

02-469-CD
DAVID B. MCGARREY "vs" FRED DIEHL MOTOR, INC.

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

DAVID B. MCGARREY,
Plaintiff

vs.

FRED DIEHL MOTOR, INC.,
Defendant

OQ-469-CO

SEARCHED

: No. *469-CO*
: Type of Case: CIVIL
: Type of Pleading: COMPLAINT
: Filed on Behalf of: PLAINTIFF
: Counsel of Record for this Party:
: PAUL E. CHERRY, ESQ.
: Supreme Court No.42945
: CHERRY & CHERRY
: 23 East Park Avenue
: DuBois, PA 15801
: (814) 371-3288

FILED

MAR 28 2002

MS M110:50/Atty Cherry
William A. Shaw
Prothonotary

pd. \$80.00
1cc Sherry

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

DAVID B. MCGARREY,
Plaintiff

vs. : No. - 2002 - C.D.

FRED DIEHL MOTOR, INC.,
Defendant

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Amended Complaint or for any other claim or relief requested by the Plaintiffs. 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. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

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

DAVID B. MCGARREY,
Plaintiff

vs.

: No. - 2002 - C.D.

FRED DIEHL MOTOR, INC.,
Defendant

COMPLAINT

AND NOW, comes the Plaintiff, DAVID B. MCGARREY, by and through his attorneys, CHERRY & CHERRY, who file the within Complaint, averring as follows:

1. Plaintiff, DAVID B. MCGARREY, is an adult individual, residing at 801 Butler Pike, Mercer, Mercer County, Pennsylvania 16137.
2. Defendant, FRED DIEHL MOTOR, INC., is incorporated under the laws of the Commonwealth of Pennsylvania and has a place of business at Route 879 West, P.O. Box 671, Clearfield, Clearfield County, Pennsylvania, 16830.
3. On or about September 30, 1999, Defendant sold a 2000 Chevrolet LS 1500 Pickup Truck to Marcene A. Schlosser for use in her business by Plaintiff.
4. Following the purchase of the 2000 Chevrolet LS 1500 Pickup Truck, Plaintiff purchased and installed accessories for the truck including a stainless metal pickup truck bed rail cap.
5. On or about March 20, 2000, a hit and run accident occurred at Plaintiff's place of employment which resulted in damage to the driver's side bed panel of the 2000 Chevrolet LS 1500 Pickup Truck.
6. The 2000 Chevrolet LS 1500 Pickup Truck was taken to Defendant's body shop for repair of the driver's side bed panel.

7. In order to repair the driver's side bed panel on the 2000 Chevrolet LS 1500 Pickup Truck, Defendant removed and reinstalled the accessories on the pickup truck bed including the stainless metal pickup truck bed rail cap.

8. The repair job done by Defendant on the 2000 Chevrolet LS 1500 Pickup Truck took a period of approximately two (2) weeks.

9. On the evening of April 11, 2000, at approximately 10:50 p.m., Plaintiff got into the bed of the 2000 Chevrolet LS 1500 Pickup Truck to retrieve bags of groceries.

10. Defendant lost his footing in the bed of the 2000 Chevrolet LS 1500 Pickup Truck, braced his right hand on the side of the stainless metal pickup truck bed rail cap and was severely cut by the stainless metal pickup truck bed rail cap.

COUNT I

STRICT LIABILITY

11. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 10 above as though the same were fully set forth at length.

12. Upon information and belief, the accident of April 11, 2000, where Plaintiff was injured, was caused by the defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the 2000 Chevrolet LS 1500 Pickup Truck, which defect existed at the time the vehicle left Defendant's care, custody, and control, and rendered the 2000 Chevrolet LS1500 Pickup Truck unreasonably dangerous for its intended use.

13. As a result of the defective nature of the installation of the stainless metal pickup truck bed rail cap, Defendant is strictly liable to Plaintiff pursuant to § 402A of the Restatement (Second) of Torts for the following reasons:

- (a) failing to properly and adequately install the stainless metal pickup truck bed rail cap;

- (b) failing to warn Plaintiff of the dangerous nature of the installation of the stainless metal pickup truck bed rail cap; and
- (c) other defects as may become evident through the course of discovery or trial.

14. As the direct result of the defects in the improper installation of the stainless metal pickup truck bed rail cap as described above, Plaintiff suffered injuries, including but not limited to a severe laceration of the right hand, severed digital nerves of the fifth finger of the right hand, damaged flexor tendons of the fifth finger of the right hand, and other injuries which may be discovered at a later time, all or some of which may be permanent in nature.

15. As a direct and proximate result of the negligence, carelessness and reckless disregard of Defendant, Plaintiff was prevented from attending to his usual occupation as a Contractor to his great loss and detriment.

WHEREFORE, Plaintiff, DAVID B. MCGARREY, demands judgment against Defendant, FRED DIEHL MOTOR, INC., in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

COUNT II

NEGLIGENCE

16. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 15 above as though the same were fully set forth at length.

17. The negligence of Defendant consisted of:

- (a) failing to discover the defects in the improper installation of the stainless metal pickup truck bed rail cap;
- (b) failing to take steps necessary to repair the improper installation of the stainless metal pickup truck bed rail cap;

- (c) failing to properly test the installation of the stainless metal pickup truck bed rail cap;
- (d) such other negligence which may be discovered at a later date.

18. As a direct result of Defendant's negligence, Plaintiff suffered severe and permanent injuries as more fully described above.

19. As a direct and proximate result of the negligence, carelessness and reckless disregard of Defendant, Plaintiff was prevented from attending to his usual occupation as a Contractor to his great loss and detriment.

WHEREFORE, Plaintiff, DAVID B. MCGARREY, demands judgment against Defendant, FRED DIEHL MOTOR, INC., in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

COUNT III

BREACH OF WARRANTY

20. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1 through 19 above as though the same were fully set forth at length.

21. At the time Defendant installed the stainless metal pickup truck bed rail cap, Defendant warranted, both expressly and impliedly, that the stainless metal pickup truck bed rail cap installation was free from defects, and was safe and suitable for the uses for which it is intended.

22. Defendant breached the aforesaid warranties, both express and implied, by improperly installing the stainless metal pickup truck bed rail cap which was defective as more fully described above, and which was neither adequate nor suitable for the uses for which it was intended.

23. As the direct result of Defendant's breach of its express and implied warranties, Plaintiff suffered severe and disabling injuries as more fully described above.

24. As a direct and proximate result of the negligence, carelessness and reckless disregard of Defendant, Plaintiff was prevented from attending to his usual occupation as a Contractor to his great loss and detriment.

25. A jury trial is demanded.

WHEREFORE, Plaintiff, DAVID B. MCGARREY, demands judgment against Defendant, FRED DIEHL MOTOR, INC., in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

Respectfully submitted,

CHERRY & CHERRY

By: 
Paul E. Cherry, Esquire
Attorney for Plaintiff

I, DAVID B. MCGARREY, verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 3-14-02



David B. McGarrey

Cherry & Cherry
23 EAST PARK AVENUE
DUBOIS, PENNSYLVANIA 15801

Lenahan & Dempsey, P.C.

By: Brian J. Butler, Esquire
I.D. No. 82774
395 South Franklin Street
Wilkes-Barre, PA 18702
(570) 822-1000

Attorneys for Defendant

DAVID B. McGARREY,

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

Plaintiff

v.

FRED DIEHL MOTOR, INC.,

CIVIL ACTION – LAW

Defendants

JURY TRIAL DEMANDED

NO. 02 – 469 – C.D.

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter the appearance of Lenahan & Dempsey, P.C. on behalf of the Defendant in the above-captioned matter.

LENAHAN & DEMPSEY, P.C.

By: 

Brian J. Butler

Dated: April 15, 2002

FILED

APR 18 2002

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12310

MCGARREY, DAVID B.

02-469-CD

VS.

FRED DIEHL MOTOR, INC.

COMPLAINT

SHERIFF RETURNS

**NOW APRIL 5, 2002 AT 11:14 PM EST SERVED THE WITHIN COMPLAINT ON
FRED DIEHL MOTOR, INC., DEFENDANT AT EMPLOYMENT, WALTON ST.,
PHILIPSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM
ELLIS, SERVICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: McCLEARY/NEVLING.**

Return Costs

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

Sworn to Before Me This

9th 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 Hanna
Chester A. Hawkins
Sheriff

FILED
012:12
MAY 09 2002
EJG

William A. Shaw
Prothonotary

Lenahan & Dempsey, P.C.

By: Brian J. Butler, Esquire

I.D. No. 82774

395 South Franklin Street

Wilkes-Barre, PA 18702

(570) 822-1000

Attorneys for Defendant

DAVID B. McGARREY,

Plaintiff

v.

FRED DIEHL MOTOR, INC.,

Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

CIVIL ACTION – LAW

JURY TRIAL DEMANDED

NO. 02 – 469 – C.D.

TO: Plaintiff, David B. McGarrey
% Paul E. Cherry, Esquire
Cherry & Cherry
23 East Park Avenue, Ste #1
Dubois, PA 15801

YOU ARE HEREBY NOTIFIED TO PLEAD TO THE ALLEGATIONS CONTAINED IN THE
ENCLOSED ANSWER AND NEW MATTER WITHIN TWENTY (20) DAYS FROM THE SERVICE
HEREOF OR SUFFER JUDGMENT OF NON PROS.

Lenahan & Dempsey, P.C.



Brian J. Butler, Esquire
Lenahan & Dempsey, P.C.
Attorneys for Defendant

FILED

MAY 16 2002

11144/noel

William A. Shaw
Prothonotary

Lenahan & Dempsey, P.C.

By: Brian J. Butler, Esquire

I.D. No. 82774

395 South Franklin Street

Wilkes-Barre, PA 18702

(570) 822-1000

Attorneys for Defendant

DAVID B. McGARREY, : IN THE COURT OF COMMON PLEAS OF
Plaintiff : CLEARFIELD COUNTY
v. :
FRED DIEHL MOTOR, INC., : CIVIL ACTION – LAW
Defendants : JURY TRIAL DEMANDED
: NO. 02 – 469 – C.D.

ANSWER AND NEW MATTER

NOW COMES, the Defendant, FRED DIEHL MOTOR, INC., by and through their counsel, Lenahan & Dempsey, P.C., by Brian J. Butler, Esquire and files the following Answer and New Matter in response to Plaintiff's Complaint:

1. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the averments contained in paragraph 1 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.
2. Admitted in part, denied in part. It is admitted Fred Diehl Motor, Inc. is incorporated under the laws of the Commonwealth of Pennsylvania. Fred Diehl Motor, Inc. has ceased doing active business as of May 8, 2000 and no longer has a place of business located at Route 879 West, PO Box 671, Clearfield, Clearfield County, Pennsylvania, 16830. Fred Diehl Motor, Inc. has a current mailing address located at 47 Laurel Run Road, Curwensville, Clearfield County, Pennsylvania, 16833.

3. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the averments contained in paragraph 3 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

4. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the averments contained in paragraph 4 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

5. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the averments contained in paragraph 5 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

6. Admitted.

7. Admitted in part, denied in part. It is admitted the subject vehicle was repaired by Answering Defendant. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the remainder of the averments contained in paragraph 7 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

8. Admitted in part, denied in part. It is admitted the subject vehicle was repaired by Answering Defendant. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the remainder of the averments contained in paragraph 8 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

9. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the averments contained in paragraph 9 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

10. Denied. After reasonable investigation, Answering Defendants lack sufficient knowledge or information to form a belief as to the averments contained in paragraph 10 of Plaintiff's Complaint. The same are therefore denied. Strict proof demanded.

COUNT I

STRICT LIABILITY

11. Answering Defendant incorporates paragraphs one (1) through eleven (11) of their Answer by reference as if fully set forth herein at length.

12. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). By way of further answer, it is specifically denied Plaintiff's injuries, if any, were caused by the defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the subject pick up truck. It is further denied the repairs to the subject vehicle by Answering Defendant were done in a defective or improper manner. It is further denied any defects existed in the subject vehicle which rendered it unreasonably dangerous for its intended use at the time the vehicle left the Defendants custody.

13. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

14. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

15. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

WHEREFORE, Answering Defendant demands judgment in their favor and against Plaintiff, together with costs and such other relief as the Court deems appropriate.

COUNT II

NEGLIGENCE

16. Answering Defendant incorporates paragraphs one (1) through fifteen (15) of their Answer by reference as if fully set forth herein at length.

17. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

18. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

19. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

WHEREFORE, Answering Defendant demands judgment in their favor and against Plaintiff, together with costs and such other relief as the Court deems appropriate.

COUNT III

BREACH OF WARRANTY

20. Answering Defendant incorporates paragraphs one (1) through nineteen (19) of their Answer by reference as if fully set forth herein at length.

21. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

22. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

23. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

24. Denied pursuant to Pa. R.C.P. 1029 (c)-(e). Strict proof demanded.

25. No response required.

WHEREFORE, Answering Defendant demands judgment in their favor and against Plaintiff, together with costs and such other relief as the Court deems appropriate.

NEW MATTER (AFFIRMATIVE DEFENSES)

26. Pursuant to Pa. R.C.P. 1030, Answering Defendant preserves the affirmative defenses of contributory negligence, comparative negligence, and assumption of the risk.

27. Plaintiff's Complaint fails to set forth a cause of action upon which relief can be granted against the Answering Defendant.

28. Some or all of Plaintiff's claims are not recoverable items of damage under Pennsylvania law.

29. Plaintiff's injuries were not caused or contributed to on any act or failure to act on the part of Answering Defendant.

30. Plaintiff's injuries were as a result of acts or omissions of third persons or entities not a party to this matter and over whom Answering Defendant had no control or right of control; said conduct acts as a superseding and/or intervening cause of the alleged injuries thereby rendering Answering Defendants not liable to Plaintiff.

31. Plaintiff's cause of action should be dismissed for failure of Plaintiff to join necessary and indispensable parties to this litigation.

32 Plaintiff's cause of action is barred by the Statute of Limitations.

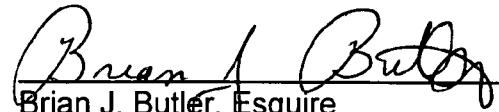
33. Answering Defendant's acts were not the proximate cause of the Plaintiff's alleged damages or losses.

33. Plaintiff's Strict Liability Count is improper under Pennsylvania law.

35. Answering Defendant made no warranties, either express or implied, concerning the repairs to the subject vehicle.

WHEREFORE, Answering Defendant demands judgment in their favor and against the Plaintiff on the cause of action alleged, together with such other relief as this Court deems appropriate.

Respectfully submitted,
Lenahan & Dempsey, P.C.



Brian J. Butler
Brian J. Butler, Esquire
Lenahan & Dempsey, P.C.
Attorney for Defendants

5-10-2002 1:07PM

FROM FRED DIEHLS OF PBURG 8143426410

P. 2

MAY 10 2002 12:49PM

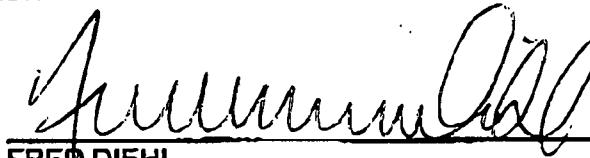
LENAHAN & DEMPSEY

NU. 650 P. 9/10

VERIFICATION

FRED W. DIEHL

I, ~~Fred W. Diehl~~, hereby verify that the foregoing Answer and New Matter was prepared with the assistance and advice of counsel, upon whose advice I have relied; that the Answer and New Matter subject to inadvertent or undiscovered errors, is based upon and therefore limited by the records and information still in existence, presently recollected and thus far discovered in the preparation of this Answer and New Matter and the defense of this case; that the language of the Answer and New Matter is that of counsel; that subject to the limitations set forth herein, the averments of the Answer and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S., Section 4904, relating to unsworn falsification to authorities.



FRED DIEHL
FRED DIEHL MOTOR, INC.,
PRES.

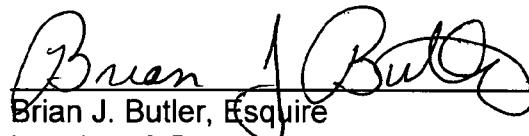
Dated 5-10-02

CERTIFICATE OF SERVICE

And now, this 10th day of May 2002, I, Brian J. Butler, Esquire do hereby certify that I, this day, served a true and correct copy of the foregoing Answer and New Matter to all counsel or parties of record, by United States first class mail, postage prepaid and addressed as follows:

Paul E. Cherry, Esquire
Cherry & Cherry
23 East Park Avenue, Ste #1
Dubois, PA 15801

Lenahan & Dempsey, P.C.



Brian J. Butler, Esquire
Lenahan & Dempsey, P.C.
Attorney for Defendants

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

DAVID B. MCGARREY,
Plaintiff

vs.

FRED DIEHL MOTOR, INC.,
Defendant

: No. 02 - 469 - C.D.
: Type of Case: CIVIL
: Type of Pleading: PLAINTIFF'S ANSWER
: TO NEW MATTER
: Filed on Behalf of: PLAINTIFF
: Counsel of Record for this Party
: PAUL E. CHERRY, ESQ.
: Supreme Court No.42945
: CHERRY & CHERRY
: 23 East Park Avenue
: DuBois, PA 15801
: (814) 371-3288

FILED

JUN 03 2002

Mr. Alice Cherry
William A. Shaw
Prothonotary

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

DAVID B. MCGARREY, :
Plaintiff :
vs. : No. 02 - 469 - C.D.
FRED DIEHL MOTOR, INC., :
Defendant :
:

PLAINTIFF'S ANSWER TO NEW MATTER

AND NOW, comes the Plaintiff, DAVID B. MCGARREY, by and through his attorneys, CHERRY & CHERRY, who file the following Plaintiff's Answer to New Matter, and in support thereof aver the following:

26. Denied. The allegations contained in Paragraph 26 of Defendant's Answer and New Matter are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied.

27. Denied. On the contrary, Plaintiff's Complaint sets forth a cause of action upon which relief can be granted against Defendant. By way of further answer, Paragraph 27 of Defendant's New Matter should have been pleaded under Preliminary Objections.

28. Denied. On the contrary, all of Plaintiff's claims are recoverable items of damage under Pennsylvania law.

29. Denied. Plaintiff's injuries were directly caused by Defendant's defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the 2000 Chevrolet LS 1500 Pickup Truck, which defect existed at the time the vehicle left Defendant's care, custody and control, and rendered the 2000 Chevrolet LS 1500 Pickup Truck unreasonably dangerous for its intended use.

30. Denied. On the contrary, Plaintiff's injuries were directly caused by Defendant's defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the 2000 Chevrolet LS 1500 Pickup Truck, which defect existed at the time the vehicle left Defendant's care, custody and control, and rendered the 2000 Chevrolet LS 1500 Pickup Truck unreasonably dangerous for its intended use. By way of further answer, should Defendant believe that Plaintiff's injuries were a result of acts or omissions of third persons or entities not a party to this matter, Defendants should properly join additional Defendants pursuant to Pa.R.C.P. No. 2252.

31. Denied. On the contrary, Plaintiff's injuries were directly caused by Defendant's defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the 2000 Chevrolet LS 1500 Pickup Truck, which defect existed at the time the vehicle left Defendant's care, custody and control, and rendered the 2000 Chevrolet LS 1500 Pickup Truck unreasonably dangerous for its intended use. By way of further answer, should Defendant believe that Plaintiff's injuries were a result of acts or omissions of third persons or entities not a party to this matter, Defendants should properly join additional Defendants pursuant to Pa.R.C.P. No. 2252.

32. Denied. On the contrary, Plaintiff's injuries occurred on April 11, 2000, and were directly caused by Defendant's defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the 2000 Chevrolet LS 1500 Pickup Truck, which defect existed at the time the vehicle left Defendant's care, custody and control, and rendered the 2000 Chevrolet LS 1500 Pickup Truck unreasonably dangerous for its intended use.

33. Denied. On the contrary, Plaintiff's injuries were directly caused by Defendant's defective installation of the stainless metal pickup truck bed rail cap which was improperly installed in the 2000 Chevrolet LS 1500 Pickup Truck, which defect existed at the time the vehicle left Defendant's care, custody and control, and rendered the 2000 Chevrolet LS 1500 Pickup Truck unreasonably dangerous for its intended use.

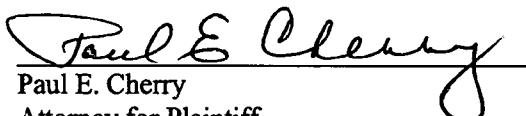
34. Denied. The allegations contained in Paragraph 34 of Defendant's New Matter are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied. By way of further answer, Plaintiff's Strict Liability Count is proper under Pennsylvania law.

35. Denied. On the contrary, Defendant made both an express and implied warranty that the installation of the stainless metal pickup truck bed rail cap on the 2000 Chevrolet LS 1500 Pickup Truck was properly installed and that the 2000 Chevrolet LS 1500 Pickup Truck was safe for its intended use.

WHEREFORE, Plaintiff, DAVID B. MCGARREY, demands that judgment be entered in his favor and against Defendant, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), exclusive of interest and costs of suit.

Respectfully submitted,

CHERRY & CHERRY



Paul E. Cherry
Attorney for Plaintiff

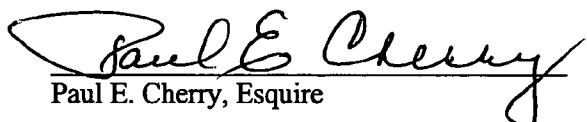
COMMONWEALTH OF PENNSYLVANIA

: ss.

COUNTY OF CLEARFIELD

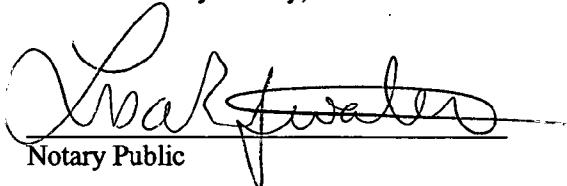
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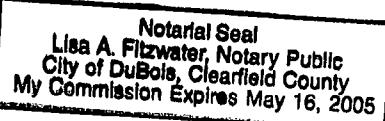
PAUL E. CHERRY, Esquire, being duly sworn according to law deposes and says that he is the attorney for Plaintiff in the foregoing action; that the facts set forth in the foregoing Plaintiff's Answer to New Matter are true and correct based upon information received from the Plaintiff and after his own diligent inquiry, and that an Affidavit of the Plaintiff can be supplied at a later date upon request.


Paul E. Cherry

Sworn to and subscribed before

me this 31st day of May, 2002.


Notary Public



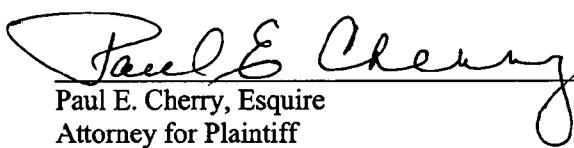
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

DAVID B. MCGARREY, :
Plaintiff :
vs. : No. 02 - 469 - C.D.
FRED DIEHL MOTOR, INC., :
Defendant :
:

CERTIFICATE OF SERVICE

PAUL E. CHERRY, ESQUIRE, certifies that as counsel for the Plaintiff in the above-captioned action, he served a true and correct copy of the Plaintiff's Answer to New Matter on May 31, 2002, to Brian J. Butler, Esquire, counsel for the Defendant, FRED DIEHL MOTOR, INC., at Lenahan & Dempsey, 395 South Franklin Street, Wilkes-Barre, PA by U.S. Postal Service, First-class mail, postage prepaid.

CHERRY & CHERRY


Paul E. Cherry, Esquire
Attorney for Plaintiff

Henry & Henry
23 EAST PARK AVENUE
DUBOIS, PENNSYLVANIA 15801

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

DAVID B. MCGARREY,
Plaintiff

vs.

FRED DIEHL MOTOR, INC.,
Defendant

: No. 02 - 469 - C.D.
:
: Type of Case: CIVIL
:
: Type of Pleading: PRAECIPE FOR
: DISCONTINUANCE
:
: Filed on Behalf of: PLAINTIFF
:
: Counsel of Record for this Party:
:
: PAUL E. CHERRY, ESQ.
: Supreme Court No.42945
:
: CHERRY & CHERRY
: 23 East Park Avenue
: DuBois, PA 15801
: (814) 371-3288

FILED

JUL 18 2003

7/11/03/Cert. Dated by Cherry
William A. Shaw / CA
Prothonotary
cc:atty Cherry

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

DAVID B. MCGARREY,
Plaintiff

vs. : No. 02 - 469 - C.D.

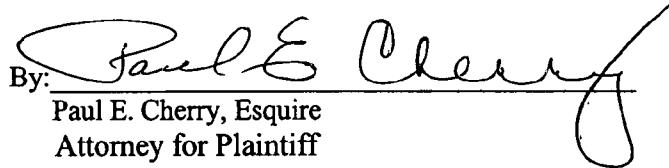
FRED DIEHL MOTOR, INC.,
Defendant

PRAECIPE FOR DISCONTINUANCE

To the Prothonotary:

Please mark the above-captioned case ended, settled, and forever discontinued and/or dismissed, with prejudice.

CHERRY & CHERRY

By: 
Paul E. Cherry, Esquire
Attorney for Plaintiff

Cherry & Cherry
23 EAST PARK AVENUE
DUBOIS, PENNSYLVANIA 15801

COPY

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

CIVIL DIVISION

David B. McGarrey

Vs.
Fred Diehl Motor, Inc.

No. 2002-00469-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 18, 2003, marked:

ended, settled, and forever discontinued and/or dismissed with prejudice

Record costs in the sum of \$120.74 have been paid in full by Paul E. Cherry, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of July A.D. 2003.



William A. Shaw, Prothonotary