from
 21 going back to my prior job because
 22 that required lifting that's more
 23 than ten pounds. And my knee
 24 bothers me, I can't be on my feet
 25 for a long period of time.

1 A. Yes.
 2 Q. After the car accident?
 3 Okay. And who told you that?
 4 A. Doctor Gick.
 5 Q. And I heard you mention
 6 your knee too, why don't you tell me
 7 what the problem with your knee is?
 8 A. I have knee pain and it
 9 cracks. If I'm on my feet for very
 10 long, my knee bothers me.
 11 Q. And you feel that that is
 12 a part of your disability as well?
 13 A. Yes.
 14 Q. If you didn't have the
 15 knee pain that you're talking about,
 16 do you think you would be back to
 17 work?
 18 A. I can't lift, that
 19 prevents me. And due to my mental
 20 state --- yes, I believe I could go
 21 back to work.
 22 Q. So it's your testimony
 23 that were it not for this knee pain,
 24 you could be working somewhere
 25 instead of on disability, is that

1 Q. So the osteoporosis, when
 2 were you diagnosed with
 3 osteoporosis?
 4 A. I was diagnosed in 1997.
 5 Q. Am I correct that even
 6 before this accident that we're here
 7 about today, that your osteoporosis
 8 prevented you from going back to
 9 your job?
 10 A. No.
 11 Q. When did that start?
 12 A. No, I performed my job. I
 13 performed my job.
 14 Q. At some point though, are
 15 you telling me that the osteoporosis
 16 became a part of your disability so
 17 that you can't do your job?
 18 A. That's correct.
 19 Q. When was that?
 20 A. I was told maybe a year
 21 and a half ago that it was after my
 22 knee that I was told I couldn't do
 23 the lifting.
 24 Q. Is after this accident
 25 that we're here about?

1 right?
 2 A. Right now at the present,
 3 I have three ruptured disks in my
 4 back, which causes me a great deal
 5 of pain also.
 6 Q. Those ruptured disks, is
 7 that something that you think is
 8 related to the car accident that you
 9 brought this lawsuit about?
 10 A. I don't know.
 11 Q. Are you making that claim
 12 in this lawsuit?
 13 A. No.
 14 Q. So the ruptured disks are
 15 not a part of this lawsuit, is that
 16 right?
 17 A. Right.
 18 Q. And so the pain related to
 19 those ruptured disks, that's not a
 20 part of this lawsuit, right?
 21 A. No.
 22 Q. I'm sorry, is that
 23 correct, that it's not or are you
 24 saying that it is?
 25 A. It's not.

1 Q. The bipolar disorder,
2 that's not a part of this lawsuit,
3 is it?

4 A. The accident made it
5 worse.

6 Q. We'll talk about that in a
7 minute.

8 A. Okay.

9 Q. What about the
10 osteoporosis, do you claim that
11 that's somehow related to the car
12 accident?

13 A. No.

14 Q. And the knee, do you think
15 your knee pain now is related to
16 this car accident?

17 A. Yes.

18 Q. Did you have any knee
19 problems before the car accident?

20 A. I had arthritis, some
21 arthritis in it.

22 Q. What knee are we talking
23 about?

24 A. The right knee, just a
25 minor --- nothing compared to what

1 knee pain, you also told me you
2 thought you could be doing some kind
3 of work, right? What do you think
4 it is that you'd be doing?

5 A. Sitting, you know, not
6 being on my feet.

7 Q. So what kind of work would
8 you look for?

9 A. Probably office. Since I
10 had my training.

11 Q. Let's go back for a
12 minute. Other than you talked about
13 going to the business school, have
14 you had any other training?

15 A. No, I have not.

16 Q. So since that was 1988,
17 right?

18 A. Correct.

19 Q. So any kind of clerical
20 training, whether it be formal
21 school or, you know, sometimes
22 people offer a course?

23 A. No.

24 Q. Nothing like that?

25 A. No.

1 it was after the surgery --- or
2 after the accident.

3 Q. Are there any other ---
4 and I don't want to get off track
5 here. We had started about why
6 you're on disability and you said
7 the mental problem. And then you
8 gave me osteoporosis, knee pain and
9 now you have also added ruptured
10 disks?

11 A. Right.

12 Q. That you said aren't
13 related to the accident?

14 A. Yes.

15 Q. Are there any other
16 physical conditions for which you're
17 on disability now?

18 A. No there isn't.

19 Q. And it's your belief that
20 the knee pain and the bipolar
21 disorder are somehow related to the
22 accident?

23 A. Yes, a worsening of the
24 bipolar disorder.

25 Q. If you didn't have the

1 Q. After graduating in 1988
2 you said you worked as a legal
3 secretary for a month?

4 A. Correct.

5 Q. What other jobs have you
6 had?

7 A. Working in the factory.

8 Q. What factory?

9 A. First I worked --- excuse
10 me.

11 Q. Sure.

12 A. I worked as an office
13 clerk at the Big G store.

14 Q. Where was that?

15 A. Emporium, PA.

16 Q. Okay.

17 A. I worked there for two
18 years. And then I accepted

19 employment at the time it was called
20 Pennsylvania Pressed Metals. And
21 then they changed the name to GKN
22 Sinter Metals.

23 Q. So you went right from the
24 Big G to Pennsylvania Pressed
25 Metals?

1 A. Yes.
 2 Q. And how long did you work
 3 for GKN Metals?
 4 A. Well, eight years
 5 apparently.
 6 Q. Why do you say apparently?
 7 A. Well, I thought that I had
 8 left work in '99, but you ---
 9 apparently it was 1998.
 10 Q. So when you left to go on
 11 disability, that's when you stopped
 12 working at GKN?
 13 A. Correct. I had a major
 14 breakdown.
 15 Q. And did you start there at
 16 about 1990?
 17 A. Yes.
 18 Q. And you say you had a
 19 major breakdown?
 20 A. Yes.
 21 Q. Can you tell me what
 22 happened?
 23 A. I had several things
 24 happen to me and I just had a
 25 breakdown. I had had cancer. And

1 Q. More than a year?
 2 A. Yes.
 3 Q. And what was your
 4 treatment with Doctor Ordiway?
 5 A. Medication and
 6 hospitalization.
 7 Q. When was the first time
 8 that you were hospitalized for
 9 mental health issues?
 10 A. When I was 19.
 11 Q. And how long was that
 12 hospitalization?
 13 A. Two weeks, as I recall. I
 14 don't know, it's been several years
 15 since I was 19.
 16 Q. And when was the last time
 17 that you were hospitalized for
 18 mental health issues?
 19 A. March of 2000.
 20 Q. Just before the car
 21 accident we're talking about?
 22 A. Yes.
 23 Q. And you already told me,
 24 right, that you don't know how many
 25 times you have been hospitalized?

1 then my one son got hurt real bad in
 2 a logging accident. And then my
 3 other son had a bad reaction to an
 4 anesthesia and he almost died. And
 5 then I broke my ankle. And it was
 6 just too much for me to cope with.
 7 Q. Before that, I mean, that
 8 sounds kind of like that was an
 9 event you had a breakdown, is that
 10 right?
 11 A. (Indicates yes).
 12 Q. Before that had you had
 13 any, you know, treatment with a
 14 mental health provider?
 15 A. Yes, I had.
 16 Q. And with who?
 17 A. Doctor Ordiway in
 18 Ridgway.
 19 Q. What kind of diagnosis, if
 20 any, did Doctor Ordiway give you?
 21 A. Clinical depression.
 22 Q. How long had you been
 23 treating with that?
 24 A. Oh, maybe three years. I
 25 don't know.

1 A. That's correct.
 2 Q. Do you think it's been at
 3 least ten times?
 4 A. No.
 5 Q. Maybe five?
 6 A. More than five.
 7 Q. And would it be fair to
 8 say that you have been on various
 9 medications for mental health issues
 10 over the years?
 11 A. For the past, oh, 19
 12 years.
 13 Q. Can you tell me what those
 14 medications are?
 15 A. What I'm taking now?
 16 Q. Can you tell me what they
 17 have been over the past 19 years?
 18 A. Yes. I can't tell you all
 19 of them, I was on Triavil, I was on
 20 Zyprexa. Do you want what I'm on
 21 now?
 22 Q. Sure.
 23 A. I'm on Lamictal, I'm on
 24 Celexa, Neurontin, and Geodon.
 25 Q. And are those are all

1 related to a psychiatric disorder?
 2 A. That's correct.
 3 Q. Now, that's not the
 4 medicine you were taking when this
 5 accident happened, is it?
 6 A. That's correct.
 7 Q. Do you remember what that
 8 was?
 9 A. No, I don't.
 10 Q. That was a knew medicine
 11 then that you were on then, right?
 12 A. Yes.
 13 Q. But you don't know what it
 14 was?
 15 A. No.
 16 Q. How long did you take that
 17 medicine?
 18 A. I don't know.
 19 Q. Do you think it was more
 20 than five months?
 21 A. Yes.
 22 Q. And am I correct that you
 23 were having problems with that
 24 medicine when the accident happened?
 25 A. No.

1 Q. You hadn't reported that
 2 to your doctor?
 3 A. No.
 4 Q. Did your doctor tell you
 5 anything about driving, taking
 6 special precautions or anything like
 7 that while you took that medication
 8 that you were taking at the time of
 9 this accident?
 10 A. No. No, he's never told
 11 me that.
 12 Q. What was your wage rate at
 13 GKN?
 14 A. I was making \$10.57 when I
 15 left an hour.
 16 Q. And how many hours did you
 17 work a week?
 18 A. I was on 12 hours swing,
 19 it varied from week to week. One
 20 week I'd work more than the other
 21 week.
 22 Q. Twelve hour swing?
 23 A. Yes.
 24 Q. What does that mean?
 25 A. I was on 12 hour shifts

1 that and found out it was gone?
 2 A. I knew at the time they
 3 only hold your job for a year.
 4 Q. What had you done by way
 5 of looking for work?
 6 A. I had put my applications
 7 in various places.
 8 Q. Where?
 9 A. I can't recall.
 10 Q. So is it something you
 11 have any notes about at home or have
 12 written down anywhere?
 13 A. No.
 14 Q. Would you have spoken to
 15 your doctors about that?
 16 A. Yes, about where I was ---
 17 where I applied?
 18 Q. About planning to return
 19 to work?
 20 A. Yes.
 21 Q. So there's no way for you
 22 to tell me where it is you applied?
 23 A. No.
 24 Q. When were you applying, do
 25 you know?

1 A. When?
 2 Q. Yes.
 3 A. Oh, between March and the
 4 time of the accident.
 5 Q. March of 2000?
 6 A. Yes.
 7 Q. And how many interviews
 8 did you actually have?
 9 A. I didn't have an
 10 interview.
 11 Q. None?
 12 A. No.
 13 Q. So you started in March of
 14 2000, and did anybody call you or
 15 anything?
 16 A. No.
 17 Q. Not one phone call?
 18 A. No. But I was trying to
 19 find work.
 20 Q. What kind of --- even if
 21 you can't remember exactly where,
 22 what kind of jobs were you applying
 23 for?
 24 A. Store, retail.
 25 Q. Did you put in

1 A. Yes, I have.
 2 Q. When's the last time that
 3 you made an entry in that?
 4 A. A year and a half.
 5 Q. A year and a half ago?
 6 A. Yes.
 7 Q. So that would be after the
 8 May 2000 accident happened, right?
 9 A. Yes. Before that, before
 10 I was married I would keep a
 11 journal, but after I got married I
 12 haven't. Up until the time, oh, I
 13 can't say when I began, but the last
 14 time I made an entry into my diary
 15 was a year and a half ago.
 16 Q. And it was after you were
 17 married?
 18 A. Yes.
 19 Q. Do you have those diaries
 20 anywhere?
 21 A. Yes. I started after the
 22 accident.
 23 Q. Why did you do that?
 24 A. I was told to keep a
 25 record.

1 applications anywhere other than a
 2 retail store?
 3 A. No.
 4 Q. What kind of job in a
 5 retail store did you want?
 6 A. Sales clerk.
 7 Q. And as far as today,
 8 again, I mean, your belief is that
 9 --- well, let me back up a minute.
 10 Do you believe you could be working
 11 as a sales clerk if this accident
 12 had not occurred?
 13 A. Yes.
 14 Q. And I keep saying this
 15 accident, what I'm referring to is
 16 the vehicle accident that you
 17 brought this lawsuit about, has that
 18 been clear to you this whole time?
 19 A. Yes.
 20 Q. Now, do you keep any kind
 21 of a diary?
 22 A. Of what? Now, day to day,
 23 no, I do not.
 24 Q. In the last ten years,
 25 have you kept any kind of a diary?

1 Q. By whom?
 2 A. Doctor Jezewski --- or
 3 Lawyer Jezewski. He was the one
 4 that was at Ainsman --- I'm nervous.
 5 Q. Sure.
 6 A. And Levine, he left.
 7 Q. At your current attorney's
 8 law firm though?
 9 A. Right.
 10 Q. So you have that diary
 11 that you kept at the recommendation
 12 of the lawyer?
 13 A. Yes.
 14 Q. Is that at home?
 15 A. No.
 16 Q. Where is it?
 17 A. With me.
 18 Q. Do you have that in the
 19 car?
 20 ATTORNEY OLIVER:
 21 Can we take a break
 22 and --- I have asked for
 23 it in discovery. Let's go
 24 off for a minute.
 25 OFF RECORD DISCUSSION

1 SHORT BREAK TAKEN
 2 BY ATTORNEY OLIVER:
 3 Q. So we're looking at a
 4 diary that you brought with you
 5 today?
 6 A. Yes.
 7 Q. And is this the diary that
 8 you started writing in because your
 9 lawyer told you you should do that?
 10 A. Yes.
 11 Q. And the first entry is on
 12 May 31st, 2000, right?
 13 A. Yes. I have not read that
 14 diary for a while, so I can't be
 15 precise of what's in that.
 16 Q. Okay. But that's the same
 17 day that the accident happened,
 18 right?
 19 A. Yes.
 20 Q. So you went to a lawyer
 21 just that day?
 22 A. No.
 23 Q. Then why did you start
 24 writing in this?
 25 A. Because I was told to

1 that?
 2 A. Whenever I contacted
 3 Ainsman & Levine.
 4 Q. You wrote all of these
 5 things in one day?
 6 A. No.
 7 Q. Well, can you tell me from
 8 looking at these pages?
 9 A. No, I cannot.
 10 Q. Is there anything you can
 11 look at to tell me when you wrote
 12 those things down?
 13 A. No.
 14 Q. But you think you wrote
 15 some of them down anyway the first
 16 time you talked to your lawyer?
 17 A. Yes.
 18 Q. You don't know when that
 19 was?
 20 A. No. Do you have a record?
 21 ATTORNEY DREXLER:
 22 I'm sure we do
 23 somewhere.
 24 BY ATTORNEY OLIVER:
 25 Q. And did you write them all

1 write it from the time to go back,
 2 so I would have a record of what
 3 happened. So I went back and I
 4 started and I wrote it.
 5 Q. So you didn't --- when it
 6 says at the top here, it says May
 7 31, 2000, and then we have a page
 8 and a half. You didn't write that
 9 on May 31st, 2000?
 10 A. No, I did not.
 11 Q. Do you know when you wrote
 12 it?
 13 A. It was after I contacted
 14 Ainsman & Levine.
 15 Q. Well, the last entry
 16 appears to me, and tell me if I'm
 17 wrong, we'll look at this together.
 18 The last date that I see, and take a
 19 look through, I don't want to
 20 mislead you, is July 6th, 2000. Is
 21 there an entry after that?
 22 A. No, there is not.
 23 Q. Is it possible that you
 24 wrote all of these things down on
 25 July 6th, 2000 or even later than

1 down on the same day?
 2 A. No.
 3 Q. So are there any of the
 4 dates that you think might actually
 5 have been written on the date that
 6 appears above it?
 7 A. I can't answer that.
 8 Q. Is there anything you
 9 could look at that would make you be
 10 able to answer that?
 11 A. No, there is not.
 12 Q. So you can't --- there's
 13 no way you can tell us when these
 14 things were written down, other than
 15 maybe that first one if we look and
 16 see when you first went to the
 17 lawyer?
 18 A. Right.
 19 Q. You had said before that
 20 you kept a diary, and maybe I'm
 21 wrong. I thought I understood you
 22 to say that in addition to this
 23 diary you started making after the
 24 accident, that you also kept a
 25 journal or a diary of some kind?

1 A. Before I was married.
 2 Q. That would have been
 3 within the last ten years though?
 4 A. Yes.
 5 Q. What about within the last
 6 --- and this is where I got a
 7 little mixed up before you said
 8 before you were married but then you
 9 said after you were married?
 10 A. No, I said before I was
 11 married.
 12 Q. Only before?
 13 A. Yes.
 14 Q. That journal, that would
 15 have been kept though at a time when
 16 you were having --- you obviously
 17 were experiencing some of the mental
 18 problems you have talked about
 19 today, right, because you said you
 20 started having depression or seeing
 21 a medical person when you were 19,
 22 right?
 23 A. Yes, but it was my day to
 24 day life, what I did, what I did
 25 during that day.

1 Q. Do you have any
 2 photographs of yourself from after
 3 the accident that you feel somehow
 4 show some injury that you sustained
 5 in the accident?
 6 A. No.
 7 Q. Do you have any
 8 photographs of your vehicle showing
 9 damage that you believe was caused
 10 by the accident?
 11 A. No, I did not take a
 12 photograph.
 13 Q. Other than yourself and
 14 Mr. Williams, do you know of any
 15 witnesses to the accident?
 16 A. No.
 17 Q. Now, I know you spoke to
 18 the police when they came, right?
 19 A. Yes.
 20 Q. And you also spoke to
 21 State Farm about this accident, do
 22 you remember that?
 23 A. Yes, I do.
 24 Q. I'm going to mark this
 25 Duttry One, it's six pages. I'll

1 Q. Do you keep those?
 2 A. No.
 3 Q. So you don't ---?
 4 A. There were personal things
 5 I didn't want anybody to see, so
 6 they were destroyed.
 7 Q. When did you destroy
 8 those?
 9 A. Oh, after I was married.
 10 Q. Okay.
 11 A. But could I ask a
 12 question?
 13 ATTORNEY DREXLER:
 14 No. Just answer her
 15 questions.
 16 BY ATTORNEY OLIVER:
 17 Q. Are you having a problem
 18 understanding one of the questions I
 19 asked though?
 20 A. No, I am not.
 21 Q. So other than this diary
 22 that you brought here today, can I
 23 --- is it correct that you don't
 24 have any other diaries or journals?
 25 A. That's correct.

1 just ask you to take a look at it.
 2 And I'll just represent to you that
 3 it's a transcription of the
 4 statement, I think, you gave to
 5 State Farm. I want you to take a
 6 look at it and I'm going to ask if
 7 you think that that reflects your
 8 conversation or if there's something
 9 in there that you think looks
 10 wrong.
 11 Have you had a chance to
 12 look that over?
 13 A. Yes, I have.
 14 Q. And I just want to ask if
 15 you believe after reading through
 16 that, that that document, Duttry
 17 One, accurately reflects the
 18 telephone conversation you had with
 19 State Farm?
 20 A. Yes.
 21 Q. Now, I also understand
 22 that you have spoken with William
 23 Evans about this accident after it
 24 has occurred, is that right?
 25 A. I spoke to him, yes.

1 Q. And on how many occasions?
 2 A. Once as far as I can
 3 recall.
 4 Q. Why don't you describe
 5 that for me?
 6 A. I called him to get his
 7 insurance information. And he
 8 apologized for what had happened.
 9 Q. Do you know when that was?
 10 A. Right after the accident.
 11 I was so shook up that night, I
 12 didn't get his insurance
 13 information. So I called, I
 14 believe, it was the next day and I
 15 spoke to somebody and they said he
 16 wasn't home. So I called later and
 17 I spoke to him.
 18 Q. Did your husband speak to
 19 him as well or just you?
 20 A. Just me.
 21 Q. And you got the insurance
 22 information?
 23 A. Yes.
 24 Q. Did you say anything else
 25 to him?

1 A. No.
 2 Q. You didn't say anything to
 3 him?
 4 A. Well, ---.
 5 Q. About how you felt or ---?
 6 A. No. I can't recall, I
 7 don't know.
 8 Q. Is there anybody else that
 9 you have spoken to, other than your
 10 medical providers, about the
 11 accident?
 12 A. Yes.
 13 Q. And who have you talked
 14 to?
 15 A. My family and my friends.
 16 Q. Anybody in particular that
 17 you have discussed it with?
 18 A. My family.
 19 Q. Your husband?
 20 A. Oh, yes.
 21 Q. And who else do you
 22 include with your family?
 23 A. My sons, my mother, my
 24 brother. I have five brothers.
 25 Q. Is there anybody in

1 particular out of that group or
 2 anyone else that you feel you have
 3 confided in about it?
 4 A. My friends.
 5 Q. Can you name some people?
 6 A. Two of them in particular
 7 was Louise Baker and Darlene
 8 Burkhouse.
 9 Q. Can you spell Darlene
 10 Burkhouse?
 11 A. D-A-R-L-E-N-E, Burkhouse
 12 is B-U-R-K-H-O-U-S-E.
 13 Q. Where does Louise Baker
 14 live?
 15 A. Emporium.
 16 Q. What about Darlene
 17 Burkhouse?
 18 A. Emporium.
 19 Q. Have you ever been
 20 convicted of a crime?
 21 A. No.
 22 Q. Do you have any military
 23 history?
 24 A. No, I don't.
 25 Q. Have you ever testified

1 before as a witness or in any kind
 2 of proceeding?
 3 A. No.
 4 Q. Have you ever been a party
 5 to a lawsuit before?
 6 A. No. Well, my divorce.
 7 Q. Sure, fair enough.
 8 Anything other than the divorce?
 9 A. No.
 10 Q. At the time this accident
 11 happened, were you wearing your seat
 12 belt?
 13 A. Yes.
 14 Q. And we looked now at your
 15 diary here that you brought today,
 16 also at Duttry One, the statement.
 17 Have you given any other either
 18 written statements or statements
 19 that were recorded that you're aware
 20 of, other than these two things that
 21 we're looking at today that would
 22 pertain to the accident?
 23 A. No. Not unless you
 24 consider the doctor recording
 25 things.

1 Q. Okay. Fair enough. So
2 telling the doctor how you feel when
3 you go?
4 A. Right.
5 Q. Anything other than that?
6 A. No. I talked --- you said
7 the police, right?
8 Q. Yes.
9 A. Okay.
10 Q. But you didn't write
11 anything down then, right? You
12 didn't give some written statement
13 to the police, did you?
14 A. Verbal.
15 Q. And they didn't have a
16 tape recorder, to the best of your
17 knowledge, did they?
18 A. No, they did not.
19 Q. I want you to please list
20 for me those problems, you know,
21 physical problems, mental problems,
22 that you claim are related to the
23 accident of May 31st, 2000?
24 A. After the accident I got
25 very forgetful, I got depressed.

1 And after the accident, my shoulder
2 and my neck hurt, my knee hurt.
3 Q. Is there anything else?
4 A. Let me think.
5 Q. Take your time.
6 A. As far as my mental state,
7 it worsened.
8 Q. And how so?
9 A. Well, as I said, I got
10 more forgetful, and more depressed.
11 And I got --- my mood swings got
12 worse.
13 Q. Are there any other
14 symptoms you think worsened because
15 of the accident?
16 A. No.
17 Q. Let's start with the
18 shoulders, is that something that
19 you claim that you still have
20 problems with today?
21 A. It still hurt some, yes.
22 Q. And what kind of --- you
23 said it hurts, are there any other
24 problems that you have with it, does
25 it limit your activities?

1 A. No.
2 Q. Is it your right shoulder
3 or your left shoulder?
4 A. My right shoulder.
5 Q. So it doesn't limit what
6 you do in any way though, right?
7 A. No, it does not.
8 Q. Do you take any pain
9 medication for that?
10 A. I can't take pain
11 medication.
12 Q. Why not?
13 A. It interferes with my
14 other medications.
15 Q. So the answer is, no, you
16 don't take any pain medications?
17 A. Right.
18 Q. What about your neck, do
19 you still have problems with your
20 neck today?
21 A. It's sore some, yes.
22 Q. Does it limit what you do?
23 A. No. I don't do much
24 because of my back, so I can't
25 answer that actually.

1 Q. But when you say I don't
2 do much because of my back, are you
3 again referring to those disks?
4 A. Yes.
5 Q. That am I right, you're
6 not claiming that that's a part of
7 the lawsuit?
8 A. That's correct.
9 Q. So as far as you know, the
10 neck soreness doesn't limit you at
11 all, is that fair to say?
12 A. I notice when I'm at my
13 computer, right, and I'm keyboarding
14 that this bothers me.
15 Q. The back of your neck?
16 A. Yes.
17 Q. On the right side?
18 A. Yes, and my shoulder I
19 noticed.
20 Q. Do you stop, I mean, does
21 that mean you can't keyboard?
22 A. If I do for very long,
23 it's very painful.
24 Q. Does it prevent you from
25 doing that?

1 A. For any length of time it
2 does.
3 Q. What kind of length of
4 time are we talking about?
5 A. Oh, maybe a half an hour.
6 Q. So you can do it for a
7 half an hour and then you stop?
8 A. Yes.
9 Q. Are you seeing any doctors
10 about that neck problem?
11 A. No, I'm not. I have been
12 seeing about my ruptured disk and I
13 hate to see another doctor.
14 Q. So that's your choice that
15 you haven't gone to see another
16 doctor ---
17 A. Yes.
18 Q. --- for the neck?
19 A. That's correct.
20 Q. Who are you seeing for the
21 ruptured disk?
22 A. Doctor Esbaugh.
23 Q. What about for the
24 shoulder, are you seeing any doctors
25 for your shoulder?

1 appointment about it?
2 ATTORNEY DREXLER:
3 I don't think she
4 testified to that.
5 ATTORNEY OLIVER:
6 She said she planned
7 to see and then she named
8 a couple people as maybe
9 for this shoulder problem,
10 currently that's her
11 plan.
12 BY ATTORNEY OLIVER:
13 Q. When did you make that
14 plan? Was it before today or since
15 we have been sitting here talking
16 about it?
17 A. It was before today.
18 Q. Do you know when that was?
19 A. No.
20 Q. And what about the mental
21 problems, you said forgetfulness,
22 more depressed, worse mood swings?
23 A. Right.
24 Q. Those are the three things
25 you told me. Is that something you

1 A. Not at the present, no.
2 Q. Do you have plans to go
3 see someone now?
4 A. Yes.
5 Q. Who are you going to go
6 see?
7 A. I would imagine I would
8 talk to Doctor Esbaugh about it.
9 Q. So this is something you
10 ---?
11 A. Or Doctor Hallstrom again.
12 Q. Do you have an appointment
13 to do any of this?
14 A. No, I don't.
15 Q. When did you make that
16 plan to do it?
17 A. It's just bothering me, so
18 as I said, I'm seeing Doctor Esbaugh
19 for my ruptured disk, I hate to
20 start seeing another doctor. But I
21 should because it is hurting.
22 Q. And I understand that.
23 But my question is, when did you
24 decide that this is bothering me,
25 I'm going to go and make an

1 think continues today because of
2 this motor vehicle accident?
3 A. I'm on different
4 medications now and it controls
5 that.
6 Q. Are you having those
7 symptoms in the degree that is worse
8 than after the motor vehicle
9 accident today?
10 A. I can't answer that.
11 Q. Why not?
12 A. I don't understand the
13 question.
14 Q. Sure. I understood that
15 you said you're on medications, and
16 that implies something. But what I
17 need you to do is answer the
18 question that I had asked. And that
19 is, I had asked you, you know,
20 talking about these symptoms of
21 forgetfulness, increased depression,
22 and increased mood swings, those
23 things that you say are related to
24 this car accident, is that something
25 you still experience?

1 A. Forgetfulness.
 2 Q. And you think that that
 3 symptom of forgetfulness is related
 4 to the car accident?
 5 A. Yes.
 6 Q. And who do you see about
 7 that?
 8 A. Doctor Turkin.
 9 Q. Have you talked with him
 10 about whether or not this is related
 11 to the car accident?
 12 A. At the beginning I did.
 13 Q. And what did he say about
 14 that?
 15 A. Yes.
 16 Q. He said it was?
 17 A. Yes.
 18 Q. And it's your
 19 understanding you alluded to you go
 20 to the doctor and they would write
 21 things down, is that something you
 22 recall Doctor Turkin do?
 23 A. He records it.
 24 Q. He records it on a
 25 cassette tape, he actually records

1 Q. How does it bother you?
 2 A. It's painful.
 3 Q. Your right knee?
 4 A. Yes, that's correct.
 5 Q. How long can you be on
 6 your feet before that happens?
 7 A. Oh, an hour.
 8 Q. So you're okay up until
 9 about an hour, right?
 10 A. Yes.
 11 Q. Are you currently seeing
 12 anybody for that problem?
 13 A. No, I'm not.
 14 Q. Do you have plans to see
 15 somebody for that problem?
 16 A. Yes.
 17 Q. Who are you going to see?
 18 A. Doctor Krot.
 19 Q. When is the last time you
 20 saw Doctor Krot, do you know?
 21 A. Maybe a year ago. I can't
 22 be precise.
 23 Q. You think it was a few
 24 months after your surgery?
 25 A. Yes.

1 discussions with you or he writes
 2 them down?
 3 A. He writes them down, I
 4 guess.
 5 Q. Do you see him do that?
 6 A. No.
 7 Q. Do you know if he uses a
 8 tape to record it?
 9 A. He has a file, so some way
 10 he records that.
 11 Q. And what about the knee,
 12 you said that you had a knee injury
 13 or knee problems?
 14 A. Yes.
 15 Q. Is that something that you
 16 still have?
 17 A. Yes. Not to the degree I
 18 did before surgery.
 19 Q. Surgery, you had surgery
 20 in June of 2001, right?
 21 A. Yes.
 22 Q. What kind of problems do
 23 you have now with the knee?
 24 A. If I'm on my feet, it
 25 bothers me and it cracks.

1 Q. Do you have an appointment
 2 with Doctor Krot?
 3 A. No, I do not.
 4 Q. The knee problem what, if
 5 anything, does that prevent you from
 6 doing now?
 7 A. On my feet for a length of
 8 time.
 9 Q. So what you ---?
 10 A. And it bothers me to
 11 dance.
 12 Q. Since the last time you
 13 have saw Doctor Krot, have you been
 14 to any other doctor for that
 15 problem?
 16 A. No, I have not.
 17 Q. The problem with the
 18 forgetfulness that you say you still
 19 have, what does that prevent you
 20 from doing, if anything?
 21 A. Nothing.
 22 Q. And I know you said you
 23 have never been a party to a lawsuit
 24 before. Let me ask it this way.
 25 And other than the disability claim,

1 I know you're on disability right
 2 now, and that's through Hartford,
 3 right?
 4 A. Yes.
 5 Q. Have you ever brought
 6 another kind of claim for personal
 7 injuries seeking money because you
 8 think somebody has hurt you?
 9 A. No.
 10 Q. Now, I think in your
 11 Interrogatory responses you had told
 12 me that you had been involved in
 13 like two prior motor vehicle
 14 accidents before May of 2000, is
 15 that right?
 16 A. That's correct.
 17 Q. And when were those?
 18 A. The first one was when I
 19 was ten.
 20 Q. And the second one, was it
 21 1994 the second one?
 22 A. Yes --- no, it's '96.
 23 Q. Okay.
 24 A. Yes, I'm sorry --- yes, it
 25 was 1996.

1 Q. What about after the
 2 accident of May of 2000, after that
 3 car accident, have you had any other
 4 car accidents?
 5 A. No.
 6 Q. What about slip and falls,
 7 anything like that?
 8 A. No.
 9 Q. None at all? How did you
 10 hurt your back?
 11 A. I don't know.
 12 Q. That wasn't a result of a
 13 fall?
 14 A. No.
 15 Q. Do you remember slipping
 16 and falling on ice, anything like
 17 that that you might have reported to
 18 a doctor?
 19 A. No.
 20 Q. Not after this May of 2000
 21 accident?
 22 A. No.
 23 Q. List for me, please, all
 24 of the doctors that you have seen
 25 for injuries you relate to this car

1 Q. Did you have any injuries
 2 in either of those?
 3 A. No.
 4 Q. Nothing at all?
 5 A. No. I hurt my knee back
 6 when I was ten, but I never got
 7 treatment.
 8 Q. And how did you hurt your
 9 knee?
 10 A. I stoved it.
 11 Q. You stoved it?
 12 A. Yes.
 13 Q. In that vehicle accident?
 14 A. Yes.
 15 Q. Which knee was that?
 16 A. My right knee.
 17 Q. And how did you do that,
 18 did you hit it against something?
 19 A. No, I just --- I don't
 20 even know if I stoved it. Like I
 21 said, I never saw a doctor at the
 22 time of the accident.
 23 Q. Did it bother you then
 24 growing up?
 25 A. No.

1 accident?
 2 A. I saw Doctor Bellomo,
 3 Doctor Hallstrom, and Doctor Krot.
 4 Q. What about Turkin?
 5 A. Yes.
 6 Q. Is Doctor Bellomo your
 7 family doctor?
 8 A. At the time, yes.
 9 Q. And you also went to the
 10 medical center after the accident,
 11 right? Did you go to DuBois
 12 Regional Medical Center?
 13 A. For physical therapy.
 14 Q. You didn't go in there the
 15 day of the accident?
 16 A. Yes, I did.
 17 Q. In the last ten years,
 18 have you had any other family
 19 doctors other than Doctor Bellomo?
 20 A. Yes, I did.
 21 Q. Who?
 22 A. Petra.
 23 Q. Where is Doctor Petra?
 24 A. She's in Emporium at the
 25 Cameron County Health Care Center.

1 Q. I'm sorry, go ahead.
 2 A. I was trying to think of
 3 her first name. I can't think of
 4 her last name. Chincheva
 5 (phonetic).
 6 Q. Anybody else? Any other
 7 family doctors in that time period?
 8 A. No, not that I can recall.
 9 Q. Doctor Hallstrom, do you
 10 know when you last saw Doctor
 11 Hallstrom?
 12 A. Let's see, maybe --- I
 13 don't know. I can't be precise. It
 14 was in 2001.
 15 Q. So about the time you had
 16 your surgery?
 17 A. It was before that.
 18 Q. You said you last saw
 19 Doctor Krot shortly after the
 20 surgery, right? We could look at
 21 your records, I guess.
 22 A. Maybe six months.
 23 Q. Do you think it was even
 24 six months?
 25 A. As I said, it was either

1 Norm?
 2 A. At the Behavior Health
 3 Center in DuBois.
 4 Q. And you saw him in 2000,
 5 right?
 6 A. Yes.
 7 Q. What about in 1999?
 8 A. No, I saw another
 9 counselor.
 10 Q. Who was that?
 11 A. Sheri somebody.
 12 Q. Same place though,
 13 Behavior Health Center?
 14 A. Yes.
 15 Q. How long have you been
 16 having counseling at Behavior Health
 17 Center?
 18 A. Three years.
 19 Q. And you don't do that
 20 now. Do you remember falling at
 21 DuBois Regional Medical Center?
 22 A. Yes, I did.
 23 Q. When was that?
 24 A. Come to think of it, it
 25 was in August of last year.

1 October, November or December. I
 2 can't narrow it down.
 3 Q. Of 2001?
 4 A. That's correct.
 5 Q. When's the last time you
 6 saw Doctor Turkin?
 7 A. I saw Doctor Turkin two
 8 months ago.
 9 Q. How regularly do you see
 10 him?
 11 A. Now it's two months.
 12 Q. Every two months?
 13 A. Yes.
 14 Q. And, I'm sorry, do you see
 15 any other mental health care
 16 providers now?
 17 A. No, I don't see a
 18 counselor now.
 19 Q. Who's Norm?
 20 A. He was my counselor.
 21 Q. And what's his last name?
 22 A. Figerella (phonetic).
 23 Q. Can you spell that?
 24 A. No, I cannot.
 25 Q. Where did you go to see

1 Q. And what injuries did you
 2 have after that, if any? I mean,
 3 did you hurt yourself?
 4 A. I bumped my knee again.
 5 Q. Your right knee?
 6 A. Yes.
 7 Q. Okay.
 8 A. And I was taken to the
 9 emergency room and they did several
 10 different x-rays.
 11 Q. And what happened as a
 12 result of that, anything?
 13 A. No.
 14 Q. And you still don't
 15 remember having any falls between
 16 that time at the medical center and
 17 the automobile accident?
 18 A. No. As I said, I'm
 19 forgetful. I don't remember
 20 everything.
 21 Q. Has there been any ---
 22 let's take the knee for a minute.
 23 Since the accident up until the time
 24 you had your surgery in June of
 25 2001, was there any point when your

1 knee felt, you know, better than it
 2 did or was it pretty much a constant
 3 feeling throughout that whole time
 4 period?
 5 A. When I wasn't active, when
 6 I was having mental problems and
 7 that, and I wasn't active, it really
 8 didn't bother me. But as soon as I
 9 started to get more active, it
 10 started to bother me again.
 11 Q. And what about with
 12 respect to the shoulder, same
 13 question, was there some period when
 14 it was better or was it pretty much
 15 the same, and I'll take that up
 16 through today, from the time of the
 17 accident through today?
 18 A. It's bothered me. But I
 19 thought --- it's bothered me, yes.
 20 Q. Is there any time when it
 21 was better or worse?
 22 A. It was better when I
 23 wasn't doing much. I had a very ---
 24 I just wasn't doing that much.
 25 Q. Can you explain to me

1 A. Oh, since mid July.
 2 Before that I volunteered at the
 3 American Cancer Society.
 4 Q. And what did you do ---
 5 let me back up. July 2002 you
 6 started this nursing home?
 7 A. Yes.
 8 Q. And then before that you
 9 volunteered at the American Cancer
 10 Society?
 11 A. Yes.
 12 Q. What did you do?
 13 A. Answered the phones.
 14 Q. How many days a week do
 15 you think you did that?
 16 A. Maybe two, just in the
 17 afternoon.
 18 Q. And what about the neck
 19 problems that you had, was there a
 20 time when that was better or has
 21 that been pretty much the same since
 22 the accident or maybe a time when it
 23 was worse?
 24 A. It hurts now since I
 25 started working with the computer.

1 things that you're doing now that
 2 you weren't doing? I'm not sure
 3 what you mean.
 4 A. I volunteer now.
 5 Q. Where do you volunteer?
 6 A. At the DuBois Nursing
 7 Home.
 8 Q. What do you do there?
 9 A. I assist the beautician.
 10 Q. How often do you do that?
 11 A. Two days a week.
 12 Q. And how long are you
 13 there?
 14 A. From nine until about
 15 four.
 16 Q. What do you do to assist
 17 the beautician?
 18 A. I take the rollers out.
 19 And I take the patients to the
 20 beauty shop.
 21 Q. Do you do any other
 22 volunteer work?
 23 A. No, I don't.
 24 Q. How long have you been
 25 doing that at the nursing home?

1 Q. What do you do with the
 2 computer?
 3 A. I keyboard.
 4 Q. What?
 5 A. E-mail.
 6 Q. So personal-type things?
 7 A. Yes.
 8 Q. When did you start doing
 9 that?
 10 A. October.
 11 Q. Of what year?
 12 A. 2002.
 13 Q. Before October of 2002,
 14 had it been bothering you at all?
 15 A. It's a nagging pain. Yes,
 16 it has.
 17 Q. Before the automobile
 18 accident that we're here about, did
 19 your neck bother you at all?
 20 A. No.
 21 Q. Again, you don't take any
 22 pain medications for that?
 23 A. No.
 24 Q. So you think now that
 25 doing this volunteer work over at

1 the nursing home, that's bothering
 2 your shoulder?
 3 A. Yes, and my knee.
 4 Q. But you're able to do it,
 5 right?
 6 A. For ---.
 7 Q. I mean, you go?
 8 A. Yes, I go. I do a little
 9 bit and then I sit down.
 10 Q. The forgetfulness, did you
 11 tell me that you think that that is
 12 getting better or am I not recalling
 13 that correctly?
 14 A. A little better. I'm
 15 still forgetful.
 16 Q. Have you ever had a doctor
 17 tell you that that's related to the
 18 car accident?
 19 A. Yes.
 20 Q. And who's that?
 21 A. Norm did. Well, he's not
 22 a doctor, Norm did. And Doctor
 23 Turkin. It's bothering me just
 24 sitting here like this.
 25 Q. Your neck is?

1 kind of treatment?
 2 A. I had chemo and radiation.
 3 Q. When was that?
 4 A. In '96.
 5 Q. Okay.
 6 A. And '97.
 7 Q. Since then, since that
 8 treatment was over, have you had any
 9 recurrence of cancer?
 10 A. No.
 11 Q. Do you still see an
 12 oncologist on a fairly regular
 13 basis?
 14 A. Once --- yes.
 15 Q. And who's that?
 16 A. At first it was Doctor
 17 Turkin in Saint Mary's. Now it's
 18 Doctor Marchioli in DuBois.
 19 Q. Doctor Turkin was the
 20 oncologist?
 21 A. No, I'm sorry, Doctor
 22 Tandon?
 23 Q. And now it's Doctor
 24 Marchioli where?
 25 A. In DuBois, at the Hahne

1 A. Yes, and my shoulder.
 2 Q. Now, I just want to have a
 3 general idea of what your health was
 4 before the accident. We have talked
 5 about bipolar disorder, right,
 6 that's something that you had before
 7 this accident happened?
 8 A. Yes.
 9 Q. Osteoporosis, right?
 10 A. Yes.
 11 Q. And has anybody told you
 12 that that's really concentrated in
 13 one area your body, the
 14 osteoporosis, or is that an all over
 15 problem for you?
 16 A. They never said.
 17 Q. What kind of symptoms did
 18 you have?
 19 A. I shrunk.
 20 Q. You mentioned cancer?
 21 A. Yes.
 22 Q. What kind of cancer?
 23 A. Breast.
 24 Q. Is that something for
 25 which you --- I take it you had some

1 Cancer Center.
 2 Q. How often do you go there?
 3 A. Six months.
 4 Q. You also said you had
 5 arthritis in your knee, right?
 6 A. Yes.
 7 Q. And that was before the
 8 accident?
 9 A. Yes, slight arthritis.
 10 Q. What about back problems
 11 or anything like that?
 12 A. No. I had --- no.
 13 Q. You seem to hesitate
 14 there.
 15 A. I found out that I had a
 16 compound fracture after the
 17 accident. And we looked at the
 18 x-rays that was there prior to the
 19 accident.
 20 Q. The fracture was?
 21 A. Yes. It was in T-4, I
 22 believe, on my spine.
 23 Q. Who do you treat with for
 24 that?
 25 A. Doctor Esbaugh. I did see

1 Doctor Gick and he transferred. Now
 2 I see Doctor Esbaugh.
 3 Q. Where is Doctor Esbaugh?
 4 A. In Saint Mary's.
 5 Q. Is that at Elk Regional
 6 Health Center?
 7 A. Yes.
 8 Q. And are you also seeing,
 9 did I also see Valigorsky?
 10 A. Yes, I saw Doctor
 11 Valigorsky and he gave me shots,
 12 they didn't help.
 13 Q. And Doctor Forgate, have
 14 you ever seen Doctor Forgate?
 15 A. I don't think I have ever
 16 heard the name.
 17 Q. Doctor Valigorsky and the
 18 shots that you just talked about?
 19 A. Yes.
 20 Q. That's related to your
 21 back problem though?
 22 A. Yes.
 23 Q. And, again, not related to
 24 this car accident, right?
 25 A. No, not as far as I know.

1 seen for symptoms you relate to this
 2 accident. And we know that you had
 3 a knee surgery ---
 4 A. Yes.
 5 Q. --- in June of 2001. And
 6 I take it you think that that's
 7 related to the car accident?
 8 A. Yes, I do.
 9 Q. And that was with Doctor
 10 Krot?
 11 A. Yes.
 12 Q. Did Doctor Krot tell you
 13 that he thinks that the knee surgery
 14 was necessary because of the
 15 accident?
 16 A. Yes.
 17 Q. Other than that surgery,
 18 what other kinds of treatment have
 19 you had for any of these symptoms
 20 that you told me about?
 21 A. Physical therapy.
 22 Q. And that was basically two
 23 sessions, is that fair to say?
 24 A. No, it was more than that.
 25 Q. That was a bad question,

1 Q. In the last ten years, can
 2 you tell me, you have seen Doctor
 3 Turkin for mental health problems?
 4 A. Yes.
 5 Q. What other doctors have
 6 you seen for mental health problems?
 7 A. I saw Doctor Ordiway and
 8 Doctor Boxi. Doctor Ordiway is in
 9 Ridgway.
 10 Q. Where is Doctor Boxi?
 11 A. In Saint Mary's. And then
 12 I saw a woman, and I can't think of
 13 her name.
 14 Q. What year was that, do you
 15 know, that you saw this woman?
 16 A. Yes, it was in '99.
 17 Q. Okay. And what about as
 18 far as hospitalizations, can you
 19 tell me in the last ten years all
 20 the places that you were
 21 hospitalized for a psychiatric
 22 admission?
 23 A. Ridgway, one, and DuBois.
 24 Q. Now, you listed out
 25 various doctors for me that you have

1 sorry. It looked to me when I
 2 looked at your records, I'll just
 3 tell you, it looked like you went
 4 for an initial period?
 5 A. I understand what you
 6 mean, yes, two sessions.
 7 Q. So July through August of
 8 2000 being one session, however many
 9 times that is would be in your
 10 records, right?
 11 A. I see.
 12 Q. And then another session
 13 in February of 2001 through March of
 14 2001, does that sound about right to
 15 you?
 16 A. Yes.
 17 Q. Was there then --- there
 18 weren't any other times though or
 19 were there?
 20 A. No.
 21 Q. Okay. And what other
 22 kinds of treatment, anything else?
 23 A. Doctor Hallstrom
 24 prescribed exercises. And Doctor
 25 Krot also did.

1 Q. You mentioned medication
2 for psychiatric problems?
3 A. Yes.
4 Q. You had been taking
5 medication anyway, right?
6 A. Yes.
7 Q. And you were taking
8 medication for years and years
9 before this accident happened,
10 right?
11 A. Yes.
12 Q. Do you think you take
13 additional medication now because of
14 the accident?
15 A. He put me on different
16 medication.
17 Q. And it's your belief that
18 that's because of accident-related
19 symptoms?
20 A. Yes.
21 Q. And he is Doctor Turkin?
22 A. Yes.
23 Q. Before the accident we're
24 here about, did you ever see a
25 chiropractor?

1 Q. Do you think it's been
2 about a year, at least?
3 A. More than that. I was
4 told to quit.
5 Q. By whom?
6 A. Doctor Tandon.
7 Q. What were you seeing
8 Doctor Casteel for, what lead you to
9 go there?
10 A. Back pain.
11 Q. Again, the problems with
12 your disks?
13 A. No.
14 Q. I'm sorry. A different
15 problem?
16 A. Yes.
17 Q. Where was that pain?
18 A. In my T-4, in the center
19 of my back.
20 Q. And that's not something
21 that you think is related to this
22 accident, is it?
23 A. No.
24 Q. That's correct?
25 A. That's correct.

1 A. Years ago.
2 Q. Who was that?
3 A. I don't know.
4 Q. Do you know where it was?
5 A. Emporium.
6 Q. What did you see the
7 chiropractor for?
8 A. To get a massage, a back
9 adjustment.
10 Q. Were you having pain
11 problems?
12 A. I was --- mild, yes.
13 Q. And where?
14 A. My lower back.
15 Q. And since this accident,
16 you have seen a chiropractor, right?
17 A. Yes.
18 Q. Who have you seen?
19 A. Casteel, Doctor Casteel.
20 Q. Have you seen anybody
21 other than Doctor Casteel?
22 A. No.
23 Q. When is the last time you
24 saw him, do you know?
25 A. Oh, no, I don't.

1 Q. Are you currently seeing a
2 doctor for problems you relate to
3 this accident?
4 A. No.
5 Q. What about any other kind
6 of health care provider, physical
7 therapist, counselor, are you seeing
8 anybody like that for problems you
9 relate to the accident?
10 A. No.
11 Q. And when this accident
12 happened, what time did that occur?
13 A. Around eight o'clock in
14 the evening.
15 Q. And that was on, correct
16 me if I'm wrong, but that was May
17 31st, 2000, right?
18 A. Yes.
19 Q. And where had you been
20 just before?
21 A. Shop 'N Save, it's a
22 grocery store.
23 Q. And I guess, you hadn't
24 worked that day, right, you were on
25 disability?

1 A. Right.
 2 Q. Can you just give me a
 3 general idea of what you had done
 4 that day?
 5 A. Just some housework and I
 6 read. I sit out on the deck and
 7 read. And I went for a walk.
 8 Q. Had you had any alcoholic
 9 beverages before the accident?
 10 A. No, no.
 11 Q. And you said you were on
 12 medication, but you can't tell me
 13 right now what it was, right?
 14 A. That's right.
 15 Q. But that was psychiatric
 16 medication?
 17 A. Yes.
 18 Q. So you go to the Shop 'N
 19 Save?
 20 A. Yes.
 21 Q. And how far was that from
 22 your home?
 23 A. Two miles maybe.
 24 Q. And why don't you tell me
 25 what happens after you leave Shop 'N

1 Save?
 2 A. I left, I pulled out of
 3 Shop 'N Save to the left. I went
 4 --- I remember I stopped at the red
 5 light and I made a left-hand turn.
 6 And I went maybe a block and I was
 7 struck.
 8 Q. Do you know how long you
 9 were stopped there at that red
 10 light?
 11 A. No, I don't remember.
 12 Q. So you're stopped at the
 13 red light, you took a left-hand turn
 14 there?
 15 A. Yes.
 16 Q. On to Dixon Avenue?
 17 A. That's correct.
 18 Q. When you took a left on to
 19 Dixon Avenue, was there any traffic
 20 coming the other way?
 21 A. I had the arrow.
 22 Q. I'm sorry, when you took a
 23 left and you turn on to Dixon
 24 Avenue, was there any traffic coming
 25 from the opposite direction on

1 Q. When you turned on to
 2 Dixon and before the accident, did
 3 you see Mr. Evans' vehicle?
 4 A. No. Well, I saw him
 5 approaching.
 6 Q. You saw his truck
 7 approaching?
 8 A. Yes.
 9 Q. Can you describe his truck
 10 for me?
 11 A. It was a blue pickup.
 12 Q. Did you notice anything
 13 else about it when he was
 14 approaching other than it was a blue
 15 pickup?
 16 A. It had a blue light.
 17 Q. On top of the vehicle?
 18 A. No, on the dash.
 19 Q. Was the blue light
 20 flashing?
 21 A. I don't --- yes.
 22 Q. Anything else that you
 23 noticed about the vehicle?
 24 A. No.
 25 Q. Was the turn signal on?

1 A. No.
 2 Q. Do you know that or ---?
 3 A. I don't recall it being
 4 on.
 5 Q. But I want to make sure
 6 I'm clear here. Do you know --- is
 7 it your testimony that it was not on
 8 or just that you don't recall?
 9 A. It wasn't on.
 10 Q. Okay. So you saw the blue
 11 light?
 12 A. Yes.
 13 Q. Are you familiar with that
 14 Dixon Street there?
 15 A. I wasn't at the time.
 16 Q. Had you ever been on it
 17 before?
 18 A. Yes.
 19 Q. How many times do you
 20 think?
 21 A. I don't know.
 22 Q. And how far was that from
 23 your house did you say, about two
 24 miles?
 25 A. Shop 'N Save was two

1 A. That's --- I don't know.
 2 BY ATTORNEY OLIVER:
 3 Q. Okay.
 4 A. Dixon Street isn't that
 5 long.
 6 Q. Sure. Can you tell me
 7 where his vehicle was in relation to
 8 anything else on Dixon Street when
 9 you first saw him?
 10 A. No.
 11 Q. And you saw the blue light
 12 flashing?
 13 A. Yes.
 14 Q. Did you hear a fire alarm
 15 going off?
 16 A. Yes, I did.
 17 Q. Did you have any idea
 18 where that was coming from?
 19 A. No, I did not.
 20 Q. Did you see any other
 21 vehicles with lights flashing?
 22 A. No.
 23 Q. Did it occur to you at any
 24 point to pull over when you saw the
 25 blue light on Mr. Evans' vehicle?

1 miles.
 2 Q. And Shop 'N Save was about
 3 a block away?
 4 A. No, maybe a half mile.
 5 Q. Do you think you had been
 6 on that street at least ten times
 7 before?
 8 A. Yes.
 9 Q. 20 times before the
 10 accident happened?
 11 A. Probably, yes.
 12 Q. Do you think more than
 13 that?
 14 A. I would imagine, yes.
 15 Q. Were you aware that there
 16 was a fire hall there?
 17 A. No.
 18 Q. So how far away from you
 19 was Evans' vehicle when you saw it?
 20 ATTORNEY DREXLER:
 21 At what point, when
 22 she first saw it?
 23 ATTORNEY OLIVER:
 24 Yeah, when she first
 25 saw it.

1 A. No.
 2 Q. Did it occur to you that
 3 that might be an emergency vehicle?
 4 A. Yes. But may I say
 5 something?
 6 Q. Please.
 7 A. I always thought except
 8 for an ambulance, that you didn't
 9 have --- if he was coming in the
 10 opposite direction, I didn't think
 11 that I had to give him right away.
 12 Q. Okay. So was that
 13 consciously in your mind at the time
 14 this accident happened, that's what
 15 I'm wondering? Were you noticing
 16 the blue light and thinking, well, I
 17 don't have to pull over?
 18 A. I didn't notice it until
 19 he was up close.
 20 Q. Did you make any conscious
 21 thought about pulling over or not?
 22 A. No.
 23 Q. So you're telling me now
 24 after the fact though what your
 25 understanding is, is that why you

1 just said that about the
 2 right-of-way or not with the
 3 emergency vehicle? Let me back up
 4 for a minute. I'm trying to
 5 understand what you were thinking
 6 the day that this accident
 7 happened. And it can get a little
 8 confusing if we're not talking about
 9 the same time period, so let me just
 10 ask. You see the Evans' vehicle,
 11 you see the blue light flashing, did
 12 it occur to you to pull over?
 13 A. No.
 14 Q. Okay. Did it occur to you
 15 that it might be an emergency
 16 vehicle?
 17 A. Yes.
 18 Q. Okay. How long do you
 19 think it was from the first time
 20 that you saw the Evans' vehicle
 21 until the collision happened?
 22 A. Maybe a minute.
 23 Q. How fast was he driving?
 24 A. I don't know.
 25 Q. And how fast were you

1 in the vicinity when this happened?
 2 A. No, not that I'm aware of.
 3 Q. And did it look like he
 4 was turning into --- if you know,
 5 did it look like he was turning into
 6 somewhere or ---?
 7 A. Yes.
 8 Q. Where did it look like he
 9 was trying to turn into?
 10 A. There was an alley there.
 11 Q. So is it your belief that
 12 he was ---?
 13 A. I don't know where he was
 14 turning into.
 15 Q. Okay.
 16 A. Actually I didn't know he
 17 was going to turn until he hit me.
 18 Q. Did you put your horn on
 19 or anything like that?
 20 A. I did not have time to.
 21 Q. And was it fairly loud
 22 right there where you were, I mean,
 23 did you hear a loud siren?
 24 A. Yes, I did.
 25 Q. So there's a collision

1 driving?
 2 A. 25.
 3 Q. Did you do anything to try
 4 to avoid the accident?
 5 A. I did not have time to
 6 react.
 7 Q. Okay.
 8 A. No.
 9 Q. When was the first time
 10 you realized that there was going to
 11 be an accident?
 12 A. Maybe a couple seconds
 13 before it happened.
 14 Q. And, I mean, how exactly
 15 did it happen? So you're travelling
 16 on Dixon Street, he's coming the
 17 opposite direction?
 18 A. That's correct.
 19 Q. And what happened?
 20 A. He just cut right over in
 21 front of me.
 22 Q. As if he were going to the
 23 left?
 24 A. Yes.
 25 Q. Were there any other cars

1 then?
 2 A. Yes.
 3 Q. Why don't you describe
 4 that for me?
 5 A. He hit me. And I got out
 6 of the car. And then there wasn't
 7 any witnesses. And so he started
 8 hollering over to somebody to come
 9 over.
 10 Q. Do you know who he was
 11 hollering to?
 12 A. No, I do not.
 13 Q. And do you know if you
 14 said anything?
 15 A. I asked him why he did it.
 16 Q. And what did he say?
 17 A. He asked me if I was all
 18 right.
 19 Q. And what was your reply to
 20 that?
 21 A. I was in shock. I'm not
 22 sure.
 23 Q. Were you ever treated for
 24 shock?
 25 A. No.

1 Q. Do you remember being concerned about your car?
 2 A. Yes. I said my pretty car.
 5 Q. Right. And you had a lit cigarette when this happened too?
 7 A. Yes.
 8 Q. And you were concerned about what happened to that, right?
 10 A. Yes.
 11 Q. So you were able to walk around there right at the scene, right?
 14 A. Yes.
 15 Q. Did you hit your head on anything inside the vehicle?
 17 A. Yes.
 18 Q. What did you hit your head on?
 20 A. The air bag.
 21 Q. Did any other part of your body hit something inside the vehicle?
 24 A. Yes, my knee.
 25 Q. What did your knee hit?

1 done.
 2 Q. When did you have the root canal done?
 4 A. August after the accident.
 5 Q. August of 2000?
 6 A. Yes.
 7 Q. Who did that?
 8 A. Doctor Reese.
 9 Q. Where is Doctor Reese?
 10 A. In DuBois.
 11 Q. After having the root canal, is that problem fixed?
 13 A. Yes.
 14 Q. So did your tooth bother you that day right after the accident happened?
 17 A. No.
 18 Q. When did that start to bother you?
 20 A. A couple weeks afterwards. I had been to the dentist, yes, a couple weeks afterwards.
 24 Q. Did an ambulance come to the scene?

1 A. The air conditioner knob.
 2 Q. And which knee?
 3 A. The right knee.
 4 Q. But there were no cuts or bruises or anything, right?
 6 A. Yes, there was a bruise on my arm from the air bag.
 8 Q. On your right arm?
 9 A. Yes.
 10 Q. Anywhere else?
 11 A. Not that I can recall.
 12 Q. How about your knee, was your knee bruised?
 14 A. No.
 15 Q. No bruises on your face?
 16 A. No.
 17 Q. Were you cut anywhere or bleeding?
 19 A. No.
 20 Q. Did you have any broken bones from the accident?
 22 A. No. I had a bad tooth.
 23 Q. And what do you mean by a bad tooth?
 25 A. I had to have a root canal

1 A. No.
 2 Q. Were you asked if you wanted to have an ambulance come?
 4 A. Yes.
 5 Q. And did you refuse that?
 6 A. My husband drove me.
 7 Q. But what did you say when you were asked if you wanted to have an ambulance come?
 10 A. I don't remember.
 11 Q. So if in the police report it says that you refused medical attention, do you have any reason to doubt that?
 15 A. No, not if the police said it.
 17 Q. And how did your husband get there?
 19 A. He drove.
 20 Q. You called him?
 21 A. Yes.
 22 Q. And then he took you over to the medical center?
 24 A. Yes.
 25 Q. Am I correct that you have

1 not yourself paid any medical
 2 expenses for injuries for this
 3 accident?
 4 A. That's correct.
 5 Q. And when I looked at your
 6 insurance record, it looked to me
 7 like you had \$50,000 in first-party,
 8 they call it, or medical expense
 9 kind of coverage under your own
 10 policy. Do you understand that to
 11 be the case?
 12 A. I don't know. I haven't
 13 read my policy lately.
 14 Q. Have you ever been told by
 15 your insurance company that the
 16 limits for what they'll pay for this
 17 accident for medical expenses has
 18 been reached?
 19 A. No.
 20 Q. And to the best of your
 21 knowledge, have all the medical
 22 expenses actually been paid through
 23 your automobile insurance?
 24 A. Yes.
 25 Q. Do you also have medical

1 A. Yes.
 2 Q. And that something you
 3 relate to your knee problems, right?
 4 A. Yes.
 5 Q. And are there any specific
 6 activities, when you say be on my
 7 feet, were there things that you
 8 used to do that now you can't do?
 9 A. Walk for long distance.
 10 Q. Did you used to take long
 11 walks?
 12 A. Yes.
 13 Q. How often would you do
 14 that before the accident?
 15 A. Maybe about a week or
 16 twice a week.
 17 Q. And how long are we
 18 talking about, how long a distance
 19 would you ---?
 20 A. A mile.
 21 Q. Did you have a particular
 22 route you liked to take?
 23 A. Up around our house, the
 24 block. Well, no, I would walk the
 25 streets. That doesn't sound good.

1 insurance?
 2 A. Yes.
 3 Q. And who is that with?
 4 A. Select Blue, Highmark Blue
 5 Cross/Blue Shield.
 6 Q. Is that a policy through
 7 employment of your husband?
 8 A. Yes.
 9 Q. And how long have you had
 10 that policy?
 11 A. Since we were married.
 12 Q. I think I have asked you
 13 kind of specifically, you know,
 14 about some of the injuries you have
 15 talked about and how it might have
 16 restricted you or not restricted you
 17 from doing things. And I just want
 18 to ask that a little more generally
 19 to make sure we have covered it.
 20 Are there any things that you think
 21 you can't now do that you used to be
 22 able to do before this accident ---
 23 A. Be on my feet.
 24 Q. --- and you relate to it?
 25 Being on your feet?

1 Q. Was there anybody that you
 2 would walk with?
 3 A. No, my husband
 4 occasionally.
 5 Q. So you used to do that and
 6 are you telling me that now you
 7 can't do that?
 8 A. Right, I can't walk as
 9 far.
 10 Q. Since the accident has
 11 happened, from May 2000, May 31st,
 12 2000 until now, do you walk at all?
 13 A. No.
 14 Q. What other activities, if
 15 any, are you now limited from doing?
 16 A. Well, as I said, being on
 17 my feet for a long period of time.
 18 Q. Are there any specific
 19 things that you used to do that now
 20 you can't do?
 21 A. Line dance. Well, I
 22 wanted to learn how to line dance.
 23 And I went to a couple sessions and
 24 it bothered my knee so much, I
 25 couldn't do it.

1 Q. You went to those sessions
2 after the accident happened, after
3 the car accident?

4 A. Yes.

5 Q. But you didn't used to
6 line dance?

7 A. No.

8 Q. That's something that ---?

9 A. And my husband and I would
10 dance and that interfered with my
11 dancing.

12 Q. So you're saying that you
13 used to go dancing and now you
14 don't?

15 A. Yes. Right, we only go
16 out very seldom now.

17 Q. How often did you go
18 before?

19 A. Oh, we go maybe once a
20 month, twice a month.

21 Q. And how often do you go
22 now?

23 A. Oh, twice a year.

24 Q. And you think that that's
25 because of the car accident?

1 No. I think you have
2 restated her testimony and
3 I'm not sure you restated
4 it accurately, which is
5 why I'm objecting.

6 A. What was the question?

7 BY ATTORNEY OLIVER:

8 Q. Let me rephrase it. On a
9 day-to-day basis, how do you think
10 that this car accident has changed
11 your life?

12 ATTORNEY DREXLER:

13 Presently or at all?

14 BY ATTORNEY OLIVER:

15 Q. At all?

16 A. Well, it limited, at the
17 time and after my surgery, it
18 limited a lot of things.

19 Q. So was there kind of a
20 recuperation period there?

21 A. Yes.

22 Q. Sitting here today, how is
23 your life different now because of
24 the accident?

25 A. I have stated, being on my

1 A. My knee bothers me, yes.
2 Q. So, yes, you think it's
3 because of the car accident that you
4 go less?

5 A. Yes.

6 Q. Any other activities?

7 A. Now?

8 Q. In which you're now
9 limited?

10 A. No.

11 Q. So is it fair to say,
12 other than those things that you
13 have just mentioned, as far as your
14 day to day life, there isn't a lot
15 of difference that these
16 accident-related injuries have
17 made?

18 ATTORNEY DREXLER:

19 Well, I'm going to
20 object to the form of the
21 question.

22 ATTORNEY OLIVER:

23 Are you telling her
24 not to answer it?

25 ATTORNEY DREXLER:

1 feet for a length of time.

2 Q. Okay.

3 A. And, as I said before,
4 keyboarding bothers me. And just
5 sitting here bothers me.

6 Q. Just sitting?

7 A. Just sitting here bothers
8 me, yes.

9 Q. And your shoulder?

10 A. Yes.

11 Q. Is there anything else?

12 A. My knee bothers me.

13 Q. And we have talked about
14 that, right?

15 A. Yes.

16 Q. Is there anything else
17 about the knee that you feel is
18 important that we haven't talked
19 about?

20 A. It cracks. No.

21 Q. How about your marriage,
22 has this accident, do you think it's
23 affected your marriage?

24 A. It did for a time, yes.

25 Q. But that's now resolved?

1 A. Yes.
 2 Q. How long a time?
 3 A. Maybe a year.
 4 Q. And how did it affect your
 5 marriage for a year?
 6 A. Oh, I was more depressed,
 7 my mood swings got worse, I got
 8 mean.
 9 Q. So it was those
 10 psychiatric symptoms you think?
 11 A. And then I couldn't ---
 12 there were other things I couldn't
 13 do.
 14 Q. Like what?
 15 A. Our personal life.
 16 Q. What about your personal
 17 life?
 18 A. It limited it.
 19 Q. And I need you to tell me
 20 how?
 21 A. I don't want to. It's
 22 personal.
 23 Q. Are you talking about
 24 sexual activity?
 25 A. Yes.

1 A. Yes.
 2 BY ATTORNEY OLIVER:
 3 Q. Is there any other way
 4 that this has affected your
 5 marriage?
 6 A. Yes, for a period of time
 7 I continued do my housework. My
 8 husband had to do my housework. And
 9 we had to be separated during the
 10 time of my recuperation because I
 11 couldn't stay in my home.
 12 Q. Where did you stay?
 13 A. With my mother.
 14 Q. Was that the recuperation
 15 from the knee surgery?
 16 A. Yes.
 17 Q. Why couldn't you stay at
 18 home?
 19 A. Because the bathroom and
 20 the bedrooms are upstairs.
 21 Q. And where does your mother
 22 live?
 23 A. Emporium.
 24 Q. And how long did you stay
 25 with her?

1 Q. And if you're making a
 2 claim here for those kinds of
 3 things, then I need you to tell me
 4 what it is that you weren't able to
 5 do?
 6 A. I can't.
 7 Q. Are you asking for
 8 compensation because this accident
 9 has affected your marriage?
 10 A. Yes.
 11 Q. Then you need to tell me
 12 what things it is that you want to
 13 be compensated for?
 14 ATTORNEY DREXLER:
 15 I think she's already
 16 said her sexual activity
 17 is limited. Do you want
 18 her to describe specific
 19 acts she can't do?
 20 ATTORNEY OLIVER:
 21 No, I want her to
 22 describe anything else.
 23 If it's sexual activity,
 24 that's fine, you have said
 25 that then.

1 A. Two weeks.
 2 Q. And then after that two
 3 weeks you went back home?
 4 A. Yes. I had trouble
 5 getting up and down the stairs, but
 6 I didn't want to be away from home
 7 any longer.
 8 Q. Is there anything else
 9 that we haven't talked about today,
 10 any way that you feel this accident
 11 has affected your life?
 12 A. It really changed my
 13 mental state because after
 14 everything I had been through prior
 15 to the nervous breakdown, and then
 16 it just seemed like things were
 17 getting to go well for me and then
 18 this happened. And it just seems
 19 like that's affected me.
 20 Q. Do you think that is still
 21 affecting you as far as your mental
 22 state or is that something that
 23 happened for a period and now has
 24 resolved?
 25 A. I think I'm just bitter

1 about it because it just, as I said,
 2 I was through so much, I just didn't
 3 think I should have to go through
 4 any anymore, but I did.

5 Q. Is there anything else ---

6 A. No.

7 Q. --- you wanted to add?

8 And I just want to --- I'm going to
 9 mark this as Duttry Two. And I'm
 10 not going to represent --- these are
 11 some records that I obtained from
 12 the Hartford, and I just want to
 13 know if it's your handwriting on
 14 these three documents?

15 A. Yes.

16 Q. I'll mark it 2a, b and c?

17 A. Yes.

18 Q. That's all of your
 19 handwriting?

20 A. Yes, unfortunately.

21 Q. Why do you say that?

22 A. Well, it's sloppy.

23 Q. And let me ask you about
 24 2b and 2c. So you filled out these
 25 documents?

1 Q. Do you believe that that's
 2 about the time that you filled it
 3 out?

4 A. Yes.

5 Q. And then as far as 2b, you
 6 see that same received mark, do you
 7 ---?

8 A. No, I do not see that.

9 Q. It says February 9, '01?

10 A. I do not see that.

11 Q. Looking at that stamp, and
 12 I don't know, I'm asking you. Do
 13 you believe that that's about the
 14 time that 2b would have been filled
 15 out, that is February 9, 2001?

16 A. Well, it was filled out

17 shortly before it was received. I
 18 filled it out and sent it in.

19 Q. So sometime around

20 February 2001 you filled out 2b?

21 A. Yes.

22 Q. Thank you. I'll just take
 23 a look at my notes, but I think I'm
 24 done.

25 ATTORNEY OLIVER:

1 A. Yes.

2 Q. And can you tell me why
 3 you filled them out and what the
 4 purpose of it was?

5 A. Yes, to see if I'd still
 6 be qualified for my disability.

7 Q. Do you know, can you tell
 8 me with respect to either 2b or 2c,
 9 I don't know when either of them
 10 were made or were filled out, can
 11 you tell me that?

12 A. No, I cannot. Well, right
 13 there it says 2-5-01.

14 Q. Okay. And that's on 2a.
 15 How about 2b?

16 A. It's not dated.

17 Q. And do you think that that
 18 was filled out at the same time, do
 19 you know, as 2a?

20 A. I don't know.

21 Q. And how about 2c, same
 22 question, can you tell me when that
 23 was filled out?

24 A. It says received January
 25 24th of 2002.

1 Thank you very much.

2 I'm done.

3 EXAMINATION

4 BY ATTORNEY DREXLER:

5 Q. I have one thing I'd like
 6 to question you about, Mrs. Duttry.

7 In response to counsel's
 8 questions, a question about how long
 9 it was that you had observed the
 10 Defendant's vehicle prior to the
 11 accident. You said about a minute?

12 A. Yes.

13 Q. Now, we often casually
 14 throw around terms like just a
 15 minute, just a second. A minute
 16 means 60 seconds?

17 A. Yes.

18 Q. Do you think you observed
 19 his vehicle for a full 60 seconds
 20 before that accident?

21 A. I should have said I don't
 22 know to that question.

23 Q. So you're not certain that
 24 it was a full minute?

25 A. I can't remember.

1 Q. Okay. Fair enough.

2 ATTORNEY DREXLER:

3 Nothing further.

4 We'll read.

5 * * * * *

6 DEPOSITION CONCLUDED AT 11:50 A.M.

7 * * * * *

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<p style="text-align: center;">-#-</p> <p>#1 [1] 5:4 #2a [1] 5:5 #2b [1] 5:6 #2c [1] 5:7</p> <p style="text-align: center;">-\$-</p> <p>\$10.57 [1] 31:14 \$50,000 [1] 102:7</p> <p style="text-align: center;">-'</p> <p>'01 [1] 116:9 '84 [1] 12:24 '96 [2] 62:22 76:4 '97 [1] 76:6 '98 [2] 15:12,15 '99 [2] 26:8 79:16 'N [6] 85:21 86:18,25 87:3 90:25 91:2</p> <p style="text-align: center;">-0-</p> <p>02-412 [1] 1:8</p> <p style="text-align: center;">-1-</p> <p>105 [1] 10:10 106 [1] 2:12 107 [1] 6:3 116 [1] 4:4 117 [1] 4:5 118 [1] 4:5 119 [1] 4:6 11:50 [1] 118:6 12 [2] 31:18,25 15 [1] 12:15 15219 [1] 3:6 16 [3] 1:16 2:15 10:18 16801 [1] 3:13 19 [6] 14:22 28:10,15 29:11,17 42:21 1988 [4] 14:23 15:4 24:16 25:1 1990 [1] 26:16 1994 [1] 62:21 1996 [1] 62:25 1997 [1] 19:4 1998 [2] 15:11 26:9 1999 [5] 15:9,10,16 17:11 68:7</p> <p style="text-align: center;">-2-</p> <p>2-5-01 [1] 115:13 2/12/47 [1] 11:15 20 [2] 13:10 91:9 2000 [24] 16:17 17:4,13 18:5 28:19 32:14 34:5,14 36:8 38:12 39:7,9,20,25 50:23 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NAME AND ADDRESS DUTTRY, LINDA D 105 CHESTNUT STREET			REGISTRATION DATE 05/31/00	TIME 20:45	ORG DNR	MED. REC. NO 378202	BILLING NO 0015200639	
P A T I E N T	DUBOIS PA 15801	COUNTY 095 PA	AGE 53Y	BIRTH. DATE 02/12/47	METHOD ARRIVAL 2 WALK IN	SEX F	RACE 1	M.S. M
			RELIGION BAPTIST	P.T. ER	FIN.CL. AU	ADMIT BY HW		
TELEPHONE NO. (814)372-2394 S.S. NO. 170-40-1241 EMPLOYER, ADDRESS, OCCUPATION, PHONE 110198 <i>1 Corra 8/1/00</i>			ICD-9-CM/CPT4 CODES					
DISABLED								
PT/PT REPRESENTATIVE STATES SYMPTOMS OR ACCIDENT - HOW, WHERE, WHEN MVA			STAFF ALERT					
PERSON TO NOTIFY IN CASE OF EMERGENCY DUTTRY, CARL 105 CHESTNUT STREET DUBOIS PA (814)372-2394 H			RELATIONSHIP SPOUSE					
R E S P V	NAME AND ADDRESS DUTTRY, CARL L SPOUSE 105 CHESTNUT STREET			TELEPHONE (814)372-2394 TRUCK DRIVER SOC. SEC. # 200-30-5109	REL	EMPLOYER NAME AND ADDRESS WOMELDORF TRUCKING R D 1 BROOKVILLE PA 15825 (814)849-8347		
	DUBOIS PA 15801							
I N S	INSURANCE COMPANY AUTO INSURANCE AUTO INSURANCE PROF	PLAN 350001 35000	POLICY HOLDER DUTTRY, LINDA; D DUTTRY, LINDA D	REL 1	POLICY # 219245614 219245614	GROUP # 470003532 470003532		
	E.R. PHYSICIAN PALMER, GEORGE JR	FAMILY PHYSICIAN OUTPATIENT, DOCTOR	REFERRING PHYSICIAN ROUTPATIENT, DOCTOR					

AUTHORIZATION FOR EMERGENCY, OUTPATIENT, OR SHORT PROCEDURES UNIT TREATMENT

I, Carl Duttry (or Carl),

for Winda, voluntarily authorize and consent to diagnostic procedures,

examinations, and/or medical care as prescribed by, or deemed necessary in the judgement of Dr. Palmer for

Emergency Treatment Outpatient Services Short Procedures Unit Services.

I understand that this consent does not include operations or any non-routine procedures or treatment, and that the risks and alternatives for such procedures or treatment, which a reasonable patient would consider significant to a decision whether or not to undergo such treatment or procedures, will be explained to me by my treating physician or another physician designated by him.

I certify that no guarantees have been made to me as to the results of treatments or examinations in the Medical Center.

This form has been explained to me and I certify that I understand its contents.

Signature of Patient

Relationship

NOTE: This report is strictly confidential and is for the information only of the person to whom it is addressed. No responsibility can be accepted if it is made available to any other person, including the patient.

Witness

Patient is unable to consent for the following reason:

Condition

Signature of Patient Representative

Relationship

Date/Time

Witness

Witness

RELEASE FROM RESPONSIBILITY FOR DISCHARGE

I am leaving (or taking Condition from) the DuBois Regional Medical Center against the advice of my physician. I have been informed of the risks involved in this decision. I hereby release the DuBois Regional Medical Center, its staff, and my physician from all responsibility for any ill effects which may result from this action.

Signature of Patient

Relationship

Date/Time

Witness

Witness



EMERGENCY DEPARTMENT RECORD Page 1 of 7

Time: 8:05 Emergent Urgent NonurgentCONDITION ON ARRIVAL: Poor Fair Satisfactory DOA

CHIEF COMPLAINT: Was in my A. Driver of car another car made a hard think hit her head on my head head. No LOC. Car may deployed. No seatbelt - no headache

VITAL SIGNS	Temp 98.6	Pulse 74	Resp 16	BP 118/64	O ₂ Sat 94%	WT 171
-------------	-----------	----------	---------	-----------	------------------------	--------

ALLERGIES: Sulfa

CURRENT MEDS: See attached list *Aspirin - sleep*.

Neurotonic
Ativan
Terazosin
Levodopa

IMMUNIZATIONS: DNA UP TO DATE LAST TT/TD:

VISUAL ACUITY	OD	OS	OU	<input type="checkbox"/> CORRECTED <input type="checkbox"/> UNCORRECTED
---------------	----	----	----	--

ODNA

PT. PREGNANT? DNA YES NO UNSURE HYSTERECTOMY
LMP *8/10/04* TUBAL LIGATION

TRIAGE TO: Registration *Emergency Room* RoomPrimary Nurse: *Mary Hallison*

378202 015200639

05/31/00

DUTTRY, LINDA D

170-40-1241 F 53Y 02/12/47

PALMER, GEORGE JR

OUTPATIENT, DOCTOR



CHECK THE REQUESTED STUDIES

<input type="checkbox"/> CBC	<input type="checkbox"/> Cardiac enzymes	<input type="checkbox"/> UA	<input type="checkbox"/> C&S
<input type="checkbox"/> Lytes	<input type="checkbox"/> CKMB	<input type="checkbox"/> UC	<input type="checkbox"/> Wet Mount
<input type="checkbox"/> BUN	<input type="checkbox"/> CPK, Trip, Myo	<input type="checkbox"/> RSS	<input type="checkbox"/> RSV
<input type="checkbox"/> Creatinine	<input type="checkbox"/> Troponin I	<input type="checkbox"/> Throat C&S	<input type="checkbox"/> Triage Drug Screen
<input type="checkbox"/> Blood Sugar	<input type="checkbox"/> Digoxin level	<input type="checkbox"/> Blood C&S	<input type="checkbox"/> Coma Panel
<input type="checkbox"/> Amylase	<input type="checkbox"/> Cholesterol	<input type="checkbox"/> Type and Screen	<input type="checkbox"/>
<input type="checkbox"/> PT/PTT	<input type="checkbox"/> Monospot	<input type="checkbox"/> Type and Cross	<input type="checkbox"/>
<input type="checkbox"/> Basic Met Prof.	<input type="checkbox"/> Pregnancy	<input type="checkbox"/> Type and Cross	<input type="checkbox"/>
<input type="checkbox"/> Hepatic Prof.	<input type="checkbox"/> ETOH	<input type="checkbox"/> Chlamydia	<input type="checkbox"/>
<input type="checkbox"/> Compre profile	<input type="checkbox"/> Magnesium	<input type="checkbox"/> GC	<input type="checkbox"/>

EKG: EKG: Provisional Reading: Repeat

C	<input type="checkbox"/> ABG. <input type="checkbox"/> on O ₂ <input type="checkbox"/> on Room Air	<input type="checkbox"/> Repeat	<input type="checkbox"/> Repeat
A	<input type="checkbox"/> Proventil	<input type="checkbox"/> Repeat	<input type="checkbox"/> Repeat
R	<input type="checkbox"/> Proventil <i>Atrovent</i>	<input type="checkbox"/> Repeat	<input type="checkbox"/> Repeat
D	<input type="checkbox"/> Vaponephrine	<input type="checkbox"/> Repeat	<input type="checkbox"/> Repeat
I	<input type="checkbox"/> Other	<input type="checkbox"/> Repeat	<input type="checkbox"/> Repeat
O	<input type="checkbox"/> Peak Flows	<input type="checkbox"/>	<input type="checkbox"/>

S	<input type="checkbox"/> Chest	<input type="checkbox"/>	<input type="checkbox"/> CT
P	<input type="checkbox"/> Portable Chest	<input type="checkbox"/>	<input type="checkbox"/> Enhanced
R	<input type="checkbox"/> Port Lat C Spine	<input type="checkbox"/>	<input type="checkbox"/> Unenhanced
A	<input type="checkbox"/> C Spine	<input type="checkbox"/>	<input type="checkbox"/>
Y	<input type="checkbox"/> LS Spine	<input type="checkbox"/>	<input type="checkbox"/>
I	<input type="checkbox"/> ABD Series	<input type="checkbox"/>	<input type="checkbox"/>
A	<i>Emergency</i>	<input type="checkbox"/>	<input type="checkbox"/>
L	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PHYSICIAN REPORT

Dictated

EXAM TIME: 2045

History 10-15 min
Family Hx: No past medical history.

Medications:
1. Ativan
2. Levo

*Chest Sx: Slight**ABD: No tenderness, no rebound, no guarding.*

DISPOSITION OF PATIENT AND PATIENT INSTRUCTIONS

Condition On Discharge:	<input type="checkbox"/> Satisfactory	<input type="checkbox"/> Fair	<input type="checkbox"/> Poor	Time: <i>5:00 PM</i>	WITH: <input type="checkbox"/> self <input type="checkbox"/> family <input type="checkbox"/> other
-------------------------	---------------------------------------	-------------------------------	-------------------------------	----------------------	---

<input type="checkbox"/> Admitted Room No:	<input type="checkbox"/> Physician Notified/Time:	<input type="checkbox"/> Sent Home	<input type="checkbox"/> Return to work	<input type="checkbox"/> Deceased	<input type="checkbox"/> Transferred	NOTIFIED: <input type="checkbox"/> Relative <input type="checkbox"/> Coroner	<input type="checkbox"/> Police <input type="checkbox"/> Poison Center
---	--	------------------------------------	---	-----------------------------------	--------------------------------------	--	---

For follow-up care please see: Personal physician Occupational medicine ER if worse or not improvingFOLLOW INSTRUCTIONS ON HEAD INJURY CULTURE STREP SCREEN LAB TEST X-RAY/EKG'S SPRAINS, STRAINS AND CONTUSIONS NOSEBLEEDS U.R.I.
 WOUND CARE AND BURN CARE GASTROENTERITIS AND/OR ABDOMINAL PAIN ALLERGY INJ. URINARY INFECTIONS CARE OF CHILD AND FEVER
 ANIMAL BITES CASTS EYE CARE TETANUS INJECTION MEDICATION ALERT MEDICATION USEOTHER INSTRUCTION: *10x w/eys - Plaster*

<input type="checkbox"/> No Work or School	Date: <i>8/10/04</i>
<input type="checkbox"/> No Physical Education	<input type="checkbox"/> Until Released by Physician
<input type="checkbox"/> Light Work Only	

Method of Validating Knowledge: *Verbalization* Return Demo Other: *None*PATIENT/ RESPONSIBLE PARTY *Mary Hallison* NURSE'S SIGNATURE

PHYSICIAN'S SIGNATURE

I hereby acknowledge receipt of these instructions, have read them and understand them. I further understand that I have had emergency treatment and that I may be released before all of my medical conditions/test results are known or treated. I will arrange for follow-up care. DuBois Regional Medical Center-DuBois, PA 15801

Patient: LINDA DUTTRY, 378202

Date: 05/31/2000 Time: 23:49

Discharge Instructions

Learning Needs Identified: Illness, Medication, Follow-up Care

Primary Language: English

Barriers Identified: None

Intervention for Barriers to Learning: None

Teaching Methods Used: Printed patient instruction, Verbal instruction

IMPORTANT: We examined and treated you today on an emergency basis only. This was not a substitute for, or an effort to provide, complete medical care. In most cases, you must let your doctor check you again. Tell your doctor about any new or lasting problems. We cannot recognize and treat all injuries or illnesses in one Emergency Department visit. If you had special tests, such as EKG's or X-rays, we will review them again within 24 hours. We will call you if there are any new suggestions. After you leave, you should follow the instructions below.

You were treated today by GEORGE JR PALMER, MD.

THIS INFORMATION IS ABOUT YOUR FOLLOW UP CARE

Call DOCTOR OUTPATIENT, MD if you have any problems or concerns. You can reach DOCTOR OUTPATIENT at , DUBOIS, PA, 15801.

THIS INFORMATION IS ABOUT YOUR DIAGNOSIS

CONTUSIONS (Bruises).

Contusions are an injury to a body part caused by a blunt object. The force of the injury breaks some of the tiny blood vessels in and under the skin. Leaking blood from these broken vessels causes the swelling and the blue color. As the bruise heals, the swelling will go away. The bruise will change as the blood is washed away from the inside. Its color will change from blue to yellow-green and later to a faint brown. It should disappear completely in about 3 weeks.

Do the following:

- Apply ice packs. These help keep the swelling down in the first 2 days after an injury. After that, it should get steadily better.
- After 2 days, use warm packs. That will help the injury heal faster.

Call your doctor if you have:

- increased pain or swelling.
- fever.
- pain lasting longer than 1 week.
- any new or severe symptoms.

HEAD INJURY

A head injury shakes up the brain inside its protective skull. Examination of your brain and nerves was normal. Sometimes, though, problems can show up later.

Follow these instructions:

- Rest quietly for about 1 day.
- Eat simple foods, such as soup and other liquids.
- **Do Not Drink Alcohol!**
- Have someone else watch you for the problems listed below (someone who does not have an injured head).
- Have them wake you to check for symptoms every 4 hours.

Call your doctor if you have:

- repeated or persistent vomiting.
- headache which worsens or lasts more than 1 day.
- unequal pupils (one large and one small).
- difficulty seeing.
- difficulty walking or using your arms.
- dizziness, confusion, or loss of consciousness.
- difficulty being awakened.
- bleeding or drainage of fluid from the nose or ears.
- slurred speech.
- new or worsening neck pain.
- any new or severe symptoms.

IF YOU CANNOT REACH YOUR DOCTOR, CALL OR RETURN TO THE EMERGENCY DEPARTMENT.

THIS INFORMATION IS ABOUT YOUR MEDICINE

IBUPROFEN (Motrin, Advil, Rufen, Nuprin).

Take this medicine with food in the following dose: 800 mg by mouth twice a day if needed for pain or swelling.

This medicine will reduce fevers, control pain and reduce inflammation (redness and swelling). Side effects may include: an upset stomach, heartburn or drowsiness. Allergy would show up as: rash or itching, wheezing or shortness of breath.

Follow these instructions:

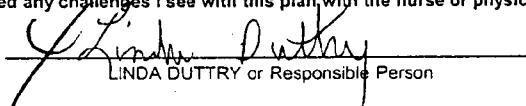
- Store this medicine away from heat, moisture or direct light.
- If you miss a dose, take it as soon as possible. If it is within 4 hours of your next dose (or within 8 hours if you are taking it once or twice a day), skip the missed dose. Do not double the doses.
- Take this medicine with food to avoid an upset stomach.
- **Do not take aspirin or naproxen or ketoprofen while taking this medicine.** (Check the labels on over-the-counter medicines.)

Call your doctor if you have:

- any sign of allergy.
- any new or severe symptoms.

YOU ARE THE MOST IMPORTANT FACTOR IN YOUR RECOVERY. Follow the above instructions carefully. Take your medicines as prescribed. Most important, see a doctor again as discussed. If you have problems that we have not discussed, call or visit your doctor right away. If you cannot reach your doctor, return to the Emergency Department.

"I have received this information and my questions have been answered. I have discussed any challenges I see with this plan, with the nurse or physician."


LINDA DUTTRY or Responsible Person

LINDA DUTTRY or Responsible Person has received this information and tells me that all questions have been answered.


DuBois Regional Medical Center Staff Signature Date: 05/31/2000 Time: 23:49

You may receive a survey in about a week from DuBois Regional Medical Center regarding this Emergency Department visit. Please complete the survey, as we are interested in hearing your feedback! Thank You!



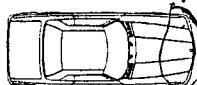
DuBois Regional Medical Center
EMERGENCY PHYSICIAN
RECORD
MVA (5)

17

378202 00152000
DUTTRY DAD 170-40 F 53Y 02/12/47
PALMER, GEORGE JR
OUTPATIENT, DOCTOR

TIME SEEN: 2:50 ROOM 2250 EMS Arrival
HISTORIAN: patient spouse paramedics

HX / EXAM LIMITED BY:

HPI chief complaint: MVA Injury to: 1150 2nd flr 245																			
occurred: just PTA	position in vehicle: driver passenger front back																		
context: -car collision overturned vehicle single-car accident (lost control / fell asleep / unknown cause)																			
location of pain/injuries: head face mouth neck chest abdomen back upper mid- lower radiating to (R/L) thigh/leg																			
<table border="1"> <tr> <td style="text-align: center;">right</td> <td style="text-align: center;">left</td> </tr> <tr> <td>shldr</td> <td>hip</td> </tr> <tr> <td>arm</td> <td>thigh</td> </tr> <tr> <td>elbow</td> <td>knee</td> </tr> <tr> <td>f-arm</td> <td>elbow</td> </tr> <tr> <td>leg</td> <td>knee</td> </tr> <tr> <td>wrist</td> <td>leg</td> </tr> <tr> <td>hand</td> <td>ankle</td> </tr> <tr> <td>foot</td> <td>foot</td> </tr> </table>		right	left	shldr	hip	arm	thigh	elbow	knee	f-arm	elbow	leg	knee	wrist	leg	hand	ankle	foot	foot
right	left																		
shldr	hip																		
arm	thigh																		
elbow	knee																		
f-arm	elbow																		
leg	knee																		
wrist	leg																		
hand	ankle																		
foot	foot																		
severity of pain: mild	associated symptoms: lost consciousness/ dazed																		
moderate	duration: remembers: impact coming to hospital																		
severe	seizure																		
site of impact: "P" = primary "S" = secondary 																			
<table border="1"> <tr> <td>force</td> <td>low</td> <td>mod</td> <td>high</td> </tr> <tr> <td>direct</td> <td>glancing</td> <td></td> <td></td> </tr> </table>		force	low	mod	high	direct	glancing												
force	low	mod	high																
direct	glancing																		
restraints: none lap / shoulder doesn't recall car seat air bag deployed thrown from vehicle ambulated at scene long extrication																			

ROS	<input checked="" type="checkbox"/> all systems neg except as marked
	<input checked="" type="checkbox"/> loss of feeling / power arms/legs
	<input checked="" type="checkbox"/> headache
	<input checked="" type="checkbox"/> double vision / hearing loss
	<input checked="" type="checkbox"/> trouble breathing / chest pain
	<input checked="" type="checkbox"/> nausea / vomiting
	<input checked="" type="checkbox"/> loss of bladder function
	<input checked="" type="checkbox"/> skin laceration
	<input checked="" type="checkbox"/> recent fever / illness

SOCIAL HISTORY recent FTOH smoker drug abuse

PAST HISTORY negative

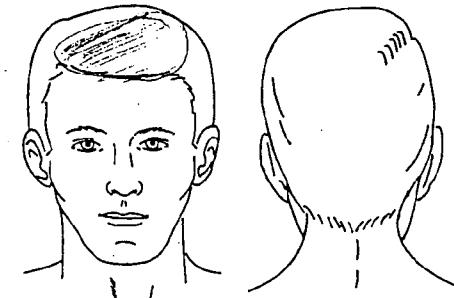
Meds: none / see nurses note
Allergies: NKDA / see nurses note

Nurses note reviewed Tetanus immun. UTD Vital signs reviewed

PHYSICAL EXAM Alert Lethargic Anxious
Distress: MAD mild moderate severe
Other: c-collar (PTA / in ED) back-board IV splint

HEAD see diagram
no evidence of trauma
 Battle's sign / Raccoon Eyes

NECK see diagram
non-tender vertebral point-tenderness
painless ROM muscle spasm / decreased ROM
trachea midline pain on movement of neck



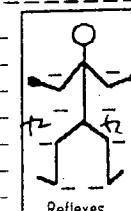
EYES PERRL unequal pupils R- mm L- mm
 EOM entrapment / palsy
 EOMI subconjunctival hemorrhage
 pale conjunctivae

ENT hemotympanum
 EML obscured by wax
 clotted nasal blood
 dental injury / malocclusion

RESP & CVS see diagram (on reverse)
 decreased breath sounds
 wheezing / rales
 heart sounds nml
 splinting / paradoxical movements
 tachycardia

ABDOMEN non-tender
 no organomegaly
 rebound tenderness
 mass / organomegaly
 guarding

GENITAL / RECTAL perineal hematoma
 blood at urethral meatus
 decreased rectal tone

NEURO / PSYCH confusion / disorientation
 EOM palsy / anisocoria
 facial asymmetry
 unsteady / ataxic gait
 sensory / motor deficit


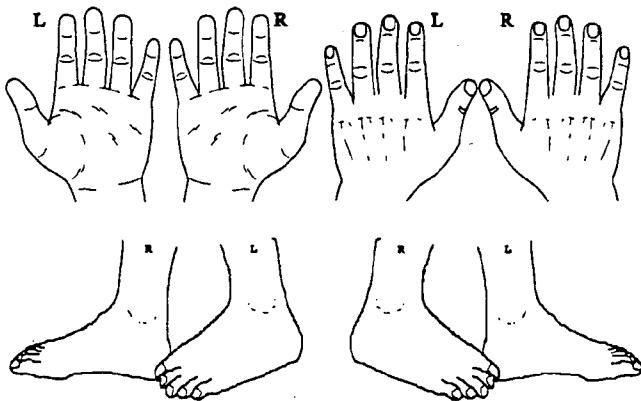
SKIN
intact
warm, dry

BACK
no CVA
tenderness
no vertebral
tenderness

EXTREMITIES

atraumatic
pelvis stable
hips non-tender
no pedal edema
nml ROM

- see diagram
crepitus / diaphoresis
- see diagram
vertebral point-tenderness
CVA tenderness
muscle spasm / limited ROM
- see diagram
bony point-tenderness
painful / unable to bear weight
pulse deficit
Joint Exam:
limited ROM / ligaments laxity / joint effusion



XRAYS Interp. by me Reviewed by me Discsd w/radiologist

C-Spine D-Spine LS-Spine

nml / NAD
no fracture
nml alignment
soft tissues nml
reversal / straightening of cerv. lordosis
DJD / spondylosis / spurring

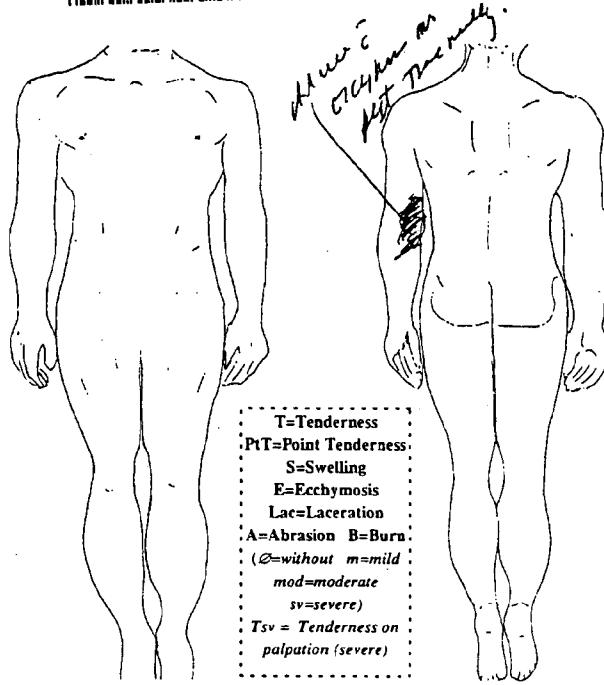
CXR

nml / NAD
no infiltrates
nml heart size
nml mediastinum
rib fracture
infiltrate / atelectasis

OTHER See separate report

Wound Description/Repair
length _____ cm location _____
superficial SQ muscle linear stellate irregular
clean contaminated moderately /*heavily _____
distal NVT: neuro & vascular status intact no tendon injury
anesthesia: local digital block cc
lidoc 1% 2% epi / bicarb marcaine .25% .5% LET
prep:
sterile saline irrigation ^{debrided / undermined}
irrigated/washed w/ saline ^{*extensively}
*extensively foreign material removed
explored minimal moderate ^{extensive}
repair: Wound closed with: dermabond / steri-strips
SKIN- # _____ -0 nylon / prolene / staples
*SUBCU- # _____ -0 vicryl / chromic
*may indicate intermediate repair ^{may indicate intermediate or complex repair}

378202 0015200630 05/31/00
DUTTRY, LINDA D
170-40-1241 F 53Y 02/12/47
PALMER, GEORGE JR
OUTPATIENT, DOCTOR



PROGRESS:

From 1yr w/o - chest
/ 6/04 w/o chest

Motor 800g, B10 A 2

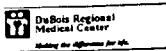
Discussed with Dr. _____ CRIT CARE- 30-74 min
will see patient in: office / ED / hospital 75-104 min _____ min
Counseled patient / family regarding: Prior records ordered
lab results diagnosis need for follow-up Additional history from:
Rx given Admit orders written family caretaker paramedics

CLINICAL IMPRESSION:

contusion		sprain / strain	
head		wrist	R / L
face		hand	R / L
chest		hip	R / L
abdomen		thigh	R / L
back		knee	R / L
shoulder	R / L	leg	R / L
arm	R / L	ankle	R / L
elbow	R / L	foot	R / L
forearm	R / L		
concussion		laceration	
with LOC w/o LOC			

DISPOSITION: home admitted transferred
CONDITION: unchanged improved stable

MD / DO



Emergency Department Record

7 of 7

378202 '0015200639 05/31/00
DUTTRY,LINDA D
170-40-1241 F 53Y 02/12/47
PALMER,GEORGE JR
OUTPATIENT,DOCTOR



1000 J. POLYMER SCIENCE: PART A

ACCUCKEK

HEMOCCULT

Time:

Time: _____

Results:

Initials:

Results: _____ Initials: _____

Code: B = Belief

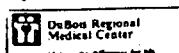
P = Partial Relief

N = No relief

O = No adverse effect

= Pain Scale

Time	Intervention	Type/Site	Comments	Initials
	Wound Care:			
	Cleansed			
	Steri Strips			
	Dressing			
	Musculoskeletal			
	Splint			
	Ace			
	Immobilizer			
	Sling			
	Crutches/Walker			
	Immobilizations Removed			
	GI			
	NG/Lavage			
	Enema			
	GU			
	Catheter			
	Other:			



Emergency Department Record Page 2 of 7

TIME: 9:20 am

Mode of Arrival	Arrived with	Self Care
<input checked="" type="checkbox"/> Ambulance	<input type="checkbox"/> W.C.	<input type="checkbox"/> Self
<input checked="" type="checkbox"/> Ambulatory	<input type="checkbox"/> Carried	<input type="checkbox"/> Police
Gait <input checked="" type="checkbox"/> Steady	<input type="checkbox"/> Spouse	<input checked="" type="checkbox"/> Independent
<input type="checkbox"/> Unsteady	<input type="checkbox"/> Family	<input type="checkbox"/> Total Assist
		<input type="checkbox"/> Friend
		<input type="checkbox"/> Partial Assist
		<input type="checkbox"/> Delegate
		<input type="checkbox"/> Child

378202 0015200639 05/31/00
 DUTTRY, LINDA D 170-40-1241 F 53Y 02/12/47
 PALMER, GEORGE JR
 OUTPATIENT, DOCTOR



Safety Measures

Siderails up Family at bedside
 Call Bell Security present

Environmental

Lives with: Self Spouse
 Family Other _____
 Language barrier
 Translator _____

Overall appearance: Normal Frail
 Mood/affect: Alert Anxious
 Cooperative Blunted/flat Lethargic
 Age appropriate Combative Confused
 Unresponsive Uncooperative

Ideations: _____

Trauma/Accidents

Driver Passenger Front Back
 Seat Belt on Air bag deployed

Type: Car Truck Motorcycle Bicycle _____Impact: Front Back
 Rollover Side Helmet Protective Clothing

Time of incident: _____

Extrication needed Yes No Fall (____ feet) GSW Assault Other _____

Prehospital Care / Treatment

 LSB C1D Stiff collar IV of _____ # at _____ in _____ IV of _____ # at _____ in _____ Accuchek _____ Meds: _____ Splints _____0, NC Simple Non-RebreatherAirway: Oral Nasopharyngeal ETT _____ EOA _____

PMH:

 NONE Unable to obtain CHF MI Cardiac Cath Hypertension Diabetes Asthma/COPD Seizures Cancer Stroke Dementia Mental Illness Ulcers GI Bleed Renal Disease _____ _____Alcohol use: _____Tobacco use: _____Caffeine use: _____

□ DNA

Airway

Clear/Patent
 Adjuncts _____

Breathing

Normal Dyspneic Grunting
 Stridor Nasal flaring Retractions
 Accessory muscles Absent
 Other _____

Cough: Non productive Productive

Breath Sounds:

 Not assessed / DNA

Right	Left
<input type="checkbox"/> Clear	<input type="checkbox"/>
<input type="checkbox"/> Rales/crackles	<input type="checkbox"/>
<input type="checkbox"/> Rhonchi/Coarse	<input type="checkbox"/>
<input type="checkbox"/> Wheeze	<input type="checkbox"/>
<input type="checkbox"/> Diminished	<input type="checkbox"/>
<input type="checkbox"/> Absent	<input type="checkbox"/>
<input type="checkbox"/> Tracheal Deviation	<input type="checkbox"/>
<input type="checkbox"/> JVD	<input type="checkbox"/>

Oxygen: _____ LPM _____ Time

NC Simple face Nonrebreather
 Tube Humidified Ventilator

Pulse Oximeter on at _____ %

□ DNA

Circulation

Color: Normal Pale
 Mottled Cyanotic
 Ashen Jaundice
 Sallow _____

Condition: Warm Dry
 Cool Moist
 Hot Cold

Pulses: Right Left DNA

Radial
 Normal

Thready
 Bounding
 Absent

Pedal
 Normal
 Thready
 Bounding
 Absent

Capillary refill: _____ seconds
 Bleeding controlled Yes No

Cardio Pulmonary

□ DNA

Chest pain Yes No

Location: _____

Radiation: _____

Onset/Duration: _____

Pain Scale (0-10) _____

Character: _____

 Dyspnea Syncope DiaphoresisDinemapp on: CARDIAC MONITOR

Rhythm _____

Pacemaker Yes No

Neurological

□ DNA

Patient Status

Unsure

Loss of Consciousness Yes NoWitnessed Duration _____Unwitnessed Incontinence _____Nausea Headache *7/10 on abdominal* Vomiting Post ictal Visual disturbance Appropriate verbal responses *FOCS = 15*Appropriate motor responses *FOCS = 15*

Pupils

Equal Duration _____Unequal In reactive _____Reactive Non reactive _____Non reactive Dilated & Fixed Dilated & Fixed Other *Demanded aspirin*

Extremity movement

Hand grasps Equal Unequal Duration _____Strong Weak Weak Leg movement Equal Unequal Strong Weak Weak Signature: *Mark Mullins, RN*Initials: *MM*

MISCELLANEOUS

DNA

Musculoskeletal Injury/Wounds

DNA

Mechanism of injury/Description: *Upper extremity (medially)*
Lower extremity (medially)
Extremity (medially)

Injured at: Work Home Other
 See body diagram

378202 0015200639 05/31/00
 DUTTRY,LINDA D 170-40-1241 F 53Y 02/12/47
 PALMER,GEORGE JR
 OUTPATIENT,DOCTOR

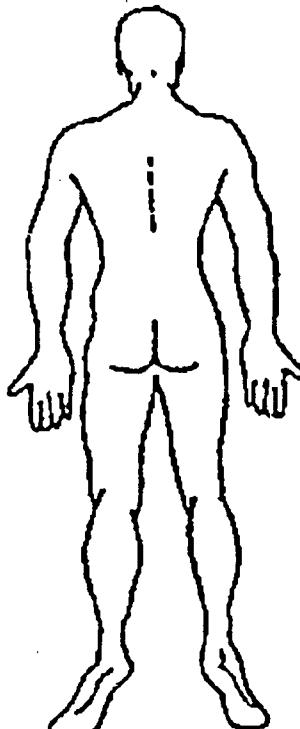
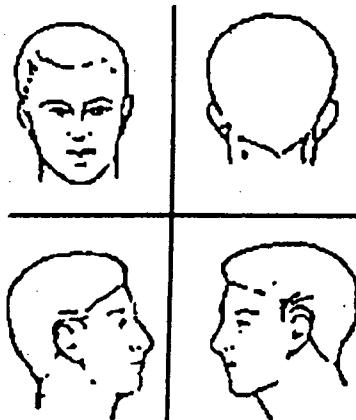


DNA

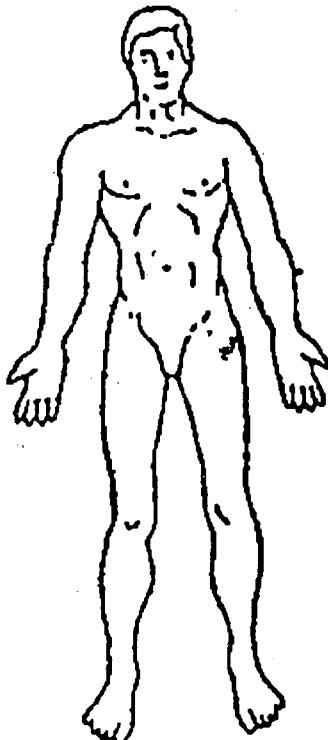
EENT

EYES	OD	OS	EARS	AD	AS	NOSE/THROAT
Red	<input type="checkbox"/>	<input type="checkbox"/>	Pain	<input type="checkbox"/>	<input type="checkbox"/>	Epistaxis
Tearing	<input type="checkbox"/>	<input type="checkbox"/>	Drainage	<input type="checkbox"/>	<input type="checkbox"/>	Rhinorrhea
Matted	<input type="checkbox"/>	<input type="checkbox"/>	Decreased	<input type="checkbox"/>	<input type="checkbox"/>	Sore throat
Burning/pain	<input type="checkbox"/>	<input type="checkbox"/>	Hearing	<input type="checkbox"/>	<input type="checkbox"/>	Dysphagia
Itching	<input type="checkbox"/>	<input type="checkbox"/>	Other:	<input type="checkbox"/>	<input type="checkbox"/>	Other:
Blurred vision	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
Loss of vision	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
Flashing light	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
Floater	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	
Foreign body	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	

DESCRIPTION: _____



A - Abrasion
 AM - Amputation
 AV - Avulsion
 B - Burn -1°, 2°, 3°
 C - Contusion
 CR - Crush
 E - Ecchymosis
 P - Penetration
 H - Hematoma
 L - Laceration
 D - Deformity



GI/GU/GYN

DNA

Abdomen:
 Soft Distended
 Guarding Rigid

Tenderness:
 None LUQ
 RUQ LLQ
 RLQ Epigastric

Bowel Sounds:
 Present Last BM _____
 Diminished
 Hyperactive
 None

GI:
 Nausea Dry heaves
 Vomiting _____
 Diarrhea _____
 Rectal Bleed _____

GU:
 Voids without difficulty
 Flank pain R L
 Dysuria
 Urgency
 Hematuria
 Frequency
 Foley
 Other _____

GYN:
 Fetal tones _____
 Vaginal bleeding _____
 Vaginal discharge _____
 History of ectopic
 Para _____ Gravida _____ Ab _____
 Description: _____

Signature: *MM*
 Initials: *MM*

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

DUTTRY, LINDA D *ER Unit # 000378202
105 CHESTNUT STREET
DUBOIS PA 15801 Age 53Y Acct # D0015200639

Date: 05/31/00 Time: 2313

PALMER, GEORGE JR OUTPATIENT, DOCTOR

DUBOIS PA 15801

Chk-in # Order Exam
404091 0001 40005 XR-MANDIBLE MIN 4 VIEWS
Ord Diag: 959.8-INJURY MLT SITE/SITE NEC

MANDIBLE:

Multiple views of the mandible were obtained.

The mandible is intact. There is no evidence of fracture.

IMPRESSION: NORMAL STUDY.

NIA CODE: N

/READ BY/ GEORGE M KOSCO,
/Released By/ GEORGE M KOSCO,

06/01/00 1055
LLW

CP
6/1/00

Complete



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DuBois, Pennsylvania 15801-0447
Outpatient Therapy: (814) 375-3372

PHYSICAL THERAPY INITIAL EVALUATION

Patient:	Linda D. Duttry	Date:	07/19/2000
Diagnosis:	(R) Cervical/Trapezius Myofascial Disorder, (R) Knee Contusion/Patellofemoral Pain		
Physician:	Laun R. Hallstrom, MD/John J. Bellomo, DO		
Primary Ins:	CNA Auto Insurance	ID#	US219245614
2 nd Ins:	Select Blue	Onset Date:	05/31/00
			ID#YYZ200305109

SUBJECTIVE:

How Injury/Episode Occurred: Patient reports that she was driving a car that was hit head-on as a car in the opposing traffic attempted to make a (L) hand turn. Patient reports that she was wearing her seatbelt and her airbag deployed upon impact. Patient complains of (R) shoulder and neck pain which patient describes as painful at rest, with movement and increasing at the end of the day. Patient denies any numbness or tingling into (R) UE. Patient reports daily headaches. Patient reports she had a cervical and knee x-ray performed following MVA, but reports that these were not performed in the ER. Patient states only jaw was x-rayed in the ER. Patient currently complains of knee soreness with pain on walking and ambulating up and down the steps. Patient reports that (R) knee hurts when standing and when resting.

PMH/Medications: PMH: (R) Ankle fracture, CA of lymph nodes. Medications: Darvocet, Extra-Strength Tylenol.

Work Title/Description: Patient is currently on disability.

OBJECTIVE:

FUNCTIONAL STATUS AT ADMISSION: Patient reports no troubles with sleeping although per Neck Disability Index patient reports mild disturbance of sleep. Patient has discomfort throughout all movements of cervical region although reports no difficulties with driving. Patient reports increased pain with self care activities and increased neck pain with reading. Patient reports that she cannot walk long distances without increased (R) knee pain. Patient states it also hurts with stair ambulation. Patient reports that she utilizes a non-reciprocal pattern but had performed this previously due to the ankle fracture.

FUNCTIONAL STATUS BEFORE INJURY/EPISODE: Patient reports no limitations with functional activities prior to MVA.

PAIN: Currently 7/10 in the neck, 8/10 at its worst, 3/10 at its least. Knee pain currently 6/10, 8/10 at its worst, 4/10 at its least.

AROM/PROM: AROM cervical flexion WFL, cervical extension to neutral with discomfort and pain noted. (R) Cervical side bending 40° with discomfort noted on (R) side with (R) side bending. (L) Cervical side bending 46° with discomfort noted on (L) side with (L) side bending. (R) Cervical rotation 71°, (L) cervical rotation 61° with pain. Bilateral UE AROM measurements WFL. Bilateral LE AROM measurements WFL.

STRENGTH: Cervical resisted testing 3+/5 throughout. (R) Shoulder strength grossly 3+/5, (L) shoulder grossly 4-/5, bilateral elbows 4/5. (L) LE grossly 4+/5 throughout. (R) Hip flexion 3+/5, (R) knee and ankle movements 3/5. Passive SLR (L) 47°, (R) 30°.

SPECIAL TESTS: Negative Drop Arm Test with the exception of pain noted in (R) upper trapezius region. Pain noted with Impingement Test in (R) upper trapezius. Pain noted with Supraspinatus Test in (R) upper trapezius. Positive Cervical Compression and Distraction Tests for pain. Negative Vertebral Artery Test. (R) knee: Negative Varus and Valgus Stress Tests. Negative Anterior Drawer Test. Positive Clark's Test for pain. Negative Apprehension Test.

Page 2

Patient: Linda D. Duttry
P.T. Initial Evaluation (Continued)

MUSCULOSKELETAL/POSTURE: Patient demonstrates forward head and rounded shoulders in sitting position. Patellar mobs WFL both medially and laterally with grinding noted during medial mobilization.

SENSATION/DTR'S: Sensation grossly intact and equal to light touch bilateral UE/LE's.

TONE/PALPATION: Tenderness noted throughout (R) upper trapezius muscle, cervical paraspinals and interscapular region. Tenderness also noted with palpation over insertion of supraspinatus tendon and across the spine of (R) scapula. Tenderness noted with palpation across both medial and lateral joint lines at the (R) knee, as well as circumferentially around the (R) patella.

TREATMENT: Patient instructed in a HEP of cervical AROM in flexion, extension, side bending and rotation. Patient also educated on therapy goals and treatment plan.

GOALS:

Short Term Goals: (2 weeks)

1. Decrease subjective complaints of pain in neck/(R) shoulder region to 5/10.
2. Decrease subjective complaints of pain in (R) knee to 5/10.
3. Increase cervical extension AROM to WFL.

Long Term Goals: (4 weeks)

1. Decrease subjective complaints of pain in cervical/(R) shoulder region to 3/10.
2. Decrease subjective complaints of pain in (R) knee to 2/10.
3. Increase cervical side bending and rotation to be symmetrical bilaterally.
- ✓4. Increase (R) LE strength to equal that of the (L) LE.
- ✓5. Increase (R) and (L) shoulder strength to 4/5.
- ✓6. Patient will demonstrate independence in HEP.

FUNCTIONAL OUTCOMES: Return patient to prior level of function with minimal restrictions.

PATIENT/FAMILY PARTICIPATION IN PLAN: Yes.

UNDERSTANDING OF EXERCISE PROGRAM: Yes.

ASSESSMENT:

Patient is a 53 year old female who presents to Outpatient PT with diagnoses of Cervical/Trapezius Myofascial Disorder and (R) Knee Contusion/Patellofemoral Pain due to MVA on 05/31/00. Patient demonstrates pain in both cervical and knee region as well as decreased AROM/strength in cervical and (R) knee region and decreased function.

PLAN:

Patient to be seen 2-3 x a week x 4 weeks for treatment to include to cervical region MH, soft tissue massage, manual stretching, strengthening and MFR. Treatment for (R) knee to include US, ROM and (R) LE strengthening with concentration on VMO. Patient also to be instructed in HEP.

Thank you for this referral.

Sharon C. Crotzer PT
Sharon C. Crotzer, PT

SCC/mm

20510

Daily Progress Note

Pat[○] Name Duthry, Linda

(2) 7/20/00 (8:30-9:05)

S: Pt reports being sore p yesterday's eval in neck/shoulder region. "I had pain in the top of my R foot last night."

O: Rx: MH to cervical region x 15 mins supine while performing US to R anterior knee x 8 mins @ 2.5 w/cm².

Performed SLR, SAQ & R LE x 10 reps & A for SLR
Manual stretch R hamstrings (10 mins)

STM seated to cervical region (10 mins)

Reviewed HEP

A: Tolerated all treatment & only minimal complaints during massage. Spasms decreased some following Rx.

P: Cont Rx. Sharon C. Cugia PT

(3) 7/24/00 (10:15-10:55)

S: Pt reports being sore since last visit & pain as well.

O: Rx: MH to cervical region x 15 mins supine while performing US to R anterior knee x 8 mins @ 2.0 w/cm²

Performed SLR, SAQ and heel slides x 10 reps @ LE (STM seated to cervical and interscapular region (10 mins)

Reviewed HEP

Instructed pt in SAQ and heel slides & SD stretch to HEP (5', manual stretch C upper traps and C RDT to tolerance (10 mins)

A: A required for SLR due to pts complaints of patellar pain. Poor tolerance for manual stretching of cervical region. Minimal tolerance for STM. Encouraged more active participation & HEP for cervical exercises.

P: Cont Rx. Sharon C. Cugia PT

(4) 7/20/00 (10:00-10:45) (worec 10:41)

S: Pt reports being sore. "I have trouble going up the steps."

O: Rx: MH to cervical region x 15 mins supine while performing US to ant. (R) knee x 8 mins @ 2.0 w/cm²

Performed SLR & (A) 2x15 reps; patellar mobs medially + laterally (5 mins)

STM seated to (B) upper traps and interscapular region (10 mins) supine manual stretching to (R) upper traps, (R) levator and (L) cervical ROT (5 mins)

Reviewed HEP from previous visit; performed stepups 8" x 10 reps, shld shrugs and scapular retraction PRORx x 10 reps each (6 mins)

A: Tolerated treatment & continued complaints of soreness in both knee and neck/shld. Less (A) required for SLR & pt demo improved contractions ~ 40% soreness in (R) glute region.

Improved tolerance for STM and manual stretching.

P: Cont Rx 2-3x/week for progressive VMO strengthening (R) LE as tolerated. Progress UE exercises as tolerated. Sharon C. Crochet

(5)

7/31/00 (10:00-10:45)

S: Pt states she is gaining a little motion in her neck.

O: Rx: MH to neck x 15' while performing SLR 15 reps x 2, SAQ 15 x 2

(SLR & (A); US @ 2.0 w/cm² x 8' to (R) superior patellar border.

Pt then performed shld shrugs x 15 reps, forward lunge 8" step ups & seated fitter 2 bands 15 reps ea. to focus on (R) VMO (exes)

STM & trigger point mobs to (R) upper & middle traps (8') f/b manual stretching (R) cervical SB, rot, & combined motion (8')

A: Tol. well.

P: Continue Christine Gustafus PTA / Renie Calleka PT

(6) (10:00 - 10:45)
8-2-00

S: Pt states she does her exercises, but not all the time like she should. Pt reports no ↓ in neck or R knee pain.

O: Rx: MH to neck x 15' while completing neck disability index survey & US @ 2.0 w/cm² x 8' to R knee superior patellar border. STM & trigger point release to R upper Trap x 8'; manual stretching R cervical musculature: rot, SB, & combined motion. Instructed pt in AAROM cervical rot & added shr shrugs, & stretching of upper Trap & levator- pt demonstrated good working knowledge (12'). Pt then performed RLE ther-ex in focus on VMO: 15x2 SLR, SAQ; forward step ups, sitter, 1/4 wall squats & TKE in ball, hamstring curls (see exer-sheet) x 18'. Discussed importance of compliance in HEP.

Cervical AROM: SB R 32°, L 35°, rot R 60°, L 62°.

A: ROM ↓ - Should improve in stretching exers./HEP Compliance.

P: Cont. Rx; use biofeedback unit R VMO to improve isolation.

Christine Gustafus PTA

Rein Calish PT

(1) 8/3/00 (9:30 - 10:10)

S: "I don't know if I'm getting anywhere with my exercises."

O: Rx: US @ 2.0 w/cm² x 8' to R knee superior patellar border f/b

trigger point release R upper Trap x 5'; manual stretching R cervical musculature: rot, SB, & combined motion x 8'. Reviewed performance of flexibility exers. Pt then performed ther-ex per gym sheet x 18' wearing biofeedback R VMO threshold x 10, sensitivity 3.

A: Trigger points ↓.

P: Continue Rx. Christine Gustafus PTA/Rein Calish PT

(8) 8/7/00 (10:05-10:00)

8/11/00

S: Pt reports of pain in knee (R). "It's just sore. I did a lot of walking on Saturday." Pt reports dull ache in cervical region C 4/10 level.

O: Rx: continuous USC 2.0 w/cm² x 8 mins to (R) superior patella f/b STNL and trigger point release to (R) upper traps x 5 mins. Reviewed upper traps + levator stretch from HEP n pt performed (R) x 5 mins

Then tx performed per gym sheet i progressions as noted x 32 mins

AROM: cervical SB (R) 45° (L) 39°, ROT (L) 52° (R) 62°, ext wfc

instructed pt in SCR and wall slides for home program.

A: Tolerated additions to exercise program & complaints. Cervical AROM improved from previous measurements x (L) ROT. Tolerated exercise additions to HEP n demo good working knowledge of. Has achieved STB 1-3.

P: Cont Rx. Progress cervical/scapular strengthening. Sharon C. Crotz PT

(9)

8/9/00 (10:00-10:45)

S: Pt reports 80% improvement i knee and 45% improvement i neck. Pt reports "feeling good" and "no problems" following last treatment. Pt states pain in (R) knee 5/10 although states it has improved i therapy.

O: Rx: continuous USC 2.0 w/cm² x 8 mins to (R) knee superior patella f/b trigger point release to (R) upper traps in sidelying x 5 mins
Pt performed upper traps stretch
Then tx performed per gym sheet as outlined
Reviewed HEP

Biopfeedback on (R) VMO, threshold 10, sensitivity 2

Biopfeedback on (R) shld 4/5, (R) hip 4/5, (R) knee 4/5

A: Tolerated all exercises well i & knee complaints. Tenderness in (R) upper traps continues during palpation although spasm less noticeable and less prominent. Pt reports pain @ 5/10 level which is only one level lower than on eval although pt reports 80% improvement ((R) knee) ~ pts pain perception may be altered. Pts shld and (R) LE strength improved.

P: Cont tx. Send PN to St. Hilestrom following next visit. Pt may be appropriate to discontinue clinic treatment for VMO strengthening and continue clinic tx for cervical tx 2x/wk x 2 weeks.

Sharon C. Crotz PT

(10)

8/11/00 (10:00-10:45)

S: Pt states she has more motion in her neck.

O: Rx: US @ 2.0 w/cm² x 8' to R Knee superior patellar region
 f/b instruction in HEP progressions: shdr shrugs, scapular retraction in standing & prone, scapular protraction in supine, lower traps in prone, standing knee V, TKE = surgical tubing, 1/4 wall squats, forward step ups - pt demonstrated good working knowledge of all. Pt then performed ther-ex per gym sheet = addition of U/M/L traps & horizontal rows = tubing (35 min) Biofeedback unit on R VMO threshold x 10, sensitivity 2. AROM c-spine: rot R 69°, L 67°, SB R NNL, L 40°.

A: RDM improving. Minimal palpable trigger points in upper trap R.

P: F/u = Dr. 8-14-00; p.n. sent = pt. Awaiting further orders.

(Christine Gustitus PTA)
 (Anna rat PT)

(11)

8/15/00 (10:00-10:30)

S: Pt reports feeling good.

O: Rx: manual cervical stretching in SB + ROT

Reviewed addictions to HEP of prone scapular exs for mid + lower traps. Performed ther-ex per gym sheet as outline & progressions + addictions as noted (ther-ex x 25')

Instructed pt in supine chin tucks for HEP.

A: Isolated inc. w/ill. No vertebral complaints of pain in cervical region. Preferred R LE exs to HEP. Pt (1) & these exs.

P: Stat Rx for 3 more visits per recommendations. S. Anne Croft PT

(12)

Dulany Smack

8/18/00 (10:05-10:35)

S: Pt reports 1st soreness (0 pain) in R shoulder in last few days. "I tried to sleep & use towel roll and it worked one night but not the next." Pt reports numbness in R posterior upper arm (triceps region) which has been there since lymph node removal.

O: Rx: manual cervical stretching cervical SB + ROT (B) performed therex as outlined on gym sheet & additions + progressions as noted. (30°)

AROM: cervical SB (R) 46° (L) 53°, ROT (R) 67° (L) 49°

A: Cervical AROM continues to vary from assessment → assessment. This date cervical rotation (L) improved. Overall pts functional status improved since eval date.

P: Cont 2x/week x 1 more week. Sharon C. Croft PT

(13)

8/22/00 (10:35-11:05)

S: Pt reports 80-90% improvement in cervical/shoulder symptoms. Pt rates pain level in same region 4/10 which pt reports starts 1st thing in the morning and is only relieved in Tylenol.

O: Rx: manual cervical stretching in SB + ROT (B) (5') performed therex per gym sheet as outlined (25')

A: Pt reports ≥ least 15% improvement in cervical symptoms since 8/9 although pain level has not significantly decreased. Tell pts pain distribution may be altered. Pt reports the complaint of pain during Rx & any exercise.

P: Cont 1 more visit to D/C to HEP. Sharon C. Croft PT

(14)

8/25/00 (10:30-11:00)

S: Pt reports "okay".

O: AROM: cervical SB (R) 34° (L) 40°, ROT (R) 64° (L) 57°

MM: (B) solid strength grossly 4/5 as well as (B) UE strength 4/5

Rx: manual cervical stretching in SB and ROT (B) (5')

performed therex per gym sheet as outlined (25')

Reviewed HEP

A: Pt has achieved cervical goal/UE goals although cervical AROM continued to vary. At last measurements for cervical SB are WNL as well as cervical ROT WNL.

P: Recommended D/C to HEP. Sharon C. Croft PT

DUBOIS REGIONAL MEDICAL CENTER
REHABILITATION SERVICES

2⁰

AUTO

P.O. Box 447
DuBois, PA 15801-0447
(814) 375-3372

FAX (814) 375-3049

FACSIMILE TRANSMISSION

PHYSICIAN: Bellomo Anticipated Date of Service: 7/20/00

PATIENT: Duttry, Linda D

PATIENT ID#: YY2/200305109

DIAGNOSIS: (R) cervical/trapezius myofascial disorder, (R) knee contusion 2⁰ MVA

TREATMENT PROTOCOL: moist heat, ultrasound, soft tissue massage,
myofascial release, ROM, strengthening

PAIN LEVEL: 4/10 in (R) neck/shoulder, 4/10 knee

ROM DEFICIENCIES: cervical flexion 0/0, limited cervical extension,
(R) SB 40°, (L) 46°, (R) ROT 71°, 61° (L)

LIMITATIONS: cervical resistive testing 3+5 throughout, (R) hip
flexion 3+5, (R) knee and ankle 3/5, (L) LE strength grossly 4/5

AFFECTS ON ADL'S: Patient reports headaches daily & limitation in
concentration and reading abilities due to pain.

Difficulty walking any lengthy distance and performance
of stair ambulation is knee pain

PLAN: Pl to be seen 3x/week x 4 weeks for above
treatment protocol.

COMMENTS: _____

FREQUENCY: 3x/week

SIGNATURE Sharon C. Cioce
THERAPIST

DuBois Regional Medical Center
OUTPATIENT PHYSICAL THERAPY DEPARTMENT
P.O. BOX 447
DUBOIS PA 15801
(814) 375-3372

FAX (814) 375-3049

PHYSICIAN: Dr. Hallstrom DATE: 8/11/00

PATIENT: Linda Duttry REFERRAL DATE: 7/17/00

DIAGNOSIS: S/P MVA, (R) cervical/trapezius myofascial disorder + (R) knee contusion = patellofemoral pain

TREATMENT PROTOCOL: moist heat cervical, ultrasound (R) knee, soft tissue massage, MFR cervical, VMO/hamstring strengthening + biofeedback on (R) VMO

FREQUENCY AND TOTAL VISITS TO DATE: TIW; 10 visits to date

COMMENTS: S: Pt reports 80% improvement in (R) knee + 65% improvement in neck. O: AROM: cervical 0/1 WFL, SB (R) 45° D 46° (C best), ROT (R) 71° (C best) (L) 61° (C best). MMT: (R) shld 4/5 (L) shld was 3/5, (R) hip 0 4/5 (was 3/5), (R) knee 4/5 (was 3/5) A: Pt is improved (R) shld and LE strength. Decreased spasms noted (R) upper traps. Decreased tenderness (R) knee. Pt reports pain level 2 5/10 level (was 4/10) in (R) knee although

PLAN: reports 80% improvement and improved ability to amb longer distances.

Pt may be appropriate to continue (R) knee VMO program + HEP and continue clinic Rx for cervical region 2x/week x 2 weeks.

P: Please advise

Thank you for your referral.

THERAPIST Sharon C. Croft PT

PLEASE CHECK THE APPROPRIATE ORDERS:

Continue with Recommended Treatment

Discharge and/or Discontinue Treatment

Additional orders: _____

Physician's Signature _____ Date _____



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PHYSICAL THERAPY DISCHARGE SUMMARY

Patient Name: Linda Duttry Referral Date: 7/17/00

Physician: Lawn Hallstrom, MD Discharge Date: 8/25/00

Diagnosis: S/P LVA, (R) cervical, trapezius myofascial disorder +
(R) knee contusion & patellofemoral pain

Number of Visits: 10 visits - for (R) knee
14 visits for cervical

Treatment Program:

WCLT, heat/cry/ice, ultrasound (R) knee, soft tissue massage,
HR cervical, VMO/hamstring strengthening & biofeedback on (R) VMO,
UC strengthening, HEP

Functional Status at Admission: (ADL's, Hobbies, Work Level)

Pain level 7/10 in neck, 4/10 (R) knee. ROM: cervical SB (R) 40°
(L) 40° cervical rot (R) 70° (L) 60° MMT: cervical assisted sitting 3/5,
(R) shld 3/5, (L) shld 4/5, (R) elbow 4/5, (L) 4/5, (R) hip 1/3/5 (R)
knee 3/5

Goals/Functional Outcome at Discharge: (ADL's, Hobbies, Work Level)

Pain level at C/O 4/10 in neck 5/10 in (R) knee (least).
ROM: cervical SB (R) 40° (L) 40° (R) 53° (L) 60°, cervical rot
(R) 7/10 (L) 6/5 (L) 6/7 (R) best). MMT: (R) hip 4/5, (R) knee 4/5,
(L) shld 4/5, (R) UC gaitly 4/5 throughout

Goals/Functional Outcomes not Achieved at Discharge and Why?

PT did not achieve a decrease in pain level in
cervical and (R) knee (did not achieve goal) but reported
80-90% improvement in neck and 80-70% improvement in
(R) knee.

Education and Home Exercise Program:

HEP of shld swings, tubing rows, scapula protraction,
knee scapula rotation, front low back, posterior front upper trap stretch, cervical rotula stretch,
so stretch, SAO SLR, heel slides with sides, bicep/lat
curls, TKE, tubing, stepups, chin ups

Employment Status at Discharge:

disabled

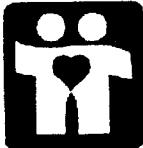
Comments:

Plan:

O/C - pt to PT 3 times w/ (L) HEP

Shawna, Ctral PT
Therapist Name

8/29/00
Date



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PHYSICAL THERAPY INITIAL EVALUATION

Patient: Linda D. Duttry Date: 02/13/2001
Diagnosis: (R) Knee Pain, R/O Lateral Collateral Ligament Sprain
Physician: Laun R. Hallstrom, MD/John J. Bellomo, DO
Primary Ins: CNA Auto Insurance ID#US219245614
2nd Ins: Select Blue ID#YYZ200305109

Eval time: 50 mins including Tx.

SUBJECTIVE:

DATE OF INJURY/EPIISODE: 5/31/00

HOW INJURY/EPIISODE OCCURRED: Patient reports she was in an automobile accident on the 31st of May of 2000 where she was hit head-on. She reports that she had PT treatments following her accident for neck and knee pain, that her neck is doing well but that she has continued knee pain, particularly when she does too much. She has been using ice at home which gives her minimal relief. She is not doing any exercise currently because it makes her worse. She reports she has trouble walking and going up and down steps. Off and on she reports swelling. She has had x-rays performed which were negative. She is to see the doctor again in one month.

PMH/MEDICATIONS: (R) Ankle fracture, CA of the lymph nodes, and previous PT treatment for neck injury from the same MVA. She currently takes Tylenol OTC as well as an anti-inflammatory pill, and medication for depression.

WORK TITLE/DESCRIPTION: She is on Disability.

OBJECTIVE:

FUNCTIONAL STATUS AT ADMISSION: Patient has decreased ability to ambulate or go up and down steps without pain. She even has pain at rest.

FUNCTIONAL STATUS PRIOR TO INJURY: Patient reports no history of knee pain prior to her accident on the 31st of May in 2000.

PAIN: She is at a 6/10 today which is also the best she feels; at the worst she gets to a 7/10.

AROM/PROM: (R) Knee ROM 0-125°, (L) knee ROM 0-130°. Patellar ROM is WFL but she has pain upon medial and inferior patellar glides.

STRENGTH: Upon MMT (R) hamstring 4-/5, (L) hamstring 4+/5, (R) quadricep 4/5 with pain upon resistance, (L) quadricep 4+/5, (R) SLR 3+/5 with pain upon resistance, (L) SLR is at 5/5.

SPECIAL TESTS: Medial Collateral Stress Test reproduces painful symptoms. Lateral Collateral Stress Test is negative.

MUSCULOSKELETAL/POSTURE: In standing has slight hyperextension at bilateral knees but (L) is worse than (R).

INTEGUMENT/GIRTH: Patient has no observable swelling today; therefore, no measurements were taken in this area.

SENSATION/DTR'S: Sensation intact without deficit to light touch and sharp/dull.

Continued...

Page 2

Patient: Linda D. Duttry
P.T. Initial Evaluation (Continued)

GAIT: Independent ambulation without need for assistive device.

TONE/PALPATION: Tender to palpation medial aspect of the knee joint, progressing into the posterior aspect of the knee.

TREATMENT: Patient was treated today with MH x 15 mins. to the (R) knee while supine. This was followed by instruction in a home therapeutic exercise program (please see the attached sheet).

GOALS:

Short Term Goals: (2 weeks)

1. Independent in H.E.P.
2. Decrease pain level to a 4/10.
3. Improve strength by $\frac{1}{2}$ MMT in limited areas.

Long Term Goals: (4 weeks)

1. Pain level at a 2/10.
2. ROM (R) knee equal to that of (L).
3. Strength (R) knee equal to that of (L).
4. Perform previous daily activities including walking and stair climbing with minimal pain.

FUNCTIONAL OUTCOMES: Expect patient to have overall decrease in pain, improved ROM and strength so she can return to previous daily activities more normally.

PATIENT/FAMILY PARTICIPATION IN PLAN: She has exercises she will perform at home.

UNDERSTANDING OF EXERCISE PROGRAM: Patient was independent with exercises as shown to her today.

PATIENT EXPECTATIONS: She would like to decrease her pain level.

ASSESSMENT:

Problems:

1. Pain.
2. Decreased (R) knee ROM for flexion.
3. Decreased (R) LE strength.
4. Decreased function.

PLAN:

Patient will be seen 3 x a week for 3-4 weeks for the above stated treatment program, progressing with therapeutic exercises and other modalities as needed for pain relief as tolerated.


Julie A. Miller, P.T.

JAM/mm

Attachment

(2) 2/16/01 (11:00 - 11:35)

S: Pt reports her knee has been so sore she couldn't do her exers.

O: Rx: MH R Knee x15' in supine f/b review of HEP - pt completed 10 reps each; ther-ex then completed as outlined on gym sheet x20'.

A: Encouraged completion of HEP.

P: Continue. Christine Justine PTA / Holly McCormick, PT.

(3) 2/20/01 (10:30 - 11:05)

S: Feels the same. Used at home but it doesn't work as good as heat ... but I don't have a MH pad. Reports she is getting bicepsy for C8 of spine - reports loss of strength (50%) which she did not reveal to me in initial eval.

O: Rx of MH x15' in supine R knee f/b review of HEP. Charged SAG to L4/5 ext. 18' in gym as per sheet. 20'.

A: Feels ex well but subjective of pain

P: Cont. I add of ex. as to Julie Miller PT

④ 2/23/01 (10:10 - 10:40)

Duttry, Linda

S: "About the same."

O: Rx: MH x 15' to R knee in supine f/b ther-ex per gym sheet
= addition of hamstring curls & forward step ups &
rep/wt 1s as noted x 15'

A: Did well w/ progressions, some discomfort = wall squats
though able to complete 2 sets.

P: Continue Rx - Christine Gistelus PTA
Julie Miller PT

⑤

2/27/01
10⁰⁵ - 10³⁵

S: Better. Pain 4/10.

O: MH x 15' to R knee in supine f/b to b in gym
as per sheet. AROM R knee at 0° - 131° Strength R
SLR = 4/5, Quad = 5/5, Hamstring = 4/5 (15')

A: Improved all areas.

P: cont.

⑥ 3/1/01

10³⁰ - 11⁰⁰

S: Better overall. Pain 4/10.

O: MH x 12' to R knee in supine f/b to b in gym as per sheet. (15')

A: Tel well.

P: cont. To work on leg strength and leg pain. Julie Miller



DuBois Regional
Medical Center

Making the difference for life.

P. O. Box 447
DuBois, Pennsylvania 15801-0447
Phone: 375-3372

Physician: Dr. Pihlstrom
Patient: Linda Duttry
Diagnosis: R knee pain LCL sprain

Frequency of Treatment: 3x/wk

Current Progress: ROM Knee = 0-131°

Strength R h-str = 4/5, quad = 5/5,
SPL = 4/5.

pain 4/10

red skin to palpation

pt. cx the week of 3-5-01
all above info is from
2-27-01

Plan: D/C pt. to HEP unless further orders
all goals achieved & strength which she will
achieve in HEP.

★Please check the appropriate orders:
 Continue with Recommended Treatment
 Discharge and/or Discontinue Treatment

Additional Orders: _____

Please send a new prescription or
PN with new orders. Thank you!

Date: 3-8-01
Referral Date: 2-13-01
Treatment: MA, TE's

Total Visits: 6

Initial Condition: R knee ROM = 0-125°

Strength R h-str = 4/5, quad = 4/5,
SPL = 3/5

pain 6/10

tenderness to palpation

Therapist: Julie Miller

Thanks!

Physician's Signature

Date



DuBois Regional
Medical Center

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

Making the difference for life.

PHYSICAL THERAPY DISCHARGE SUMMARY

Patient Name: Linda Duttry

Referral Date: 2-13-01

Physician: Dr. Hallstrom

Discharge Date: 3-18-01

Diagnosis: R knee pain r/o

Number of Visits: 6

Treatment Program: MH, TC's, HEP

Level of Progress at Discharge: pain 4/10

Initial Findings: pain 6/10

ROM = 0 - 131° R knee

ROM R knee = 0 - 125°, Q = 0 - 130°

strength R leg = 4+15, quadriceps = 5/5,
hamstrings = 4/5

strength R h-utr = 4-15, R glute = 4/5,
R leg = 3-15

improved sitting & pain

pain in GT and stairs

(D C HEP)

Goals/Functional Outcomes Not Achieved at Discharge and Why:

pain level not 2/10

not full strength and

Home Exercise Program and Education:

(D C HEP)

Employment Status at Discharge:

Comments: most of goals achieved and others in process
dis = HEP

Plan:

D/C

Julie Miller PT 3-20-01
Therapist Name Date

baseline on R knee
FREQUENCY AND TOTAL VISITS TO DATE: Tw: 10 visits to date

COMMENTS: S: Pt reports 20% improvement in R knee + 45% improvement in neck. 0: AROM: flexion 4/1, flex, SB (R) 45°, D 45° (C best), rot (R) 71° (C best) (L 61°/C best). MMT: (R) M1 4/5 (L) M1 was 3/5, (R) hyp 4/5 (was 3/5), (R) knee 4/5 (was 3/5) A: Pt is improved (R) M1 and L E strength. Decreased spams noted (R) upper traps. Decreased tenderness (R) knee. Pt reports pain level C 5/10 level (was 9/10) on (R) knee although

PAIN: reports 30% improvement and improved ability to amb long distances.

Pt may be appropriate to continue current PT program in HEP and continue clinic for clinical rehab 2x/week x 2 weeks.

P: Please advise. Thank you for your referral.
THERAPIST Sharon C. Cognet

workup for other problems
10-sec for gross RT NO for

10/15/00
D6

at in the week of 3-5-01
to allow sign from
2-27-01

Plan: - Dll pt so (P) MET unless further orders
all goals achieved X stronger belief she will
or achieve in 10 p.

★Please check the appropriate orders:

- Continue with Recommended Treatment
 Discharge and/or Discontinue Treatment

Additional Orders:

Therapist: Julie Decker at
Thanks!

Please send a new prescription or
PN with new orders. Thank you!

Physician's Signature Tommy Date 10/15/01



DENNIS PARLAVECCHIO MD
12-14 WEST LONG AVE. DUBOIS, PA. 15801

DATE: 6-16-00

NAME OF PATIENT: Linda Duttry

AGE: 53

ALLERGIES: Sulph

PLACE: (route, east, west, work address):

Dixen Avenue

DATE & TIME OF ACCIDENT/INJURY

5-31-00 8:00 pm

WEARING SEATBELT: YES NO N/A

LOCATION IN VEHICLE: Driver

DID YOU GO TO THE ER? YES NO

NAME & ADDRESS OF ER/HOSPITAL:

Dubois Regional

X-RAYS OR TESTS PERFORMED:

X-ray of Jaw

PRESENT SYMPTOMS: (example: headache, back pain, etc.)

headache, Sore Knee, Sore Neck, Sore right shoulder

BRIEF DESCRIPTION OF ACCIDENT:
I was traveling on Dixon Avenue when William Evans,
who was traveling in opposite direction, turned directly in front
of me and struck me head on

AUTO INSURANCE OR WORKMANS COMPENSATION INFORMATION:

Send bills to Beverly J. Smith

at CNA Insurance
401 Penn Street
PO Box 16203
Reading PA 19612
Claim # R1216 993 JK

Our insurance company is CNA

Name Linda Duttry

Date of Birth

2-12-47

Date	WB. 187	BP. 104/62.	
6-16-00			
52			
			1. Refer to Dr. May 2. x-rays 3. Motrin 800 4. FM Skelaxin -

DUTTRY, LINDA

6/16/00

MOTOR VEHICLE ACCIDENT

S: She is here today for follow-up evaluation. She was apparently involved in a motor vehicle accident on the 31st of May. She was the belted driver of a vehicle that was driving about 25 mph when another vehicle turned in front of her and she hit the front quarter of this vehicle and she was struck in the front of her car. She is not sure if she hit her head on the dash or on the air bag, but approximately a week after this, she began to experience headaches and stiffness in her neck and shoulders. She has had no neurologic symptoms such as tingling, or weakness, or paresthesias with this.

O: She is alert and oriented. She has a somewhat flat affect, but she is very appropriate. Her sclera are nonicteric. She has no obvious trauma on her face. No forehead or head tenderness. She has no obvious tenderness in the spinous processes of her neck. She is slightly tender in the cervical paraspinals and fairly markedly tender in the right and left trapezius in the mid borders, more on the right than the left. Also her deltoids on both sides are tender somewhat more on the right again. On neurologic testing, her sensation is intact. She has intact and healthy grip, which is symmetrical on both sides. Upper extremities deep tendon reflexes are also normal appearing.

A: Cervical and upper back and shoulder muscular injury from a motor vehicle accident.

P: We will do some cervical spine x-rays. We will try her on some Motrin 800 mg tid with some Skelaxin 400 mg 2 tabs bid. I did warn her about potential sedation with in combination with her other medicines and she understands that she shouldn't drink alcohol with this and to be very careful and if she becomes more sedated to stop the muscle relaxant. I will see her back in about 10 days. If her headaches continue then we could certainly do a head CT to rule out a subdural, but I suspect it's muscular.

JOHN J. BELLOMO, D.O.

JJB/jms

MEDICATION/ALLERGIES	
7-6-00	B.P. 120/74
53yo	

DUTTRY, LINDA

7/6/00

MOTOR VEHICLE ACCIDENT

S: She is here for follow-up of her motor vehicle accident pain. She is no better. She feels her muscles are tight. Her headaches are about the same.

O: She has very tender cervical and lumbar paraspinal muscles. When she ambulates she seems uncomfortable. The medicines we gave her made her feel very spacey, so she is not taking those. Neurologically she is intact.

A: At this point in time, since her muscles are so tender, I suspect that she just has persistent muscle spasm.

P: We will give her some Darvocet to try on a sparring basis just as needed, that or Tylenol. We are going to refer her to Dr. Hallstrom to get her into a rehabilitation program because I suspect that would do the most to get her better. We will schedule her for a knee x-ray because of her persistent knee pain, although her exam is essentially normal. I will follow-up with her in one month's time after she sees Dr., Hallstrom.

JJB/jms

JOHN J. BELLOMO, D.O.

③

8-3-00	WT 188#	BD 112/60	Gravid 6 live 7SH. Agoloprotein
53yo.			

DUTTRY, LINDA

8/3/00

MOTOR VEHICLE ACCIDENT

S: She is here today for follow-up. She sees Dr. Hallstrom and is also in physical therapy. She is generally doing better.

O: NECK: Minimally tender. Her cervical paraspinal muscles nerve traps at minimally tender. She has fairly good range of motion of her neck. She is neurologically intact.

A: Motor vehicle accident, pain is resolving.

P: We are going to continue with her current care. Continue the Darvocet as needed. She will follow-up with Dr. Hallstrom and with her physical therapy. I will see her back in a month.

JOHN J. BELLOMO, D.O.

JJB/jms

Name Linda Duttry

Date of Birth 2-12-47

Date	8-31-00	Aut. 190	BP 112/64
	53yo.		
			new non resolved
			- ? hypoglycemia.
			- Dr malik for intermittent diarrhea.
			- Cleft palate + urachus.
			- Dr Khan v Estelle - 04

DUTTRY, LINDA

8/31/00

S: She is here today for recheck of her motor vehicle accident. She is doing well and finished her therapy. She saw Dr. Turkin yesterday who started Ritalin for her fatigue. She also complains of diarrhea once a week with Imodium to get it stopped.

O: NECK: Non-tender in the both the cervical and thoracic paraspinals and her trapezius. ABDOMEN: Essentially benign today.

A: Resolved neck muscle pain.

P: Follow-up on this as needed. For chronic intermittent diarrhea, we will refer her to Dr. Malik. She will continue Metamucil and Imodium for the time being. Her lithium ~~level~~ is currently checked by Dr. Turkin and this is normal per the patient. So I will see her back again in 6 months. We will make the referral for her to Dr. Malik.

JOHN J. BELLOMO, D.O.

JJB/jms

6

DU BOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

DUTTRY, LINDA D OPW Unit # 000378202
105 CHESTNUT STREET
DUBOIS PA 15801 Age 53Y Acct # D0016800346

Date:06/16/00 Time:1529

OPW Unit # 000378202

Acct # D0016800346

Age 53Y

Acct # D0016800346

BELLOMO, JOHN J
12-14 WEST LONG AVE
DUBOIS PA

15801

OUTPATIENT, DOCTOR

PA 15801

Chk-in # Order Exam 406829 0001 43003 XR-CERVICAL SPINE MIN 4
Ord Diaq: MVA

CERVICAL SPINE - SEVEN VIEWS:

History: Neck pain.

There is moderate narrowing of the C4-5 and C5-6 disc, associated with marginal osteophytes. There is mild encroachment on the intervertebral neural foramina. There is no compression fracture or subluxation. There is mild reversal of cervical lordosis, which could also be related to spasm.

IMPRESSION: MODERATE DEGENERATIVE DISC DISEASE AT C4-5 AND C5-6.
MILD REVERSAL OF LORDOSIS, SUGGESTIVE OF SPASM.

NIA CODE: P

/READ BY/ JERJIS T ALAJAJI, Radiologist
/Released By/ JERJIS T ALAJAJI, Radiologist

06/17/00 1206
JLB

6

Complete

6

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

DUTTRY, LINDA D
105 CHESTNUT STREET
DUBOIS PA 15801

DIS - MAB Unit # 000378202
Age 53Y Acct # D0019300466

Date: 07/11/00 Time: 1542

BELLOMO, JOHN J
12-14 WEST LONG AVE
DUBOIS PA 15801

BELLOMO, JOHN J
12-14 WEST LONG AVE
DUBOIS PA 15801

Chk-in # Order Exam
410767 0001 44540 DI-KNEE COMPLETE*R
Ord Diag: PAIN

RIGHT KNEE - FOUR VIEWS:

History: Patellar pain.

The joint space and patella are intact without fracture or dislocation.
Minimal osteoarthritic changes are noted.

IMPRESSION: MILD OSTEOARTHRITIC CHANGES.

NIA CODE: P

/READ BY/ ROBERT J BORON,
/Released By/ ROBERT J. BORON,

07/13/00 1247
RAW

Linda Bellomo, DO

Complete

DUBOIS REGIONAL MEDICAL CENTER
100 Hospital Ave, DuBois, PA 15801

DUTTRY, LINDA D MAB Unit # 000378202
105 CHESTNUT STREET
DUBOIS PA 15801 Age 53Y Acct # D0036300442

Date: 12/28/00 Time: 1220

HALLSTROM, LAUN R

BELLOMO, JOHN J
910 BEAVER DRIVE
DUBOIS PA 15801

Chk-in # Order Exam
440810 0001 44540 DI-KNEE COMPLETE*R
Ord Diag: 719.46-JOINT PAIN-L/LEG

RIGHT KNEE - AP, LATERAL, TANGENTIAL, AND TUNNEL VIEWS:

There are degenerative changes seen in the knee joint with osteophytes at the articular margins of tibia, femur, and patella. Slight narrowing of the medial compartment of knee joint is seen. No fracture or dislocation is noted.

IMPRESSION: MODERATELY ADVANCED OSTEOARTHRITIS RIGHT KNEE JOINT.

NIA CODE: P

/READ BY/ G. ALI SHAH
/Released By/ G. ALI SHAH

12/28/00 1455

LLW

8

Complete



Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DUBOIS, PA 15801
(814) 371-4524

July 17, 2000

John Bellomo, D.O.
12-14 West Long Avenue
DuBois, PA 15801

Re: Linda Duttry

Dear Dr. Bellomo,

I had the pleasure of evaluating Linda Duttry on the seventeenth of July 2000.

HISTORY OF PRESENT ILLNESS: Linda is a fifty-three year old female who was a restrained driver involved in a head-on motor vehicle accident on the thirty-first of May of this year. She presents with complaints of neck and right shoulder pain. She states that she struck her head on the right. She also has knee pain. She has been seen both in the emergency department and in your office. She denies any numbness or tingling. She states that she loses her balance occasionally but does not identify any specific weakness. Symptoms are aggravated when she turns to the left and also with walking. She has found the Darvocet to be helpful. She did have some plain x-rays in the emergency department that did not identify any acute abnormalities. She has not had a CT Scan or MRI. She has had no physical therapy, chiropractic treatments or injections.

PAST MEDICAL HISTORY: 1. Depression 2. Bipolar disorder

PAST SURGICAL HISTORY: 1. Tonsillectomy 2. Left oophorectomy 3. Lumpectomy both breasts 4. Right ankle surgery 5. Lymph node excision right axilla

ALLERGIES: Sulfa

CURRENT MEDICATIONS: 1. Lithium 2. Neurontin 3. Wellbutrin 4. Serzone

REVIEW OF SYSTEMS: She does report intermittent headaches. She has no change of vision. She has no speaking or swallowing problems. She denies any chest pain or palpitations. She has no bowel or bladder problems. She has had no change in weight. There has been no fever or chills. She denies any other joint symptoms. She has no low back pain.

SOCIAL/FUNCTIONAL: She is married. She is a smoker. She denies significant alcohol use. She does not currently work outside of the home.

July 17, 2000
Re: L. Duttry
Page 2

PHYSICAL EXAMINATION: She is a well-nourished, well-developed female in no acute distress. Cervical range of motion reveals limitations with extension and lateral rotation. She flexes without significant difficulty. Spurling maneuver does not produce any radicular symptoms. Biceps, triceps, brachioradialis, patellar and Achilles reflexes were all brisk and symmetric. Sensation is intact in all dermatomes. Motor strength is 5/5 throughout. There is minimal tenderness over the midline cervical spine. There is greater tenderness in the region of the right paracervical and right trapezius musculature. There are palpable trigger points. This area is negative on the left. There is no evidence of scapular winging. Shoulder impingement tests were negative. There is no tenderness over the right biceps tendon or over the anterior joint capsule. Straight leg is negative for root tensions. Fabere maneuver is negative bilaterally as was internal rotation. There is tenderness to palpation overlying the right patella. Patellar apprehension test is negative. There is some crepitus with movement of the patella in the patella femoral groove. There is no laxity to varus or valgus stress. McMurray was negative. Lachman's was negative. There was no tenderness in the lumbar spine or paravertebral musculature. There was no cyanosis, clubbing or edema. There was no calf tenderness on either side. Distal pulses were intact. The feet and hands were warm to touch.

IMPRESSION: Linda Duttry is a fifty-three year old female who is status post motor vehicle accident on May 31, 2000. She has sustained soft tissue injuries to include cervical strain with persistent right cervical and trapezius myofascial pain. She also sustained contusion to the right knee with patella femoral pain.

PLAN: I have suggested that she initiate a physical therapy program. I have given her a prescription to begin at DRMC. This will include moist heat, ultrasound to the right knee, massage/myofascial release, joint mobilization and strengthening. I would like to see her back in my office in three to four weeks and reassess her progress at that time. I did not see any neurologic abnormalities that would have suggested a radicular process but we will re-assess on her follow-up.

Thank you for allowing me to participate in the care of your patient. If you have further questions, please feel free to call.

Sincerely,



Laun R. Hallstrom, M.D.

LRH/gdm

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

8/14/00

Linda Duttry is here for follow-up of MVA and cervical strain with right paracervical/trapezius myofascial pain. She also suffered contusion to the right knee. In general, her symptoms have improved significantly. She has been participating in a physical therapy program and she believes this has been quite helpful. The knee pain is essentially gone.

On examination, she is in no acute distress. Cervical ROM was within functional limits. Spurling maneuver was negative. Motor strength testing was 5/5 throughout. There was only minimal tenderness to palpation of the right paracervical and trapezius region. There was no tenderness of the right patellar region. Upper extremity neurologic and vascular exams were intact.

Impression: 1. Cervical strain/myofascial pain – much improved. 2. Right patellar contusion – much improved.

Plan: The patient will continue on with 2 more weeks of therapy transitioning to a self-paced program. I would like to see her back in the office in six weeks. If she is doing well at that time, we will likely discontinue her from care.

LRH/gdm *Mark*

8-25-00 Linda r/s today's appt to 10-9 515

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

October 9, 2000

Linda Duttry is here for follow up of cervical strain/myofascial pain and right knee pain. She has not been performing her exercises as often as she should but she states that she is actually doing quite well. She still has some occasional posterior cervical pain, some occasional pain in the medial aspect of the right knee and proximal tibia.

On examination she demonstrates full range of motion of the cervical spine. She does have some mild discomfort with cervical rotation. She demonstrates full range of motion of the right upper extremity and right lower extremity. There is tenderness in the right paracervical and right trapezius, but decreased from before. There is no evidence of scapular winging. Motor strength is intact and sensation is intact. She has full range of motion of the knee. There is no crepitus. There is no tenderness to palpation of the medial or lateral joint line. There is tenderness overlying the pes anserine bursa. There is no pain with resisted knee flexion.

IMPRESSION: 1. Cervical strain/myofascial pain, much improved; 2. Right patellar contusion, improved; 3. Findings suggestive of mild pes anserine bursitis.

PLAN: I have encouraged her to continue on her self-paced stretching exercise program for the neck and shoulders. I have shown her some stretching of the hamstrings and adductor muscles of the right leg and have asked her to use a cold pack overlying the pes anserine bursa. I will only see her back on a p.r.n. basis.

LRH:cls *LRH*

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

11/13/00

Linda Duttry is here for follow-up of cervical myofascial pain and right knee pain. She states that she is having greater shoulder pain. The knee pain persists. She is also reporting a burning pain in the region of the right triceps. She had a previous lymph node dissection and states that she has always had some light tingling which seems to be increasing. On examination, cervical ROM is within functional limits. Spurling maneuver was borderline for radicular symptoms. Motor strength was 5/5 throughout. Biceps, triceps, brachioradialis muscle stretch reflexes were present and symmetric. Sensation was intact although she does have paresthesias in the right axilla and right triceps region. There is still discomfort with movement of the patella and patella femoral groove and there is crepitus. There does not seem to be any significant medial or lateral laxity.

There is tenderness overlying the right biceps tendon and across the muscle belly of the biceps. Yergason maneuver is borderline.

Impression: 1. Right patella femoral syndrome 2. Right biceps tendonitis 3. Paresthesias right proximal arm (?) related to previous lymph node dissection (?) radiculopathy (?) brachial plexopathy

Plan: I have given Linda a number of exercise to perform for the cervical spine and shoulder. She will continue her leg exercises as well. She reports that she has not been exercising on her own secondary to her "mental condition". I have given her a prescription for Voltaren as well, 75 mgs., B.I.D. I would like to see her back in 6 weeks. If she the paresthesias are not improving, we will consider performing an EMG study at that time.

LRH/gdm *J. Hallstrom*

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

12/11/00

Linda Duttry is here for follow-up of lower extremity pain, patella femoral syndrome and biceps tendonitis. Since her last evaluation, she states that the arm paresthesias and tendonitis have improved significantly and the knee is improved. She states that she did have exacerbation of back pain. She was referred to a chiropractor and states that the symptoms have improved significantly. On examination, she has good ROM of both upper extremities. Reflexes are brisk and symmetric. Straight leg raising was negative bilaterally. She is able to forward flex bringing her fingertips to within a few inches of the floor. She can extend 5-10 degrees. Motor strength was 5/5 throughout. There was only minimal tenderness to palpation of the lumbar spine. There was no tenderness of the knee or the upper extremities. There is no significant edema.

IMPRESSION: 1. Low back pain – improved with chiropractic program 2. Right knee pain – improved-stable 3. Right upper extremity tendonitis/paresthesias – much improved.

PLAN: In general, she seems to be doing much better. I agree with the chiropractic program and have her continue to follow-up with the chiropractor. She seems to have much improvement of her other symptoms and we will have her follow-up here only on a prn basis.

Laun R. Hallstrom, M.D.
Laun R. Hallstrom

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
Suite 101
DuBois, PA 15801
(814) 371-4524

Linda Duttry

Progress Report

Note progress of case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

December 21, 2000

Linda Duttry was seen Monday, December 11, 2000. Released from treatment. She called today c/o right knee pain. She states she was walking up the stairs 4 days ago and felt a pop in her knee. She has tried icing, but her knee is still very sore. Knee is not red or hot. She is still taking Voltaren. Has not had much opportunity to elevate the knee, except at night. (372-2394)

Many

12-21-00 Linda is to continue the Voltaren & elevate leg for 48 hrs. Call next wk if still sore. Many
Called Patient

12-26-00 Linda called, R knee still very painful, she has been staying off it, felt a pop 1 week ago. 61h

12-27-00 Dr Hallstrom wants Linda to have the knee x rayed & come in Friday 11 am on her machine

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

December 29, 2000

Linda Duttry is here for follow up of right knee pain. Actually there has been an increase in symptoms. She related that she was walking up the stairs when she felt a pop. She has not had any giving way or locking of the knee. There has not been significant edema but there has been light edema. On examination she ambulates with a mild antalgic gait on the right. There was minimal effusion of the right knee. There is tenderness over the lateral aspect of the knee. Forced varus movement of the knee does seem to aggravate. There was no significant laxity. McMurray was negative. There was no tenderness over the medial aspect of the knee. Lachman and McMurray were negative. She does have anti-gravity strength and is able to provide 4 to 4+/5 resistance. Sensation was intact. There was no calf tenderness. Distal pulses were intact.

I did obtain x-rays of the right knee primarily she has evidence of mild to moderate osteoarthritis.

IMPRESSION: Linda Duttry has exacerbation of right knee pain. We had previously diagnosed her with patella femoral syndrome. Her history and exam today suggests a lateral collateral sprain.

PLAN: I have given her a prescription for a right knee immobilizer. She states that she does have crutches at home. I would like her to ambulate weight bearing as tolerated with the crutches and the immobilizer. She does Voltaren at home. I have asked her to continue this. I plan to see her back in two weeks. If symptoms persist an MRI scan may be necessary.

LRH:cls *L.R.H.H.*

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

January 15, 2001

Linda Duttry is here for follow up of right knee pain. I had given her the knee immobilizer and asked her to be on a partial weight bearing status only. She returns today without the immobilizer or crutches. She states that she used them only a short time. She states that the knee is "somewhat improved" but has not resolved.

On examination today there is no effusion. There is no erythema or warmth. There still is some mild laxity with varus stress of the knee and mild aggravation of pain. There is tenderness over the lateral aspect. There was negative McMurray, negative Lachman. She has full range of motion. There is mild crepitus.

IMPRESSION: Right knee pain that seems to be less acute today. Rule out lateral collateral strain.

PLAN: As noted above she has already discontinued use of the immobilizer. I have asked her to continue to be protective. We will begin a strengthening program. We will do this at home and I have given her exercises to perform. I have also continued the Voltaren. I plan to see her back in one month.

LRH:cls *Laun Hallstrom*

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

2/12/01

Linda Duttry is here for follow-up of right knee pain. She has not been wearing a brace. She has been performing minimal exercises on her own. She states that the knee is "about the same". She has been using the Voltaren without difficulty. On examination, there still is tenderness primarily laterally. There is no effusion. There is no significant laxity with varus or valgus stress. McMurray was negative. Lachman and anterior drawer were negative. There was no calf tenderness, erythema or induration. Motor strength is 5/5. There is no atrophy. Straight leg raising is negative for root tension signs.

Impression: 1. Right knee pain. Initially we had been treating her for patella femoral syndrome then she had the secondary incident when she was walking upstairs and felt a pop. Since that time her exam has seemed more consistent with the lateral collateral strain.

Plan: I have referred her for a physical therapy program addressing the knee as it is now. She had therapy about 8 months ago for the initial injury. For now we will continue the Voltaren as well. If she is not improving with therapy we will likely proceed with a MRI scan.

LRH/gdm



Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

3/12/01

Linda Duttry is here for follow-up of right knee pain. She states that the symptoms are somewhat better. It still bothers her to stand. It gives her trouble when she drives. She has been exercising on her own and is taking the Voltaren. She denies any locking or giving way. On examination, there is no significant effusion. There is no warmth or erythema. There is only mild tenderness to palpation medially. Motor strength is intact. There is some laxity with varus stress on the right. Lachman and McMurray were negative.

Impression: Persistent right knee pain consistent with lateral collateral strain and also evidence of patella femoral syndrome. I have recommended a MRI scan but she does not wish to proceed in that direction. For now, we will have her continue exercising on her own and continue with the Voltaren. She will follow-up in one month.

LRH/gdm *W.M. Hallstrom*

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
DuBois, PA 15801
(814) 371-4524

Progress Note

Note progress case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

April 23, 2001

Linda Duttry is here for follow up of right knee pain. She states that the pain is virtually unchanged. It does not appear she has been doing any significant exercise on her own. She is also complaining of right neck and shoulder pain, which I had been seeing her for previously. On examination, there is tenderness in the trapezius muscle on the right and also in the right paracervical. She reports pain with abduction greater than 120 degrees. Impingement tests are borderline. Upper extremity and neurovascular was intact. The right knee has some tenderness anteriorly and laterally there is some mild laxity with varus stress. She had anti-gravity strength. Motor strength seems to be symmetric.

IMPRESSION: 1. Right cervical/trapezius myofascial pain syndrome 2. Right knee pain, previously consistent with patellofemoral syndrome and possible lateral collateral strain.

PLAN: We will continue the Voltaren. I have discussed having her resume her knee exercise program, as she does not seem to be doing any exercise at this point. I also discussed a massage therapy program for the neck and shoulders. I plan to see her back in the office in approximately four to six weeks.

LRH:cls

W.H.H.

5-21-01 Linda R/S today appt to 6-1, office
was crowded. h/b

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
Suite 101
DuBois, PA 15801
(814) 371-4524

Linda Duttry

Progress Report

Note progress of case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

June 1, 2001

Linda Duttry is here for follow up of her right knee pain. She states that the knee continues to be problematic. She does have sensation of the knee giving way at times. There is tenderness over the lateral joint line. There is some mild laxity with varus stress. She ambulates with a normal gait.

IMPRESSION: Persistent right knee pain. Still having symptoms on the lateral aspect. At this point, she seems to have failed conservative treatment. She is in agreement to have an MRI scan set up ASAP. We will follow after completion of the MRI scan to determine further treatment options.

Laun R. Hallstrom, M.D./ma

Copy to Dr. Vaca 6/10/01

MMA

Laun R. Hallstrom, M.D.
Physical Medicine & Rehabilitation

145 Hospital Avenue
Suite 101
DuBois, PA 15801
(814) 371-4524

Progress Report

Note progress of case, complications, consultations, change in diagnosis, condition on discharge and instructions to the patient.

June 8, 2001

Linda Duttry is here for follow up of her right knee pain and MRI scan. There are significant findings on MRI to include lateral meniscus tear, "bone bruising" of the and lateral collateral ligament injury as well. I discussed that I believe she should be evaluated by an orthopedist and we will set her up with Dr. Krot in the next week. She will resume the use of her knee immobilizer.

LRH:cls

JM.M

FAX to

?

PH

THIS FORM HAS BEEN APPROVED BY THE BOARD OF JUDGES OF THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, THE ALLEGHENY BAR ASSOCIATION AND THE ALLEGHENY COUNTY MEDICAL ASSOCIATION.

MEDICAL REPORT

PATIENT'S NAME LINDA DUTTRY AGE 54

DATE FIRST SEEN 4-23-01 PLACE FIRST SEEN Office - DuBois

PATIENT'S CHIEF COMPLAINTS right knee pain
neck / shoulder pain

PAST HISTORY (SURGICAL, SOCIAL, FAMILY, SYSTEMIC, MENSTRUAL) Married.

Tonsillectomy, breast lumps, lymph nodes, ovary, Rankle.
Heart disease, high BP, Heart attack, cancer, depression.

PHYSICAL EXAM WITH SIGNIFICANT FINDINGS HR right knee pain -
Edema initially & patient complain + - instability,

Cervical / trapezius M FP

DIAGNOSTIC TEST-RESULTS MRI - right knee lateral meniscal tear, bone bruising, lateral collateral ligament injury

DIAGNOSIS Right lateral meniscal tear, knee contusion

Cervical / trapezius strain / myofascial pain

IN TERMS OF REASONABLE MEDICAL CERTAINTY, WHICH OF THE ABOVE DIAGNOSED CONDITIONS WERE RESULTED BY THE ACCIDENT OF 5/31/00?

- knee contusion / minor laceration

- cervical strain / mild

IN TERMS OF REASONABLE MEDICAL CERTAINTY, WHICH OF THE ABOVE DIAGNOSED CONDITIONS WERE AGGRAVATED BY THE ACCIDENT OF 5/31/00?

TREATMENT (INCLUDE HOSPITALIZATION) _____

Referral to orthopedic surgeon

PT

meds

DISABILITY - TEMPORARY OR PERMANENT - EXTENT THEREOF _____

Temporary - knee @ discretion of Dr. Knut

PROGNOSIS Fair

PERIOD OF TIME TREATED 1-15-01 to 6-8-01

YOUR FEE TO DATE attached

WHAT FUTURE TREATMENT MAY BE REQUIRED AS A RESULT OF THE ACCIDENT? ESTIMATE THE COST OF SUCH FUTURE TREATMENTS.

PT

? cut

MR. MC

Signature

DATE: 5/20/01

L. R. Hallstrom, MD

Print Name



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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

Plaintiffs, :
v.

WILLIAM EVANS, :
:

Defendant. :
:

NOTICE

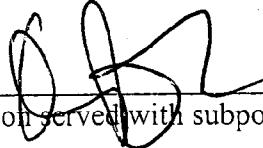
TO: ALEXANDER A. KROT, D.O.
145 Hospital Avenue Suite 101
DuBois, PA 15801

YOU ARE REQUIRED to complete the following Certificate of Compliance when
producing documents or things pursuant to the Subpoena.

CERTIFICATE OF COMPLIANCE WITH SUBPOENA
TO PRODUCE DOCUMENTS OR THINGS

I, Alexander A Krot DO, (person served with subpoena) certify to the
best of my knowledge, information and belief that all documents or things required to be
produced pursuant to the subpoena issued on 5-16-02 (date of subpoena) have
been produced.

Dated: 5-29-02


(Person served with subpoena)

RECORDS AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

SS

COUNTY OF _____

The undersigned does hereby declare that I am the duly authorized custodian of records with authority to certify records. Following a careful search by me or at my direction and under my supervision, I hereby submit the attached records to McQuaide Blasko Law Offices, legal counsel for Defendant(s), and hereby certify that the records so submitted conform to the following:

1. The records pertain to _____, SS# _____, DOB: _____.
2. The records represent all documents for _____ to the present date of this Affidavit [unless otherwise specifically requested by McQuaide Blasko].
3. The records submitted under the Affidavit consist of _____ pages.
[If no records exist, please so indicate "No Records," sign and return this Affidavit.]
4. The copies of records for which this Certification/Affidavit is made are true and complete reproductions of the original or microfilmed medical records which are housed by _____ (name of health care provider). The original records were made in the regular course of business at or near the time of the matter recorded. This Certification/Affidavit is given pursuant to 42 Pa. C.S.A. § 61 (e) (relating to medical records) by the custodian of the records in lieu of his/her personal appearance.

I declare that the foregoing facts are within my personal knowledge are true and correct and other facts contained herein are true to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 19 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

MARY M. AKERS
(Signature of Records Custodian)

MARY M. AKERS
(Print or Type Name of Records Custodian)

Sworn to and subscribed
before me this _____ day
of _____, 20____.

Notary Public
[SEAL]

**PLEASE EXECUTE AND RETURN THIS DOCUMENT
WITH THE REQUESTED RECORDS**

Alexander A. Krot, D.O.
Orthopedic Surgeon

New Patient Doctor Evaluation Form

Pt.'s Insurance _____

Patient Name Jinda Duttry Initial Visit Date 6-13-01

Referring Physician _____ Date of Injury _____

Patient Complaint (R) knee

DOCTOR'S FINDINGS/NOTES:

Chief Complaint/History of Present Illness

Location (Where is pain/problem) Right knee

Severity (How severe is pain/problem) _____

Timing (When pain/problem occurs) _____

Associated signs/symptoms _____

Quality _____

Duration (How long or when pain started) _____

Context (Where you were at onset of pain) _____

Modifying factors (What makes the pain better/worse, previous episodes) _____

Alexander A. Krot, D.O.
Orthopedic Surgeon and Specialist

145 Hospital Avenue
DuBois, PA 15801
Telephone: (814) 371-4524
Fax: (814) 371-0331

January 23, 2002

Ainsman & Levine, PC, Erin Fucci
330 Grant Street
Suite 2201
Pittsburgh, PA 15219

RE: Linda Duttry

Dear Ms. Fucci:

Ms. Linda Duttry was evaluated in my office for complaints of pain in the right knee. The patient was apparently referred by Dr. Hallstrom following failed treatment after an injury, which occurred from a motor vehicle accident. She stated at that time that she was having pain over the right knee, primarily over the lateral aspect. The pain had been present since the time of the accident. The patient was felt to have failed a reasonable course of conservative treatment. An MRI was ordered by Dr. Hallstrom and was positive for a bone bruise as well as a tear of the lateral meniscus. Following these findings it was elected to proceed with an arthroscopy of the right knee. This was performed on 06/22/01. At the time a partial lateral meniscectomy of the right knee was performed, as well as chondroplasty of the medial femoral condyle, and of the intercondylar region of the right femur. She tolerated it well and was noted to progress satisfactory in her postoperative and, in fact, was released from my treatment on 08/15/01 having that she progressed fairly well with this.

In regards to the questions from your letter, yes, I do believe that there is a causal relationship to the knee injury and the accident that occurred on May 31, 2000. The injury apparently resulted in a lateral meniscal tear, which was the primary reason for this surgery. A secondary finding at the time was some medial compartment arthritis, which I can not relate that it was a direct result of the accident itself. This would be a preexisting condition. The patient underwent an evaluation 6/13/01. The surgery was performed on 6/22/01 and follow-ups were performed on 7/3/01, 7/17/01, and 8/15/01. Each of the follow up visits showed that the patient was progressing satisfactory and was having a lessening pain pattern. In regards to Mrs. Duttry's complete recovery, I feel that she will do well with the lateral meniscal tear. The preexisting condition of the arthritis is a progressive condition and can cause symptoms on its own, not relating to the motor vehicle accident.

If you have any further questions please feel free to contact me.

Sincerely,



Alexander A. Krot, DO
AAK/crb

Alexander A. Krot, D.O.

145 HOSPITAL AVENUE

DUBOIS, PA 15801

TELEPHONE: (814) 371-4524

Linda Duttry

PROGRESS NOTES

DATE

Note progress of case, complications, consultations, change in diagnosis, condition on discharge and instructions to patient.

7/3/01

Linda Duttry seen, doing satisfactory, very little discomfort, very little pain, progressing adequately, recheck in two weeks.

Alexander A. Krot, DO/hlh

AK

7/17/01

Linda Duttry seen, status post arthroscopy, progressing satisfactorily, less discomfort, less pain, ambulating better, recheck in four weeks, encouraged muscle strengthening exercises.

Alexander A. Krot, DO/hlh

AK

8/15/01

Linda Duttry evaluated, doing satisfactorily, good range of motion, very little discomfort, no patellar ballottement, wounds healing nicely, recheck on an as-needed basis.

Alexander A. Krot, DO/hlh

AK

Alexander A. Krot, D.O.

PROGRESS NOTES

145 HOSPITAL AVENUE
DUBOIS, PA 15801
TELEPHONE: (814) 371-4524

Linda Duttry

DATE

Note progress of case, complications, consultations, change in diagnosis, condition on discharge and instructions to patient.

6/12/10 Patient would like to know her ~~no~~ status.

6/12/10 Dr. Krot wants patient to remain non WB until her follow-up appt. (May 4).

6/13/01

Linda Duttry was referred to the office for evaluation of the right knee. She has been having weight bearing pain since a motor vehicle accident in May, 2000. She complains of pain over the joint space, most of it appears to be lateral in nature. Today's evaluation revealed a white female, well nourished, well developed. Range of motion of the knee was adequate, minimal patellar ballottement. Pain present on palpation over the joint spaces bilaterally. McMurray's signs did not really localize any real pain at this point, but no instability patterns were noted either to varus and valgus stress or Lachman's. MRI was reviewed, it appears to be positive for a complex tear of the meniscus.

IMPRESSION: Lateral meniscal tear of the right knee.

RECOMMENDATION: Her symptoms have been present for over a year, she is not really showing any improvement. I would suggest an arthroscopic evaluation be performed, arrangements are being made for this.

Alexander A. Krot, DO/hlh

C: Dr. Hallstrom

9

5

OPERATIVE REPORT
DUBOIS REGIONAL MEDICAL CENTER
DUBOIS, PENNSYLVANIA
02/12/1947

DATE: 06/22/2001

PATIENT NAME: DUTTRY, LINDA D 0117200281 - 000378202 OP

SURGEON: Alexander A. Krot, D.O. ASSISTANT:

PREOPERATIVE DIAGNOSIS: Tear of lateral meniscus.

POSTOPERATIVE DIAGNOSIS: 1) Complex tear of lateral meniscus. 2) Chondral flap tears of the medial femoral condyle. 3) Degenerative changes of the patellofemoral articulation and medial compartment.

NAME OF OPERATION: 1. Lateral meniscectomy, right knee.
2. Chondroplasty with drilling of medial femoral condyle.
3. Chondroplasty intercondylar region of the right femur.

ANESTHESIA: General.

INDICATIONS: Clinically, the patient was noted to have pain on range-of-motion of the right knee. There is crepitance noted on range-of-motion with pain on palpation of the joint spaces. Surgical findings revealed patellofemoral articulation that showed erosions of the femur on the intercondylar region. There are chondral flap tears present there. Chondral flap tears were also noted in the medial compartment primarily over the femur. Slight degenerative changes of the tibial surface of the meniscus appeared to be adequate. Anterior and posterior cruciate appeared to be adequate. Lateral compartment showed a complex tear of the lateral meniscus. Some erosions of the tibial surface were noted.

OPERATIVE PROCEDURE: The patient was properly identified and surgically anesthetized by means of a general anesthetic. The right knee was surgically prepped and draped in the usual fashion. The stab incision was placed in the right knee and arthroscopic instruments were inserted. Upon completion of examination attention was turned to the lateral compartment. The lateral meniscus tear was outlined, probed and excised using multiple biters and shavers. The tibial surface was also shaved somewhat off the lateral tibial surface. Attention was turned to the medial joint space. The medial femoral condyle was examined. There was chondral flap tears which were debrided. The eburnated bone was exposed and drilled using smooth K wire. Some changes of chondral flapping was noted in the intrachondral region and these were also smoothed. The knee was now thoroughly irrigated free of any surgical debris. Operative instruments were removed and the bulky dressing was applied.

D: 06/22/2001 2:32 P
T: 06/27/2001 1:39 P AAK/nb.
DOCUMENT NO: 204276
Job/Tape ID: 000094537

cc: Alexander A. Krot, D.O.

Alexander A. Krot, D.O.

Copy to: Alexander A. Krot, D.O.

DUBOIS MAGNETIC IMAGING CENTER, 145 HOSPITAL AVE. SUITE 102, DUBOIS, PA 15801
PHONE (814) 375-3595 OR (814) 375-3596 OR FAX (814) 375-3298

PATIENT NAME: DUTTRY, LINDA
ADDRESS : 105 CHESTNUT ST.
DUBOIS, PA 15801

DATE OF BIRTH: 2-12-47 AGE: 54
SOC. SEC # : 170-40-1241

EXAM REQUESTED: MR IMAGING OF RIGHT KNEE
DATE OF EXAM: 6-6-01 SCAN #: 17154 671a

REF. PHY.: HALLSTROM

MR IMAGING OF RIGHT KNEE

SCAN SEQUENCE: T1 weighted, proton density, and gradient recall sagittal, T1 weighted and fat-suppressed coronal and T2 weighted axial images.

REPORT: There is a large area of abnormal signal in the proximal tibia in the medial and lateral tibial plateau. A serpiginous hypointensity is seen in the lateral tibial plateau in all sequences within hyperintense zone in T2 weighted and fat-suppressed images. Also noted is a complex tear of the lateral meniscus. In the inner aspect of the meniscus the tear is vertical giving it a bucket-handle appearance. The tear is predominantly horizontal along the periphery of the meniscus at its capsular attachment. There is increased signal seen in the lateral collateral ligament indicating contusion of the lateral collateral ligament. There is a moderate amount of free fluid seen in the joint space. The medial meniscus is intact. Anterior and posterior cruciate ligaments are normal. Signal in the distal femur is normal.

IMPRESSION: LARGE AREA OF BONE CONTUSION IN THE PROXIMAL TIBIA WITH NONDISPLACED STRESS FRACTURE IN THE LATERAL TIBIAL PLATEAU. NO DEFORMITY OR DEPRESSION AT THE FRACTURE SITE IN THE LATERAL TIBIAL PLATEAU.
COMPLEX EXTENSIVE TEAR INVOLVING THE BODY AS WELL AS ANTERIOR AND POSTERIOR HORNS OF THE LATERAL MENISCUS.
CONTUSION AND BRUISING OF THE LATERAL COLLATERAL LIGAMENT OF THE KNEE. JOINT WITH LATERAL HERNIATION OF THE LATERAL MENISCUS BENEATH THE CAPSULE.



G. Ali Shah, M.D.

GAS/raw
D: 6-6-01
T: 6-6-01

NIA CODE: P

Alexander A. Krot, D.O.

145 HOSPITAL AVENUE
DUBOIS, PA 15801
TELEPHONE: (814) 371-4524

PROGRESS NOTES

Linda Duttry

DATE

Note progress of case, complications, consultations, change in diagnosis, condition on discharge and instructions to patient.

6/12/01 Patient would like to know her w/o status.

6/12/01 Dr. Krot wants patient to remain non WB until her follow-up appt. (May 4).

6/13/01

Linda Duttry was referred to the office for evaluation of the right knee. She has been having weight bearing pain since a motor vehicle accident in May, 2000. She complains of pain over the joint space, most of it appears to be lateral in nature. Today's evaluation revealed a white female, well nourished, well developed. Range of motion of the knee was adequate, minimal patellar ballottement. Pain present on palpation over the joint spaces bilaterally. McMurray's signs did not really localize any real pain at this point, but no instability patterns were noted either to varus and valgus stress or Lachman's. MRI was reviewed, it appears to be positive for a complex tear of the meniscus.

IMPRESSION: Lateral meniscal tear of the right knee.

RECOMMENDATION: Her symptoms have been present for over a year, she is not really showing any improvement. I would suggest an arthroscopic evaluation be performed, arrangements are being made for this.

Alexander A. Krot, DO/hlh

C: Dr. Hallstrom





THE LAW FIRM OF

AINSMAN, LEVINE & DREXLER, LLC

310 Grant Street, Suite 2201 • Pittsburgh, PA 15219 • 412.338.9030 fax 412.338.9167

August 20, 2003

Katherine V. Oliver, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

RE: Linda and Carl Duttry vs. William Evans
Docket No: 02-412-C.D.

Dear Ms. Oliver

As per your correspondence dated July 03, 2003, requesting if our client was continuing treatment with Dr. Krot. I spoke to Mrs. Duttry and she informed me that she has not had any medical treatment since her deposition on December 16, 2002. However, her knee is bothering her and she feels that she might have to seek additional medical treatment, she will notify us if this is the case.

Should you have any questions please contact me at 412-338-9030.

Very truly yours,



Rita Glentzer, Paralegal to
Stephen P. Drexler, Esquire



MEDICATION CHECK
BEHAVIORAL HEALTH CENTER

07/06/00

COPY

LINDA DUTTRY

The patient reports that she had a car accident the day after I last saw her and hurt her knee and to some degree her neck but did not have serious injuries. She said that she has felt a little more irritable and nervous since then particularly feeling somewhat phobic about riding in a car. However, she has maintained her previous gains in terms of mood, interests, and sleep although she does take the Restoril and feels she can't sleep without it. She complains however of continued fatigue and says this begins an hour after waking up. Affect seems relatively euthymic today. I have suggested that we begin a taper of Serzone to start with no more morning dose and after one week to taper the bedtime dose to 100 mgs. She is to RTC in 1 month and we will consider discontinuation of that medication.



S. Turkin, M.D.
Psychiatrist

ST:rb
D: 07/06/00
T: 07/10/00

This information has been disclosed to you from records which are ultimately保管 by Federal Law, Part B, Health Information (45 CFR, Part B) and which are being used for the disclosure of information for the purpose of research, evaluation, and quality improvement. A signed statement will be provided if medical records are being released for this purpose.

6/22/00

INDIVIDUAL THERAPY NOTE

LINDA DUTTRY

S/ "My neck and knee are hurting." "I could not take muscle relaxants and the pain medication."

O/ Spouse present we talked about need to return to past social activities on a regular basis. He was open to this. He is to retire in about nine months. He is now away all week driving a truck. He confirms an increase in depression and sedation when she was taking pain medication and muscle relaxants.

A/ Flat in pain. She is conflicted about legal action to support her recovery. Continues volunteer work. I see no significant decline as a result of this auto accident.

P/ See 7/20/00 at 1-PM.



NORMAN G FURGIUELE LCSW

COPY

This information has been disclosed to you from records whose confidentiality is protected by Federal Law, Federal Regulation (62 CFR, Part 2) prohibiting, among other things, any further disclosure. This is your specific written assurance of the protection of the information, or records, from unauthorized disclosure.

A general assurance of the protection of the information or records is NOT sufficient for this purpose.



CP Special Policy Endorsement Coverage Summary



Policyholder:
LINDA DUTTRY
105 CHESTNUT STREET
DUBOIS PA 15801

Agent:
SU INC. DBA SERVICE UNLIMITED
RT 219 RD 2 BOX 530
BROCKWAY PA 15824
PHONE: 814-265-0399 470-003532-0000

STATE COLLEGE FCO

FEB 21 2002

Policy Number:
US 219245614

Policy Period:
05/15/2000 to 05/15/2001 12:01 AM Standard Time

Policyholder Since:
05/2000

Insurance Provided By:
CONTINENTAL INSURANCE COMPANY
P.O.BOX 16020 READING, PA 19612-6020

24 HOUR CLAIM REPORTING 800-588-7400

YOUR POLICY HAS BEEN CHANGED

As of:

CHANGED USE OR MILEAGE INFORMATION
07/26/2000 CHANGED VEHICLE NUMBER 2
Change to Annual Premium
Revised Annual Policy Premium
Return Premium for Coverages From 07/26/2000 to 05/15/2001

- \$ 34.00
\$ 912.00
\$ 27.00

This Coverage Summary provides you with complete policy information, including the above change, and represents your coverages currently in effect.

IMPORTANT INFORMATION ABOUT YOUR POLICY

We provide collision coverage for a non-owned private passenger motor vehicle rented by you, during the term of this policy, if at least one of your autos shown below has collision coverage. (The collision coverage we provide is subject to the lowest applicable deductible.) Please review your policy for coverage details.

MOTOR VEHICLE PROTECTION		(Coverage applies only if a premium or limit is shown)					
	Vehicle 1	Vehicle 2					
Description:	1997 MERCURY SABLE				1988 TOYOTA PICKUP		
VIN:	1MELM53SOVA621248				JT4RN50R7J5124632		
Rated Driver:	LINDA D DUTTRY				CARL L DUTTRY		
Use:	Pleasure				Work 13 miles		
Class Code:	801120				801120		
COVERAGES	LIMITS	PREMIUMS	LIMITS	PREMIUMS			
PERSONAL LIABILITY (per accident)	\$ 300,000	\$ 194.00	\$ 300,000	\$ 203.00			
<input checked="" type="checkbox"/> FULL TORT OPTION	Applies		Applies				
UNINSURED MOTORISTS - STACKED LIMITS	\$ 35,000	\$ 11.00	\$ 35,000	\$ 11.00			
UNDERINSURED MOTORISTS - STACKED LIMITS	\$ 35,000	\$ 33.00	\$ 35,000	\$ 33.00			
FIRST PARTY BENEFITS (FPB) COVERAGE:							
ADDED FPB COVERAGE		\$ 82.00				\$ 119.00	
Medical Expense Benefit	\$ 50,000		\$ 50,000				
Work Loss Benefit (per month/maximum)	\$ 1,500/25,000		\$ 1,500/25,000				

US 219245614

Bernard L. Angelbough

Chairman of the Board

Jonathan Kandt

Secretary

C 0811

ALL-STATE LEGAL SUPPLY CO. 1-800-222-0610 ED11 RECYCLED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiffs,

v.

WILLIAM EVANS,

Defendant.

CIVIL DIVISION

No.: 02-412-C.D.

Issue:

CODE:

**PLAINTIFFS' ANSWERS TO
INTERROGATORIES**

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN & LEVINE, P.C.
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

INTERROGATORIES

1. State your full name(s), date(s) of birth, place(s) of birth, and Social Security number(s).

ANSWER:

Full name: Linda Darlene Duttry; Date of Birth: 2/12/47; Place of Birth: Renovo, PA; Social Security Number: 170-40-1241.

2. State your present residence address, the period during which you have resided at said address, and telephone number.

ANSWER:

Address provided in paragraph one (1) of the Plaintiff's Complaint;
Phone number: 814-372-2394.

3. State your residence address at the time of the accident to be referred to in your Complaint.

ANSWER:

See Paragraph one (1) of Plaintiff's Complaint.

4. Are you married at the present time?

ANSWER:

Yes.

5. If so, state:

(a) Your spouse's full name-,

ANSWER:

Carl Lewis Duttry.

(b) If female, her maiden name;

ANSWER:

Not applicable.

(c) His or her address-,

ANSWER:

See Paragraph one (1) of the Plaintiff's Complaint.

(d) The date and place of your marriage-,

ANSWER:

Date of Marriage: 9/28/96; Place of Marriage: Emporium, PA

(e) State whether or not your spouse is now living with you;

ANSWER:

Yes.

(f) If not, when the separation occurred;

ANSWER:

Not applicable.

(g) Your spouse's present address.

ANSWER:

See Paragraph one (1) of the Plaintiff's Complaint.

6. State your business or occupation at the time of the accident to be referred to in your Complaint and if you are still engaged in such a business or occupation.

ANSWER:

The Plaintiff, Linda Duttry, was not employed at the time of the incident.

7. If so, state:

- (a) When you ceased working in such business or occupation-,

ANSWER:

Not applicable.

- (b) Your present business or occupation, the date you entered it and your present income from such business;

ANSWER:

Not applicable.

- (c) Any other business occupations prior to your present one and after the date set out in answer to paragraph (a) above.

ANSWER:

Not applicable.

8. Have you lost any time from your business or occupation since the accident to be referred to in your Complaint and if so, state:

ANSWER:

Not applicable.

- (a) The cause of such loss of time,

ANSWER:

Not applicable.

- (b) The number of days lost and the dates;

ANSWER:

Not applicable.

- (c) The amount of any income or wages lost.

ANSWER:

Not applicable.

9. If employed at the time of the accident to be referred to in your Complaint, state,

- (a) The name and address of the employer-,

ANSWER:

Not applicable.

- (b) The position held and the nature of the work performed;

ANSWER:

Not applicable.

- (c) Average weekly wages for the preceding year.

ANSWER:

Not applicable.

I 0. If employed since the accident to be referred to in the Complaint, state:

- (a) Name and address of present employer;

ANSWER:

Not applicable.

- (b) Position held and nature of work being performed;

ANSWER:

Not applicable.

- (c) Hours worked per week;

ANSWER:

Not applicable.

- (d) Present weekly wages, earnings, income or profit;

ANSWER:

Not applicable.

- (e) Name your immediate boss, foreman or the superior to whom you are responsible-,

ANSWER:

Not applicable.

- (f) Whether a physical examination was required and if so, state the date, place and person giving the examination-,

ANSWER:

Not applicable.

- (g) For each employer, whether or not you made any representations in writing or answered in writing any questions concerning your physical condition.

ANSWER:

Not applicable.

I 1. Are you now receiving or have you ever received any disability pension, income or insurance or any workers' compensation from any agency, company, person, corporation, state or government?

ANSWER:

Yes.

12. If so, state:

- (a) The nature of any such payment;

ANSWER:

\$612 and \$645.

- (b) Dates you received such income;

ANSWER:

Monthly.

- (c) For what injuries or disability you received it, and how such injury occurred or disability arose;

ANSWER:

Objection. The information sought in this interrogatory is over broad and not reasonably calculated to lead to evidence that would be admissible at trial. Having not waived said objection, the Plaintiff, Linda Duttry, suffers from osteoporosis and bipolar disorder.

- (d) By whom paid;

ANSWER:

With respect to the disability for osteoporosis, Plaintiff receives income from The Hartford Insurance Companies. With respect to disability associated with her bipolar disorder, the Plaintiff receives income from Social Security Disability.

- (e) Whether you now have any present disability as a result of such injuries or disability;

ANSWER:

The Plaintiff's disability is ongoing.

- (f) If so, the nature and extent of such disability,

ANSWER:

Objection. This interrogatory calls for a medical opinion. Having not waived said objection, the Plaintiff, Linda Duttry, is currently totally disabled.

- (g) Whether you had any disability at the time of the accident to be referred to in the Complaint;

ANSWER:

Objection. This interrogatory is over broad and not reasonably calculated to lead to evidence that would be admissible at trial. Having not waived said objection, please refer to the disabilities referenced in sub-interrogatory 12(c).

- (h) If so, the nature and extent of such disability.

ANSWER:

Objection. This interrogatory calls for a medical opinion. Having not waived said objection, the Plaintiff, Linda Duttry, is currently totally disabled.

13. Have you made claim for any benefits under any medical pay coverage or policy of insurance relating to injuries arising out of the accident alleged in your Complaint?

ANSWER:

Yes.

14. If so, state:

- (a) The name of the insurance company or organization to whom said claim was made;

ANSWER:

See automobile insurance Declaration's page.

(b) The date of the Claim or application;

ANSWER:

Subsequent to the incident.

(c) The claim number or policy number.

ANSWER:

See automobile insurance Declaration's sheet.

15. Have you ever made claim for any benefits under any insurance policy, or against any person, firm or corporation for personal injuries or physical condition which you have not heretofore listed in your answers to these interrogatories?

ANSWER:

No.

16. If so, state:

(a) The injury or condition for which such claim was made;

ANSWER:

Not applicable.

(b) The name and address of the person, firm or corporation to whom or against whom it was made;

ANSWER:

Not applicable.

(c) The date it was made;

ANSWER:

Not applicable.

(d) The nature and amount of any payment received therefor.

ANSWER:

Not applicable.

17. State in detail the manner in which you assert that the accident to be referred to in the Complaint occurred, specifying the speed, position, direction, and location of each vehicle and person involved during its approach to, at the time of and immediately after the collision.

ANSWER:

See Paragraph six (6) of the Plaintiff's Complaint as well as the attached Police Report.

18. Did you consume any alcoholic beverages of any type, or any sedative, tranquilizer or other drug, medicine or pill during the 48 hours immediately preceding the accident to be referred to in the Complaint?

ANSWER:

Yes.

19. If so, state:

- (a) The nature, amount, and type of item consumed;

ANSWER:

The Plaintiff was on anti-depressant medication for her bi-polar disorder. The Plaintiff does not recall the name of the prescription.

- (b) The amount of time over which consumed;

ANSWER:

Unknown.

- (c) The names and addresses of any and all persons who have any knowledge as to the consumption of these items.

ANSWER:

Plaintiff's family physician, John J. Bellomo, D.O., 910 Beaver Drive, Du Bois, PA 15801; Phone: (814) 371-3730; and
Scott Turkin, M.D. 90 Beaver Drive, Du Bois, PA 15801; Phone: (814) 375-6379

20. State whether you made any statement or statements in any form to any person regarding any of the events or happenings to be referred to in your Complaint.

ANSWER:

Yes.

21. If so, state:

- (a) The names and addresses of the person or persons to whom such statements were made;

ANSWER:

To the Defendant's auto insurer, State Farm.

- (b) The date such statements were made;

ANSWER:

Subsequent to the incident.

- (c) The form of the statement, whether written, oral, by recording device or to a stenographer;

ANSWER:

Plaintiff gave an oral statement which recorded on cassette tape.

- (d) Whether such statements, if written, were signed;

ANSWER:

The statement was not signed.

(e) The names and addresses of the persons presently having custody of such statements.

ANSWER:

The Defendant's insurer, State Farm, should have a copy of such statement.

22, State the full name and last known address, giving the street, street number, city and state of every witness known to you or to your attorneys who has any knowledge regarding the facts and circumstances surrounding the happening of the accident to be referred to in the Complaint or your alleged injuries, including, but not limited to, eye witnesses to such event, as well as medical witnesses and other persons having any knowledge thereof

ANSWER:

Plaintiff, Linda Duttry, address provided in Paragraph one (1) of the Plaintiff's Complaint; and Defendant, address provided in Paragraph two (2) of the Plaintiff's Complaint.

23. if any of the witnesses listed in Interrogatory number 22 or whom you propose to use at trial are related to you or to each other, please state the nature of such relationship.

ANSWER:

Not applicable.

24. State the full name and last known address, giving the street, street number, city and state, of every witness known to you or your attorneys who claims to have seen or heard the defendant made any statement or statements pertaining to any of the events or happenings to be alleged in your Complaint.

ANSWER:

Defendant gave a statement to the Police officer that investigated the incident. See the attached Police Report for name, address of that officer. In addition, the Plaintiff contacted the Defendant the day following the incident for information regarding the Defendant's auto insurer, policy number, etc. In that conversation, the Defendant apologized to the Plaintiff for causing the incident.

25. Supply the following information with respect to each individual whose name you have given in the answer to Interrogatory No. 24:

- (a) The location or locations where the Defendant made any such statement or statements;

ANSWER:

The scene of the incident. The Defendant made a party admission via telephone from the Defendant's residence the day following the incident. See response to Interrogatory 24.

- (b) The name and address of the person or persons in whose presence the Defendant made any such statement or statements;

ANSWER:

The Plaintiff and the Sandy Township Police Officer. See addresses provided in Paragraph one (1) of the Plaintiff's Complaint and the attached Police report respectively.

- (c) The time and date upon which the Defendant made any such statement or statements;

ANSWER:

Immediately following the incident.

- (d) The full name and address of any other person who was present at the time and place the Defendant made such statement or statements',

ANSWER:

Unknown.

- (e) Whether you or anyone acting on your behalf obtained statements in any form from any persons who claim to be able to testify to the statement or statements made by the Defendant.

ANSWER:

None were taken.

26. If the answer to Paragraph (e) of the foregoing interrogatory is in the affirmative, then state:

- (a) The names and addresses of the persons from whom any such statements were taken.

ANSWER:

Not applicable.

- (b) The date upon which said statements were taken;

ANSWER:

- (c) The names and addresses of the employers of the persons who took such statements,

ANSWER:

Not applicable.

- (d) The names and addresses of the persons having custody of such statements,

ANSWER:

Not applicable.

- (e) Whether such statements were written, oral, by recording device or by court reporter or stenographer.

ANSWER:

Not applicable.

27. State whether you, your attorney, your insurance carrier or anyone acting on your or their behalf obtained statements in any form from any persons regarding any of the events or happenings that occurred at the scene of the accident to be referred to in the Complaint immediately before, at the time of, or immediately after said accident.

ANSWER:

None were taken.

28. If so, state:

- (a) The name and address of the person from whom any such statements were taken,

ANSWER:

Not applicable.

- (b) The dates on which such statements were taken;

ANSWER:

Not applicable.

- (c) The names and addresses of the persons and employers of such persons who took such statements;

ANSWER:

Not applicable.

- (d) The names and addresses of the persons having custody of such statements,

ANSWER:

Not applicable.

- (e) Whether such statements were written, by recording device, by court reporter or stenographer.

ANSWER:

Not applicable.

29. For each expert witness you intend to call at the trial of this case, please list:

- (a) Name, business address, and home address;

ANSWER:

Plaintiffs is not certain who they will call as an expert at the time of trial. Plaintiffs will provide this information in their Pre-Trial statement.

- (b) Date of birth, technical schools attended, dates of attendance, date of graduation and degree attained;

ANSWER:

Not applicable.

- (c) The specialties in which the witness has received certification by and board or professional organization, the date of such certification, and the identity of the board issuing such certification;

ANSWER:

Not applicable.

- (d) All professional societies, academies, associations or other organized professional groups of which this expert is a member;

ANSWER:

Not applicable.

- (e) All states in which the witness has ever been licensed and the states in which the witness is currently licensed-,

ANSWER:

Not applicable.

- (f) Whether any state board of licensure has ever revoked or suspended the witness's license and if so, the date of such revocation or suspension and the name of the state board of licensure imposing such revocation or suspension;

ANSWER:

Not applicable.

(g) Whether any professional or governmental agency or body has ever had occasion to investigate the witness pursuant to any complaint calling into question the professional conduct or professional ethics of the witness and if so, the name of such investigative body, the date of investigation, and the outcome or disposition of such investigation;

ANSWER:

Not applicable.

(h) All lawsuits in which this expert has ever testified as an expert witness, and for each, whether he testified on behalf of the Plaintiff or Defendant, the Court term and number of each action, and the area of expertise to which this expert testified in each case,

ANSWER:

Not applicable.

G) All textbooks, treatises, papers, articles, or other writings which this witness has ever authored, and for each, the name of the article, publication, citation of the publication and date of publication;

ANSWER:

Not applicable.

- h) If the witness is not self-employed, state each address where the witness is employed.

ANSWER:

Not applicable.

30. For each such expert witness you intend to call at the trial of this case, state the subject matter on which the expert is expected to testify.

ANSWER:

The Plaintiffs have not determined who they will call as an expert witness at the time of trial. The Plaintiffs will provide this information in their Pre-Trial Statement.

31. For each such expert witness, state the substance of each and every fact which each expert is expected to utilize during his/her testimony.

ANSWER:

The Plaintiffs have not determined who they will call as an expert witness at the time of trial. The Plaintiffs will provide this information in their Pre-Trial Statement.

32. For each such expert witness, state the substance of each and every opinion to which the expert is expected to testify and for each opinion give a complete statement of the ground for such opinion.

ANSWER:

The Plaintiffs have not determined who they will call as an expert witness at the time of trial. The Plaintiffs will provide this information in their Pre-Trial Statement.

33. If you received any treatment with respect to the injuries allegedly suffered state:

(a) The name and address of each hospital at which you were treated or admitted;

ANSWER:

See attached medical records, bills, and damage summary.

- (b) The dates on which said treatment was rendered, including the dates of entry into and discharge from said hospital or hospitals;

ANSWER:

See attached medical records, bills, and damage summary.

- (c) Itemize the charges rendered by each of the hospitals listed above;

ANSWER:

See attached medical records, bills, and damage summary.

- (d) State the name and address of each doctor or medical practitioner of any type whatsoever who has examined or treated Plaintiff or conferred with you with respect to the injuries alleged,

ANSWER:

- (e) Itemize the cost and expenses of such examinations or treatments by the doctors listed above.

ANSWER:

See attached medical records, bills, and damage summary.

34. Since the date of the accident to be referred to in your Complaint, have you been treated by or examined by or have you conferred with or consulted with any other doctor or medical practitioner of any type whatsoever whose name you have not heretofore supplied?

ANSWER:

See attached medical records, bills, and damage summary.

35. If so, state:

- (a) The name and address of each doctor or medical practitioner of any type whatsoever who has examined, treated, conferred, or consulted with you and the date of same.

ANSWER:

See attached medical records, bills, and damage summary.

- (b) The condition for which said care or treatment or attention was rendered.

ANSWER:

See attached medical records, bills, and damage summary.

36. If you have incurred any medical bills in connection with the alleged injuries not heretofore listed, state:

- (a) The total amount of each such bill-,

ANSWER:

See attached medical records, bills, and damage summary.

- (b) The person to whom such amount was paid;

ANSWER:

See attached medical records, bills, and damage summary.

- (c) The service or thing for which the bill was rendered.

ANSWER:

See attached medical records, bills, and damage summary.

37. If you are still receiving medical services or treatment of any nature whatsoever, state:

- (a) The name or names of the person or persons attending you;

ANSWER:

See attached medical records, bills, and damage summary.

- (b) The approximate frequency of said treatment of service;

ANSWER:

See attached medical records, bills, and damage summary.

- (c) The date you last received said treatment or service.

ANSWER:

See attached medical records, bills, and damage summary.

38. State the dates during which you were confined following your discharge from the hospital.

(a) To your bed;

ANSWER:

The Plaintiff does not recall.

(b) To your home.

ANSWER:

The Plaintiff does not recall.

39. Were you an insured or beneficiary under any policy of insurance under which you received benefits or reimbursement for medical expenses resulting from the injuries received in the accident?

ANSWER:

Yes.

40. If so, state:

(a) The name and address of the company paying the benefits;

ANSWER:

See attached automobile insurance declarations page.

- (b) Whether the company required you to assign to it any rights of recovery you may have against others.

ANSWER:

Unknown.

41. At the time of the accident referred to in your Complaint, was there in effect an insurance policy which provided benefits and coverage pursuant to the Pennsylvania No-Fault Motor Vehicle Insurance Act of the Motor Vehicle Financial Responsibility Law?

ANSWER:

Yes.

42. If so, as to each state:

- (a) Name, principal place of business and telephone number of insurer,

ANSWER:

See attached automobile insurance declarations page.

- (b) Name, address and telephone number of named insured;

ANSWER:

See attached automobile insurance declarations page.

(C) Policy Number; and

ANSWER:

See attached automobile insurance declarations page.

(d) Claim number designated to your policy.

ANSWER:

See attached automobile insurance declarations page.

43. Have you been paid any benefits under said policy for medical expenses as a result of the accident referred to in your Complaint?

ANSWER:

See attached medical records, bills, and damage summary.

44. If so, state the total amount of benefits you have received for medical expenses from the date of the accident to the present.

ANSWER:

See attached medical records, bills, and damage summary.

45. Have you been paid any benefits under said policy for lost wages as a result of the accident referred to in your Complaint?

ANSWER:

No.

46. If so, state the total amount of benefits you have received for lost wages from the date of the accident to the present.

ANSWER:

Not applicable.

47. In the years prior to the accident referenced in this matter, had you ever been involved in any other vehicular accidents?

ANSWER:

Yes.

48. If so, as to each, state:

- (a) The date, time, and location of accident;

ANSWER:

Approximately 1957. The place of that accident is unknown to the Plaintiff.

In addition, the Plaintiff rear-ended another vehicle in 1996. The Plaintiff did seek medical attention immediately following this incident at St. Mary's Regional Hospital for an evaluation. The Plaintiff suffered no injuries as a result of this incident.

- (b) The names and addresses of people involved;

ANSWER:

Unknown.

- (c) If legal proceedings were commenced;

ANSWER:

No.

(d) The names of parties and the status they occupied in any action;

ANSWER:

Unknown.

(e) The result of any judgment rendered in any action;

ANSWER:

Not applicable.

(f) The result of any settlement in absence of legal proceedings;

ANSWER:

Not applicable.

(g) The nature and extent of any injuries you sustained.

ANSWER:

Plaintiff sustained no injuries in that accident.

49. Have you been involved in any vehicular accidents since the date of the accident referenced in this matter?

ANSWER:

No.

50. If so, as to each, state:

(a) The date, time, and location of accident;

ANSWER:

Not applicable.

(b) The names and addresses of people involved;

ANSWER:

Not applicable.

(c) If legal proceedings were commenced;

ANSWER:

Not applicable.

(d) The names of parties and the status they occupied in any action;

ANSWER:

Not applicable.

(e) The result of any judgment rendered in any action;

ANSWER:

Not applicable.

(f) The result of any settlement in absence of legal proceedings;

ANSWER:

Not applicable.

(g) The nature and extent of any injuries you sustained.

ANSWER:

Not applicable.

51. Do you have any difficulty in judging distance? If so, describe such difficulty.

ANSWER:

Objection. This interrogatory is vague.

52. Identify fully and completely each and every document which you intend to introduce into evidence at the trial of this case.

ANSWER:

Plaintiffs will provide this information in their Pre-Trial Statement. At this time, the Plaintiffs are producing the following documents received to date - The first party benefits file, the police report, the automobile insurance declarations page, a damage summary, photographs, property damage summary, and medical records.

53. Identify each and every demonstrative exhibit, picture, object, model, movie, tape or other document which you intend to refer to during any witnesses' testimony at the trial of this case, and for each, identify the witness(es) whom you intend to question concerning said exhibit.

ANSWER:

Plaintiffs have not developed demonstrative exhibits at this time. The Plaintiffs will provide this information in their Pre-Trial exhibit.

Respectfully submitted,
Ainsman & Levine, P.C.

By: 
Stephen P. Drexler, Esquire
Counsel for Plaintiffs

VERIFICATION

We verify that the statements made in the PLAINTIFFS' ANSWERS TO INTERROGATORIES are true and correct; that the attached PLAINTIFFS' ANSWERS TO INTERROGATORIES is based upon information which we have furnished to our counsel and information which has been gathered by our counsel in the preparation of the lawsuit. The language of the PLAINTIFFS' ANSWERS TO INTERROGATORIES is that of counsel and not of the Plaintiffs. We have read the PLAINTIFFS' ANSWERS TO INTERROGATORIES and to the extent that the PLAINTIFFS' ANSWERS TO INTERROGATORIES is based upon information which we have given to our counsel, it is true and correct to the best of our knowledge, information and belief. To the extent that the content of the PLAINTIFFS' ANSWERS TO INTERROGATORIES is that of counsel, We have relied upon counsel in making this Verification. We understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date:

July 16, 2002

Linda Duttry
Linda Duttry

Carl Duttry
Carl Duttry

CERTIFICATE OF SERVICE

The undersigned, does hereby certify that a true and correct copy of the foregoing of Plaintiffs' Answers to Interrogatories has been served on all interested parties, via **First Class Mail**, on this 23rd day of July, 2002.

AINSMAN & LEVINE, P.C.

By: 



CNA PERSONAL INSURANCE

P.O. Box 16203, Reading, PA, 19612

Claim Number: R1216993 JJ
Insuring Company: Continental Ins Co

APPLICATION FOR BENEFITS - PERSONAL INJURY PROTECTION

Date: 7/24/00	Policyholder: Linda Duttry	Date of Accident: 05/31/2000	CLAIM NUMBER: R1216993 JJ
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To enable us to determine if you are entitled to benefits under the automobile personal injury protection endorsement of the policy with the above company, please complete this form and return it promptly.

YOUR NAME Linda D. Duttry	PHONE NUMBER (HOME) (814) - 372 - 2394 (WORK)
YOUR ADDRESS (NO., STREET, CITY OR TOWN, STATE AND ZIP CODE) 105 Chestnut Street, DuBois PA	DATE OF BIRTH 2-12-47
DATE AND TIME OF ACCIDENT May 31, 2000 between 2 PM and 8 PM	PLACE OF ACCIDENT (STREET, CITY OR TOWN & STATE) Dixon Avenue, DuBois PA 15801
BRIEF DESCRIPTION OF ACCIDENT I was traveling on Dixon Avenue and M.L. Evans was approaching from opposite direction - as he got almost to me, he turned directly in front of me.	

WERE YOU THE DRIVER OF OUR POLICYHOLDER'S CAR? YES NO
AT TIME OF ACCIDENT: WERE YOU A PASSENGER IN OUR POLICYHOLDER'S CAR? YES NO
WERE YOU A PEDESTRIAN? YES NO

ARE YOU A MEMBER OF OUR POLICYHOLDER'S HOUSEHOLD? YES NO

LIST ALL AUTOS IN YOUR HOUSEHOLD

NAME OF OWNER	NAME OF INSURANCE COMPANY	POLICY NO.
Carl D. Duttry	CNA	US 2192456 14
97 Mercury Sable - Carl Duttry	CNA	US 2192456 14
84 Toyota Pickup - Carl Duttry	CNA	US 2192456 14

AS A RESULT OF THIS ACCIDENT WERE YOU INJURED? YES NO IF YOUR ANSWER IS "YES", COMPLETE THE REST OF THIS FORM.
IF ANSWER IS "NO", SIGN HERE AND RETURN THIS FORM TO US.

SIGNATURE: DATE:

DESCRIBE YOUR INJURY

Injuries to neck, right shoulder, shoulder, and right knee.

WERE YOU TREATED BY A DOCTOR? DATE OF 1ST TREATMENT DOCTOR'S NAME AND ADDRESS

YES NO

IF YOU WERE TREATED IN A HOSPITAL, WERE YOU AN IN-PATIENT OUT-PATIENT HOSPITAL'S NAME AND ADDRESS

AMOUNT OF MEDICAL BILLS TO DATE WILL YOU HAVE MORE MEDICAL EXPENSES? YES NO AT THE TIME OF THIS ACCIDENT, WERE YOU WORKING FOR YOUR EMPLOYER? YES NO

DID YOU LOSE WAGES OR SALARY AS A RESULT OF YOUR INJURY? YES NO IF "YES", AMOUNT LOST TO DATE WHAT IS YOUR AVERAGE WEEKLY WAGE OR SALARY?

IF YOU LOST TIME: DATE DISABILITY FROM WORK BEGAN:
DATE YOU RETURNED TO WORK:

HAVE YOU RECEIVED OR ARE YOU ELIGIBLE FOR BENEFITS UNDER

(1) ANY WORKMAN'S COMPENSATION LAW? YES NO (4) ANY DISABILITY LAW? YES NO IF "YES", AMOUNT
(2) EMPLOYMENT BY U.S. GOVERNMENT? YES NO (5) ANY WAGE OR SALARY YES NO
(3) MILITARY SERVICE? YES NO CONTINUATION PLAN? YES NO PER WEEK PER MONTH

LIST NAMES AND ADDRESSES OF YOUR EMPLOYERS AT THE DATE OF THE ACCIDENT AND GIVE OCCUPATION AND DATES OF EMPLOYMENT:

EMPLOYER NAME AND ADDRESS OCCUPATION FROM TO

CNA

CNA

AS A RESULT OF YOUR INJURY, HAVE YOU HAD ANY OTHER EXPENSES? YES NO IF YES, EXPLAIN ON REVERSE SIDE.

SIGNATURE: Linda D. Duttry DATE:

IMPORTANT:

TO PRESENT CLAIM FOR BENEFITS YOU MUST COMPLETE AND SIGN THIS APPLICATION.
YOU MUST ALSO SIGN ANY ATTACHED AUTHORIZATION(S).
RETURN PROMPTLY WITH ANY MEDICAL BILLS YOU HAVE RECEIVED TO DATE

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S MOTION FOR**

SUMMARY JUDGMENT OR, ALTERNATIVELY FOR PARTIAL SUMMARY

JUDGMENT in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 15th day of October, 2003, to the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
ID No. 77069
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiffs,

v.

CIVIL DIVISION

No.: 02-412-C.D.

Issue:

CODE:

WILLIAM EVANS,

NOTICE OF SERVICE

Defendant.

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler, Esquire
PA I.D. #76108

Erin J. Fucci
PA I.D. #86472

AINSMAN, LEVINE & DREXLER, LLC
Firm #975

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Pittsburgh, PA 15219

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JURY TRIAL DEMANDED

AL047687.1

FILED

OCT 27 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

Plaintiff,

v.

WILLIAM EVANS,

Defendant.

CIVIL DIVISION

No.: 02-412-C.D.

NOTICE OF SERVICE

I, STEPHEN P. DREXLER, the undersigned, do hereby certify that a true and correct copy of the foregoing Plaintiffs' Notice of Service has been served on all interested parties, by U.S. First Class Mail, on this 20th day of October, 2003.

AINSMAN, LEVINE & DREXLER, LLC

By:


Stephen P. Drexler, Esquire

MAILED TO:

Katherine V. Oliver, Esquire
811 University Drive
State College, PA 16801-6699

FILED NO
M 13 2003
OCT 27 2003
CC

William A. Shaw
Prothonotary/Clerk of Courts

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :

v.

WILLIAM EVANS, :

Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S ANSWERS AND
OBJECTIONS TO PLAINTIFFS' INTERROGATORIES DIRECTED TO
DEFENDANT in the above-captioned matter was mailed by regular mail, postage prepaid,
at the Post Office, State College, Pennsylvania, on this 21 day of November 2003, to the
attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By:



Katherine V. Oliver

I.D. No. 77069

811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

FILED

NOV 24 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

LINDA DUTTRY and CARL DUTTRY, :
her husband :
: :
-vs- : No. 02 - 412 - CD
: :
WILLIAM EVANS : :

FILED

NOV 25 2003

OPINION AND ORDER

William A. Shaw
Prothonotary/Clerk of Courts

On May 31, 2000, William Evans, Defendant above-named, was a volunteer fireman with Sandy Hose Company No. 1 and was responding to a fire alarm from his home to that Hose Company at approximately 8:00 p.m. While turning left into the Hose Company, his vehicle, which was traveling with its blue light activated, collided with the vehicle operated by Plaintiff Linda Duttry causing her certain injuries.

Plaintiff's Complaint was filed on March 20, 2002, and Defendant responded with an Answer and New Matter claiming the defenses available under the Political Sub-Division Tort Claims Act (42 Pa. C.S.A. § 8501 et seq.) pleading his status as a volunteer fireman acting in the scope of employment. Defendant now moves for Summary Judgment based on the above.

There appears to be no dispute that Sandy Hose Company No. 1 is a local agency within the meaning of the Act or that volunteer firefighters are "employees" protected by the Act. The question here then is whether the Defendant was acting within the scope of his duties as a volunteer firefighter for Sandy Hose Company No. 1 at the time of the accident and if so, the limitation on damages contained in the Act are applicable here.

In DeLong v. Miller, 426 A.2d, 1171 (Pa. Super. 1981) the Superior Court of Pennsylvania held as follows:

“... because the unique character of the employment requires prompt reaction to an alarm, a volunteer fireman is in the course of his employment when he leaves his home in response to an alarm.”

While the factual situation in DeLong may be different and the issue addressed by the Superior Court not exactly identical to the one at issue here, nevertheless, the quoted statement is clear and not in its context restricted to any specific factual situation or issue and therefore, this Court is bound thereby to rule that the Defendant herein was in the scope of his duties at the time of the accident.

Having so held, the Court finds that the provisions of the Political Sub-Division Tort Claims act with regards to damages are applicable here. However, Plaintiff has alleged in its brief in opposition to Defendant's Motion that discovery is not completed and therefore, a final ruling herein is premature. For this reason, the Court will grant Plaintiff a reasonable time from date hereof to complete her discovery with regards to damages.

Defendant's final Motion for Summary Judgment involves section 1722 of the Motor Vehicle Financial Responsibility Law (75 Pa. C.S. § 1722). With regards to this issue, Plaintiff concedes that she has not made claims for loss of wages and her medical payments do not exceed the limit contained therein of \$50,000 and therefore, this Court sustains Defendant's Motion for Summary Judgment to the extent that medical expenses have not exceeded the first party medical limit on her automobile policy.

WHEREFORE, the Court enters the following:

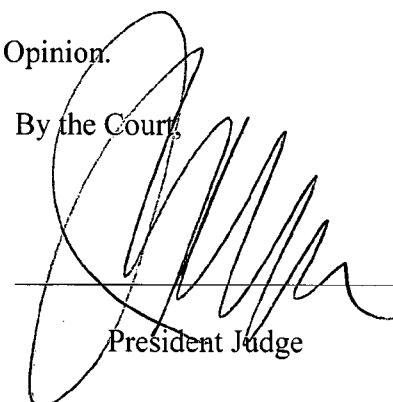
ORDER

NOW, this 24th day of November, 2003, upon consideration of Motion for Summary Judgment filed on behalf of Defendant above-named, it is the ORDER of this Court that said Motion be and is hereby granted with regards to Defendant's Motion and Plaintiffs'

claim for damages based on Section 1722 of the Motor Vehicle Financial Responsibility Law dismissed. In all other regards final ruling on Defendant's Motion shall be and is hereby continued in accordance with the foregoing Opinion.

By the Court,

President Judge



FILED 1CC Atty Drexler
09-27-03 1CC Atty Horne
NOV 25 2003

William A. Shaw
Prothonotary/Clerk of Courts
1CC D. Mikesell
K21

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

CA

LINDA DUTTRY and CARL DUTTRY,
her husband, : No. 02-412-C.D.
Plaintiffs, :
v. :
WILLIAM EVANS, : TYPE OF PLEADING
Defendant. : DEFENDANT'S MOTION FOR
: DECISION ON REMAINING
: SUMMARY JUDGMENT ISSUES
: CONTINUED BY COURT ORDER
: OF NOVEMBER 24, 2003
: FILED ON BEHALF OF
: DEFENDANT
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
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FILED

MAR 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, :
Defendant. :
:

ORDER

AND NOW, this _____ day of _____, 2004, upon consideration of
Defendant's Motion for Decision on Remaining Summary Judgment Issues Continued by Court
Order of November 24, 2003 and Plaintiffs' Response thereto, it is hereby ORDERED as
follows:

1. Defendant's motion for summary judgment seeking dismissal of Plaintiffs' pain and suffering claims under the provisions of the Political Subdivision Tort Claims Act is hereby GRANTED. Plaintiffs' claims for pain and suffering damages are dismissed from this action, with prejudice.
2. Defendant's motion for summary judgment seeking dismissal of Plaintiffs' claims for economic losses in the nature of wage loss, past, present or future, is hereby GRANTED. Plaintiffs' claims for any such losses are hereby dismissed from this action, with prejudice.

3. Plaintiffs' claims for economic losses in the nature of medical expenses were dismissed under the applicable provisions of the Motor Vehicle Financial Responsibility Law by Order of this Court dated November 24, 2003; and

4. In light of the foregoing and of this Court's November 24, 2003 Opinion and Order, Plaintiffs' claims are dismissed in their entirety, and summary judgment is hereby entered in favor of Defendant.

BY THE COURT:

J.

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

LINDA DUTTRY and CARL DUTTRY, her husband,	:	No. 02-412-C.D.
	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
WILLIAM EVANS,	:	
	:	
Defendant.	:	

**DEFENDANT'S MOTION FOR DECISION ON REMAINING
SUMMARY JUDGMENT ISSUES CONTINUED BY
COURT ORDER OF NOVEMBER 24, 2003**

AND NOW, comes Defendant, William Evans, by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and respectfully moves this Court for decision on the remaining issues raised by Defendant's previously filed motion for summary judgment, continued by Order of November 24, 2003. Defendant submits that pertinent discovery is complete, and that summary judgment should be entered in his favor. In support of his Motion, Defendant avers as follows:

Background and Resolved Summary Judgment Issues

1. This motor vehicle negligence action was filed by Complaint on March 20, 2002.
2. The action involves a two-vehicle accident that occurred on May 31, 2000 on Dixon Avenue, in DuBois, Clearfield County, Pennsylvania. The accident occurred directly in front of the fire station of the Sandy Hose Company No. 1.
3. In their Complaint, Plaintiffs assert claims for both economic and non-economic damages allegedly sustained as a result of the accident.

4. At the time of the accident, Defendant William Evans was responding to an official fire call, and was acting in his capacity as a volunteer fireman for Sandy Hose Company No. 1.

5. On or about October 15, 2003, Defendant filed a Motion for Summary Judgment, or Alternatively, for Partial Summary Judgment. A supporting Brief was filed on that date as well. (See Defendant's Brief in Support. S.J., a copy of which is attached hereto as Exhibit "A").

6. In his summary judgment motion and supporting brief, Defendant raised the limitations on damages under the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S.A. § 1701, et seq., in defense of Plaintiffs' claims for wage loss and/or medical expenses. (See Def's Mot. S.J. filed on October 15, 2003, incorporated herein by reference.)

7. Defendant's summary judgment motion also raised the limitations on damages under the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8501, et seq., (available to Defendant by virtue of his status as a volunteer fireman within the scope of employment), in defense of Plaintiffs' claims for non-economic losses such as pain and suffering. (See id.)

8. Plaintiffs' Brief was filed in accordance with a scheduling Order entered by the Court (see Plaintiff's Brief in Opposition S.J., a copy of which is attached hereto as Exhibit "B"), and argument was heard on November 14, 2003 before the Honorable John K. Reilly, Jr.

9. By Order dated November 24, 2003, this Court ruled that the damages limitations under the Political Subdivision Tort Claims Act are applicable to Plaintiffs' claims, (see Opinion and Order of November 24, 2003, a copy of which is attached hereto as Exhibit "C"), such that Plaintiffs may not recover pain and suffering damages unless they can prove that Plaintiff Linda Duttry suffered a permanent loss of bodily function, permanent disfigurement, or permanent dismemberment in the May 31, 2000 vehicle accident.

10. The Court's November 24, 2003 Opinion and Order also dismissed Plaintiffs' claims for medical expenses as precluded by Section 1722 of the Motor Vehicle Financial Responsibility Law. (See id.).

11. The Court's ruling on any wage loss claim by Plaintiffs was not entirely clear from the November 24, 2003 Opinion and Order, but it appears that all such claims were dismissed pursuant to Plaintiffs' own concessions in their brief and pursuant to the limitations of Section 1722 of the Motor Vehicle Financial Responsibility Law. (See id.).

***Remaining Issues for Summary Judgment Decision
Continued by Order of November 24, 2003***

12. Under the damages limitations of the Political Subdivision Tort Claims Act, held to be applicable to this case by the Court's November 24, 2003 Opinion and Order, Plaintiffs may not recover damages for non-economic losses such as pain and suffering unless they can demonstrate that Plaintiff Linda Duttry suffered a permanent loss of bodily function, permanent disfigurement, or permanent dismemberment.

13. In response to Defendant's summary judgment motion seeking dismissal of Plaintiffs' pain and suffering claims, Plaintiffs argued that discovery was not complete so that summary judgment would be premature. Consequently, this Court "continued" final ruling on Defendant's summary judgment motion to allow Plaintiffs a "reasonable time" from the date of the November 24, 2003 Order to complete any further discovery regarding damages. (See Exhibit "C" hereto).

14. More than three months have passed since the Court's November 24, 2003 Order, and Plaintiff's have not supplemented their prior discovery responses or come forward with any additional evidence of damages or injuries.¹

15. By letter dated February 11, 2004, counsel for Defendant wrote to Plaintiffs' attorney asking for any supplemental discovery regarding Plaintiffs' injury/damages claims, and stating Defendant's intent to renew Defendant's summary judgment motion if no response was provided within twenty days. (See February 11, 2004 letter, attached hereto as Exhibit "E").

16. Plaintiffs did not provide any additional information or otherwise respond to the aforementioned letter.

17. Consequently, Defendant submits that all pertinent discovery is complete, and that, for the reasons set forth in Defendant's summary judgment motion and supporting brief filed on October 15, 2003, Defendant is entitled to judgment in his favor on Plaintiffs' claims for pain and suffering damages based on the damages limitations of the Political Subdivision Tort Claims Act.

18. Additionally, to the extent not already ruled upon by the Court, Defendant submits that he is entitled to judgment as a matter of law with respect to any claims for wage loss and/or earning capacity impairment for the reasons further set forth in Defendant's motion for summary judgment and supporting brief filed on October 15, 2003.

19. Defendant hereby respectfully requests that the Court rule on the remaining summary judgment issues raised in Defendant's October 15, 2003 summary judgment motion

¹ Notably, even before Defendant filed his motion for summary judgment, Plaintiffs' attorney had written to Defendant's counsel stating Plaintiffs' position that the case was ready for trial. It was not until after Defendant's summary judgment motion was filed that Plaintiffs suggested that there might be additional discovery needed. (See correspondence dated June 25, 2003 from Attorney Drexler, attached hereto as Exhibit "D").

and brief, that judgment be entered in Defendant's favor on those issues, and that Plaintiffs' action be dismissed, with prejudice.

WHEREFORE, Defendant, William Evans, respectfully requests that summary judgment be entered in his favor with respect to any remaining claims for economic losses, specifically for wage loss and/or loss of earning capacity, and that judgment be entered in his favor on Plaintiffs' claims for non-economic damages in the nature of pain and suffering, and that Plaintiffs' Complaint be dismissed in its entirety, with prejudice.

Respectfully submitted,

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

By: _____


Katherine V. Oliver, Esquire
I.D. No. 77069
11 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
WILLIAM EVANS

DATED: March 16, 2004

EXHIBIT “A”

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :

Plaintiffs, :
v. :

WILLIAM EVANS, :

Defendant. :

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

I. PROCEDURAL HISTORY

The above-captioned motor vehicle negligence action was initiated by Complaint on March 20, 2002. Defendant filed an Answer with New Matter on April 24, 2002, raising inter alia, the defenses available under the Political Subdivision Tort Claims Act on account of Defendant's status as a volunteer fireman acting in the scope of employment at the time of the accident. Plaintiffs filed a Reply to New Matter on May 3, 2002, thereby closing the pleadings.

By way of discovery, the parties have both served and responded to various written discovery requests. Defendant issued subpoenas for Plaintiff Linda Duttry's medical records, as well as records pertinent to her pre-existing total disability. Depositions of both parties have been conducted. Plaintiff Linda Duttry's, (hereinafter "Plaintiff"), testimony confirmed that her last treatment for accident-related injuries had been in August of 2001 as reflected in medical

records. Plaintiffs' attorney recently confirmed that Plaintiff has not had further treatment for accident-related injuries since the time of her deposition testimony. (See Exh. J).¹

Defendant filed a Motion for Summary Judgment or, Alternatively, Partial Summary Judgment, on even date herewith, based on the damages limitations under the Political Subdivision Tort Claims Act and the Motor Vehicle Financial Responsibility Law. Defendant submits this Brief in Support of his Motion.

II. FACTS

A. Background

This action arises from a motor vehicle accident that occurred on May 31, 2000 on Dixon Avenue in DuBois, Clearfield County, Pennsylvania. The accident occurred immediately in front of the fire station for Sandy Hose Company No. 1 at approximately 8:00 p.m. or just prior thereto. (See Exhs. A-1; B; and D, at 16-17).

At all times material to this action, Defendant William Evans has been a volunteer fireman for Sandy Hose Company No. 1, an officially recognized fire company for the Township of Sandy. (See Exhs. B; C; and D, at 18-19). Shortly before the accident at issue, Mr. Evans had been paged to respond to a fire alarm at Sandy Hose Company No. 1. (See Exh. B; and D, at 19-20). Mr. Evans was traveling west on Dixon Avenue in the process of reporting to the Sandy Hose Company No. 1 fire station in response to the alarm when the accident with Plaintiff Linda Duttry occurred. (See Exh. B). Mr. Evans was traveling with his "blue light" activated, and the alarm at the fire station was sounding loudly. (Exh. E, at 92-94, 96).

1. All exhibit references are to the Exhibits appended to, and filed with, Defendant's Motion for Summary Judgment, filed on even date herewith.

Plaintiff Linda Duttry was traveling east on Dixon Avenue at the time of the accident, and estimates that her speed was about twenty-five miles per hour. (Exh. E, at 95). Mr. Evans had almost reached the Sandy Hose Company fire station and was attempting to turn left toward the fire station parking lot when the impact with Mrs. Duttry occurred. Mr. Evans did not see Mrs. Duttry's vehicle before he began his left hand turn into the parking lot, and the collision occurred as he made the turn. (Exh. D, at 29-31). Mrs. Duttry did not lose consciousness or break any bones in the accident. She was able to exit her vehicle and to walk around the scene after the collision. She refused ambulance transport to the hospital. (Exh. E, at 100-101).

B. Alleged Injuries and Damages

1. Injury Claims

Plaintiff Linda Duttry claims that she suffered injuries to her upper front tooth, neck, right shoulder, and right knee as a result of the accident. (Exh. A-and Exh. E, at 51). She claims that an accident-related knee injury ultimately required her to have arthroscopic surgery a year after the accident. Mrs. Duttry also testified in her deposition that the accident had worsened her pre-existing bipolar condition. (Exh. E, at 15-18, 28-29, 50-51).

Medical records show that Plaintiff went to Dubois Regional Medical Center on the evening of the accident with various pain complaints. She was examined and released the same evening. (See Exh F, at 1-10). She subsequently had follow-up care with her family doctor, Dr. Bellomo, and later with Dr. Laun Hallstrom and Dr. Alexander Krot. (Exh. E, at 65). She had a root canal for the alleged tooth injury, which resolved her complaints in this regard. (Id. at 99-100).

With respect to the claims of neck and right shoulder injury, Plaintiff's medical records show intermittent complaints, but do not reflect any significant prolonged limitation in activity, or that Plaintiff is unable to perform any bodily acts she could perform before the accident. Cervical spine x-rays were taken at Dr. Bellomo's request on June 16, 2000, approximately two weeks after the accident. (See Exh. G, at 2, 6). The x-rays showed moderate degenerative disc disease, and possible indications of muscle spasm. (See id.). Plaintiff was referred to physical therapy for these complaints, as well as for her knee complaints. (See Exh. F, at 11-21). She attended physical therapy from mid-July through August of 2000. (Id.).

Dr. Bellomo's records from the end of August 2000 indicate that Plaintiff was doing well, and that her neck pain had resolved. (Exh. G, at 5). Although subsequent records show intermittent complaints in the neck and shoulder area, it appears that Plaintiff was not actively treating for these complaints, and that they were not debilitating. During her deposition in December of 2002, Plaintiff agreed that her shoulder complaints did not prevent her from engaging in any activities. (Exh. E, at 51-52). Likewise, although she claimed that her neck was still "sore some," (id. at 52), she testified that the soreness did not limit her activities to any significant extent or prevent her from doing any bodily acts she could otherwise do. (Id. at 51-54).²

Plaintiff's medical records also reflect treatment for her right knee complaints. (See Exhs. F-I, generally). Various x-rays were taken and showed degenerative changes in the knee. (See Exh. G, at 7-8). Dr. Bellomo referred Plaintiff to Dr. Hallstrom. (Exh. G, at 3). Plaintiff

2. As referenced in Plaintiff's deposition testimony cited, Plaintiff was experiencing restrictions on account of having ruptured discs in her back. This condition is not related to the motor vehicle accident, and Plaintiff does not claim the condition as an injury in the case at bar. (See Exh. E at 20-21, 52-53).

treated with Dr. Hallstrom beginning in mid July of 2000 and ending in June of 2001. (See Exh. H generally). Dr. Hallstrom prescribed a second physical therapy course, consisting of six visits, from February 13, 2001 through March 8, 2001. (Exh. F, at 22-27). Dr. Hallstrom's records over the course of Plaintiff's presentations document varying degrees of complaints, and that at various times Plaintiff reported to be doing well. (See e.g., Exh. H, at 3-4). Plaintiff's last visit with Dr. Hallstrom was June 1, 2001. (Id. at 14.). Dr. Hallstrom's records also document his belief that any accident-related disability would be temporary in nature. (See id., at 15-16).

Plaintiff was referred to Dr. Krot on June 13, 2001 after an MRI showed a torn meniscus. (Exh. I, at 5). Dr. Krot performed arthroscopic surgery on June 22, 2001. (Exh. I, at 5-6).³ Pre-existing degenerative changes were noted during the procedure in addition to the meniscal tear. (Id. at 3, 6). Records of visits following the arthroscopy document that Plaintiff was doing well. (Id. at 4). By August 15, 2001, less than eight weeks after the arthroscopy and meniscal repair, Plaintiff had good range of motion and little discomfort. Id. Dr. Krot planned to see Mrs. Duttry on an as needed basis only. (Id.). The August 15, 2001 visit with Dr. Krot was Mrs. Duttry's last medical treatment for injuries she attributes to the motor vehicle accident. (See Exh. E, at 85 and Exh. J).

Dr. Krot wrote a letter to Plaintiffs' attorney in January of 2002 stating that Plaintiff had progressed fairly well and had been released from his care. Dr. Krot stated in the letter that

3. Mrs. Duttry's medical records document various incidents that occurred after the motor vehicle accident in question and before Plaintiff's MRI and arthroscopic surgery. Defendant disputes that the automobile accident of May 31, 2000 caused an injury to Mrs. Duttry which required arthroscopic surgery. However, for purposes of the instant motion for summary judgment only, Defendant will assume, arguendo, that the surgery was necessitated on account of accident-related injuries. The reason for the surgery itself is not relevant to the summary judgment issues before the Court, because the medical evidence of record clearly shows that Plaintiff's alleged accident-related knee injury did not result in a permanent loss of bodily function.

Plaintiff would do well as far as complete recovery from the meniscal tear. He also noted that Mrs. Duttry had a pre-existing progressive arthritic knee condition that could cause her symptoms on its own, unrelated to the automobile accident. (Exh. I, at 3).

Finally, Plaintiff claimed at her deposition that the accident had worsened her pre-existing bipolar condition. (Exh. E, at 22, 28-29, 50-51). However, Plaintiffs have never presented an expert report to support this claim, and the records from Mrs. Duttry's treating providers clearly indicate that the accident had little effect on her overall condition. Plaintiff struggled with serious mental health problems for more than thirty years prior to the motor vehicle accident at issue, and was hospitalized on numerous occasions. (Id. at 28-29). She was treating with Dr. Scott Turkin just before and after the accident. Dr. Turkin's records from shortly after the accident on July 6, 2000 reflect that Plaintiff did not suffer serious injuries in the accident, and that she had maintained her previous gains in terms of mood, interests, and sleep. (Exh. K). Likewise, records of a licensed social worker Mrs. Duttry was seeing at the time also reflect that Plaintiff suffered no significant decline as a result of the vehicle accident. (Id.). None of Plaintiff's records received in discovery indicate that any physician attributes a long-term worsening of Plaintiff's mental health condition(s) to the motor vehicle accident of May 31, 2000.

In sum, the record adduced in discovery reveals that, despite Plaintiff's various injury claims, she did not suffer any permanent injuries, let alone a permanent loss of bodily function, in the motor vehicle accident giving rise to this case. To the contrary, Plaintiff's alleged tooth, neck and shoulder injuries have largely (if not wholly) resolved, and do not prevent Plaintiff from performing any bodily acts she could perform but for the injuries. Likewise, even assuming that

Plaintiff suffered a meniscal tear to the right knee in the accident, that condition was treated with arthroscopic procedures in June of 2001, and the only available medical evidence documents that she functioned very well in relation to that condition following the procedure, and that the meniscal tear did not result in any permanent injury.

2. *Special Damages Issues*

Documents from Plaintiffs' automobile insurance company show that Plaintiffs had \$50,000.00 in medical expense coverage under their first party automobile policy. (See Exh. L). These limits were never exhausted. During Mrs. Duttry's deposition, she testified that all of her medical expenses for injuries she relates to the accident have been paid under her own automobile insurance. (Exh. E, at 100-103).

Plaintiff was totally disabled at the time of the accident due to pre-existing osteoporosis and a long-standing bipolar condition, (Exh. M, at No. 12), and so was not working at the time. Her written discovery responses indicate that she is not making a wage loss claim. (See id. at No's. 6-12). Although Plaintiff testified at her deposition that she thought she could be working but for her knee complaints, her testimony was very vague, (see Exh. E, at 23-24, 32-35), and Plaintiff has not produced any other evidence in discovery to support a wage loss claim, past, present, or future. Moreover, Plaintiff is not under a restriction from any physician for accident-related problems, and there is no evidence to link her continuing subjective knee complaints to any accident-related injury, as opposed to her pre-existing degenerative condition that Dr. Krot believes could produce her symptoms irregardless of the automobile accident. (See Exh. I, at 3). Plaintiff's testimony also established that she was working as a volunteer answering phones for the American Cancer Society and assisting the beautician at a local nursing home after the

accident. (Exh. E, at 69-72). Finally, Plaintiff had wage loss coverage under her automobile policy of \$1,500.00 per month, with a cap of \$25,000.00. Plaintiff apparently never made a claim for lost wages under her automobile policy, (see Exh. N), so that the coverage could not have been exhausted.

III. ISSUES PRESENTED

1. Whether Defendant's motion for summary judgment on Plaintiffs' claim for pain and suffering damages must be granted because the limitations on damages under the Political Subdivision Tort Claims Act apply, and because Plaintiff cannot meet her burden of proving a permanent loss of bodily function?

(Suggested Answer in the Affirmative)

2. Whether Defendant is entitled to summary judgment on Plaintiffs' claims for medical expenses and wage loss because recovery of any such damages is precluded under section 1722 of the Motor Vehicle Financial Responsibility Law, and because Plaintiffs have not produced evidence of any recoverable losses of this nature?

(Suggested Answer in the Affirmative)

IV. ARGUMENT

Pennsylvania Rule of Civil Procedure 1035.2 provides that any party may move for summary judgment, in whole or in part, under the following circumstances:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2. The non-moving party may not “rest upon the mere allegations or denials of the pleadings” in an effort to avoid summary judgment. See, Pa. R.C.P. 1035.3(a); Ertel v. Patriot-News Co., 544 Pa. 93, 100, 674 A.2d 1038, 1042 (1996). Rather, Pennsylvania Rule of Civil Procedure 1035.3 requires the non-moving party to affirmatively respond to a motion for summary judgment and to identify the following:

- (1) One or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion; or
- (2) Evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa. R.C.P. 1035.3(a)(1)-(2). Moreover, when the non-moving party ultimately bears the burden of proof on an issue at trial, it is incumbent upon the non-moving party to advance sufficient evidence in opposition to summary judgment “such that a jury could return a verdict in his favor.” Ertel, 544 Pa. at 101, 674 A.2d at 1042. “Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Id.

A. Defendant is Entitled to Summary Judgment on Plaintiffs' Claim for Pain and Suffering Damages Because the Political Subdivision Tort Claims Act Precludes Plaintiffs From Recovering Damages for Pain and Suffering in This Case.

The Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8501 et seq., (hereinafter “PSTCA” or the “Act”), sets forth various limitations on damages in suits against “employees” of “local agencies” who are acting within the scope of their duties, or who reasonably believe they

are acting in that capacity, at the time of the incident giving rise to the suit. See id. § 8549.

Under section 8553 of the Act, recovery of damages for pain and suffering is prohibited except in death cases and cases of "permanent loss of a bodily function, permanent disfigurement or permanent dismemberment where the medical and dental expenses . . . are in excess of \$1,500."

Id. § 8553.

As discussed further below, the Sandy Hose Company No. 1 is a "local agency" under the PSTCA, and Defendant William Evans was acting within the scope of his duties as an "employee" of the Sandy Hose Company No. 1 at the time the accident in question occurred. Therefore, the PSTCA precludes Plaintiffs from recovering damages for pain and suffering unless Plaintiff Linda Duttry can prove, inter alia, that she suffered a permanent loss of a bodily function, permanent disfigurement or permanent dismemberment due to the accident. Because Plaintiffs cannot meet their burden of proof in this regard, Defendant is entitled to summary judgment on Plaintiffs' claim for pain and suffering damages.

1. Defendant Evans Was Acting Within the Scope of His Duties as an "Employee" of a "Local Agency" at the Time of the Accident at Issue in this Case.

In the case at bar, there can be no genuine dispute that the Sandy Hose Company No. 1 is a local agency within the meaning of the PSTCA, or that volunteer firefighters are "employees" within the meaning of the Act. Furthermore, all evidence of record demonstrates that Defendant Evans was acting within the scope of his duties as a volunteer fireman for the Sandy Hose Company No. 1 at the time of the accident giving rise to this case. Accordingly, the limitations on damages under the PSTCA are applicable.

“Local agency” is defined under the PSTCA as a “government unit other than the Commonwealth government.” 42 Pa.C.S.A. § 8501. The Pennsylvania Supreme Court has previously held that a volunteer fire company created pursuant to relevant law and legally recognized as the official fire company for a political subdivision is a “local agency” within the meaning of the PSTCA. Guinn v. Alburtis Fire Co., 531 Pa. 500, 614 A.2d 218 (1992). In the instant case, there can be no genuine dispute that the Sandy Hose Company No. 1 was created pursuant to relevant law and is a legally recognized official fire company for the Township of Sandy, DuBois, Clearfield County, Pennsylvania. This fact is evidenced by the Township of Sandy Ordinance No. 5-1998, and by the Affidavit of William Beers, Jr., Chief of Sandy Hose Company No. 1. (See Exh's. B and C).

Furthermore, Plaintiff cannot genuinely contest that Defendant William Evans, as a volunteer fireman for the Sandy Hose Company No. 1, is an “employee” of a local agency within the meaning of the PSTCA. An “employee” is defined under the Act, in pertinent part, as follows:

“Employee.” Any person who is acting or who has acted on behalf of a government unit whether on a permanent or temporary basis, whether compensated or not and whether within or without the territorial boundaries of the government unit, including any volunteer fireman and any elected or appointed officer, member of a governing body or other person designated to act for the government unit. . . .

42 Pa.C.S.A. § 8501. Notably, the Act expressly includes volunteer firemen within its definition.

Finally, the evidence of record demonstrates that William Evans was acting “within the scope of his duties” as a volunteer fireman for the Sandy Hose Company No. 1 at the time of the accident giving rise to this action. Mr. Evans was responding to a fire alarm that had been issued

at approximately 7:50 p.m. for response by the Sandy Hose Company No. 1. (Exh. B). Mr. Evans' blue light was activated, and the alarm at the fire station was sounding. (Exh. E, at 92-94, 96). William Beers, Jr., Chief of the Sandy Hose Company No. 1 at the time of the accident, was at the fire station and observed Mr. Evans responding to the alarm pursuant to his duties as a volunteer fireman for the company. (Exh. B).

Although Plaintiff might contend that Mr. Evans was not acting within the scope of his duties as a volunteer fireman while en route to the fire station, this argument has been flatly rejected in other contexts pertaining to volunteer firefighters. For example, in Delong v. Miller, 285 Pa. Super. 120, 462 A.2d 1171 (1981), the Pennsylvania Superior Court held that a volunteer fireman was "within the scope of employment" while en route from home to the fire station for purposes of the immunities of the workers' compensation law. Consequently, the DeLong court held that a fireman-plaintiff was precluded from bringing suit against a "co-employee" fireman who, while en route to the station, negligently struck and injured the plaintiff. Id. The Delong court stated that because "the unique character of the employment requires prompt reaction to an alarm, a volunteer fireman is in the course of his employment when he leaves his home in response to an alarm." Delong, 285 Pa. Super. at 123, 462 A.2d at 1172.

Moreover, to deny firefighters the protections of the PSTCA when they are en route to a fire station in response to an alarm would produce a result inconsistent with Pennsylvania law's treatment of volunteer firefighters generally. For example, under the General Municipal Law, 53 P.S. § 101, et seq., volunteer firemen are expressly recognized to be acting in the performance of their duties when traveling to and from a fire for the purpose of determining eligibility for death

benefits. See 53 P.S. § 891. In this regard, section 891(b) of the General Municipal Law provides:

(b) A volunteer firefighter shall be deemed to be acting in the performance of his duties for the purposes of this act going to or directly returning from a fire which the fire company or fire department attended including travel from and direct return to a firefighter's home, place of business or other place where he or she shall have been when he or she received the call or alarm . . .

53 P.S. § 891(b) (emphasis added). Similarly, under the statutory scheme providing job protection for volunteer firefighters, 43 P.S. 1201, et seq., the “line of duty” of a volunteer firefighter is specifically defined to include “going to, coming from, or during fire prevention and safety activities.” See 43 P.S. § 1201, 1204 (emphasis added). Likewise, under the Workers’ Compensation Act, 77 P.S. § 1, et seq., the term “employee” is specifically defined to include volunteer firefighters and to provide compensation for injuries received by firefighters while going to or returning from a fire that the fire company attended, including travel to and from a firefighter’s home. Specifically, the Act provides that the term “employee” includes the following:

(1) members of volunteer fire departments or volunteer fire companies . . . who shall be entitled to receive compensation in case of injuries received while actually engaged as a fireman or while going to or returning from a fire which the fire company or fire department attended including travel from and the direct return to a firefighter's home . . . where he shall have been when he received the call or alarm . . .

Id. § 1031 (emphasis added).

In Badolato v. Borough of Berwick, 135 Pa. Super. 416, 5 A.2d 635 (1939), the court discussed the strong public policy behind providing protection to volunteer firefighters while

they are in the course of travel to and from an alarm. In that case, the court was asked to rule upon whether a firefighter was entitled to workmen's compensation for injuries incurred in traveling to an "alarm," when actually there was no fire, but just a test alarm. See id. at 635-36. The court stated that the determinative issue was whether "the servant [was] serving the master regardless of whether the service was actually at a fire or going to or coming from a fire or doing any of the other many duties of a fireman." Id. at 637. In holding that the firefighter in that case was entitled to compensation, the Badolato court stated as follows:

Any other than a liberal construction of the Act of Assembly would be unfair to claimant, but injurious to the communities in which volunteer firemen are maintained. It is a practical necessity, where firemen are scattered throughout the community that they go directly to the scene of the fire; that they go directly to the point where, according to reliable information, a fire exists; that they respond to the alarm in their private cars if they can do so. If this method of response were not possible, the efficiency of volunteer fire departments would be seriously impaired. To deny compensation to a fireman injured while in his own automobile driving to the scene of a reported fire, particularly after an alarm has sounded, would result in reluctance of volunteer firemen to act as such, to the serious detriment of their communities; but if they did so act, it would result in placing the financial burden unjustly upon them and their families. . . .

Id. at 637 (emphasis added).

The Badolato court's rationale is equally compelling in the context of the PSTCA. Clearly, a volunteer firefighter serves his fire company and community in traveling to the fire station in response to a fire alarm, and is acting within the scope of his duties at the time of such travel. To deny firefighters the protections under the PSTCA when they are traveling to the station in response to a fire alarm would be both unfair to individual firefighters and injurious to the communities they serve. If firefighters are not recognized to be acting within the scope of

their duties when traveling to and returning from a fire alarm, they might be reluctant to respond to an alarm or to otherwise serve, thus placing the community in jeopardy of being without fire protection. Furthermore, it would be inherently unfair to the firefighters themselves to expect them to leave the safety of their own homes to come to the rescue of others, but to deny that they are acting within the scope of their duties when traveling to and from the emergency to which they were called.

In sum, the treatment of volunteer firefighters in other contexts of Pennsylvania law compel the result that a firefighter traveling to the fire station in response to an alarm in accordance with his duties is acting "within the scope of his duties" for the fire company under the PSTCA. Accordingly, there can be no genuine dispute in the case at bar that Defendant Evans was acting within the scope of his duties as a volunteer firefighter for the Sandy Hose Company No. 1 at the time of the accident in question, and that Defendant Evans is entitled to the protections provided employees of local agencies under the PSTCA.

2. **Because Plaintiff Linda Duttry Cannot Demonstrate That She Suffered a Permanent Loss of a Bodily Function, Permanent Disfigurement, or Permanent Dismemberment, Plaintiffs Cannot Maintain Their Claims for Pain and Suffering Damages and Defendant is Entitled to Summary Judgment Thereon**

As noted above, the PSTCA limits damages available in suits against employees of local agencies acting within the scope of their duties. Specifically, section 8549 of the Act provides as follows:

In any action brought against an employee of a local agency for damages on account of an injury to a person or property in which it is judicially determined that the act of the employee caused the injury and that such act

was, or that the employee in good faith reasonably believed that such act was, within the scope of his office or duties, damages shall be recoverable only within the limits set forth in this subchapter.

42 Pa. C.S.A. § 8549 (emphasis added). Under section 8553 of the Act, recovery of damages for pain and suffering is prohibited except in death cases and cases of "permanent loss of a bodily function, permanent disfigurement or permanent dismemberment where the medical and dental expenses . . . are in excess of \$1,500." Id. § 8553. Plaintiff in the case at bar has made no claim of permanent dismemberment or permanent disfigurement. (See Exh. A-1, generally). Thus, Plaintiff must show that she has suffered a "permanent loss of bodily function" as a prerequisite to recovering damages for pain and suffering in this case.

The Pennsylvania Supreme Court has articulated the test for "permanent loss of a bodily function" as follows:

... as a proximate result of the accident, the injured claimant is unable to do or perform a bodily act or bodily acts which the claimant was able to do or perform prior to sustaining the injury and that the loss of such ability is permanent.

Walsh v. City of Philadelphia, 526 Pa. 227, 585 A.2d 445, 452 (1991) (emphasis added).

In Walsh, the Court determined that the plaintiff had failed to demonstrate a permanent loss of bodily function despite his continued complaints of pain and subjective feelings of limitations of motion. In that case, the plaintiff suffered a fractured ankle and injured knee, and was required to wear a series of casts on his ankle for a period exceeding six months. The plaintiff also underwent physical therapy for approximately three months for his knee and ankle problems. According to the stipulated facts, the Walsh plaintiff continued to experience achiness and pain in the injured leg and had subjective feelings that his knee would not fully extend, but

there was no objective medical evidence to support these subjective symptoms. Quite to the contrary, the medical evidence reflected that the plaintiff's knee did fully extend and that there was full range of motion. Furthermore, although the Walsh plaintiff refrained from athletics after being injured, he had not been advised to do so by his physicians. Finally, the plaintiff had resumed his employment in the same manner as before the accident. Id. at 451. Under these circumstances, the Pennsylvania Supreme Court held that the plaintiff had failed to establish that he was "unable to do or perform a bodily act which he was able to do or perform prior to the injury," and that the plaintiff had failed to show a permanent loss of a bodily function under the PSTCA. Id. at 452.

Similarly, in Herhal v. Morrisville Sch. Dist., 46 D&C 3d 92 (C.P. Bucks Co. 1987), appeal quashed, 559 A.2d 616 (Pa. Commw. Ct. 1989), a case decided before Walsh, the court entered a non-suit in favor of the defendant based on the pain and suffering damages limitations of the PSTCA. Id. In Herhal, the minor-plaintiff suffered a spiral fracture of his femur when he tripped and fell on a playground. He was treated with traction and a body cast, and was confined to the hospital and home for three months. Id. at 93. Despite these injuries, the court held that the plaintiff failed to present sufficient evidence to reach the "permanent loss of a bodily function" threshold under the PSTCA. The court stated:

A close reading of the transcript reveals that one of plaintiff's friends testified that plaintiff could engage in most normal childhood activity such as soccer, swimming, bike riding, hockey and tee ball. He participates in gymnastics and can do cartwheels. His activity in physical education class has not been restricted at all. The treating physician testified that plaintiff had experienced some minimal loss of motion as the result of the injury but he did not translate the loss of motion into any functional disability. Plaintiff did offer evidence of pain and discomfort on an occasional basis.

Id. at 94 (emphasis added).

Just as in Walsh and Herhal, Plaintiff Linda Duttry cannot demonstrate that she suffered a permanent loss of a bodily function as a result of the May 31, 2000 vehicle accident. Although Plaintiff claims that she continues to be "sore some" and to have subjective pain complaints in her neck and shoulder, she has not come forward with reports of any medical experts to demonstrate a continuing, let alone permanent, accident-related injury that renders her unable to perform some bodily act she could perform prior to the motor vehicle accident. Plaintiff also testified that she has continuing knee symptoms that she feels limit her ability to walk for a mile at a time, go line dancing, or be on her feet for prolonged periods. (Exh. E, at 103-109). However, there is no evidence that these complaints, even assuming them to be true, are related to the motor vehicle accident as opposed to Plaintiff's pre-existing degenerative knee condition. (See Exh. I, at 3).

Plaintiff's medical records, the only available medical evidence, do not reflect any ongoing restriction in activity or loss of function as a result of the motor vehicle accident, and Plaintiff herself has not identified any bodily acts that she was able to perform before the accident, but could no longer perform on account of accident-related injuries. Notably, Plaintiff's own testimony established that although she had been off of work for pre-existing total disabilities even before the accident, she was working as a volunteer answering phones and assisting the beautician at a nursing home after the accident. (Exh. E, at 69-72). Moreover, Plaintiff's subjective complaints and self-limitations are no different than the Walsh plaintiff's claims that his motion was limited and that he could not engage in athletics, which the Walsh Court found was not sufficient to demonstrate a permanent loss of a bodily function. In sum, the

evidence adduced in discovery in this case makes clear that Plaintiff cannot prove that she suffered an injury resulting in a loss of bodily function in the May 31, 2000 accident.

Even assuming, without conceding, that Plaintiff could point the court to sufficient evidence to show that, as a result of the accident, she is unable to do or perform a bodily act which she was able to do or perform prior to the accident (i.e., that she suffered an injury resulting in loss of bodily function), Plaintiff still must prove that any such loss of bodily function will be permanent. See Walsh, 585 A.2d at 452. Under Pennsylvania law, the alleged permanency of an injury must be proven by expert medical opinion. See, Maliszewski v. Rendon, 374 Pa. Super. 109, 542 A.2d 170 (1988), appeal denied, 520 Pa. 617, 554 A.2d 510 (1989); McCabe v. Derry Township, 117 Dauph. Co. Rpts 373, 376 (1997) (a copy of which is attached hereto as Exh. "A."). In McCabe, the Court of Common Pleas of Dauphin County held that the plaintiff was precluded from seeking pain and suffering damages under the PSTCA when the plaintiff had failed to produce expert evidence that her alleged injuries and symptoms would be permanent. See McCabe, 117 Dauph. Co. Rpts. at 376-77. In so holding, the McCabe court stated as follows:

Under Pennsylvania law, McCabe must produce sufficient evidence that she suffers from permanent injury or have summary judgment entered against her. Such evidence must come in the form of expert medical opinion. . . . In the case at bar, McCabe has presented no expert report opining that her injuries are permanent. McCabe admits this fact in her brief in opposition to summary judgment. McCabe testified at her deposition that she has occasional pain in her knees, headaches and blackouts. There is no expert testimony concerning the permanency of these injuries or that the symptoms are causally connected to the accident. Thus, it is our determination that McCabe cannot meet her burden of producing evidence of permanent injuries required by the PSTCA

and summary judgment must be granted against the claim of damages for pain and suffering. . . .

Id.

In the case at bar, although Plaintiff apparently continues to complain of soreness and alleged limitations, Plaintiff cannot point to any competent evidence to relate her symptoms to the motor vehicle accident, or to prove that any accident-related symptoms and resulting disabilities are permanent. In fact, all available records indicated the Plaintiff's neck and shoulder symptoms were temporary in nature and are not debilitating in any event, that her alleged knee injury was repaired through arthroscopic procedure, that Plaintiff did very well and had good range of motion shortly thereafter, and that there will be no residual or permanent injury from the vehicle accident. (See Section II.B of this Brief and record citations therein). Thus, just as in McCabe, Plaintiff in the case at bar cannot produce any competent evidence that the injuries she allegedly sustained in the accident at issue were permanent and resulted in a permanent loss of bodily function, or that the subjective symptoms she allegedly experiences are even causally related to the accident. Accordingly, Plaintiff cannot meet her burden of producing evidence of permanent loss of bodily function as required by the PSTCA.

In sum, Plaintiff cannot meet either prong of the test articulated in Walsh for determining whether a plaintiff has sustained a "permanent loss of bodily function." Accordingly, Plaintiff cannot meet her burden of proving a permanent loss of bodily function as required by the Political Subdivision Tort Claims Act, and Defendant is entitled to summary judgment on Plaintiffs' pain and suffering claims.

B. Defendant is entitled to Summary Judgment on Plaintiffs' Claims for Medical Expenses and Wage Loss Because All Such Expenses Were Paid or Are Payable Under a Policy of Insurance, and Because The Evidence Does Not Support a Viable Wage Loss Claim in Any Event.

Section 1722 of Pennsylvania's Motor Vehicle Financial Responsibility Law, ("MVFRL"), precludes a plaintiff from recovering damages for medical expenses and/or wage loss arising from an automobile accident when those expenses have been paid, or are payable, under a policy of insurance. See 75 Pa.C.S. §1722. Specifically, §1722 provides:

§1722. Preclusion of Recovery and Required Benefits.

In any action for damages against a tortfeasor, ... arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits under the coverages set forth in this subchapter, for workers' compensation, or any program, group contract, or other arrangement, for payment of benefits as defined in Section 1719 (relating to coordination of benefits) shall be precluded from recovering the amount of benefits paid or payable under this subchapter, or workers' compensation, or any program, group contract, or other arrangement for payment of benefits as defined in Section 1719.

Id.; Carlson v. Bubash, 432 Pa. Super. 514, 639 A.2d at 461-62 (1994).

In the case at bar, there can be no genuine dispute that Plaintiffs are precluded from recovering medical expenses by MVFRL §1722. Plaintiffs had \$50,000.00 in medical expense coverage available under their first party automobile policy with CNA Insurance, (Exh. L), and those benefits were never exhausted. (See Exh.E, at 101-102). Mrs. Duttry herself testified that all of her medical expenses were paid under the CNA policy. (Id.). Thus, under the MVFRL, Plaintiff may not recover those expenses a second time.

Likewise, Plaintiff had wage loss coverage under her own automobile policy of \$1,500.00 per month, with a cap of \$25,000.00. Plaintiff never made a wage loss claim under her automobile policy. (See Exh. N). Presumably, no first party insurance claim was made because Plaintiff did not, in fact, suffer any wage loss or impairment to her earning capacity as a result of the May 31, 2000 motor vehicle accident. Plaintiffs' interrogatory responses state that Plaintiff Linda Duttry was totally disabled at the time of the accident on account of pre-existing physical and mental health conditions, and that she had not lost any wages as of the time of her responses. (See Exh. M, at 6-12). Although Plaintiff claimed at her deposition that she believed she could be working if not for her knee pain, there is absolutely no medical evidence to support a restriction in this regard, and no evidence that any knee pain that Plaintiff was experiencing was related to the automobile accident in question in any event.⁴ Without such evidence, a jury award based on Plaintiff's subjective complaints, in light of her various other disabling conditions, would amount to inappropriate speculation and conjecture. See e.g., Gordon v. Trovato, 234 Pa. Super. 279, 338 A.2d 653, 657 (1975) ("Loss of earning power and its amount must appear by proper and satisfactory proof and not be left to conjecture.' . . . There must be evidence upon which a jury's conclusion may be based."). Moreover, even assuming, without conceding, sufficient evidence exists to submit a wage claim to the jury, Plaintiff would be precluded from doing so under MVFRL section 1722 to the extent that any losses claimed were payable under the first party coverage of the CNA policy. See Carlson v. Bubash, supra.

In sum, the record adduced in discovery is clear that Plaintiffs cannot come forward with evidence of recoverable medical expenses and/or wage losses at the trial of this case.

4. In addition, Plaintiff testified that she was working, albeit in a volunteer capacity. (See Exh. E, at 69-72).

Consequently, Defendant is entitled to summary judgment with respect to Plaintiffs' claims for these items of damages.

V. CONCLUSION

Defendant's motion for summary judgment, or alternatively, for partial summary judgment, must be granted. Defendant is entitled to summary judgment on Plaintiffs' claims for pain and suffering damages because Defendant, as a volunteer fireman acting within the scope of his duties at the time of the accident, is entitled to the protections of the Political Subdivision Tort Claims Act, including the limitations on damages therein. Consequently, Plaintiffs cannot recover damages for pain and suffering unless Plaintiffs can prove that Plaintiff Linda Duttry suffered a permanent loss of a bodily function in the accident. The evidence adduced in discovery clearly reveals that Plaintiffs cannot meet this burden.

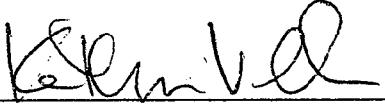
Additionally, it is clear from the record that Plaintiffs cannot come forward with evidence of recoverable medical expenses and/or wage loss in this case. The Motor Vehicle Financial Responsibility Law precludes Plaintiffs from recovering any medical expenses because the \$50,000.00 in medical benefits under their own automobile policy was not exhausted, and all of Plaintiffs' medical expenses have been paid under that policy. Furthermore, Plaintiffs have not come forward with any competent evidence to demonstrate lost wages and/or a viable impairment of earning capacity claim. Even assuming, for the sake of argument, that Plaintiffs could support such a claim, Plaintiffs had available wage loss coverage under their own automobile policy that was never tapped into, and therefore, never exhausted. Under the

provisions of MVFRL section 1722, Plaintiffs may not recover any damages for wage losses payable under their own policy.

In sum, Defendant submits that he is entitled to summary judgment in this case because the evidence of record makes clear that Plaintiff is not entitled to seek recovery for any items of special damages, or for general damages in the nature of pain and suffering. In the alternative, Defendant is entitled to partial summary judgment in his favor with respect to Plaintiffs' claims for pain and suffering damages.

Respectfully submitted,

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DATED: 10-15-03

373 (1997)

DAUPHIN COUNTY REPORTS

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McCabe v. Derry Township

Negligence - Motion for summary judgment - Immunity under Political Subdivision Tort Claims Act - Pain and suffering - No expert reports substantiating permanent injuries.

1. In a negligence action for damages resulting from a child being struck by a school bus operated by the township and school district, the Court granted, in part, defendant's motion for summary judgment after determining that under the Political Subdivision Tort Claim Act, claims of pain and suffering must be accompanied by permanent injury, and plaintiff did not present any expert report or evidence of permanent injury.
2. A motion for summary judgment is proper when an adverse party has been given adequate time to develop the case and complete the discovery relevant to the motion.
3. Claims under the Political Subdivision Tort Claims Act must be construed narrowly to promote the legislative intent of limiting governmental liability.
4. The adverse party to a motion for summary judgment may not rest upon the allegations or denials but must provide a response identifying one or more issues of fact arising from evidence in the record.

Negligence; motion for summary judgment. C.P., Daup. Co., No. 1208 S 1995; Motion granted in part.

Timothy P. Keating, Lemoyne, for Plaintiff

Kevin McNamara, for Defendants

Before Evans, Kleinfelter and Clark, JJ.

KLEINFELTER, J., August 18, 1997. - On May 5, 1994, at about 7:45 a.m., plaintiff Nichol McCabe ("McCabe") was dropped off by her mother, Shelley McCabe, at Bishop McDevitt High School in Harrisburg. In order to drop McCabe off at the school, Shelley McCabe stopped her car in the eastbound lane of Market Street with her hazard lights flashing. In order to get to the school, it was necessary for McCabe to cross the westbound lane of Market Street. As she attempted to cross, McCabe was struck by a school bus in the center lane. The bus had been behind McCabe's car and had tried to pass her stopped car via the center lane. The bus was operated by defendants Derry Township and Derry Township School District ("Derry"). McCabe was injured as a result of being struck by the bus.

Thereafter, on March 3, 1995, McCabe served a writ of summons on Derry. McCabe filed a complaint on December 6, 1995. On April 25, 1996, Derry filed a complaint against Shelley McCabe. Derry filed for summary judgment on December 16, 1996. The matter presently before the court is Derry's motion for summary judgment.

In the complaint, McCabe claims that as a result of Derry's negligent driving of the bus she has suffered physical injuries which have pre-

vented her from performing her normal daily activities. McCabe also claims that she has suffered pain and suffering and has ongoing medical problems.

Derry, in its motion for summary judgment, avers that it is immune from McCabe's claim of pain and suffering because it is a political subdivision, and under the Political Subdivision Tort Claims Act ("PSTCA"), all valid claims of pain and suffering must be accompanied by permanent injury. Derry argues that McCabe has not presented any expert report or evidence of permanent injury and summary judgment should be granted in its favor.

McCabe, in opposition to Derry's motion, admits that she lacks any expert reports substantiating permanent injuries. However, McCabe claims that she does suffer from dizzy spells, blackouts and severe headaches. McCabe claims that the duration of these injuries is unknown. Thus, McCabe argues, issues of fact exist and summary judgment should be denied. In the alternative, McCabe claims that, at the most, only partial summary judgment should be granted in favor of Derry because Derry has only sought summary judgment as to the claims of pain and suffering and not the other damages sought in the complaint.

The standard for summary judgment is well established.

[S]ummary judgment is properly granted "if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Citation omitted.) Summary judgment may be granted only in those cases where the right is clear and free from doubt. (Citations omitted.) The moving party has the burden of proving that there is no genuine issue of material fact. (Citation omitted.) Moreover, the record and any inferences therefrom must be viewed in the light most favorable to the non-moving party, and any doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. (Citation omitted.)

Bigansky v. Thomas Jefferson University Hospital, 442 Pa.Super. 69, 73-74, 658 A.2d 423, 425 (1995), *appeal denied*, 542 Pa. 655, 668 A.2d 1119 (1995).

As a preliminary matter, we must first determine if Derry has brought its motion for summary judgment at the proper time in this litigation. A

motion for summary judgment is premature if an adverse party is not given adequate time to develop his case and complete the discovery relevant to the motion. Pa.R.Civ.P. 1035.1. Explanatory Comment. A motion for summary judgment is proper when:

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law.

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.Civ.P. 1035.2(2).

Here, Derry filed its motion for summary judgment a year after the complaint was filed. Depositions have been taken of the parties, including McCabe. There has been adequate time for McCabe to produce experts in support of her claims. See, *Jacques v. Akzo International Salt, Inc.*, 442 Pa.Super. 419, 619 A.2d 748 (1992) (summary judgment motion was not premature and there was sufficient time for discovery where six months elapsed between filing of complaint and motion for summary judgment and adverse party to summary judgment motion did not attempt further discovery).

Derry is a political subdivision and thus all claims against it are subject to the PSTCA.¹ Under the PSTCA, damages for pain and suffering are limited.

§8553: Limitations on damages.

(c) Types of losses recognized. — Damages shall be recoverable only for:

(2) Pain and suffering in the following instances:

(1) death; or

1. School districts are political subdivisions and like cities, boroughs and townships are local agencies for purposes of 42 Pa.C.S.A. §522. *Washington Bunting Co. v. School District of Philadelphia*, — Pa.Cmwlth. —, n.8, 634 A.2d 208, 213, n.8 (1995), *affirmed*, 543 Pa. 402, 612 A.2d 279 (1996).

(ii) only in cases of permanent loss of bodily function, permanent disfigurement or permanent dismemberment. . .

42 Pa.C.S.A. 8553(c)(1)(2).

Claims under 42 Pa.C.S.A. 8553(c) must be construed narrowly to promote the legislative intent of limiting governmental liability. *Walsh v. City of Philadelphia*, 526 Pa. 227, 585 A.2d 445 (1991). The phrase "permanent loss of a bodily function", as stated in 42 Pa.C.S.A. 8553(c), has been interpreted to mean:

that as a proximate result of the accident, the injured claimant is unable to do or perform a bodily act or bodily acts which claimant was able to do or perform prior to sustaining the injury and the that loss of such ability is permanent.

Walsh, 526 Pa. at 241-242, 585 A.2d at 452.

Thus, our focus now turns to whether an issue of fact exists as to whether McCabe suffered a permanent loss of a bodily function to avoid summary judgment.

Pa.R.C.P. 1035.3, effective July 1, 1996, provides that the adverse party to a motion for summary judgment may not rest upon the allegations or denials but must provide a response identifying one or more issues of fact arising from evidence in the record. In *Eriel v. Patriot News Co.*, 544 Pa. 93, 674 A.2d 1038 (1996) the Pennsylvania Supreme Court held:

... a non-moving party must adduce sufficient evidence on an issue essential to his case on which he bears the burden of proof, such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

544 Pa. at 101-102, 674 A.2d at 1042.

Under Pennsylvania law, McCabe must produce sufficient evidence that she suffers from permanent injury or have summary judgment entered against her. Such evidence must come in the form of expert medical opinion. *Maliszewski v. Rendon*, 374 Pa.Super. 109, 542 A.2d 170 (1988), appeal denied, 520 Pa. 617, 554 A.2d 510 (1989); See, *Walsh v. City of Philadelphia*, 526 Pa. at 242, 585 A.2d at 452. In the case at bar, McCabe has presented no expert report opining that her injuries are

permanent. McCabe admits this fact in her brief in opposition to summary judgment. McCabe testified at her deposition that she has occasional pain in her knees, headaches and blackouts. There is no expert testimony concerning the permanency of these injuries or that the symptoms are causally connected to the accident. Thus, it is our determination that McCabe cannot meet her burden of producing evidence of permanent injuries required by the PSTCA and summary judgment must be granted against the claim of damages for pain and suffering. The cause of action may continue with regard to all other claims.

Accordingly, we enter the following:

ORDER

AND NOW, this 18th day of August, 1997, upon consideration of defendants' motion for summary judgment, plaintiffs' response thereto and oral arguments of counsel, it is hereby ORDERED that plaintiffs' motion is GRANTED in part. Summary judgment is granted in favor of the defendants against the plaintiffs' claim of damages for pain and suffering. The cause of action may continue for all other claims.

Salko v. Penn National Race Course, et al.

Horse races - Wagering - Preliminary objections - Unjust enrichment - Negligent misrepresentation - Statute of limitations - Failure to state a cause of action - Parimutuel form of wagering required by law.

1. In an action by a bettor against a horse race establishment for unjust enrichment and negligent misrepresentation resulting from payment based upon final odds under the parimutuel form of wagering rather than the posted odds at the time the bet was placed, the Court sustained preliminary objections and dismissed with prejudice after determining that the track was required by law under the pari-mutual system to calculate the final odds based on the amount of wagers placed on each horse.

Preliminary objections. C.P., Daup. Co., No. 5539 S 1995. Objections sustained.

Michael Salko, Jr., Plaintiff, Pro Se
James W. Kutz, for Defendants

Before Evans, Kleinfelter and Clark, J.J.

KLEINFELTER, J., August 18, 1997. - Plaintiff Michael Salko, Jr. (hereinafter "Salko") bet on horse races at defendant Penn National Race Course (hereinafter "Penn National") in Grantville, Pennsylvania. In the present action, Salko has filed suit against Penn National claim-

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband,

v.

WILLIAM EVANS,

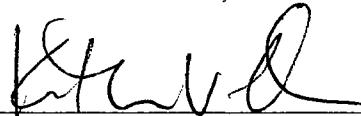
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY FOR PARTIAL
SUMMARY JUDGMENT in the above-captioned matter was mailed by regular mail, postage
prepaid, at the Post Office, State College, Pennsylvania, on this 15th day of October, 2003, to
the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
ID No. 77069
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926

EXHIBIT “B”

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 02-412-C.D.

v.

Issue:

Code:

WILLIAM EVANS,

Defendant.

**BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Filed on behalf of the Plaintiff.

Counsel of Record for this Party:

Stephen P. Drexler
PA I.D. #76108

Ainsman, Levine, & Drexler, LLC
Firm #975

2201 Grant Building
Pittsburgh, PA 15219

(412) 338-9030

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA DUTTRY, and
CARL DUTTRY, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 02-412-C.D.

v.

Issue:

WILLIAM EVANS,

Code:

Defendant.

**BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

AND NOW, come the Plaintiffs, Linda Duttry and Carl Duttry, by and through their attorneys, Ainsman, Levine, & Drexler, LLC, and Stephen P. Drexler, Esquire, and files the following Brief in Opposition to Defendant's Motion for Summary Judgment.

I. Factual and Procedural History

On or about May 31, 2000 at approximately 8:00 p.m., the Plaintiff, Linda Duttry was lawfully driving her vehicle in Clearfield County along Dixon Avenue, Sandy Township, Pennsylvania past the firehouse when she was struck head on by the Defendant, a volunteer fireman, who turned left over Plaintiff's lane of travel in an attempt to pull into the firehouse. As a result of this incident, the Plaintiff sustained personal injuries.

On or about March 14, 2002, the Plaintiffs initiated the instant action by filing a Complaint with this Court at No. 02-412-C.D.

In response to this Complaint, the Defendant, William Evans, filed an Answer and New Matter, wherein he raised defenses under the Political Subdivision Tort Claims Act (PSTCA) and

the Motor Vehicle Financial Responsibility Law (MVFRRL) which are the subject of the instant Motion for Summary Judgment. Specifically, the Defendant raises three issues for consideration, two under the PSTCA and one under the MVFRRL.

Initially, the Defendant argues that while he was racing to and not yet arrived to the firehouse in response to a fire alarm, he should be deemed to be in the course and scope of his firefighting duties so as to invoke various defenses and protections under the PSTCA. Secondly, the Defendant argues that because the PSTCA applies, the Plaintiff should be precluded from asserting claims for pain and suffering because her injuries do not meet the threshold requirement under the PSTCA, specifically 42 Pa. C.S. §8553, that she has permanent disfigurement or dismemberment to qualify her for pain and suffering damages. Finally, the Defendant argues that §1722 of the MVFRRL will preclude the Plaintiff from recovery.

For the reasons that follow, the Plaintiffs respectfully request that this court dismiss the Defendant's Motion for Summary Judgment with respect to the first two arguments under the PSTCA and agrees to sustain the Motion for Summary Judgment regarding the the third issue arising under the MVFRRL.

II. Issues

1. Whether the Defendant, while en route to the Sandy Township Volunteer Firehouse in his privately owned motor vehicle in response to a fire alarm, and who caused a motor vehicle accident while in transit thus injuring the Plaintiff, is deemed in the course and scope of his duties as a volunteer firefighter so as to avail himself of the defenses under the PSTCA

Suggested Answer: NO.

2. Assuming that Defendant is held to be in the course and scope of his employment of a volunteer firefighter while commuting to work, whether the pain and suffering damage limitation of 42 Pa. C.S. §8553 (PSTCA) applies when the Plaintiff sustained a serious knee injury which necessitated surgery and left a resultant scar.

Suggested answer: NO.

III. Standard of Review

Two elements must be present for a motion for summary judgment to be successful: (1) the absence of a dispute as to any material fact and (2) the absence of evidence sufficient to permit a jury to find a fact essential to the cause of action or defense. Pa. R.Civ.P. 1035.2. When presented with a motion for summary judgment the court must conduct a review of the record in "the light most favorable to the non-moving party, and all doubts regarding the existence of a genuine issue of material fact must be resolved against the moving party." *Young v. Commonwealth of Pennsylvania Department of Transportation*, 560 Pa. 373, 376, 744 A.2d 1276, 1277 (2000).

The burden is therefore placed upon the moving party to prove that there is no issue of material fact. *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 204, 412 A.2d 466, 468-469 (1979).

IV. Argument

1. *Defendant is Not an Employee in the Course and Scope of Firefighting Duties*

While no hard and fast rule exists to determine whether a particular relationship is one of employer-employee or owner-independent contractor, certain guidelines have been established and certain factors are required to be taken into consideration:

Control of manner of work to be done; responsibility for results only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by the time or by the job; whether work is part of the regular business of the employer, and also the right to terminate the employment at any time.

Hammermill Paper Company v. Rust Engineering Company, 243 A.2d 389, 392 (Pa. 1968).

In a workers' compensation context, the general rule is that injuries sustained by an employee while commuting to and from work are not compensable under the Workers'

Compensation Act. *Williams v. W.C.A.B. (Matco Electric Co)*, 721 A.2d 1140, 1142 (Pa. Commw. 1998). There are four exceptions to the general rule that injuries sustained by a claimant while commuting to and from work are not compensable under workers' compensation law: (1) the employment contract includes transportation to and/or from work; (2) the claimant has no fixed place of work; (3) the claimant is on special assignment for employer; or (4) the special circumstances are such that claimant was furthering employer's business. *Id.* As an example, our Supreme Court, in *Peterson v. W.C.A.B. (PRN Nursing Agency)*, 597 A.2d 1116 (Pa. 1991), held that a nurse, who was employed by a temporary agency, was furthering her employer's business where she did not have a fixed place of work and was traveling to assigned job sites at the time her injuries were sustained. In considering the exclusionary effect of the "coming and going" rule, the *Peterson* Court focused on the exceptions in order to award benefits to the claimant. The Court stated, "In determining this question, we must keep in mind that the Pennsylvania Workers' Compensation Act is remedial in nature and intended to benefit the worker, and, therefore, the Act must be liberally construed to effectuate its humanitarian objectives." *Id.* at 1120. Considering the statutorily command of liberal construction, the Court awarded benefits to the claimant reasoning that injuries in the course of employment shall include all injuries sustained while the employee is actually engaged in the furtherance of the business affairs of the employer. *Id.* Because the Workers' Compensation Act takes this liberal approach, it is patently unfair to consider the expansive view that a volunteer firefighter commuting to a firehouse in his privately owned vehicle in response to a fire alarm is in the "course and scope of his employment" as a defense in a civil suit.

Rather, the better rule when considering the defensive application of the “coming and going” rule in a civil context is found in the case of *Wilson v. Konita*, 63 Pa. D&C 446 (Montgomery Co. 1948). The facts of *Wilson* are remarkably similar to those of the instant case. In *Wilson*, the Plaintiffs sustained injuries in a motor vehicle accident caused by a volunteer firefighter who was recklessly responding to a fire alarm in his privately owned motor vehicle. In *Wilson*, the Plaintiffs sued the driver of the car individually and the Volunteer Fire Company on a theory of respondeat superior. The *Wilson* Court acknowledged that the defendant was engaged in an activity in furtherance of his principal’s business, but nonetheless concluded that the Volunteer Fire Department could not be held jointly and severally liable with the defendant-driver, whose negligent operation of a privately owned motor vehicle caused injury, when said member was responding to a general fire alarm. *Id.* at 450. The Court noted that the principal did not have any control over the defendant or his privately owned motor vehicle. The better application of the commuter rule in a civil-defensive context draws from the independent contractor factors articulated in *Williams v. W.C.A.B.* rather than those exceptions of the “coming and going” rule in an offensive workers’ compensation scenario.

In the instant matter, the Defendant, William Evans, was negligently racing his automobile to the firehouse in his privately owned motor vehicle and caused injuries to the Plaintiff, Linda Duttry, before he ever arrived at the firehouse. While admittedly he was close to the firehouse when the incident occurred, he had not yet arrived. The Sandy Township Volunteer Fire Company did not have any control over the conduct of the Defendant, nor over his privately owned motor vehicle, when the Defendant was responding to the alarm. In this situation, it would work an injustice to allow the Defendant to avail himself of statutory governmental immunity

and its damage limitations by borrowing the expansive and liberal interpretation of what is deemed in the “course and scope of employment” in commuting cases.

In support of Defendant’s position that he is in the course and scope of his employment, the Defendant primarily relies on *DeLong v. Miller*, 426 A.2d 1171 (Pa. Super. 1981). Reliance on this case is misplaced. In *DeLong*, both the plaintiff and defendant were volunteer firemen who were responding to an alarm. The plaintiff was directing traffic at the firehouse while the defendant was driving his personal automobile when he struck the plaintiff. The plaintiff filed for and received full workers’ compensation benefits as provided under the Pennsylvania Workers’ Compensation Act, yet attempted to sue the defendant in tort ignoring the “sole remedy” provisions of the Act. The end result of *DeLong* was that plaintiff was denied recovery on the grounds that both plaintiff and defendant were held to be “in the same employ.” The *DeLong* court did not make a conclusion that defendant was in “in the course of his employment” but rather held that the plaintiff, while directing traffic, was in the course and scope of his employment. Because the plaintiff was in the course and scope of his employment, his “sole remedy” is the workers’ compensation benefits as provided under the Act.

Wherefore, for the aforementioned reasons, is cannot be stated as a matter of law that the Defendant, William Evans, was in the course and scope of his employment as a volunteer firefighter when he crossed the center line of travel and collided into the Plaintiff’s vehicle while operating his privately owned automobile. As such, the Plaintiffs respectfully request that this Court enter an Order dismissing the Defendant’s Motion for Summary Judgment.

2. *Defendant Sustained Permanent Disfigurement or Loss of Bodily Function*

In the alternative, should this Court determine that the Defendant, William Evans, was acting in the course and scope of his employment as a volunteer firefighter when he caused injury to the Plaintiff, the damage limitation with respect to "pain and suffering" found under the PSTCA are not applicable due to the nature and extent of the Plaintiff, Linda Duttry's personal injuries, and therefore, for the reasons that follow, the Defendant's Motion for Summary Judgment should be denied.

Generally, no local agency shall be liable for any damages on account of any injury to a person caused by any act of the local agency or an employee thereof. 42 Pa. C.S. §8541. However, under 42 Pa. C.S. §8542(a) and (b)(1), a local agency shall be liable for injury to a person if the damages are recoverable at common law, the injuries were caused by an employee acting within the scope of his official duties, and the injuries arise from the operation of any motor vehicle in the possession or control of the local agency. Where a local agency, acting through its "employee" involved in a motor vehicle accident, its governmental immunity is waived.

Assuming, for the sake of argument, that the Defendant is a volunteer firefighter acting within the course and scope of his employment while en route to the firehouse in his personal automobile in response to a fire alarm, the Defendant argues that under 42 Pa. C.S. §8553, the Plaintiff is not entitled to "pain and suffering damages." Specifically, the Defendant argues that the Plaintiff has not adduced any evidence that her injuries resulted in a permanent loss of bodily function, permanent disfigurement, or dismemberment where medical expenses exceed \$1,500 pursuant to §8553(c)(2)(ii). To the contrary, the Plaintiff has had knee surgery in June of 2001 which she testified to in her deposition on December 16, 2002. (Ex. A, p. 59). Additionally, the Plaintiff has produced medical records indicating that Plaintiff, Linda Duttry, had a lateral meniscus tear which was causally related to the incident complained of, and which required

surgical intervention. (Ex. B, Narrative Report - A. Krot, MD, 1/23/02). Furthermore, the Plaintiff has yet to have her medical expert testify as to the nature and extent of her injuries, therefore the instant Motion for Summary Judgment is premature.

Wherefore, for the aforementioned reasons, the Plaintiffs respectfully request that this Court dismiss the instant Motion for Summary Judgment because they have raised a genuine issue of material fact as to the extent and permanence of her injuries.

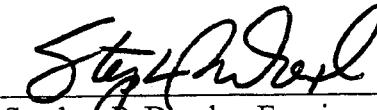
3. *First Party Benefits and the MVFRL*

Section 1722 of the MVFRL precludes a Plaintiff from recovering damages for medical expenses and/or wage loss arising from an automobile accident when those expenses are paid or payable under a policy of insurance.

The Plaintiff, Linda Duttry, has not made claims for loss wages and after Act 6 reduction, has not had any medical payments exceed her First Party Medical Benefit limit of \$50,000.

The Plaintiffs agree to sustain the Defendant's third Motion for Summary Judgment, arising under the MVFRL, sustained to the extent that medical expenses have not and are likely not to exceed the \$50,000 first party medical limit on her automobile policy of insurance.

Respectfully submitted,
Ainsman, Levine, & Drexler, LLC

By: 
Stephen P. Drexler, Esquire
Counsel for Plaintiff

JURY TRIAL DEMANDED

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

* * * * *

LINDA DUTTRY AND *

CARL DUTTRY, HER *

HUSBAND, *

Plaintiffs * No. 02-412 C.D.

vs. *

WILLIAM EVANS, *

Defendant *

* * * * *

DEPOSITION OF

LINDA DUTTRY

DECEMBER 16, 2002

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by the certifying agency

Page 58	Page 60
<p>1 A. Forgetfulness.</p> <p>2 Q. And you think that that symptom of forgetfulness is related to the car accident?</p> <p>5 A. Yes.</p> <p>6 Q. And who do you see about that?</p> <p>8 A. Doctor Turkin.</p> <p>9 Q. Have you talked with him about whether or not this is related to the car accident?</p> <p>12 A. At the beginning I did.</p> <p>13 Q. And what did he say about that?</p> <p>15 A. Yes.</p> <p>16 Q. He said it was?</p> <p>17 A. Yes.</p> <p>18 Q. And it's your understanding you alluded to you go to the doctor and they would write things down, is that something you recall Doctor Turkin do?</p> <p>23 A. He records it.</p> <p>24 Q. He records it on a cassette tape, he actually records</p>	<p>1 Q. How does it bother you?</p> <p>2 A. It's painful.</p> <p>3 Q. Your right knee?</p> <p>4 A. Yes, that's correct.</p> <p>5 Q. How long can you be on your feet before that happens?</p> <p>7 A. Oh, an hour.</p> <p>8 Q. So you're okay up until about an hour, right?</p> <p>10 A. Yes.</p> <p>11 Q. Are you currently seeing anybody for that problem?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Do you have plans to see somebody for that problem?</p> <p>16 A. Yes.</p> <p>17 Q. Who are you going to see?</p> <p>18 A. Doctor Krot.</p> <p>19 Q. When is the last time you saw Doctor Krot, do you know?</p> <p>21 A. Maybe a year ago. I can't be precise.</p> <p>23 Q. You think it was a few months after your surgery?</p> <p>25 A. Yes.</p>
<p>1 discussions with you or he writes them down?</p> <p>3 A. He writes them down, I guess.</p> <p>5 Q. Do you see him do that?</p> <p>6 A. No.</p> <p>7 Q. Do you know if he uses a tape to record it?</p> <p>9 A. He has a file, so some way he records that.</p> <p>11 Q. And what about the knee, you said that you had a knee injury or knee problems?</p> <p>14 A. Yes.</p> <p>15 Q. Is that something that you still have?</p> <p>17 A. Yes. Not to the degree I did before surgery.</p> <p>19 Q. Surgery, you had surgery in June of 2001, right?</p> <p>21 A. Yes.</p> <p>22 Q. What kind of problems do you have now with the knee?</p> <p>24 A. If I'm on my feet, it bothers me and it cracks.</p>	<p>Page 59</p> <p>1 Q. Do you have an appointment with Doctor Krot?</p> <p>3 A. No, I do not.</p> <p>4 Q. The knee problem what, if anything, does that prevent you from doing now?</p> <p>7 A. On my feet for a length of time.</p> <p>9 Q. So what you ---?</p> <p>10 A. And it bothers me to dance.</p> <p>12 Q. Since the last time you have saw Doctor Krot, have you been to any other doctor for that problem?</p> <p>16 A. No, I have not.</p> <p>17 Q. The problem with the forgetfulness that you say you still have, what does that prevent you from doing, if anything?</p> <p>21 A. Nothing.</p> <p>22 Q. And I know you said you have never been a party to a lawsuit before. Let me ask it this way.</p> <p>25 And other than the disability claim,</p>

**Alexander A. Krot, D.O.
Orthopedic Surgeon and Specialist**

145 Hospital Avenue
DuBois, PA 15801
Telephone: (814) 371-4524
Fax: (814) 371-0331

January 23, 2002

Ainsman & Levine, PC, Erin Fucci
330 Grant Street
Suite 2201
Pittsburgh, PA 15219

RE: Linda Duttry

Dear Ms. Fucci:

Ms. Linda Duttry was evaluated in my office for complaints of pain in the right knee. The patient was apparently referred by Dr. Hallstrom following failed treatment after an injury, which occurred from a motor vehicle accident. She stated at that time that she was having pain over the right knee, primarily over the lateral aspect. The pain had been present since the time of the accident. The patient was felt to have failed a reasonable course of conservative treatment. An MRI was ordered by Dr. Hallstrom and was positive for a bone bruise as well as a tear of the lateral meniscus. Following these findings it was elected to proceed with an arthroscopy of the right knee. This was performed on 06/22/01. At the time a partial lateral meniscectomy of the right knee was performed, as well as chondroplasty of the medial femoral condyle, and of the intercondylar region of the right femur. She tolerated it well and was noted to progress satisfactory in her postoperative and, in fact, was released from my treatment on 08/15/01 having that she progressed fairly well with this.

In regards to the questions from your letter, yes, I do believe that there is a causal relationship to the knee injury and the accident that occurred on May 31, 2000. The injury apparently resulted in a lateral meniscal tear, which was the primary reason for this surgery. A secondary finding at the time was some medial compartment arthritis, which I can not relate that it was a direct result of the accident itself. This would be a preexisting condition. The patient underwent an evaluation 6/13/01. The surgery was performed on 6/22/01 and follow-ups were performed on 7/3/01, 7/17/01, and 8/15/01. Each of the follow up visits showed that the patient was progressing satisfactory and was having a lessening pain pattern. In regards to Mrs. Duttry's complete recovery, I feel that she will do well with the lateral meniscal tear. The preexisting condition of the arthritis is a progressive condition and can cause symptoms on its own, not relating to the motor vehicle accident.

If you have any further questions please feel free to contact me.

Sincerely,



Alexander A. Krot, DO
AAK/crb

CERTIFICATE OF SERVICE

The undersigned, does hereby certify that a true and correct copy of the foregoing of Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment has been served via First Class Mail, on this 4th day of November, 2003.

AINSMAN, LEVINE & DREXLER, LLC

By: 

Stephen P. Drexler, Esquire
Attorney for Plaintiffs

MAILED TO:

Katherine Oliver, Esquire
811 University Drive
State College, PA 15801

Court Administrator
Clearfield County Courthouse
Suite 228, 230 East Market Street
Clearfield, PA 16830

EXHIBIT “C”

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

LINDA DUTTRY and CARL DUTTRY, :
her husband :
:

RECEIVED

-vs-

: No. 02-412-CD **NOV 26 2003**

WILLIAM EVANS :
:

MCQUAID BLASKO

OPINION AND ORDER

On May 31, 2000, William Evans, Defendant above-named, was a volunteer fireman with Sandy Hose Company No. 1 and was responding to a fire alarm from his home to that Hose Company at approximately 8:00 p.m. While turning left into the Hose Company, his vehicle, which was traveling with its blue light activated, collided with the vehicle operated by Plaintiff Linda Duttry causing her certain injuries.

Plaintiff's Complaint was filed on March 20, 2002, and Defendant responded with an Answer and New Matter claiming the defenses available under the Political Sub-Division Tort Claims Act (42 Pa. C.S.A. § 8501 et seq.) pleading his status as a volunteer fireman acting in the scope of employment. Defendant now moves for Summary Judgment based on the above.

There appears to be no dispute that Sandy Hose Company No. 1 is a local agency within the meaning of the Act or that volunteer firefighters are "employees" protected by the Act. The question here then is whether the Defendant was acting within the scope of his duties as a volunteer firefighter for Sandy Hose Company No. 1 at the time of the accident and if so, the limitation on damages contained in the Act are applicable here.

In DeLong v. Miller, 426 A.2d, 1171 (Pa. Super. 1981) the Superior Court of Pennsylvania held as follows:

“... because the unique character of the employment requires prompt reaction to an alarm, a volunteer fireman is in the course of his employment when he leaves his home in response to an alarm.”

While the factual situation in DeLong may be different and the issue addressed by the Superior Court not exactly identical to the one at issue here, nevertheless, the quoted statement is clear and not in its context restricted to any specific factual situation or issue and therefore, this Court is bound thereby to rule that the Defendant herein was in the scope of his duties at the time of the accident.

Having so held, the Court finds that the provisions of the Political Sub-Division Tort Claims act with regards to damages are applicable here. However, Plaintiff has alleged in its brief in opposition to Defendant's Motion that discovery is not completed and therefore, a final ruling herein is premature. For this reason, the Court will grant Plaintiff a reasonable time from date hereof to complete her discovery with regards to damages.

Defendant's final Motion for Summary Judgment involves section 1722 of the Motor Vehicle Financial Responsibility Law (75 Pa. C.S. § 1722). With regards to this issue, Plaintiff concedes that she has not made claims for loss of wages and her medical payments do not exceed the limit contained therein of \$50,000 and therefore, this Court sustains Defendant's Motion for Summary Judgment to the extent that medical expenses have not exceeded the first party medical limit on her automobile policy.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 24th day of November, 2003, upon consideration of Motion for Summary Judgment filed on behalf of Defendant above-named, it is the ORDER of this Court that said Motion be and is hereby granted with regards to Defendant's Motion and Plaintiffs'

claim for damages based on Section 1722 of the Motor Vehicle Financial Responsibility Law dismissed. In all other regards final ruling on Defendant's Motion shall be and is hereby continued in accordance with the foregoing Opinion.

By the Court,

/s/ JOHN K. REILLY, JR.

President Judge

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

NOV 25 2003

Attest.

John K. Reilly
Prothonotary
Clerk of Courts

EXHIBIT “D”

THE LAW FIRM OF

AINSMAN, LEVINE & DREXLER, LLC

310 Grant Street, Suite 2201 • Pittsburgh, PA 15219 • 412.338.9030 fax 412.338.9167

June 25, 2003

Katherine V. Oliver, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

RE: Linda Duttry and Carl Duttry vs. William Evans
No. 02-412-C.D.

Dear Ms. Oliver:

It would be my intention to put this case at Issue and praecipe to have it placed on the next available trial list. Do you anticipate that you will need to do further discovery? If so, please indicate how long you anticipate it will take to complete that discovery and when you would suggest requesting that this case be placed on the trial list.

Your attention to this matter will be greatly appreciated.

Very truly yours,



Stephen P. Drexler

SPDsmh

AL047698.1

EXHIBIT "E"

MCQUAIDE BLASKO

ATTORNEYS AT LAW

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

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

February 11, 2004

Via First Class Mail

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

**In re: Linda and Carl Duttry vs. William Evans
No. 02-412-C.D. (Clearfield County)**

Dear Mr. Drexler:

It has certainly been a "reasonable time" since the Court's summary judgment Opinion of November 26, 2003, and we have not been provided with any supplementation of Plaintiffs' prior discovery responses with respect to the injury claims.

Please advise as to whether Plaintiff will be coming forward with any additional medical evidence in support of her claims. If we have not received any such information within the next 20 days, I will assume that you do not intend to come forward with any other evidence, and will seek a ruling on the remaining summary judgment issue before the Court.

Thank you for your anticipated courtesy and cooperation with this matter.

Very truly yours,

McQUAIDE BLASKO

By:


Katherine V. Oliver

KVO/sap

cc: Howard Shaffer - State Farm (38-J366-584)

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

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

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

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yenger

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

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S MOTION FOR**
DECISION ON REMAINING SUMMARY JUDGMENT ISSUES CONTINUED BY
COURT ORDER OF NOVEMBER 24, 2003 in the above-captioned matter was mailed by
regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 16th day of
March, 2004, to the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver
ID No. 77069
Attorneys for Defendant
WILLIAM EVANS
811 University Drive
State College, PA 16801
(814) 238-4926

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

LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
Plaintiffs, :
v. :
WILLIAM EVANS, : TYPE OF PLEADING
Defendant. : CERTIFICATE OF SERVICE
:
: FILED ON BEHALF OF
: DEFENDANT
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

APR 14 2004

William A. Shaw
Prothonotary

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

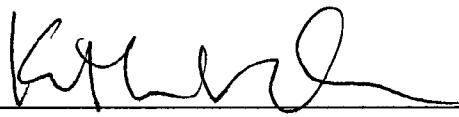
LINDA DUTTRY and CARL DUTTRY, : No. 02-412-C.D.
her husband, :
: Plaintiffs, :
v. :
: WILLIAM EVANS, :
: Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Reply Brief Supporting Motion for Decision on Remaining Summary Judgment Issues in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 12th day of April, 2004, to the attorney(s) of record:

Stephen P. Drexler, Esquire
Ainsman & Levine, P.C.
330 Grant Street Suite 2201
Pittsburgh, PA 15219

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

By: 

Katherine V. Oliver

ID No. 77069

Attorney for Defendant

WILLIAM EVANS

811 University Drive

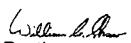
State College, PA 16801

(814) 238-4926

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

APR 14 2004

Attest.


Prothonotary/
Clerk of Courts

FILED

in 1:00 AM, cc & atty

APR 14 2004

WMS

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LINDA DUTTRY and CARL DUTTRY :

VS. : NO. 02-412-CD

WILLIAM EVANS :

O P I N I O N

This matter initially came before the Court on Defendant's Motion for Summary Judgment. By Opinion and Order dated November 24, 2003, this Court granted Summary judgment in favor of the Defendant for Plaintiff's claims arising under the Motor Vehicle Financial Responsibility Law in light of the fact that said expenses do not exceed the \$50,000 first-part medical limit and reserved ruling on the other issues in light of the fact that Plaintiff alleged that discovery was not complete. Since the issuance of said Opinion, this Court notes that no further discovery has taken place, and being convinced that the record does not support any claims advanced by the Plaintiff and in light of the Opinion entered November 24, 2003, this Court does now grant summary judgment in favor of the Defendant and against the Plaintiff on all remaining issues.

BY THE COURT:

John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED

MAY 27 2004

William A. Shaw
Prothonotary

FILED

James Home
1cc Stephen Dresler
0 3.35.04 1cc Stephen Dresler

II
MAY 27 2004 1cc

William A. Shaw
Prothonotary

Date: 05/28/2004

Clearfield County Court of Common Pleas

User: DGREGG

Time: 02:51 PM

ROA Report

* Page 2 of 2

Case: 2002-00412-CD

Current Judge: John K. Reilly Jr.

Linda Duttry, Carl Duttry vs. William Evans

Civil Other

Date	Judge
05/31/2002	Certificate of Service, Defendant's Response to Plaintiffs' Request for Production of Documents upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq. no cc No Judge
10/09/2002	Filing: Certificate of Service of Notice of Intent to Serve Subpoenas filed by Atty. Oliver. No cc. No Judge
10/25/2002	Certificate of Service of Defendant's Notice of Plaintiffs' Depositions and Request For Production Of Documents upon STEPHEN P. DREXLER, ESQ. filed by s/Katherine V. Oliver, Esq. no cc No Judge
10/30/2002	Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22. No Judge s/Katherine V. Oliver, Esq. no cc
10/16/2003	Defendant's Motion For Summary Judgment Or, Alternatively, For Partial Summary Judgment. filed by s/Katherine V. Oliver, Esquire Certificate of Service no cc No Judge
10/27/2003	Notice of Service filed by Atty. Drexler No cc. John K. Reilly Jr.
11/24/2003	Certificate of Service, Defendant's Answers and Objections To Plaintiffs' Interrogatories Directed To Defendant, upon: STEPHEN P. DREXLER, ESQUIRE filed by, s/Katherine V. Oliver, Esquire no cc John K. Reilly Jr.
11/25/2003	OPINION AND ORDER, NOW, this 24th day of November, 2003, upon consideration of Motion for Summary Judgment filed on ORDER of this Court that said Motion be and is hereby GRANTED with regards to Defendant's Motion and Plaintiffs' claim for damages based on Section 1722 of the Motor Vehicla Financial Responsibility Law DISMISSED. In all other regards final ruling on Defendant's Motion shall be and is hereby continued in accordance with the foregoing Opinion. by the Court, s/JKR,JR.,P.J. 1 cc Atty Drexler, Horne, and D. Mikesell John K. Reilly Jr.
03/17/2004	Defendant's Motion For Decision On Remaining Summary Judgment Issues Continued By Court Order Of November 24, 2003. filed by, s/Katherine V. Oliver, Esquire Certificate of Service no cc John K. Reilly Jr.
04/15/2004	Certificate of Service, Defendant's Reply Brief Supporting Motion for Decision on Remaining Summary Judgment Issues upon Stephen P. Drexler, Esquire filed by, s/Katherin V. Oliver, Esquire 1 cc to Atty John K. Reilly Jr.
05/27/2004	Opinion, re: Defendant's Motion for Summary Judgment. by the Court, s/JKR,JR., S.J., Specially Presiding 1 cc James Norne, Stephen Drexler, and Mikesell II John K. Reilly Jr.

Date: 05/28/2004

Clearfield County Court of Common Pleas

User: DGREGG

Time: 02:51 PM

ROA Report

Page 1 of 2

Case: 2002-00412-CD

Current Judge: John K. Reilly Jr.

Linda Duttry, Carl Duttry vs. William Evans

Civil Other

Date	Judge	
03/20/2002	Filing: Complaint in Civil Action Paid by: Drexler,, Stephen P. Esq (attorney for Duttry, Linda) Receipt number: 1839952 Dated: 03/20/2002 Amount: \$80.00 (Check) One CC Sheriff	No Judge
04/08/2002	Miscellaneous Payment: Copy Fee Paid by: James Horne, Esquire Receipt number: 1840747 Dated: 04/08/2002 Amount: \$.25 (Check) Praeclipe For Entry of Appearance on Behalf of the Defendant, WILLIAM EVANS. Filed by s/James M. Horne, Esq. s/Katherine V. Oliver, Esq. Certificate of Service no cc	No Judge
04/25/2002	Answer With New Matter. Filed by s/Katherine V. Oliver, Esq. Verification No Judge s/William Evans Cert of Svc	No Judge
04/26/2002	Filing: Subpoena Paid by: Oliver, Katherine V. (attorney for Evans, William) Receipt number: 1841627 Dated: 04/26/2002 Amount: \$21.00 (Check) Certificate of Service, Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery to Drs. Krot, Hallstrom and Bellomo, DuBois Regional Medical Center and Hartford Life Filed by s/Katherine V. Oliver, Esq. no cc	No Judge
	Certificate of Service, Second Request for Production of Documents and Tangible Things by Defendant Directed to Plaintiffs, upon Stephen P. Drexler, Esq. Filed by s/Katherin V. Oliver, Esq. no cc	No Judge
	Certificate of Service, Interrogatories Propounded by Defendant for Answer by Plaintiffs (One) and Request for Production (Set One), upon Stephen P. Drexler, Esq. filed by s/James M. Horne, Esq. no cc	No Judge
05/07/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
05/09/2002	Reply to New Matter. Filed by s/Stephen P. Drexler, Esq no cc Certificate of Service, Notice of Service upon all interested parties. Filed by s/Stephen P. Drexler, Esquire no cc	No Judge
05/17/2002	Certificate Prerequisite To Service Of Subpoenas Pursuant To Rule 4009.22. Filed by s/Katherine V. Oliver, Esq. no cc Certificate of Service, Subpoena Duces Tecum Directed to DuBois Regional Medical Center upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq. no cc	No Judge
	Certificate of Service, Subpoena Duces Tecum Directed to John J. Bellomo, D.O. upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq. no cc	No Judge
	Certificate of Service, Subpoena Duces Tecum Directed to Alexander A. Krot, D.O. upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq. no cc	No Judge
	Certificate of Service, Subpoena Duces Tecum Directed to Laun R. Hallstrom, M.D. upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq.	No Judge
	Certificate of Service, Subpoena Duces Tecum Directed to Hartford Life upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq. Filed by s/Katherine V. Oliver, Esq. no cc	No Judge
05/31/2002	Certificate of Service, Defendant's Answers to Plaintiffs' Interrogatories upon Stephen P. Drexler, Esq. Filed by s/Katherine V. Oliver, Esq. no cc	No Judge