

02-658-CD
WILLIAM DESALVE etux -vs- HARMONY GAS, OIL & TIMBER, INC. etal

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

APR 25 2002

O/9:55/att Noble

William A. Shaw

Prothonotary

pd 80.00

lcc atty.

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

v.

DEFENDANTS.

No. 02-_____-CD

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

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

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) No. 02-_____-CD
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1. First Plaintiff is William DeSalve, who does, and at all material times, did reside at RD #1, Box 150 "C", Penfield, Clearfield County, Pennsylvania 16830.
2. Second Plaintiff is Ruth E. DeSalve, who does, and at all material times, did reside at RD #1, Box 150 "C", Penfield, Clearfield County, Pennsylvania 16830.
3. That William DeSalve and Ruth E. DeSalve are, and at all material times were, husband and wife, living together as such at the aforementioned address.
4. That first Defendant is Harmony Gas, Oil & Timber, Inc., upon information and belief a duly formed and existing corporation under the laws of Pennsylvania with a principal address of RD #1, Box 18, Rt. 219 N, Cherry Tree, Clearfield County, Pennsylvania 15724.

5. That second Defendant is Barry D. Einsig, upon information and belief, an adult individual who does, and at all material times, did reside at of RD #1, Box 18, Rt. 219 N, Cherry Tree, Clearfield County, Pennsylvania 15724.

6. That third Defendant is Carl Decker, Jr., upon and information and belief, an adult individual who does, and at all material times, did reside at RD #1, Box 298, Marion Center, Indiana County, Pennsylvania 15759.

Background

7. That on or about June 2, 2002, being a Saturday, at approximately 1:10 P.M., William DeSalve was operating a 1997 Ford truck, while Ruth E. DeSalve was a passenger, traveling in a northerly direction on State Route 153, in the northbound lane, in Huston Township, Clearfield County Pennsylvania, in the vicinity of Johnson's Nursery.

8. That at the same date and time, Defendant Carl Decker, upon information and belief, an agent or employee of Defendant Harmony Gas, Oil & Timber, Inc., was operating a 1999 International Tractor and Trailer, which was owned by Defendant Barry D. Einsig, on the same roadway as the DeSalves, also traveling in the same direction.

9. That the International tractor and trailer truck did collide with the DeSalves' Ford, in the north bound lane of State Route 153, forcing the DeSalve vehicle to leave its lane of travel, cross the south bound lane and forcibly strike a tree located on the property believed to be owned by a private resident.

10. That the front end of International tractor and trailer truck did strike the rear end of the DeSalve vehicle, which its front end in turn did strike said tree.

11. That the DeSalve vehicle had entered onto State Route 153, in a northerly direction, from the office of Johnson Nursery, proceeded to travel in its proper lane of travel, and was going to make a left turn into the Johnson Nursery inventory area and indicated as such by activating its left turn signal.

12. That prior to the entry way into the Johnson Nursery's inventory area, there is a private residential area, with a driveway, located on the left as one travels in a northerly direction on State Route 153.

13. That the area in which the vehicles collided, is a somewhat level area, in a slight valley before an uphill, right hand bend in the road.

14. That as a direct and proximate result of said collisions, William DeSalve did receive numerous injuries which included, but are and were not limited to: multiple right rib fractures, a pleural effusion of the right lung along with numerous, but less severe, cuts, abrasions and contusions.

15. That as a result of said injuries, William DeSalve received medical care and treatment from ambulances, vehicle and air; Clearfield Area Hospital, Connemaugh Hospital., DuBois Regional Medical Center and numerous physicians and other health care related practioners, with resulting medical bills of approximately \$60,000, to be more fully determined at time of trial.

16. That William DeSalve did suffer, and continues to suffer, although to a lesser extent, pain and suffering and loss of enjoyment of life, and which is expected to be on going and permanent, for which he should be compensated in an amount to be determined at time of trial.

17. That in addition to the above damages, Mr. DeSalve also incurred additional expenses, for such things as travel to and from the many doctor's visits, assistance with his daily living needs, and other medical needs such as devices and medicines, in an amount to be determined at time of trial.

18. That as a direct and proximate result of said collisions, Ruth E. DeSalve did receive numerous injuries which included, but are and were not limited to: multiple fractures of the left ribs, concussion, compression fractures of numerous vertebrae, liver contusion, open fracture of the left supracondylar, left medial and lateral malleolar fractures and numerous other cuts, abrasions and contusions.

19. That as a result of said injuries, Ruth E. DeSalve received, and continues to receive, medical care and treatment from ambulances, vehicle and air; Clearfield Area Hospital, Connemaugh Hospital., DuBois Regional Medical Center and numerous physicians and other health care related practioners, with resulting expected medical bills of approximately \$200,000, to be more fully determined at time of trial.

20. That Ruth E. DeSalve did suffer, and continues to suffer, pain and suffering and loss of enjoyment of life, and which is expected to be on going and permanent, for which she should be compensated in an amount to be determined at time of trial.

21. That as a result of said injuries and surgery as well as additional expected surgeries, Mrs. DeSalve did suffer, and is expected to suffer, additional scarring such that it would cause one to be subjected to humiliation, embarrassment, and subject to ridicule, for which she should be compensated in an amount to be determine at time of trial.

22. That as a result of said collision and injuries, Mrs. DeSalve did suffer and continues to

suffer, extreme emotional distress, best described as "post traumatic distress syndrome", for which she should be compensated in an amount to be determined at time of trial.

23. That in addition to the above damages, Mrs. DeSalve also incurred additional expenses, for such things as travel to and from the many doctor's visits, assistance with her daily living needs, and other medical needs such as devices and medicines, in an amount to be determined at time of trial.

Count I: William DeSalve v. Carl Decker, Jr.;
Negligence

24. That the averments of paragraphs 1 - 23, inclusive, are hereby incorporated as if again fully set forth at length.

25. That as a driver of a large motor vehicle on the roadways of Pennsylvania, Defendant Carl Decker, Jr., did owe a duty of care to Mr. DeSalve.

26. That Defendant Decker did breach that duty of care in that he negligently operated said vehicle.

27. That Defendant Decker's negligence included as follows:

(a) failed to keep a proper look out as he approached the DeSalve vehicle;

(b) assumed that the DeSalve vehicle would make a left turn at a certain location when in fact the left turn which the DeSalve vehicle indicated it was going to make was a little farther down the road;

(c) failed to keep his vehicle under control; and

(d) failed to operate his vehicle at a safe and prudent speed for the then prevailing conditions and circumstances;

28. That the aforementioned damages and injuries suffered by Mr. DeSalve were the direct and proximate result of Defendant Decker's aforementioned negligence.

WHEREFORE, William DeSalve requests that judgment be entered in his favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count II: Ruth E. DeSalve v. Carl Decker, Jr;
Loss of Consortium

29. That the averments of paragraph 1 - 28, inclusive, are hereby incorporated as if again fully set forth at length.

30. That as a result of the aforementioned injuries suffered by William DeSalve, he was not able to assist and perform services for Ruth E. DeSalve which he would otherwise and typically do.

31. That as the spouse of William DeSalve, Ruth E. DeSalve had a right to expect such assistance and performance of such services which was denied her by this Defendant's negligence, for which she should be compensated in an amount to be determined at time of trial.

WHEREFORE, Ruth E. DeSalve requests that judgment be entered in her favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count III: William DeSalve v. Harmony Gas, Oil & timber, Inc;
Negligence

32. That the averments of paragraphs 1 - 31, inclusive, are hereby incorporated as if again fully set forth at length.

33. That Defendant Decker was acting in the scope of his employment or agency relationship with this Defendant at the time of the aforementioned negligence.

34. That as such, this Defendant is also liable for the damages suffered by William DeSalve.

35. That in addition to the above, upon information and belief, this Defendant was also negligent which included as follows:

(a) failed to properly train Defendant Decker to assure his safe operation of the tractor and trailer he was operating;

(b) failed to properly supervise Defendant Decker to assure his operation of the tractor and trailer was done in a safe and prudent manner;

(c) failed to adequately check Defendant Decker's background to assure he was a safe and prudent driver;

(d) failed to give Defendant Decker sufficient time off from his employment or agency duties to assure Defendant Decker was sufficiently alert when he operated the tractor and trailer; and

(e) compensated Defendant Decker in a manner which gave him incentive to drive in a hurried and otherwise negligent manner.

37. That this Defendant owed Mr. DeSalve a duty of care to assure that its employee and or agent would not negligently operate a motor vehicle on the roadways of this Commonwealth.

38. That the aforementioned damages and injuries suffered by Mr. DeSalve were the direct and proximate result of Defendant Decker's, as well as this Defendant's aforementioned negligence.

WHEREFORE, William DeSalve requests that judgment be entered in his favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count IV: Ruth E. DeSalve v. Harmony Gas, Oil & Timber, Inc.;
Loss of Consortium

39. That the averments of paragraph 1 - 38, inclusive, are hereby incorporated as if again fully set forth at length.

40. That as a result of the aforementioned injuries suffered by William DeSalve, he was not able to assist and perform services for Ruth E. DeSalve which he would otherwise and typically do.

41. That as the spouse of William DeSalve, Ruth E. DeSalve had a right to expect such assistance and performance of such services which was denied her by Defendant Decker's as well as this Defendant's negligence, for which she should be compensated in an amount to be determined at time of trial.

WHEREFORE, Ruth E. DeSalve requests that judgment be entered in her favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count V: William DeSalve v. Barry D. Einsig.;
Negligence

42. That the averments of paragraphs 1 - 41, inclusive, are hereby incorporated as if again fully

set forth at length.

43. That upon information and belief, this Defendant was leasing the vehicle it owned to Defendant Harmony Gas, Oil & Timber, Inc..

44. In the alternative, Defendant Decker was the agent and or employee of this Defendant and is also liable for his negligence and damages proximately resulting there from.

45. That in addition to the above, upon information and belief, this Defendant was also negligent which included as follows:

(a) failed to properly train its lessor to assure his safe operation of the tractor and trailer;

(b) failed to properly supervise its lessor to assure operation of the tractor and trailer would be done in a safe and prudent manner;

(c) failed to adequately check its lessor's background to assure it employed safe and prudent drivers;

46. In the alternative, upon information and belief, this Defendant was also negligent which included as follows:

(a) failed to properly train Defendant Decker to assure his safe operation of the tractor and trailer he was operating;

(b) failed to properly supervise Defendant Decker to assure his operation of the tractor and trailer was done in a safe and prudent manner;

(c) failed to adequately check Defendant Decker's background to assure he was a safe and prudent driver;

(d) failed to give Defendant Decker sufficient time off from his employment or agency duties to assure Defendant Decker was sufficiently alert when he operated the tractor and trailer; and

(e) compensated Defendant Decker in a manner which gave him incentive to drive in a hurried and otherwise negligent manner.

47. That this Defendant owed Mr. DeSalve a duty of care to assure that its lessor, employee or agent would not negligently operate a motor vehicle on the roadways of this Commonwealth.

48. That the aforementioned damages and injuries suffered by Mr. DeSalve were the direct and

proximate result of Defendant Decker's, as well as this Defendant's aforementioned negligence.

WHEREFORE, William DeSalve requests that judgment be entered in his favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count VI: Ruth E. DeSalve v. Barry D. Einsig;
Loss of Consortium

49. That the averments of paragraph 1 - 48, inclusive, are hereby incorporated as if again fully set forth at length.

50. That as a result of the aforementioned injuries suffered by William DeSalve, he was not able to assist and perform services for Ruth E. DeSalve which he would otherwise and typically do.

51. That as the spouse of William DeSalve, Ruth E. DeSalve had a right to expect such assistance and performance of such services which was denied her by Defendant Decker's, Defendant Harmony Gas, Oil & Timber, Inc., as well as this Defendant's negligence, for which she should be compensated in an amount to be determined at time of trial.

WHEREFORE, Ruth E. DeSalve requests that judgment be entered in her favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count VII: Ruth E. DeSalve v. Carl Decker, Jr.;
Negligence

52. That the averments of paragraphs 1 - 51, inclusive, are hereby incorporated as if again fully set forth at length.

53. That as a driver of a large motor vehicle on the roadways of Pennsylvania, Defendant Carl Decker, Jr., did owe a duty of care to Mrs. DeSalve.

54. That Defendant Decker did breach that duty of care in that he negligently operated said vehicle.

55. That Defendant Decker's negligence included as follows:

(a) failed to keep a proper look out as he approached the DeSalve vehicle;

(b) assumed that the DeSalve vehicle would make a left turn at a certain location when in fact the left turn which the DeSalve vehicle indicated it was going to make was a little farther down the road;

(c) failed to keep his vehicle under control; and

(d) failed to operate his vehicle at a safe and prudent speed for the then prevailing conditions and circumstances;

56. That the aforementioned damages and injuries suffered by Mrs. DeSalve were the direct and proximate result of Defendant Decker's aforementioned negligence.

WHEREFORE, Ruth E. DeSalve requests that judgment be entered in her favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count VIII: William DeSalve v. Carl Decker, Jr;
Loss of Consortium

57. That the averments of paragraph 1 - 56, inclusive, are hereby incorporated as if again fully set forth at length.

58. That as a result of the aforementioned injuries suffered by Ruth E. DeSalve, she was not able to assist and perform services for William DeSalve which she would otherwise and typically do.

59. That as the spouse of Rut E. DeSalve, William DeSalve had a right to expect such assistance and performance of such services which was denied him by this Defendant's negligence, for which he should be compensated in an amount to be determined at time of trial.

WHEREFORE, William DeSalve requests that judgment be entered in his favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count IX: Ruth E. DeSalve v. Harmony Gas, Oil & Timber, Inc;
Negligence

60. That the averments of paragraphs 1 - 59, inclusive, are hereby incorporated as if again fully set forth at length.

61. That Defendant Decker was acting in the scope of his employment or agency relationship with this Defendant at the time of the aforementioned negligence.

62. That as such, this Defendant is also liable for the damages suffered by Ruth E. DeSalve.

63. That in addition to the above, upon information and belief, this Defendant was also negligent which included as follows:

(a) failed to properly train Defendant Decker to assure his safe operation of the tractor and trailer he was operating;

(b) failed to properly supervise Defendant Decker to assure his operation of the tractor and trailer was done in a safe and prudent manner;

(c) failed to adequately check Defendant Decker's background to assure he was a safe and prudent driver;

(d) failed to give Defendant Decker sufficient time off from his employment or agency duties to assure Defendant Decker was sufficiently alert when he operated the tractor and trailer; and

(e) compensated Defendant Decker in a manner which gave him incentive to drive in a hurried and otherwise negligent manner.

64. That this Defendant owed Mrs. DeSalve a duty of care to assure that its employee and or agent would not negligently operate a motor vehicle on the roadways of this Commonwealth.

65. That the aforementioned damages and injuries suffered by Mrs. DeSalve were the direct and proximate result of Defendant Decker's, as well as this Defendant's aforementioned negligence.

WHEREFORE, Ruth E. DeSalve requests that judgment be entered in her favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count X: William DeSalve v. Harmony Gas, Oil & Timber, Inc.;
Loss of Consortium

66. That the averments of paragraph 1 - 65, inclusive, are hereby incorporated as if again fully set forth at length.

67. That as a result of the aforementioned injuries suffered by Ruth E. DeSalve, she was not able to assist and perform services for William DeSalve which she would otherwise and typically do.

68. That as the spouse of Ruth E. DeSalve, William DeSalve had a right to expect such assistance and performance of such services which was denied him by Defendant Decker's as well as this Defendant's negligence, for which he should be compensated in an amount to be determined at time of trial.

WHEREFORE, William DeSalve requests that judgment be entered in his favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count XI: Ruth E. DeSalve v. Barry D. Einsig;
Negligence

69. That the averments of paragraphs 1 - 68, inclusive, are hereby incorporated as if again fully set forth at length.

70. That upon information and belief, this Defendant was leasing the vehicle it owned to Defendant Harmony Gas, Oil & Timber, Inc..

71. In the alternative, Defendant Decker was the agent and or employee of this Defendant and is also liable for his negligence and damages proximately resulting there from.

72. That in addition to the above, upon information and belief, this Defendant was also negligent which included as follows:

- (a) failed to properly train its lessor to assure his safe operation of the tractor and trailer;
- (b) failed to properly supervise its lessor to assure operation of the tractor and trailer would be done in a safe and prudent manner; and
- (c) failed to adequately check its lessor's background to assure it employed safe and prudent

drivers;

73. In the alternative, upon information and belief, this Defendant was also negligent which included as follows:

(a) failed to properly train Defendant Decker to assure his safe operation of the tractor and trailer he was operating;

(b) failed to properly supervise Defendant Decker to assure his operation of the tractor and trailer was done in a safe and prudent manner;

(c) failed to adequately check Defendant Decker's background to assure he was a safe and prudent driver;

(d) failed to give Defendant Decker sufficient time off from his employment or agency duties to assure Defendant Decker was sufficiently alert when he operated the tractor and trailer; and

(e) compensated Defendant Decker in a manner which gave him incentive to drive in a hurried and otherwise negligent manner.

74. That this Defendant owed Mrs. DeSalve a duty of care to assure that its lessor, employee or agent would not negligently operate a motor vehicle on the roadways of this Commonwealth.

75. That the aforementioned damages and injuries suffered by Mrs. DeSalve were the direct and proximate result of Defendant Decker's, as well as this Defendant's aforementioned negligence.

WHEREFORE, Ruth E. DeSalve requests that judgment be entered in her favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Count XII: William DeSalve v. Barry D. Einsig;
Loss of Consortium

76. That the averments of paragraph 1 - 75, inclusive, are hereby incorporated as if again fully set forth at length.

77. That as a result of the aforementioned injuries suffered by Ruth E. DeSalve, she was not able to assist and perform services for William DeSalve which she would otherwise and typically do.

78. That as the spouse of Ruth E. DeSalve, William DeSalve had a right to expect such assistance and performance of such services which was denied him by Defendant Decker's, Defendant Harmony Gas, Oil & Timber, Inc., as well as this Defendant's negligence, for which he should be compensated in an amount to be determined at time of trial.

WHEREFORE, William DeSalve requests that judgment be entered in his favor, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest, against said Defendant.

Miscellaneous

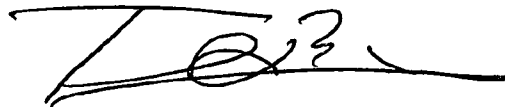
79. That all defendants are jointly and severally liable for the damages suffered by Plaintiffs.

80. That venue is proper.

81. That jurisdiction is proper.

WHEREFORE, Plaintiffs requests that judgment be entered in their favors, and against all defendants, jointly and severally, in an amount in excess of Twenty-Five Thousand Dollars, together with costs and interest.

Respectfully Submitted,



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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

V.

HARMONY GAS, OIL & TIMBER, INC., a Pennsylvania Corporation; BARRY D. EINSIG, an adult individual, and CARL DECKER, JR., an adult individual,

No. 02-_____ -CD

We, William DeSalve and Ruth E. DeSalve, Plaintiffs in the foregoing and attached CIVIL COMPLAINT, do hereby swear and affirm that we have read the same and that to the best of our information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that we make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

William DeSalve
William DeSalve, Plaintiff

Ruth E. DeSalve
Ruth E. DeSalve, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiff,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

Defendant.

CIVIL DIVISION

02-658 CD

Issue No.

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of DEFENDANTS

Counsel of record for this party:

John T. Pion, Esq.
PA. I.D. #43675

DICKIE, McCAMEY & CHILCOTE, P.C.
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

(412) 281-7272

JURY TRIAL DEMANDED

FILED

MAY 10 2002

mjl:08/noed

William A. Shaw
Prothonotary

Copy CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and)
RUTH C. DESALVE, husband and wife,)
) Civil Division
Plaintiffs,)
) No. 02-658-CD
vs.)
)
HARMONY GAS, OIL & TIMBER, INC.,)
a Pennsylvania Corporation; BARRY D.)
EINSIG, an adult individual, and CARL)
DECKER, JR., an adult individual,)
)
Defendants.)

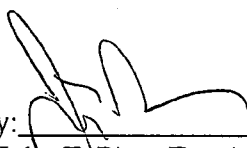
PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

KINDLY enter our appearance on behalf of Defendant HARMONY GAS, OIL &
TIMBER, INC., BARRY D. EINSIG and CARL DECKER, JR. in the above-entitled action.

A JURY TRIAL IS DEMANDED.

DICKIE, McCAMEY & CHILCOTE

By: 
John T. Pion, Esquire

Attorney for Defendants

Two PPG Place, Suite 400
Pittsburgh, PA 15222
(412) 392-5452

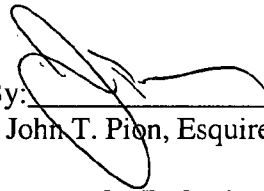
CERTIFICATE OF SERVICE

I, John T. Pion, Esquire, hereby certify that a true and correct copy of the foregoing
Praecipe for Appearance was served upon counsel of record by U.S. Mail, postage prepaid this
8 day of May, 2002.

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

COUNSEL FOR PLAINTIFF

DICKIE, McCAMEY & CHILCOTE

By: 
John T. Pion, Esquire

Attorney for Defendants

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

12446

DESALVE , WILLIAM & RUTH C.

02-658-CD

VS.

HARMONY GAS, OIL & TIMBER INC.

COMPLAINT

SHERIFF RETURNS

NOW APRIL 29, 2002 AT 2:29 PM DST SERVED THE WITHIN COMPLAINT ON BARRY D. EINSIG, IND., DEFENDANT AT EMPLOYMENT, RD#1 BOX 18, 219N, CHERRY TREE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDNIG TO THOMAS GROMLEY, LABORER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF. SERVED BY: NEVLING.

NOW APRIL 29, 2002 AT 2:29 PM DST SERVED THE WITHIN COMPLAINT ON HARMONY GAS, OIL & TIMBER, INC., DEFENDANT AT EMPLOYMENT, RD#1 BOX 18, 219N, CHERRY TREE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO THOMAS GROMLEY, LABORER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF. SERVED BY: NEVLING.

NOW APRIL 25, 2002, DONALD BECKWITH, SHERIFF OF INDIANA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON CARL DECKER JR., IND., DEFENDANT.

NOW APRIL 30, 2002 SERVED THE WITHIN COMPLAINT ON CARL DECKER JR., IND., DEFENDANT BY DEPUTIZING THE SHERIFF OF INDIANA COUNTY. THE RETURN OF SHERIFF BECKWITH IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED FRAN FALISEC, ADULT AT RESIDENCE.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12446

DESALVE, WILLIAM & RUTH C.

02-658-CD

VS.

HARMONY GAS, OIL & TIMBER INC.

COMPLAINT

SHERIFF RETURNS

Return Costs

Cost Description

69.00 SHFF. HAWKINS PAID BY: ATTY.

51.00 SHFF. BECKWITH PAID BY: ATTY.

30.00 SURCHARGE PAID BY: ATTY.

150.00

Sworn to Before Me This

20th 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 A. Hawkins
My Marked Hamr
Chester A. Hawkins
Sheriff

FILED

MAY 20 2002
01325

William A. Shaw
Prothonotary

Σ
REP



INDIANA COUNTY SHERIFF

825 PHILADELPHIA STREET
INDIANA, PENNSYLVANIA 15701-3934
(724) 465-3930
FAX: (724) 465-3937

Donald L. Beckwith
Sheriff

David J. Rostis
Chief Deputy Sheriff

Affidavit of Service

Page: 657

Docket Number: 02-658-CD

Now, 04-30-2002 at 1330 hrs. served the within

complaint upon Carl Decker, Jr.

at 1696 Pine Vale Rd., Marion Center, PA

by handing to Fran Falisec, fiancée, person in charge of residence
at time of service

a true and correct copy(s) of the within complaint

and making known to him/her/them the contents thereof.

So Answers:

Donald L. Beckwith

Donald L. Beckwith, Sheriff

By:

Gary L. Wissinger
Gary L. Wissinger,

Deputy

Sworn and subscribed before me

This 6 day of May 2002

Loretta J. Wissinger

Costs: \$51.00 paid

NOTARIAL SEAL
LORETTA J. WISSINGER, NOTARY PUBLIC
INDIANA, INDIANA CO
MY COMMISSION EXPIRES MARCH 8, 2006



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM & RUTH C. DESALVE

TERM & NO. 02-658-CD

VS

SERVE BY: 5/25/02

HARMONYGAS, OIL & TIMBER, INC. al

DOCUMENT TO BE SERVED:

COMPLAINT

MAKE REFUND PAYABLE TO: THERON NOBLE, Attorney


SERVE: CARL DECKER Jr., Ind.

ADDRESS: RD#1 Box 298, Marion Center, Pa. 15759

Informed atty. that directions were required he requested we send this to you anyway.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF INDIANA COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 25th Day of APRIL 2002.

Respectfully,


CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
2002 APR 28 P 11:28
INDIANA COUNTY SHERIFF

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs,

v.

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
individual, and CARL DECKER, JR.,
an adult individual,

Defendants.

) CIVIL DIVISION

)
) No. 02-658 CD

) **NOTICE OF SERVICE OF**
) **INTERROGATORIES AND**
) **REQUESTS FOR PRODUCTION**
) **OF DOCUMENTS DIRECTED TO**
) **PLAINTIFFS**

) Filed on behalf of Defendants

) Counsel of record for these parties:

) John T. Pion, Esquire
) Pa. I.D. No. 43675

) Dickie, McCamey & Chilcote, P.C.
) Firm No. 067

) Two PPG Place, Suite 400
) Pittsburgh, Pennsylvania 15222

) (412) 281-7272

) **JURY TRIAL DEMANDED**
)

FILED

MAY 24 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.	)	CIVIL DIVISION
DESALVE, husband and wife,)	
	)	No. 02-658 CD
Plaintiffs,)	
)	
v.)	
)	
HARMONY GAS, OIL & TIMBER,)	
INC., et al.,)	
)	
Defendants.)	

**NOTICE OF SERVICE OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS**

PLEASE TAKE NOTICE that on the 22nd day of May, 2002, the original and two (2) true and correct copies of Interrogatories and Requests for Production of Documents were served upon Plaintiffs' counsel of record, via first class mail, postage-prepaid, addressed as follows:

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

DICKIE, McCAMEY & CHILCOTE, P.C.

By: John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

FILED

MAY 10 10:30 AM
MAY 24 2002

William A. Shaw
Prothonotary

WCC
KCB

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

NOTICE OF SERVICE

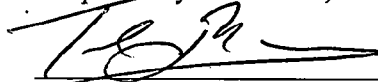
To: William A. Shaw, Prothonotary

Date: June 14, 2002

I, Theron G. Noble, Esquire, counsel for Plaintiffs, do hereby certify that I did mail, on the below listed person, being counsel of record for the Defendants, a true and correct copy of NOTICE OF DEPOSITION, a copy of which is attached hereto, this 14th day of June, 2002, via United States Mail, first class, postage pre-paid, at the following address:

John T. Pion, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Pa. I.D.#: 55942
301 East Pine Street
Clearfield, PA 16830

FILED

JUN 17 2002

William A. Shaw
Prothonotary

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

COPY

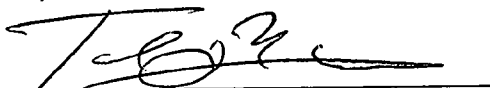
NOTICE OF DEPOSITION

To: John T. Pion, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Take notice that the deposition upon oral examination will be taken of Defendant Carl Decker, Jr., at the law offices of Ferraraccio & Noble, located at 301 East Pine Street, Clearfield, PA, on the 9th day of July, 2002 commencing at approximately 10:00 A.M, at which time you are invited to attend and participate.

The scope of said deposition will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Pa. I.D.#: 55942
301 East Pine Street
Clearfield, PA 16830

cc: Mr. and Mrs. William DeSalve

FILED

NO
MIA:11-28
cc
JUN 17 2002

William A. Shaw
Prothonotary

[Handwritten signature]

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

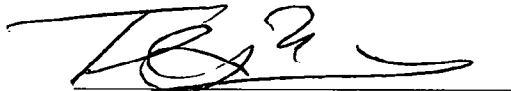
No. 02- 658 -CD

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, do hereby certify that I did mail, on the below listed person, being counsel of record for the Defendants, a true and correct copy of Plaintiffs' NOTICE OF SERVICE, this 24th day of July, 2002, via United States Mail, first class, postage pre-paid, at the following address:

John T. Pion, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Pa. I.D.#: 55942
301 East Pine Street
Clearfield, PA 16830

FILED

JUL 25 2002
m/1:26/rocc
William A. Shaw
Prothonotary *ket*

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

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife

-vs-

No. 02 – 658 – CD

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
individual, and CARL DECKER, JR.,
an adult individual

ORDER

NOW, this 8th day of August, 2002, upon consideration of Preliminary Objections filed on behalf of Defendants above-named, it is the ORDER of this Court that Plaintiff shall, within 30 days from date hereof, submit to Defendants a complete detailed list of all medical expenses incurred on behalf of Plaintiff William DeSalve and a statement as to which of these expenses have been covered by alternative sources. It is the further ORDER of this Court that immediately following determination of the necessity of further surgery on behalf of Plaintiff Ruth C. DeSalve, said Plaintiff shall immediately notify defense of said determination and of all medical expenses incurred on her behalf as of that date together with a statement of which expenses have been covered for her by alternative sources.

It is the final ORDER of this Court that at trial in said matter no medical expenses shall be submitted to the jury for its consideration other than those expenses remaining unpaid and not covered by alternative sources.

By the Court,

President Judge

FILED

AUG 08 2002

William A. Shaw
Prothonotary

FILED

AUG 08 2002

01/18/46 / 1cc atty Noble
William A. Shaw
Proprietary

1cc atty Ron


IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs,

v.

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
individual, and CARL DECKER, JR.,
an adult individual,

Defendants.

) CIVIL DIVISION

) No. 02-658 CD

) **BRIEF IN SUPPORT OF**
) **PRELIMINARY OBJECTIONS IN**
) **THE NATURE OF A MOTION TO**
) **STRIKE OR, IN THE**
) **ALTERNATIVE, FOR A MORE**
) **SPECIFIC PLEADING**

) Filed on behalf of Defendants

) Counsel of record for these parties:

) John T. Pion, Esquire
) Pa. I.D. No. 43675

) Dickie, McCamey & Chilcote, P.C.
) Firm No. 067

) Two PPG Place, Suite 400
) Pittsburgh, Pennsylvania 15222

) (412) 281-7272

) **JURY TRIAL DEMANDED**

RECEIVED

MAY 20 2002

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.	)	CIVIL DIVISION
DESALVE, husband and wife,)	
	)	No. 02-658 CD
Plaintiffs,)	
)	
v.)	
)	
HARMONY GAS, OIL & TIMBER,)	
INC., et al.,)	
)	
Defendants.)	

**BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS IN THE NATURE OF
A MOTION TO STRIKE, OR, IN THE ALTERNATIVE,
FOR A MORE SPECIFIC PLEADING**

I. HISTORY OF THE CASE

The above-referenced lawsuit arises out of a motor vehicle accident which occurred on June 2, 2001. Plaintiffs' Complaint incorrectly identifies the accident date as June 2, 2002. (§ 7 of Plaintiffs' Complaint.) Plaintiff, William DeSalve, was operating a 1997 Ford truck along State Route 153 which collided with a tractor-trailer being operated by Defendant, Carl Decker, Jr. As a result of the accident, Plaintiffs have alleged personal injuries which required them to seek treatment at various medical facilities identified in the Complaint. (§§ 15, 19 of Plaintiffs' Complaint.)

In paragraphs 15 and 19 of the Complaint, Plaintiffs set forth a stated amount of medical bills which resulted from the treatment they received following the accident.

These medical bills are identified as damages which the Plaintiffs are presumably seeking, in addition to other damages, as part of the lawsuit. (¶¶ 17, 23 of Plaintiffs' Complaint.)

Plaintiffs had automobile insurance coverage with Nationwide Insurance Company at the time of the accident. Nationwide provided first-party medical coverage to the Plaintiffs.

II. STATEMENT OF THE QUESTION INVOLVED

ARE THE PLAINTIFFS PRECLUDED FROM ASSERTING A CLAIM FOR MEDICAL BILLS AS AN ITEM OF DAMAGES UNDER SECTION 1722 OF THE PENNSYLVANIA MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW AND, IF SO, SHOULD THOSE CLAIMS BE STRICKEN AS IMPERTINENT MATTER PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 1028(a)(2)?

SUGGESTED ANSWER: YES.

III. ARGUMENT

An allegation of damages or a prayer for damages which are not legally recoverable in a cause of action pleaded is impertinent matter in the sense that it is irrelevant to that cause of action. *Hudock v. Donegal Mutual Insurance Co.*, 264 A.2d 668, 671 n. 2 (Pa. 1970). A preliminary objection in the nature of a motion to strike-off impertinent matter is the appropriate means through which to challenge an erroneous prayer for damages. *Id.*

Section 1722 of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended, precludes a plaintiff from recovering the amount of medical bills paid or payable by any source. 75 Pa.C.S.A. § 1722. The Pennsylvania Supreme Court has held that if medical expenses are not recoverable in an action, the medical expenses are not relevant to a claim for non-economic loss, such as pain and suffering. *Martin v. Soblotney*, 466 A.2d 1022 (Pa. 1993)

(construed under the repealed No-Fault Act), *Carlson v. Bubash*, 639 A.2d 458 (1994) (applying the Supreme Court's reasoning under *Martin* in the No-Fault Act to the amended Financial Responsibility Law.) In *Martin*, the plaintiff sought to introduce the amount of medical bills, even though they had been paid by the plaintiff's no-fault insurance carrier, in order to prove the degree and extent of the plaintiff's pain and suffering. Although the trial court allowed the plaintiff to introduce into evidence the amount of bills and the Superior Court affirmed, the Pennsylvania Supreme Court overruled the lower court's holding that if medical expenses are not recoverable, they are inadmissible to establish non-economic pain and suffering because they are not relevant. *Martin*, 466 A.2d at 1025.

The Superior Court in *Carlson*, following the reasoning in *Martin*, held that if medical bills are paid or are payable by any collateral source, they are not recoverable and cannot be introduced into evidence for the purpose of showing pain and suffering.

Accordingly, under the plain language of the Pennsylvania Motor Vehicle Financial Responsibility Law, any medical bills that have been paid or are payable cannot be recovered according to the statutorily mandated exception to the collateral source rule. The amount of any of the Plaintiffs' medical bills is not relevant to show any pain or suffering, and have no other bearing on this lawsuit.

Paragraphs 15 and 19 of Plaintiffs' Complaint make reference to medical bills incurred by the Plaintiffs following this accident. These references should be stricken as impertinent matter.

In the alternative, Plaintiffs should be required to file a more specific pleading which sets forth any medical bills that have not been paid or are not payable under the Motor Vehicle Financial Responsibility Law.

IV. CONCLUSION

Paragraphs 15 and 19 of Plaintiffs' Complaint which contain references to the Plaintiffs' medical bills should be stricken under Pennsylvania Rule of Civil Procedure 1028(a)(2) as impertinent matter. Accordingly, Defendants request that his Honorable Court grant the within Preliminary Objections, striking references to the medical bills from paragraphs 15 and 19 of Plaintiffs' Complaint or, in the alternative, that Plaintiffs be required to file a more specific pleading.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

CERTIFICATE OF SERVICE

I, John T. Pion, Esquire, hereby certify that true and correct copies of the foregoing Brief in Support of Preliminary Objections have been served this 16th day of May, 2002, by U.S. first-class mail, postage prepaid, to all counsel of record.

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

DICKIE, McCAMEY & CHILCOTE, P.C.

By John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs,

v.

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
individual, and CARL DECKER, JR.,
an adult individual,

Defendants.

CIVIL DIVISION

No. 02-658 CD

**PRAECIPE FOR ORAL
ARGUMENT DATE**

Filed on behalf of Defendants

Counsel of record for these parties:

John T. Pion, Esquire
Pa. I.D. No. 43675

Dickie, McCamey & Chilcote, P.C.
Firm No. 067

Two PPG Place, Suite 400
Pittsburgh, Pennsylvania 15222

(412) 281-7272

JURY TRIAL DEMANDED

FILED

MAY 20 2002

m/9:02/10cc
William A. Shaw
Prothonotary

124

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.	)	CIVIL DIVISION
DESALVE, husband and wife,)	
	)	No. 02-658 CD
Plaintiffs,)	
)	
v.)	
)	
HARMONY GAS, OIL & TIMBER,)	
INC., et al.,)	
)	
Defendants.)	

PRAECIPE FOR ORAL ARGUMENT DATE

TO THE COURT ADMINISTRATOR:

Please schedule Defendants' Preliminary Objections for oral argument.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

CERTIFICATE OF SERVICE

I, John T. Pion, Esquire, hereby certify that true and correct copies of the foregoing Praeipie for Oral Argument Date have been served this 16th day of May, 2002, by U.S. first-class mail, postage prepaid, to all counsel of record.

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

DICKIE, McCAMEY & CHILCOTE, P.C.

By John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs,

v.

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
individual, and CARL DECKER, JR.,
an adult individual,

Defendants.

CIVIL DIVISION

No. 02-658 CD

**PRELIMINARY OBJECTIONS IN
THE NATURE OF A MOTION TO
STRIKE OR, IN THE
ALTERNATIVE, FOR A MORE
SPECIFIC PLEADING**

Filed on behalf of Defendants

Counsel of record for these parties:

John T. Pion, Esquire
Pa. I.D. No. 43675

Dickie, McCamey & Chilcote, P.C.
Firm No. 067

Two PPG Place, Suite 400
Pittsburgh, Pennsylvania 15222

(412) 281-7272

JURY TRIAL DEMANDED

FILED

MAY 20 2002

M 19:02 noca
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.	)	CIVIL DIVISION
DESALVE, husband and wife,)	
	)	No. 02-658 CD
Plaintiffs,)	
)	
v.)	
)	
HARMONY GAS, OIL & TIMBER,)	
INC., et al.,)	
)	
Defendants.)	

**PRELIMINARY OBJECTIONS IN THE NATURE OF
A MOTION TO STRIKE, OR, IN THE ALTERNATIVE,
FOR A MORE SPECIFIC PLEADING**

AND NOW, come the Defendants, Harmony Gas, Oil & Timber, Inc.,
Barry D. Einsig and Carl Decker, Jr., by and through their attorneys, Dickie, McCamey &
Chilcote, P.C. and John T. Pion, Esquire, and file the following Preliminary Objections in the
Nature of a Motion to Strike or, in the Alternative, for a More Specific Pleading pursuant to
Pennsylvania Rule of Civil Procedure 1028(a)(2):

1. The above case arises out of a motor vehicle accident which occurred on
June 2, 2001. The Plaintiff, William DeSalve, was operating a 1997 Ford truck that collided
with a tractor-trailer being operated by Defendant, Carl Decker, Jr.

2. The Plaintiffs sustained personal injuries as a result of the accident which
required them to undergo medical care.

3. In paragraph 15 of the Complaint, Plaintiff, William DeSalve identifies the facilities where he received medical care. In addition, Plaintiff states that the care has resulted in “medical bills of approximately \$60,000, to be more fully determined at the time of trial.”

4. In paragraph 19 of the Complaint, Plaintiff, Ruth DeSalve, identifies facilities where she received treatment following the automobile accident. In addition, Plaintiff states that the medical care has resulted in “medical bills of approximately \$200,000, to be more fully determined at the time of trial.”

5. Section 1722 of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended, precludes the Plaintiffs from recovering the amount of medical bills paid or payable by any source. 75 Pa.C.S.A. § 1722.

6. Medical bills that cannot be recovered for any purpose should not be admitted into evidence. *Carlson v. Bubash*, 639 A.2d 458 (Pa.Super. 1994).

7. An allegation in a complaint for damages or a prayer for damages which are not legally recoverable in a cause of action pleaded is impertinent matter in the sense that it is irrelevant to the cause of action. Thus, a preliminary objection in the nature of a motion to strike-off impertinent matter is the appropriate means through which to challenge an erroneous prayer for damages. *Hudock v. Donegal Mutual Insurance Co.*, 264 A.2d 668, 671 n. 2 (Pa. 1970).

8. Paragraphs 15 and 19 of Plaintiffs’ Complaint violate Pennsylvania Rule of Civil Procedure 1028(a)(2) in that Plaintiffs are pleading damages which are not legally recoverable pursuant to Section 1722 of the Pennsylvania Motor Vehicle Financial Responsibility Act. Accordingly, Defendants request that references to Plaintiffs’ medical bills be stricken as impertinent matter.

9. In the alternative, Defendants request that Plaintiffs be required to file a more specific pleading which identifies any medical bills which have not been paid or are not payable pursuant to Section 1722 of the Motor Vehicle Financial Responsibility Act.

WHEREFORE, Defendants, Harmony Gas, Oil & Timber, Inc., Barry D. Einsig and Carl Decker, Jr. respectfully request this Court to grant their Preliminary Objections in the Nature of a Motion to Strike Impertinent Matter or, in the Alternative, for a More Specific Pleading.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.	)	CIVIL DIVISION
DESALVE, husband and wife,)	
	)	No. 02-658 CD
Plaintiffs,)	
)	
v.)	
)	
HARMONY GAS, OIL & TIMBER,)	
INC., et al.,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2002, it is hereby
ORDERED, ADJUDGED and DECREED that Defendants' Preliminary Objections in the Nature
of a Motion to Strike the impertinent matter contained in paragraphs 15 and 19 of the Complaint
are hereby GRANTED. References to medical bills contained in paragraphs 15 and 19 of the
Complaint are stricken.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

I, John T. Pion, Esquire, hereby certify that true and correct copies of the foregoing Preliminary Objections have been served this 16th day of May, 2002, by U.S. first-class mail, postage prepaid, to all counsel of record.

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

DICKIE, McCAMEY & CHILCOTE, P.C.

By John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker, Jr.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs,

v.

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
individual, and CARL DECKER, JR.,
an adult individual,

Defendants.

NOTICE TO PLEAD

TO: PLAINTIFFS

You are hereby notified to file a written
response to the enclosed **ANSWER
NEW MATTER and NEW MATTER
PURSUANT TO RULE 2252(d) TO
PLAINTIFFS' COMPLAINT** within
twenty (20) days from the date of
service hereof or a judgment may be
entered against you.

By John Pion
John T. Pion, Esquire

CIVIL DIVISION

No. 02-658 CD

**ANSWER, NEW MATTER AND
NEW MATTER PURSUANT TO
RULE 2252(d) TO PLAINTIFFS'
COMPLAINT**

Filed on behalf of Defendants

Counsel of record for these parties:

John T. Pion, Esquire
Pa. I.D. No. 43675

Dickie, McCamey & Chilcote, P.C.
Firm No. 067

Two PPG Place, Suite 400
Pittsburgh, Pennsylvania 15222

(412) 281-7272

JURY TRIAL DEMANDED

FILED

AUG 19 2002

m/a:001 noc
William A. Shaw
Prothonotary

[Signature]

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

WILLIAM DESALVE and RUTH C.	)	CIVIL DIVISION
DESALVE, husband and wife,)	
	)	No. 02-658 CD
Plaintiffs,)	
)	
v.)	
)	
HARMONY GAS, OIL & TIMBER,)	
INC., et al.,)	
)	
Defendants.)	

**ANSWER, NEW MATTER AND NEW MATTER
PURSUANT TO RULE 2252(d) TO PLAINTIFFS' COMPLAINT**

AND NOW, come the Defendants, Harmony Gas, Oil & Timber, (incorrectly designated as Harmony Gas, Oil & Timber, Inc.), Barry D. Einsig and Carl Decker, Jr., by and through their attorneys, Dickie, McCamey & Chilcote, P.C. and John T. Pion, Esquire, and file the following Answer, New Matter and New Matter Pursuant to Rule 2252(d) and in support thereof aver as follows:

1. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 of Plaintiffs' Complaint.

2. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 2 of Plaintiffs' Complaint.

3. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3 of Plaintiffs' Complaint.

4. The averments set forth in paragraph 4 of Plaintiffs' Complaint are denied as stated. It is denied that Harmony Gas, Oil & Timber is a corporation existing under the laws of Pennsylvania with a principal address of R.D. No. 1, Box 18, Route 219 North, Cherry Tree, Clearfield County, Pennsylvania 15724. To the contrary, Harmony Gas, Oil & Timber is not a corporation. Harmony Gas, Oil & Timber is a fictitious name used by Barry Einsig who operates a sole proprietorship. The business address is 1448 Patchen Highway, Cherry Tree, Pennsylvania 15724.

5. The averments set forth in paragraph 5 of Plaintiffs' Complaint are admitted in part and denied in part. It is admitted that Barry D. Einsig is an adult individual. It is denied that Mr. Einsig resides at R.D. No. 1, Box 18, Route 219 North, Cherry Tree, Clearfield County, Pennsylvania 15724. To the contrary, Mr. Einsig resides at 1427 Patchen Highway, Cherry Tree, Pennsylvania 15724.

6. The averments set forth in paragraph 6 of Plaintiffs' Complaint are admitted in part and denied in part. It is admitted that Carl Decker is an adult individual. It is denied that he resides at R.D. No. 1, Box 298, Marion Center, Pennsylvania 15759. To the contrary, he resides at 1696 Pine Vale Road, Marion Center, Pennsylvania 15759.

7. Admitted.

8. Admitted.

9. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 9 of Plaintiffs' Complaint except insofar as the following matters therein averred are admitted. It is admitted that the vehicle operated by Carl Decker collided with the Plaintiffs' vehicle in the northbound lane of State Route 153. It is further admitted that Plaintiffs' vehicle left the northbound lane, crossed over the southbound lane and struck a tree located on property west of State Route 153.

10. Admitted.

11. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 11 of Plaintiffs' Complaint except insofar as the following matters therein averred are admitted or denied. It is admitted that the Plaintiffs' vehicle had entered onto State Route 153 in a northerly direction. It is admitted that the Plaintiff activated his left turn signal. It is denied that the Plaintiff maintained his proper lane of travel. To the contrary, Plaintiffs' vehicle moved between the northbound lane and the southbound lane, causing the accident.

12. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 12 of Plaintiffs' Complaint.

13. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 13 of Plaintiffs' Complaint except insofar as the following matters therein averred are admitted.

It is admitted that the roadway in the area where the accident occurred is generally straight and level.

14. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 14 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

15. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 15 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

16. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 16 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

17. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 17 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

18. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 18 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

19. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 19 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

20. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 20 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

21. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 21 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

22. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 22 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

23. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 23 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT I
William DeSalve v. Carl Decker, Jr.
Negligence

24. Defendants incorporate herein by reference thereto paragraphs 1 through 23 of this Answer as though more fully set forth herein at length.

25. The averments set forth in paragraph 25 of Plaintiffs' Complaint state conclusions of law to which no response is required.

26. The averments set forth in paragraph 26 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

27. The averments set forth in paragraph 27 of Plaintiffs' Complaint, including its multiple subparts (a) through (d) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

28. The averments set forth in paragraph 28 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT II
Ruth E. DeSalve v. Carl Decker, Jr.
Loss of Consortium

29. Defendants incorporate herein by reference thereto paragraphs 1 through 28 of this Answer as though more fully set forth herein at length.

30. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 30 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

31. The averments set forth in paragraph 31 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT III
William DeSalve v. Harmony Gas, Oil & Timber, Inc.
Negligence

32. Defendants incorporate herein by reference thereto paragraphs 1 through 31 of this Answer as though more fully set forth herein at length.

33. It is admitted that the Defendant, Carl Decker, was acting within the course and scope of his employment for Barry D. Einsig, d/b/a Harmony Gas, Oil & Timber at the time of this accident. All allegations of negligence are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

34. The averments set forth in paragraph 34 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

35. The averments set forth in paragraph 35 of Plaintiffs' Complaint, including its multiple subparts (a) through (e) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

37.[sic] The averments contained in paragraph 37 of Plaintiffs' Complaint state conclusions of law to which no response is required.

38. The averments set forth in paragraph 38 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT IV

Ruth E. DeSalve v. Harmony Gas, Oil & Timber, Inc.

Loss of Consortium

39. Defendants incorporate herein by reference thereto paragraphs 1 through 38 of this Answer as though more fully set forth herein at length.

40. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 40 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

41. The averments set forth in paragraph 41 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT V
William DeSalve v. Barry D. Einsig
Negligence

42. Defendants incorporate herein by reference thereto paragraphs 1 through 41 of this Answer as though more fully set forth herein at length.

43. The averments set forth in paragraph 43 of Plaintiffs' Complaint are denied. It is denied that the Defendant, Barry D. Einsig, was leasing the vehicle he owned to Defendant Harmony Gas, Oil & Timber. To the contrary, Mr. Einsig was the sole owner of the vehicle and it was not leased to any other person or entity.

44. The averments set forth in paragraph 44 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure. To the extent the averments in paragraph 44 are factual, Defendant states that Carl Decker was an employee of Barry D. Einsig, d/b/a Harmony Gas, Oil & Timber.

45. The averments set forth in paragraph 45 of Plaintiffs' Complaint, including its multiple subparts (a) through (c) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

46. The averments set forth in paragraph 46 of Plaintiffs' Complaint, including its multiple subparts (a) through (e) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

47. The averments contained in paragraph 47 of Plaintiffs' Complaint state conclusions of law to which no response is required.

48. The averments set forth in paragraph 48 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT VI

Ruth E. DeSalve v. Barry D. Einsig
Loss of Consortium

49. Defendants incorporate herein by reference thereto paragraphs 1 through 48 of this Answer as though more fully set forth herein at length.

50. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 50 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

51. The averments set forth in paragraph 51 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT VII
Ruth DeSalve v. Carl Decker
Negligence

52. Defendants incorporate herein by reference thereto paragraphs 1 through 51 of this Answer as though more fully set forth herein at length.

53. The averments set forth in paragraph 53 of Plaintiffs' Complaint state conclusions of law to which no response is required.

54. The averments set forth in paragraph 54 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

55. The averments set forth in paragraph 55 of Plaintiffs' Complaint, including its multiple subparts (a) through (d) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

56. The averments set forth in paragraph 56 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT VIII
William DeSalve v. Carl Decker, Jr.
Loss of Consortium

57. Defendants incorporate herein by reference thereto paragraphs 1 through 56 of this Answer as though more fully set forth herein at length.

58. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 58 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

59. The averments set forth in paragraph 59 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT IX
Ruth E. DeSalve v. Harmony Gas, Oil & Timber, Inc.
Negligence

60. Defendants incorporate herein by reference thereto paragraphs 1 through 59 of this Answer as though more fully set forth herein at length.

61. The averments set forth in paragraph 61 of Plaintiffs' Complaint are denied. It is denied that the Defendant Decker was acting within the scope of his employment or agency relationship with Harmony Gas, Oil & Timber, Inc. To the contrary, Harmony Gas, Oil & Timber is not incorporated as alleged. Furthermore, Defendant Decker was acting in the scope

of his employment with Barry D. Einsig, d/b/a Harmony Gas, Oil & Timber. The remaining averments in paragraph 61 are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

62. The averments set forth in paragraph 62 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

63. The averments set forth in paragraph 63 of Plaintiffs' Complaint, including its multiple subparts (a) through (e) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

64. The averments set forth in paragraph 64 of Plaintiffs' Complaint state conclusions of law to which no response is required.

65. The averments set forth in paragraph 65 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT X
William DeSalve v. Harmony, Gas Oil & Timber, Inc.
Loss of Consortium

66. Defendants incorporate herein by reference thereto paragraphs 1 through 65 of this Answer as though more fully set forth herein at length.

67. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 67

of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

68. The averments set forth in paragraph 68 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT XI

Ruth C. DeSalve v. Barry D. Einsig

Negligence

69. Defendants incorporate herein by reference thereto paragraphs 1 through 68 of this Answer as though more fully set forth herein at length.

70. The averments set forth in paragraph 70 of Plaintiffs' Complaint are denied as stated. It is denied that Barry D. Einsig was leasing the tractor-trailer to Defendant, Harmony Gas, Oil & Timber. To the contrary, Barry D. Einsig was the sole owner of the vehicle and had not entered into any lease with any individual or entity as has been alleged.

71. The averments contained in paragraph 71 of Plaintiffs' Complaint are admitted except insofar as the following matter therein averred is denied. It is admitted that Defendant Decker was an employee of Barry Einsig, d/b/a Harmony Gas, Oil & Timber. The remaining averments of paragraph 71 are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

72. The averments set forth in paragraph 72 of Plaintiffs' Complaint, including its multiple subparts (a) through (c) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

73. The averments set forth in paragraph 73 of Plaintiffs' Complaint, including its multiple subparts (a) through (e) are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

74. The averments set forth in paragraph 74 of Plaintiffs' Complaint state conclusions of law to which no response is required.

75. The averments set forth in paragraph 75 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

COUNT XII
William DeSalve v. Barry D. Einsig
Loss of Consortium

76. Defendants incorporate herein by reference thereto paragraphs 1 through 75 of this Answer as though more fully set forth herein at length.

77. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 77 of Plaintiffs' Complaint. Accordingly, said averments are deemed denied and strict proof thereof is demanded at the time of trial.

78. The averments set forth in paragraph 78 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

Miscellaneous

79. The averments set forth in paragraph 79 of Plaintiffs' Complaint are generally denied pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

80. The averments contained in paragraph 80 of Plaintiffs' Complaint state conclusions of law to which no response is required.

81. The averments contained in paragraph 81 of Plaintiffs' Complaint state conclusions of law to which no response is required.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

NEW MATTER

82. Defendants plead the contributory negligence of the Plaintiff-husband, William DeSalve, in the context of the Pennsylvania Comparative Negligence Act as a complete or partial bar to the entirety of Plaintiffs' claims.

83. Defendants aver that the claim of the Plaintiff-wife is a derivative action and is, therefore, partially or completely barred by the negligence of the Plaintiff-husband.

84. The motor vehicle accident in controversy is subject to the Pennsylvania Motor Vehicle Financial Responsibility Law and these Defendants assert, as affirmative defenses, all rights, privileges and/or immunities accruing pursuant to said statute.

85. Some and/or all of Plaintiffs' claims for damages are items of economic detriment which are solely compensable pursuant to the Pennsylvania Financial Responsibility Law and/or other collateral sources and Plaintiff may not duplicate recovery of same.

WHEREFORE, Defendants deny that they are indebted to the Plaintiffs in the sum or sums demanded or in any sum whatsoever and request judgment in their favor, together with costs.

JURY TRIAL DEMANDED

NEW MATTER PURSUANT TO RULE 2252(d)

86. Solely for purposes of this New Matter, these Defendants hereby incorporate by reference as if set forth fully herein the averments contained in Plaintiffs' Complaint.

87. If the Plaintiff has been injured and damaged as alleged, which injuries and damages are again specifically denied, then these Defendants aver that William DeSalve is directly liable to the Plaintiff-wife, jointly or severally liable to the Plaintiff-wife or liable over to these Defendants for contribution and/or indemnification in the event these Defendants are found liable, which liability is expressly denied, for the reasons set forth in Plaintiffs' Complaint.

WHEREFORE, by this New Matter, Defendants, Harmony Gas, Oil & Timber, Barry D. Einsig and Carl Decker, Jr. assert that the Additional Defendant, William DeSalve, is solely liable to the Plaintiff, Ruth DeSalve, jointly and severally liable to the Plaintiff, Ruth DeSalve, or, in the alternative, liable to these Defendants for contribution and/or indemnification.

JURY TRIAL DEMANDED

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

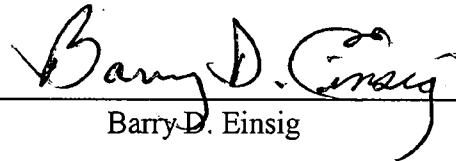
By: John T. Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber
Barry D. Einsig
Carl Decker, Jr.

VERIFICATION

I, Barry D. Einsig, have read the foregoing Answer, New Matter and New Matter Pursuant to Rule 2252(d). The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, ~~which provides that if I make~~ knowingly false statements, I may be subject to criminal penalties.


Barry D. Einsig

DATED: 8-12-02

VERIFICATION

I, Carl Decker, Jr., have read the foregoing Answer, New Matter and New Matter Pursuant to Rule 2252(d). The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



Carl Decker, Jr.

DATED: 8-13-02

CERTIFICATE OF SERVICE

I, John T. Pion, Esquire, hereby certify that true and correct copies of the foregoing Answer, New Matter and New Matter Pursuant to Rule 2252(d) have been served this 15th day of August, 2002, by U.S. first-class mail, postage prepaid, to all counsel of record.

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

DICKIE, McCAMEY & CHILCOTE, P.C.

By John Pion
John T. Pion, Esquire

Attorneys for Defendants,
Harmony Gas, Oil & Timber
Barry D. Einsig
Carl Decker, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs

Vs.

No. 0 2-658 CD

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
Individual and CARL DECKER, JR.,
An adult individual,

Defendants

Vs.

WILLIAM DESALVE,

Additional Defendant

FILED

SEP 08 2002

m/1:40/ncc

William A. Shaw

Prothonotary

Copy CA

EP
1/21


ENTRY OF APPEARANCE

Please enter my appearance for Additional Defendant, William Desalve
only, in the above matter. Papers may be served at the address listed below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as
amended, a Jury Trial is demanded on all issues raised by the pleadings in this
action.

I certify this Entry of Appearance and Demand for Jury Trial shall be served forthwith by ordinary mail upon all parties.


DENNIS J. STOFKO, ESQUIRE
P.O. Box 5500
Johnstown, Pa. 15904
814 262-0064
ID 27638

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

WILLIAM DESALVE and RUTH C.
DESALVE, husband and wife,

Plaintiffs

Vs.

No. 02-658 CD

HARMONY GAS, OIL & TIMBER,
INC., a Pennsylvania corporation,
BARRY D. EINSIG, an adult
Individual and CARL DECKER, JR.,
An adult individual,

Defendants

Vs.

REPLY TO NEW MATTER UNDER
2252(d)
Counsel of record for this party:
Dennis J. Stofko, Esquire
P.O. Box 5500
Johnstown, Pa. 15904
814 262-0064
ID 27638

WILLIAM DESALVE,

Additional Defendant

FILED

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William A. Shaw
Prothonotary

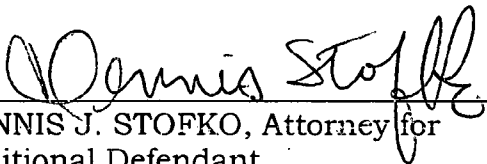
WAS

REPLY TO NEW MATTER UNDER 2252(d)

NOW COMES the Additional Defendant, William Desalve by and through counsel, Dennis J. Stofko, and files the following Reply to New Matter under 2252(d) filed by Defendants.

87. Denied. It is specifically denied that the Plaintiff husband, William Desalve was in any way negligent. Furthermore the plaintiff husband denies he is jointly or severally liable or liable over to the original defendants for contribution and/or indemnity and by way of further answer incorporates allegations of plaintiffs' complaint as if the same were set forth herein.

WHEREFORE, Additional Defendant, William Desalve requests judgment on his behalf.


DENNIS J. STOFKO, Attorney for
Additional Defendant

I, Dennis J. Stofko, do hereby state that I am the attorney for Additional Defendant, William Desalve and that as such, being authorized to do so, state that the facts set forth in the foregoing Reply to New Matter under 2252(d) are true and correct to the best of my knowledge, information and belief. This verification of counsel is being attached hereto in lieu of that of Additional Defendant because of the inability to obtain a verification from Additional Defendant in the time required to file this Reply. A verification of Additional Defendant will be provided if requested.

This statement is made subject to the provisions of 18 Pa CSA 4904 relating to unsworn falsification to authorities.


DENNIS J. STOFKO, Esquire

Dated: 6 Sept 02

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

Type of Pleading:

REPLY TO NEW MATTER

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

SEP 12 2002

William A. Shaw
Prothonotary

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

PLAINTIFF'S REPLY TO NEW MATTER

AND NOW, comes the Plaintiffs, William and Ruth C. DeSalve, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as their REPLY TO NEW MATTER:

82. For the reasons stated in Plaintiffs' CIVIL COMPLAINT, the same is DENIED and strict proof is demanded at time of trial.

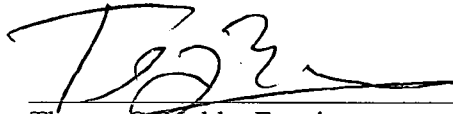
83. The same is a legal conclusion for which no response is necessary.

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

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

WHEREFORE, Plaintiffs demand JUDGMENT be entered in their favor as per their CIVIL COMPLAINT.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. G. Noble', with a horizontal line extending from the end of the signature.

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

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

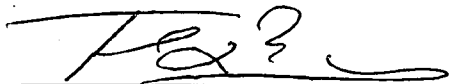
NOTICE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, do hereby certify that I did mail, to the below listed persons, being counsel of record for the Defendants, a true and correct copy of Plaintiffs' REPLY TO NEW MATTER, this 10th day of September, 2002, via United States Mail, first class, postage pre-paid, at the following address:

John T. Pion, Esquire
Dickie, McCamey & Chilcote
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402

Dennis J. Stofko, Esquire
P.O. Box 5500
Johnstown, PA 15904

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiffs
Pa. I.D.#: 55942
301 East Pine Street
Clearfield, PA 16830

FILED

NO

m 11:46:04

cc

SEP 12 2002

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William A. Shaw
Prothonotary

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

WILLIAM DESALVE, and
RUTH C. DESALVE, husband and wife,

PLAINTIFFS,

v.

HARMONY GAS, OIL & TIMBER, INC., a
Pennsylvania Corporation; BARRY D. EINSIG,
an adult individual, and CARL DECKER, JR.,
an adult individual,

DEFENDANTS.

No. 02- 658 -CD

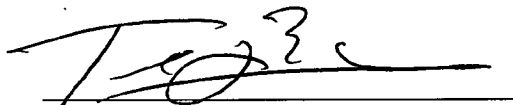
PRAECIPE TO SETTLE AND DISCONTINUE

To: William A. Shaw, Prothonotary

Date: October 11, 2002

Please mark the above captioned case, SETTLED, ENDED and forever DISCONTINUED,
with prejudice.

Respectfully Submitted,



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

FILED

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William A. Shaw
Prothonotary

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

CIVIL DIVISION

COPY

**William DeSalve
Ruth C. DeSalve**

Vs.

No. 2002-00658-CD

**Harmony Gas, Oil & Timber, Inc.
Barry D. Einsig
Carl Decker Jr.
William Desalve**

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 November 14, 2002 marked:

Settled and Discontinued

Record costs in the sum of \$80.00 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of November A.D. 2002.

William A. Shaw, Prothonotary