

02-720-CD -
JOHN-SHOMO -vs- ROBERT SNEAL

Date: 08/06/2003

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 11:06 AM

ROA Report

Page 1 of 1

Case: 2002-00720-CD

Current Judge: Fredric J. Ammerman

John Shomo vs. Robert Smeal, Eric Huber

Civil Other

Date		Judge	
05/06/2002	Filing: Civil Complaint Paid by: Green, Laurence B. (attorney for Shomo, John) Receipt number: 1842089 Dated: 05/06/2002 Amount: \$80.00 (Check) One CC Sheriff	No Judge	✓
05/20/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge	✓
05/24/2002	Praeipce For Entry of Appearance on behalf of the Defendant, ROBERT SMEAL. S/Matthew B. Taladay, Esq. no cc	No Judge	✓
05/31/2002	Notice of Service of Interrogatories and Request for Production of Documents Directed to Defendant. Filed by s/Laurance B. Green, Esq. no cc	No Judge	✓
06/11/2002	Answer and New Matter. Filed by s/Matthew B. Taladay, Esq. Verification s/Robert Smeal Certificate of Service no cc	No Judge	✓
	Complaint To Join Additional Defendant. Filed by s/Matthew B. Taladay, Esq. Verification s/Robert Smeal Certificate of Service 1 cc to Sheriff	No Judge	✓
06/14/2002	Notice of Service, First Set of Discovery Materials upon Laurence B. Green, Esq. Filed by s/Matthew B. Taladay, Esq. no cc	No Judge	✓
06/21/2002	Reply to New Matter. Filed by s/Laurence B. Green, Esq. Verification s/John Shomo Certificate of Service no cc	No Judge	✓
06/25/2002	Amended Answer and New Matter. Filed by s/Matthew B. Taladay, Esq. Verification s/Matthew B. Taladay, Esq. Certificate of Service no cc	No Judge	✓
06/28/2002	Notice of Service, Responses To Plaintiffs' First Set of Discovery Materials upon Laurence B. Green, Esq. Filed by s/Matthew B. Taladay, Esq. no cc	No Judge	✓
07/17/2002	Reply to Amended New Matter. Filed by s/Laurence B. Green, Esq. Verification s/John Shomo Certificate of Service no cc	No Judge	✓
07/18/2002	Notice of Service of Answers to Interrogatories and Response to Request for Production of Documents Directed to Plaintiff upon Matthew B. Taladay, Esquire. filed by s/Laurence B. Green, Esq. no cc	No Judge	✓
08/12/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge	✓
10/21/2002	Certificate of Service, Notice of Deposition of John Shome and Eric Huber upon Laurence B. Green, Esq. and Kimberly M. Kubista, Esq. filed by s/Matthew B. Taladay, Esq. no cc	No Judge	
02/03/2003	Answer To Complaint To Join Additional Defendant. filed by s/Kimberly M. Kubista, Esquire Verification s/Eric Huber Certificate of Service no cc	No Judge	✓
07/18/2003	Certificate of Readiness. filed by s/Matthew B. Taladay, Esquire no cc Copy to C/A	No Judge	✓
08/01/2003	Praeipce For Entry Of Appearance On Behalf Of Plaintiff, John Shomo. filed by s/Michael W. Zimecki, Esquire Certificate of Service no cc	Fredric J. Ammerman	✓

All Case Types

CLERK OF THE COURT REPORT FOR VIOLATIONS OF THE VEHICLE CODE

Fines Part I

From 7/1/2003 to 7/31/2003

Case Number Receipt	Party Violation	Local Fines	State Fine PSP	State Fine Local PD	County Fine	State Misc Fine
Total Paid: 7/31/2003						
10-0000556-CR 33716 PP	Bailey, Robin E Fleeing or attempting to elude police officer [M/2]	12.50		12.50		
10-0000702-CR 33718 PP	Tracik, Darin Lee Driving under influence of alcohol [M/2]		8.82		8.82	
11-0001065-CR 33721 PP	Delisle, David Lynn Careless driving [S]	5.00		4.99		
18-0000754-CR 33732 PP	Brown, Brian K Acc. involving damage to attended vehicle or pro		30.00			
12-0000292-CR 33747 PP	England, Copas Brooks Driving under inf. of alc. (adult blood alc. >= 0.10		50.00		50.00	
10-0000397-CR 33754 PP	Domanick, Randy Lynn Driving under influence of alcohol [M/2]		25.00		25.00	
Report Totals:		2935.81	2976.67	2923.29	1276.88	25.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

No.: 02-720-00

COMPLAINT IN CIVIL ACTION

JURY TRIAL DEMANDED

Filed on Behalf of:
John Shomo, Plaintiff

Counsel of Record for this Party:

Laurence B. Green
PA ID# 10399
BERGER AND GREEN
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

FILED

MAY 06 2002

m/3.11/atty Green pd
William A. Shaw & 80.00
Prothonotary

1 cc Sherry

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,	:	CIVIL ACTION
	:	
Plaintiff,	:	No.:
	:	
	:	
vs.	:	
	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant.	:	

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

COMPLAINT IN CIVIL ACTION

The Plaintiff, John Shomo, by his attorneys, Berger and Green and Laurence B. Green, Esquire, files the within Complaint in Civil Action and in support thereof states as follows:

1. John Shomo, Plaintiff herein, is an adult individual residing at P.O. Box 274, Ramey, Clearfield County, Pennsylvania 16671.

2. Robert Smeal, Defendant herein, is an adult individual who resides at R.R.1, Box 738, Houtzdale, Clearfield County, Pennsylvania 16651 and was the operator of a 1985 Chevrolet truck at the time of the events complained of herein.

3. The events complained of happened on or about September 2, 2000 approximately one mile off of Hale Road on an old logging road in Gulich Township, County of Clearfield, Pennsylvania.

4. At that time and place, the Plaintiff, John Shomo, was a passenger on the back of a Honda Recon fourwheeler operated by Eric Huber who resides at 741 Don Street, Houtzdale, Clearfield County, Pennsylvania 16651.

5. On or about September 2, 2000, the Defendant, Robert Smeal, was operating the 1985 Chevrolet truck on the narrow dirt road and around a bend in the opposite direction of, and was proceeding towards, the Huber Honda Recon fourwheeler. The Defendant, Robert Smeal, operated his vehicle in a negligent, careless and reckless manner and allowed the front of his vehicle to violently strike the front of the Huber vehicle, causing the Plaintiff, John Shomo, to sustain serious personal injuries as are more fully set forth below.

6. As a direct and proximate result of the negligence of the Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, was caused to suffer and sustain serious injuries including the following:

- a) Injuries to his head, pelvis and left leg;
- b) Loss of consciousness;
- c) Transverse mid-shaft fracture of the tibia and fibula on the left side requiring intra-medullary nail fixation of the tibia fracture;
- d) Permanent, serious, disfiguring scarring of the left leg;
- e) Residual left leg limp;
- f) Loss of life's pleasures; and
- g) Trauma.

7. As a direct and proximate result of the negligence of Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, has suffered in the past and, for an indefinite period of time in the future, will suffer the following:

- a) Pain, suffering, interrupted sleep and inconvenience;
- b) Fright, shock, worry, humiliation, anxiety, irritation, annoyance and other forms of distress;
- c) Limitations of movement of various parts of his body and more particularly his left leg;
- d) Loss of earnings;
- e) Impairment of his earning capacity;
- f) Impairment of his general health, strength and vitality;
- g) Inability to continue in his usual activities; and
- h) Loss of life's pleasures

8. The Plaintiff, John Shomo, believes and therefore avers that some of the aforesaid damages and injuries may be of a permanent and lasting nature.

9. As a further direct and proximate result of the negligence of the Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, has been in the past and may be for an indefinite period of time in the future, unable to engage in his usual activities.

10. As a further direct and proximate result of the negligence of the Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, has been in the past and may, for an indefinite period of time in the future, be required to spend substantial sums of money for medicines, medical, nursing, hospital, surgical attention and other incidental expenses in an attempt to effectuate a cure for himself as a result of the injuries sustained in the accident.

11. The aforementioned injuries and damages were caused directly and proximately by the negligence of the Defendant, Robert Smeal, in general and more particularly in the following manner:

- a) The Defendant was inattentive and failed to maintain a sharp observation of the road;
- b) The Defendant failed to maintain a proper lookout;
- c) The Defendant failed to watch or look where the motor vehicle was being operated;
- d) The Defendant failed to use the degree of care, skill and caution required under the circumstances;
- e) The Defendant operated the motor vehicle at an excessive, dangerous and reckless rate of speed under the circumstances;

- f) The Defendant failed to keep the motor vehicle under control, or to bring it under control when the Defendant knew or, in the exercise of due care and caution, should have known that to fail to do so would likely result in injuries and damages to the Plaintiff;
- g) The Defendant operated his motor vehicle at a speed greater than was reasonable and prudent under the conditions, having no regard for the actual and potential hazards existing, and at a speed greater than was permitted to bring the motor vehicle under control and to stop within an assured clear distance ahead in violation of 75 Pa. C.S.A. §3361;
- h) The Defendant operated the motor vehicle at a speed greater than was reasonable and prudent under the conditions then and there existing, having no regard for the actual and potential hazards existing;
- i) The Defendant operated the motor vehicle with careless disregard for the safety of persons or properties in violation of 75 Pa. C.S. §3714; and
- j) The Defendant failed to operate the brakes in such a manner so that the motor vehicle could be stopped before striking the vehicle on which the Plaintiff was a passenger.

WHEREFORE, Plaintiff, John Shomo, requests this Court to enter Judgment for compensatory damages in his favor and against Defendant, Robert Smeal, in an amount in excess of the arbitration limits of this Court.

JURY TRIAL DEMANDED

Respectfully submitted,

BERGER AND GREEN, P.C.

By: 

Laurence B. Green, Esquire
Attorney for Plaintiff
BERGER AND GREEN, P.C.
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

VERIFICATION

I, John Shomo, do hereby verify that the statements made herein are true and correct to the best of my knowledge, information and belief and that these statements are made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn falsification to authorities.



John Shomo

DATE: 4-22-02

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12488

SHOMO, JOHN

02-720-CD

VS.

SMEAL, ROBERT

COMPLAINT

SHERIFF RETURNS

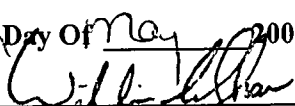
NOW MAY 13, 2002 AT 1:31 PM DST SERVED THE WITHIN COMPLAINT ON
ROBERT SMEAL, DEFENDANT AT RESIDENCE RR#1 BOX 738, HOUTZDALE,
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO EDWARD L. SMEAL,
FATHER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND
MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING.

Return Costs

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

Sworn to Before Me This

20th Day of May, 2002



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

So Answers,


by Nevling
Chester A. Hawkins

Sheriff

FILED

MAY 20 2002
01323
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

: Type of Case: Civil Action
:
:
: No. 02-720-CD
:
:
: Type of Pleading:
:
:
: Praeipie for
: Entry of Appearance
:
:
: Filed on Behalf of:
:
:
: Defendant
:
:
: Counsel of Record for This
: Party:
:
:
: Matthew B. Taladay, Esq.
: Supreme Court No. 49663
: Hanak, Guido and Taladay
: 498 Jeffers Street
: P.O. Box 487
: DuBois, PA 15801
:
:
: (814) 371-7768

FILED

MAY 24 2002

William A. Shaw
Prothonotary

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

JOHN SHOMO,

Plaintiff

-vs-

ROBERT SMEAL,

Defendant

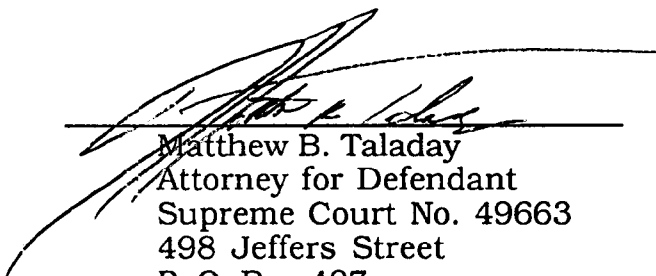
No. 02-720-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for the Defendant, Robert
Smeal, in the above captioned matter.

Dated: 5-23-02


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

cc: Laurence B. Green, Esq.
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232

FILED

MAY 24 2002

William A. Shaw
Prothonotary

cc

3001 101 101

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

CIVIL DIVISION

No.: 02-720-CD

NOTICE OF SERVICE OF
INTERROGATORIES AND
REQUEST FOR PRODUCTION
OF DOCUMENTS DIRECTED
TO THE DEFENDANT

Filed on Behalf of:

John Shomo,
Plaintiff

Counsel of Record for
this Party:

Laurence B. Green, Esquire
PA ID# 10399
BERGER AND GREEN, P.C.
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

FILED

MAY 9 1 2002

m1152/nac
William A. Shaw
Prothonotary



~~Laurence B. Green, Esquire~~
Attorney for the Plaintiff,
John Shomo

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Answer and
New Matter

Filed on Behalf of:

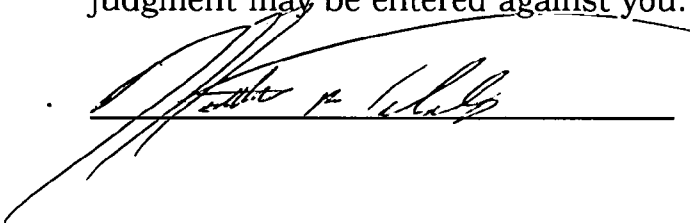
Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

You are hereby notified to plead
to the within pleading within twenty
(20) days of service thereof or default
judgment may be entered against you.



FILED

JUN 11 2002

0110:381noce
William A. Shaw
Prothonotary

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

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Robert Smeal, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted. However, by further answer, it is averred that Defendants' current correct address is 55 Long Street, Houtzdale, Pennsylvania 16671.
3. Admitted.
4. Admitted. By way of further answer, it is averred that Brian Nolan of Moran, Pennsylvania, was also a passenger on the four wheeler operated by Eric Huber.
5. Admitted in part and denied in part. It is denied that Robert Smeal in any way operated his vehicle in a negligent, careless or reckless manner or that he allowed the front of his vehicle to violently strike the front end of the Huber vehicle. It is further

denied that the actions of Robert Smeal in any way resulted in injuries to Plaintiff. The remaining allegations of paragraph 5 are admitted.

6. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 6, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

7. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 7, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

8. After reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of averments contained in paragraph 8 and therefore strict proof thereof is demanded at trial.

9. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 9, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

10. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 10, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

11. Denied.

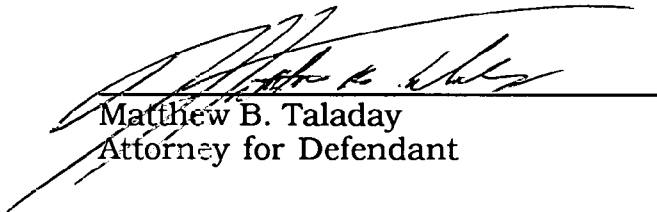
WHEREFORE, Defendant Smeal demands judgment in his favor.

NEW MATTER

12. Defendant incorporates the allegations of paragraphs 1 through 11 of the Complaint and his responses thereto as if set forth in full.

13. Plaintiff's claims are barred or limited by the provisions of the Motor Vehicle Financial Responsibility Law regarding limited tort coverage.

WHEREFORE, Defendant demands judgment in his favor.



Matthew B. Taladay
Attorney for Defendant

VERIFICATION

I, **Robert Smeal**, do hereby verify that I have read the foregoing Answer & New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 06-06-02

Robert Smeal
Robert Smeal

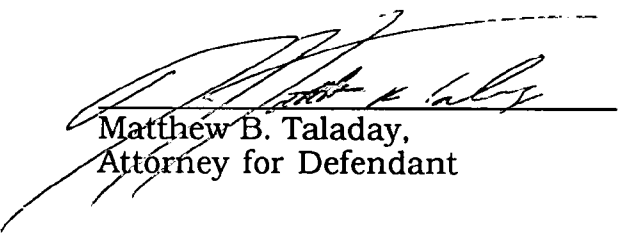
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 10th day of June, 2002, a true and correct copy of Defendant's Answer and New Matter was sent via first class mail, postage prepaid, to the following:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

-vs-

ERIC HUBER,
Additional Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Complaint to Join
Additional Defendant

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

JUN 11 2002

m/10:39/1cc-Shaw
William A. Shaw
Prothonotary
E1
KSA

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

JOHN SHOMO,
Plaintiff

-VS-

ROBERT SMEAL,
Defendant

-VS-

ERIC HUBER,
Additional Defendant

No. 02-720-CD

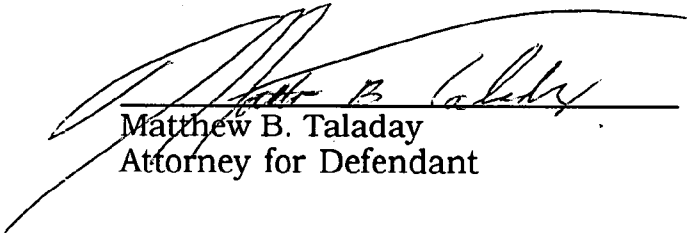
NOTICE

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 Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Office of Court Administrator
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

(814) 765-2641 Ext. 1303



Matthew B. Taladay
Attorney for Defendant

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

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

-vs-

ERIC HUBER,
Additional Defendant

No. 02-720-CD

COMPLAINT TO JOIN ADDITIONAL DEFENDANT

AND NOW, comes the Defendant and Third Party Plaintiff, ROBERT SMEAL, by and through his attorneys, HANAK, GUIDO AND TALADAY, and brings the within Complaint to Join Additional Defendant against Eric Huber, averring as follows:

1. Robert Smeal is an adult individual who resides at R.R. #1, Box 738, Houtzdale, Clearfield County, Pennsylvania 16651.
2. Eric Huber is an individual whose last known address is 741 Don Street, Houtzdale, Clearfield County, Pennsylvania 16651.
3. On or about September 2, 2000, a Honda Recon 4 wheeler operated by Eric Huber collided with a 1985 Chevrolet truck operated by Robert Smeal. This collision took place near Houtzdale, Clearfield County, Pennsylvania.
4. As a result of the above referenced collision, John Shomo has instituted the above captioned lawsuit seeking damages for

personal injuries and naming as Defendant Robert Smeal. A copy of that Complaint is attached hereto as Exhibit "A".

5. Robert Smeal has filed an Answer and New Matter to the Complaint which is attached hereto as Exhibit "B". The Complaint and Answer and New Matter are incorporated herein by reference.

6. The injuries, if any, sustained by John Shomo as a result of the above referenced collision are solely and proximately a result of the negligence of Additional Defendant, Eric Huber, which is as follows:

(a) In operating his four wheeler at a speed too fast for conditions there and then prevailing;

(b) In failing to keep a lookout for oncoming traffic while operating his four wheeler on a logging road;

(c) In failing to remain attentive to road conditions ahead;

(d) In operating the vehicle in careless disregard for the safety of his passenger, John Shomo;

(e) In failing to exercise reasonable care and caution as conditions prevailing required;

(f) In carrying two passengers on his four wheeler when he knew or should have known that to do so would impair his ability to safely operate the vehicle;

(g) In failing to require his passengers to wear proper head protection; and

(h) In operating his four wheeler in violation of the laws of the Commonwealth of Pennsylvania regarding operation of off road vehicles.

7. As a result of the negligence aforesaid, Additional Defendant, Eric Huber, is solely or partially liable for injuries sustained by Plaintiff as a result of the collision of September 2, 2000.

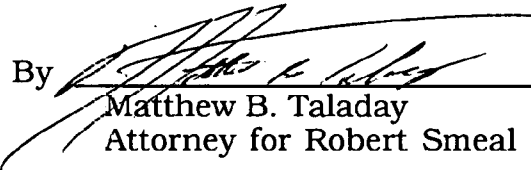
8. In the event that Robert Smeal is found to be responsible for the injuries of John Shomo, he is entitled to indemnification in whole or in part by Additional Defendant Huber under the principles of indemnification, contribution and liability over.

WHEREFORE, Third Party Plaintiff, Robert Smeal, demands judgment in his favor and against Additional Defendant, Eric Huber.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By


Matthew B. Taladay

Attorney for Robert Smeal

VERIFICATION

I, **Robert Smeal**, do hereby verify that I have read the foregoing COMPLAINT TO JOIN ADDITIONAL DEFENDANT. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 6-6-02

Robert Smeal
Robert Smeal

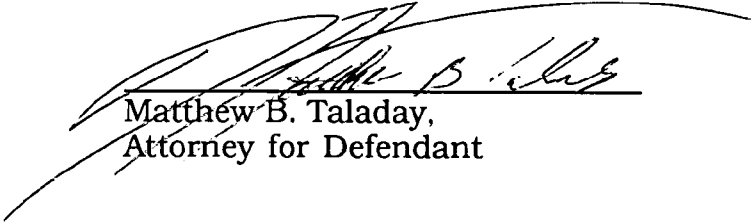
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN SHOMO,	:	
Plaintiff	:	
-vs-	:	
ROBERT SMEAL,	:	No. 02-720-CD
Defendant	:	
-vs-	:	
ERIC HUBER,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 10th day of June, 2002, a true and correct copy of Defendant's Complaint to Join Additional Defendant was sent via first class mail, postage prepaid, to the following:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

No.: 02-720-CD

COMPLAINT IN CIVIL ACTION

JURY TRIAL DEMANDED

Filed on Behalf of:
John Shomo, Plaintiff

Counsel of Record for this Party:

Laurence B. Green
PA ID# 10399
BERGER AND GREEN
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

CIVIL ACTION

No.:

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

COMPLAINT IN CIVIL ACTION

The Plaintiff, John Shomo, by his attorneys, Berger and Green and Laurence B. Green, Esquire, files the within Complaint in Civil Action and in support thereof states as follows:

1. John Shomo, Plaintiff herein, is an adult individual residing at P.O. Box 274, Ramey, Clearfield County, Pennsylvania 16671.

2. Robert Smeal, Defendant herein, is an adult individual who resides at R.R.1, Box 738, Houtzdale, Clearfield County, Pennsylvania 16651 and was the operator of a 1985 Chevrolet truck at the time of the events complained of herein.

3. The events complained of happened on or about September 2, 2000 approximately one mile off of Hale Road on an old logging road in Gulich Township, County of Clearfield, Pennsylvania.

4. At that time and place, the Plaintiff, John Shomo, was a passenger on the back of a Honda Recon fourwheeler operated by Eric Huber who resides at 741 Don Street, Houtzdale, Clearfield County, Pennsylvania 16651.

5. On or about September 2, 2000, the Defendant, Robert Smeal, was operating the 1985 Chevrolet truck on the narrow dirt road and around a bend in the opposite direction of, and was proceeding towards, the Huber Honda Recon fourwheeler. The Defendant, Robert Smeal, operated his vehicle in a negligent, careless and reckless manner and allowed the front of his vehicle to violently strike the front of the Huber vehicle, causing the Plaintiff, John Shomo, to sustain serious personal injuries as are more fully set forth below.

6. As a direct and proximate result of the negligence of the Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, was caused to suffer and sustain serious injuries including the following:

- a) Injuries to his head, pelvis and left leg;
- b) Loss of consciousness;
- c) Transverse mid-shaft fracture of the tibia and fibula on the left side requiring intra-medullary nail fixation of the tibia fracture;
- d) Permanent, serious, disfiguring scarring of the left leg;
- e) Residual left leg limp;
- f) Loss of life's pleasures; and
- g) Trauma.

7. As a direct and proximate result of the negligence of Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, has suffered in the past and, for an indefinite period of time in the future, will suffer the following:

- a) Pain, suffering, interrupted sleep and inconvenience;
- b) Fright, shock, worry, humiliation, anxiety, irritation, annoyance and other forms of distress;
- c) Limitations of movement of various parts of his body and more particularly his left leg;
- d) Loss of earnings;
- e) Impairment of his earning capacity;
- f) Impairment of his general health, strength and vitality;
- g) Inability to continue in his usual activities; and
- h) Loss of life's pleasures

8. The Plaintiff, John Shomo, believes and therefore avers that some of the aforesaid damages and injuries may be of a permanent and lasting nature.

9. As a further direct and proximate result of the negligence of the Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, has been in the past and may be for an indefinite period of time in the future, unable to engage in his usual activities.

10. As a further direct and proximate result of the negligence of the Defendant, Robert Smeal, as is more fully set forth below, the Plaintiff, John Shomo, has been in the past and may, for an indefinite period of time in the future, be required to spend substantial sums of money for medicines, medical, nursing, hospital, surgical attention and other incidental expenses in an attempt to effectuate a cure for himself as a result of the injuries sustained in the accident.

11. The aforementioned injuries and damages were caused directly and proximately by the negligence of the Defendant, Robert Smeal, in general and more particularly in the following manner:

- a) The Defendant was inattentive and failed to maintain a sharp observation of the road;
- b) The Defendant failed to maintain a proper lookout;
- c) The Defendant failed to watch or look where the motor vehicle was being operated;
- d) The Defendant failed to use the degree of care, skill and caution required under the circumstances;
- e) The Defendant operated the motor vehicle at an excessive, dangerous and reckless rate of speed under the circumstances;

- f) The Defendant failed to keep the motor vehicle under control, or to bring it under control when the Defendant knew or, in the exercise of due care and caution, should have known that to fail to do so would likely result in injuries and damages to the Plaintiff;
- g) The Defendant operated his motor vehicle at a speed greater than was reasonable and prudent under the conditions, having no regard for the actual and potential hazards existing, and at a speed greater than was permitted to bring the motor vehicle under control and to stop within an assured clear distance ahead in violation of 75 Pa. C.S.A. §3361;
- h) The Defendant operated the motor vehicle at a speed greater than was reasonable and prudent under the conditions then and there existing, having no regard for the actual and potential hazards existing;
- i) The Defendant operated the motor vehicle with careless disregard for the safety of persons or properties in violation of 75 Pa. C.S. §3714; and
- j) The Defendant failed to operate the brakes in such a manner so that the motor vehicle could be stopped before striking the vehicle on which the Plaintiff was a passenger.

WHEREFORE, Plaintiff, John Shomo, requests this Court to enter Judgment for compensatory damages in his favor and against Defendant, Robert Smeal, in an amount in excess of the arbitration limits of this Court.

JURY TRIAL DEMANDED

Respectfully submitted,

BERGER AND GREEN, P.C.

By: 

Laurence B. Green, Esquire
Attorney for Plaintiff
BERGER AND GREEN, P.C.
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

CIVIL ACTION

No.:

INSTRUCTIONS FOR SERVICE OF PROCESS

TO THE SHERIFF OF CLEARFIELD COUNTY:

Please serve the defendant, Robert Smeal, in accordance with the provisions of Pa.R.C.P. 402, by handing a copy of the Complaint in Civil Action to him, an adult member of his family with whom he resides or an adult person for the time being in charge of such residence at R.R.1, Box 738, Houtzdale, Clearfield County, Pennsylvania 16651. The defendant's telephone number is 814-378-8196.

BERGER AND GREEN, P.C.

By:

Laurence B. Green, Esquire
Attorney for Plaintiff

BERGER AND GREEN, P.C.
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232

(412) 661-1400

VERIFICATION

I, John Shomo, do hereby verify that the statements made herein are true and correct to the best of my knowledge, information and belief and that these statements are made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn falsification to authorities.



John Shomo

DATE: 4-22-02

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Answer and
New Matter

Filed on Behalf of:

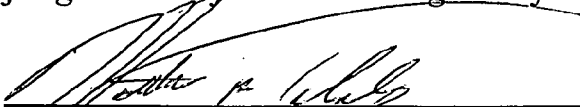
Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

You are hereby notified to plead
to the within pleading within twenty
(20) days of service thereof or default
judgment may be entered against you.



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

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Robert Smeal, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted. However, by further answer, it is averred that Defendants' current correct address is 55 Long Street, Houtzdale, Pennsylvania 16671.
3. Admitted.
4. Admitted. By way of further answer, it is averred that Brian Nolan of Moran, Pennsylvania, was also a passenger on the four wheeler operated by Eric Huber.
5. Admitted in part and denied in part. It is denied that Robert Smeal in any way operated his vehicle in a negligent, careless or reckless manner or that he allowed the front of his vehicle to violently strike the front end of the Huber vehicle. It is further

denied that the actions of Robert Smeal in any way resulted in injuries to Plaintiff. The remaining allegations of paragraph 5 are admitted.

6. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 6, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

7. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 7, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

8. After reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of averments contained in paragraph 8 and therefore strict proof thereof is demanded at trial.

9. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 9, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

10. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 10, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

11. Denied.

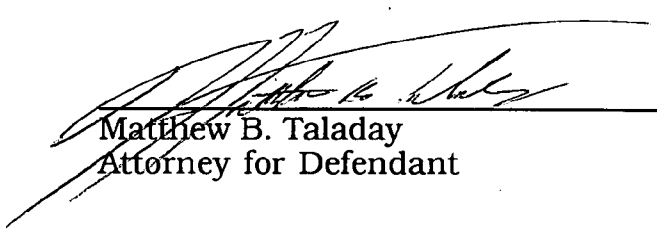
WHEREFORE, Defendant Smeal demands judgment in his favor.

NEW MATTER

12. Defendant incorporates the allegations of paragraphs 1 through 11 of the Complaint and his responses thereto as if set forth in full.

13. Plaintiff's claims are barred or limited by the provisions of the Motor Vehicle Financial Responsibility Law regarding limited tort coverage.

WHEREFORE, Defendant demands judgment in his favor.



Matthew B. Taladay
Attorney for Defendant

VERIFICATION

I, **Robert Smeal**, do hereby verify that I have read the foregoing Answer & New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 06-06-02

Robert Smeal
Robert Smeal

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

JOHN SHOMO,

Plaintiff

-vs-

No. 02-720-CD

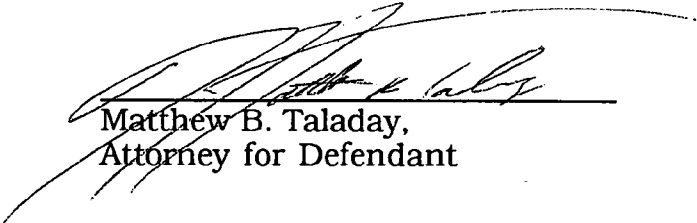
ROBERT SMEAL,

Defendant

CERTIFICATE OF SERVICE

I certify that on the 10th day of June, 2002, a true and correct copy of Defendant's Answer and New Matter was sent via first class mail, postage prepaid, to the following:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Notice of
Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

JUN 14 2002

m/10:47/mcc
William A. Shaw
Prothonetary

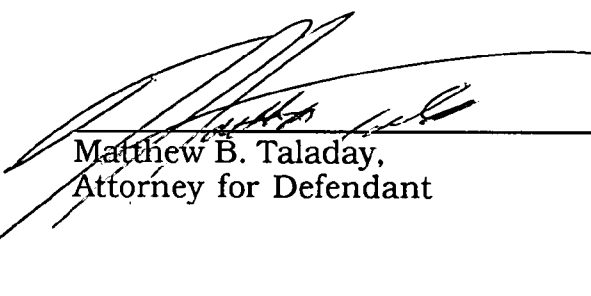
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being counsel of record for Defendant, do hereby certify that I propounded on Plaintiffs, via United States mail, first class, postage pre-paid, this 13th day of June, 2002, Defendant's FIRST SET OF DISCOVERY MATERIALS to the below indicated person, at said address, being counsel of record for the Plaintiff:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232



Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

No.: 02-720-CD

REPLY TO NEW MATTER

JURY TRIAL DEMANDED

Filed on Behalf of:
John Shomo, Plaintiff

Counsel of Record for this Party:

Laurence B. Green
PA ID# 10399
BERGER AND GREEN
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

FILED

JUN 21 2002

m1:09/ncc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,	:	CIVIL ACTION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant.	:	

REPLY TO NEW MATTER

AND NOW comes the Plaintiff, John Shomo, by his attorneys, Berger and Green and vows his reply to new matter as follows:

12. Plaintiff incorporates the allegations of paragraphs 1 through 11 of his Complaint as if fully set forth herein.

13. The allegations of paragraph 13 constitute conclusions of law to which no responsive pleading is required, and are therefore denied. To the extent, if any, it is subsequently deemed that a responsive pleading is required, the averments of paragraph 13 are specifically denied. To the contrary, the claims of the Plaintiff are neither barred nor limited in any way by limited tort, since the injuries that the Plaintiff sustained in this accident are extremely serious and long lasting in nature. Therefore, the Plaintiff is entitled to recover all of his non-economic as well as economic damages caused by the negligence of the Defendant.

WHEREFORE, the Plaintiff demands judgment against the Defendant.

JURY TRIAL DEMANDED

Respectfully submitted,

BERGER AND GREEN, P.C.

By: 

Laurence B. Green, Esquire
Attorney for Plaintiff
BERGER AND GREEN, P.C.
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

VERIFICATION

I, John Shomo, do hereby verify that the statements made herein are true and correct to the best of my knowledge, information and belief and that these statements are made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn falsification to authorities.



John Shomo

DATE: 6-17-02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing **Reply to New Matter** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 19th day of June, 2002:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

A handwritten signature in black ink, appearing to be 'LB', is written over a horizontal line.

Laurence B. Green, Esquire
PA I.D. #10399
Attorney for the Plaintiff,
John Shomo

BERGER AND GREEN, P.C.

Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232

(412) 661-1400

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff
-vs-
ROBERT SMEAL,
Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Amended Answer
and New Matter

Filed on Behalf of:

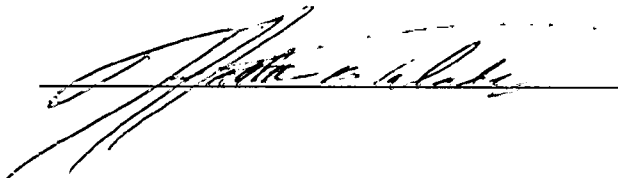
Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

You are hereby notified to plead
to the within pleading within twenty
(20) days of service thereof or default
judgment may be entered against you.



FILED

JUN 25 2002

m/10:17/NOCC
William A. Shaw
Prothonotary

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

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

AMENDED ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Robert Smeal, by his attorneys, Hanak, Guido and Taladay, and hereby responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted. However, by further answer, it is averred that Defendants' current correct address is 55 Long Street, Houtzdale, Pennsylvania 16671.
3. Admitted.
4. Admitted. By way of further answer, it is averred that Brian Nolan of Moran, Pennsylvania, was also a passenger on the four wheeler operated by Eric Huber.
5. Admitted in part and denied in part. It is denied that Robert Smeal in any way operated his vehicle in a negligent, careless or reckless manner or that he allowed the front of his vehicle to violently strike the front end of the Huber vehicle. It is further

denied that the actions of Robert Smeal in any way resulted in injuries to Plaintiff. The remaining allegations of paragraph 5 are admitted.

6. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 6, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

7. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 7, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

8. After reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of averments contained in paragraph 8 and therefore strict proof thereof is demanded at trial.

9. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 9, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

10. Defendant Smeal denies all allegations of negligence. With regard to the remaining averments of paragraph 10, after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to their truth and therefore strict proof thereof is demanded at trial.

11. Denied.

WHEREFORE, Defendant Smeal demands judgment in his favor.

NEW MATTER

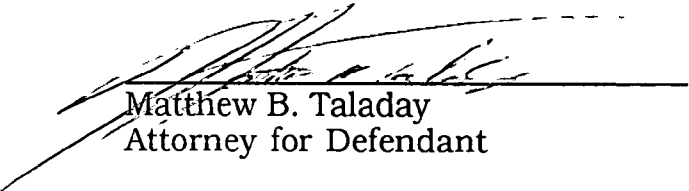
12. Defendant incorporates the allegations of paragraphs 1 through 11 of the Complaint and his responses thereto as if set forth in full.

13. Plaintiff's claims are barred or limited by the provisions of the Motor Vehicle Financial Responsibility Law regarding limited tort coverage.

14. Plaintiff's claims are barred or limited by the Doctrine of Comparative Negligence based on Plaintiff's own negligence which is as follows:

- (a) In riding as a passenger on an overloaded ATV;
- (b) In riding on an ATV without proper protective apparel;
- (c) In knowingly and voluntarily riding as a passenger on an ATV in violation of the applicable Pennsylvania statutes;
- (d) In riding as a passenger on a four wheeler operated by Eric Huber when he knew or should have known that to do so was dangerous and would potentially result in injury;
- (e) In riding as a passenger on a four wheeler operated by Eric Huber when he knew or should have known that Mr. Huber would operate the vehicle in a negligent, reckless or careless manner.

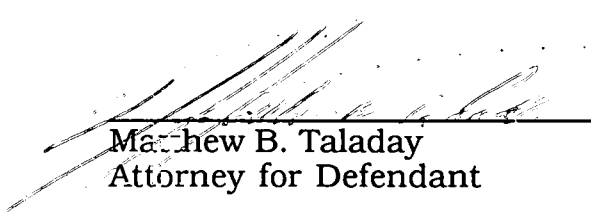
WHEREFORE, Defendant demands judgment in his favor.


Matthew B. Taladay
Attorney for Defendant

VERIFICATION

I, Matthew B. Taladay, hereby verify that the statements contained in the foregoing Amended Answer and New Matter are correct to the best of my personal knowledge or information and belief based on information provided to me and I am authorized to make this verification on behalf of Defendant because of my position as counsel of record.

June 21, 2002


Matthew B. Taladay
Attorney for Defendant

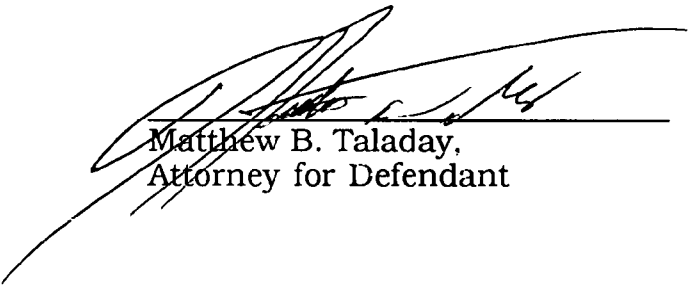
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 24th day of June, 2002, a true and correct copy of Defendant's Amended Answer and New Matter was sent via first class mail, postage prepaid, to the following:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Notice of
Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

JUN 28 2002

m/10:26/NOCC
William A. Shaw
Prothonotary

RET

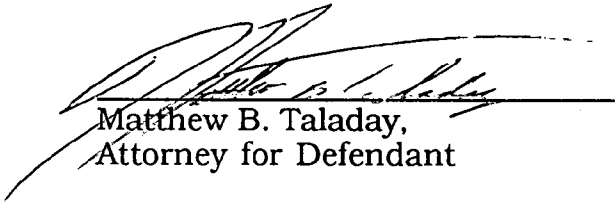
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-720-CD
	:	
ROBERT SMEAL,	:	
Defendant	:	

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being counsel of record for Defendant, do hereby certify that I forwarded via United States mail, first class, postage pre-paid, this 27th day of June, 2002 Defendant's RESPONSES TO PLAINTIFFS' FIRST SET OF DISCOVERY MATERIALS to the below indicated person, at said address. being counsel of record for the Plaintiff:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

No.: 02-720-CD

REPLY TO AMENDED NEW
MATTER

JURY TRIAL DEMANDED

Filed on Behalf of:
John Shomo, Plaintiff

Counsel of Record for this Party:

Laurence B. Green
PA ID# 10399
BERGER AND GREEN
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

FILED

JUL 17 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

JOHN SHOMO,	:	CIVIL ACTION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
	:	
vs.	:	
	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant.	:	

REPLY TO AMENDED NEW MATTER

AND NOW comes the Plaintiff, John Shomo, by his attorneys, Berger and Green by Laurence B. Green, Esquire, and sets forth his reply to Defendant's Amended New Matter as follows:

12. Plaintiff incorporates the allegations of paragraphs 1 through 11 of his Complaint as if fully set forth herein.

13. The allegations of paragraph 13 constitute conclusions of law to which no responsive pleading is required, and are therefore denied. To the extent, if any, it is subsequently deemed that a responsive pleading is required, the averments of paragraph 13 are specifically denied. To the contrary, the claims of the Plaintiff are neither barred nor limited in any way by limited tort, since the injuries that the Plaintiff sustained in this accident are extremely serious and long lasting in nature. Therefore, the Plaintiff is entitled to recover all of his non-economic as well as economic damages caused by the negligence of the Defendant.

14. The allegations of paragraph 14 constitute conclusions of law to which no responsive pleading is required, and are therefore denied. To the extent, if any, it is subsequently deemed that a responsive pleading is required, the averments of paragraph 14 are specifically denied. To the contrary, the claims of the Plaintiff are neither barred nor limited by the Doctrine of Comparative Negligence. Plaintiff denies riding on an overloaded ATV; without proper protective apparel; in violation of Pennsylvania statutes; or in knowing that to do so was dangerous or that Eric Huber was, or would be negligent, reckless or careless. To the contrary, at all times Plaintiff acted in a reasonable and prudent manner.

WHEREFORE, the Plaintiff demands judgment against the Defendant.

JURY TRIAL DEMANDED

Respectfully submitted,


BERGER AND GREEN, P.C.

By: 

Laurence B. Green, Esquire
Attorney for Plaintiff
BERGER AND GREEN, P.C.
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

VERIFICATION

I, John Shomo, do hereby verify that the statements made herein are true and correct to the best of my knowledge, information and belief and that these statements are made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn falsification to authorities.



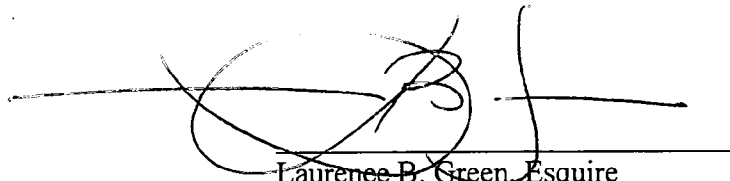
John Shomo

DATE: 7-12-02

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Reply to Amended New Matter** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 15th day of July, 2002:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

A handwritten signature in black ink, appearing to read 'L. B. Green', is written over a horizontal line.

Laurence B. Green, Esquire
PA I.D. #10399
Attorney for the Plaintiff,
John Shomo

BERGER AND GREEN, P.C.
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232

(412) 661-1400

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

: CIVIL DIVISION

: No.: 02-720-CD

: NOTICE OF SERVICE OF
: ANSWERS TO
: INTERROGATORIES AND
: RESPONSE TO REQUEST
: FOR PRODUCTION
: OF DOCUMENTS DIRECTED
: TO THE PLAINTIFF

: Filed on Behalf of:

: John Shomo,
: Plaintiff

: Counsel of Record for
: this Party:

: Laurence B. Green, Esquire
: PA ID# 10399
: BERGER AND GREEN, P.C.
: Firm #777
: 5850 Ellsworth Avenue
: Suite 200
: Pittsburgh, PA 15232
: (412) 661-1400

FILED

JUL 18 2002

William A. Shaw
Prothonetary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant.

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CIVIL DIVISION

No.: 02-720-CD

NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES AND
RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO
PLAINTIFF

I hereby certify that true and correct copies of Answers to Interrogatories and Response to Request for Production of Documents Directed to the Plaintiff were served by first class, U.S. Mail, postage pre-paid, this 15th day of July, 2002, on the party listed below:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
(814) 371-7768

Respectfully submitted,

BERGER AND GREEN, P.C.

By: 

Laurence B. Green, Esquire
Attorney for the Plaintiff,
John Shomo

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12631

SHOMO, JOHN

02-720-CD

VS.

SMEAL, ROBERT -vs- ERIC HUBER

COMPLAINT TO JOIN ADDITIONAL DEFENDANT

SHERIFF RETURNS

NOW JUNE 26, 2002 AT 10:10 AM DST SERVED THE WITHIN COMPLAINT TO JOIN ADDITIONAL DEFENDANT ON ERIC HUBER, DEFENDANT AT RESIDENCE, 741 DON ST., HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MARY HUBER, MOTHER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT TO JOIN ADDITIONAL DEFENDANT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
41.74	SHFF. HAWKINS PAID BY; ATTY.
10.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

12th Day Of August 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
by Mary Ann Harris
Chester A. Hawkins
Sheriff

FILED

AUG 12 2002
01:40
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

-vs-

ERIC HUBER,
Additional Defendant

Type of Case: Civil Action

No. 02-720-CD

Type of Pleading:

Certificate
of Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

OCT 21 2002

William A. Shaw
Prothonotary

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

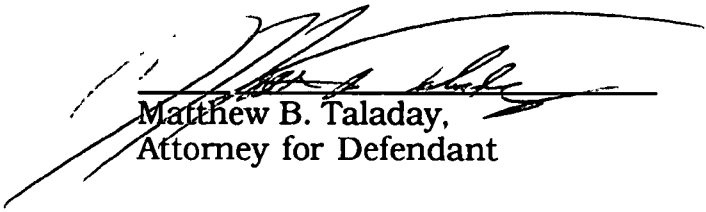
JOHN SHOMO,	:	
Plaintiff	:	
-vs-	:	
ROBERT SMEAL,	:	No. 02-720-CD
Defendant	:	
-vs-	:	
ERIC HUBER,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 18th day of October, 2002, a Notice of Deposition of John Shomo and a Notice of Deposition of Eric Huber, copies of which are attached hereto, were sent via first class mail, postage prepaid, to the following:

Laurence B. Green, Esq.
Attorney for Plaintiff
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232

Kimberly M. Kubista, Esq.
Attorney for Additional Defendant
Belin and Kubista
P.O. Box 1
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

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

JOHN SHOMO,
Plaintiff

-vs-

ROBERT SMEAL,
Defendant

-vs-

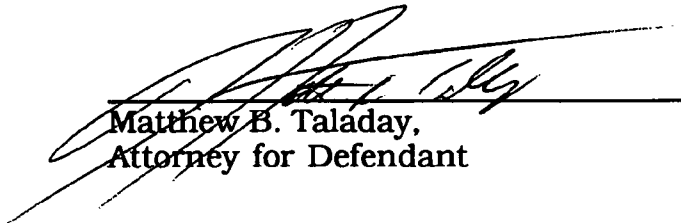
ERIC HUBER,
Additional Defendant

No. 02-720-CD

NOTICE OF DEPOSITION

TO: ERIC HUBER
c/o Kimberly M. Kubista, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Tuesday, January 7, 2003 at Noon** at the law office of Hanak, Guido and Taladay, 498 Jeffers Street, DuBois, Pennsylvania. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure regarding Discovery.



Matthew B. Taladay,
Attorney for Defendant

cc: Schreiber Reporting Service

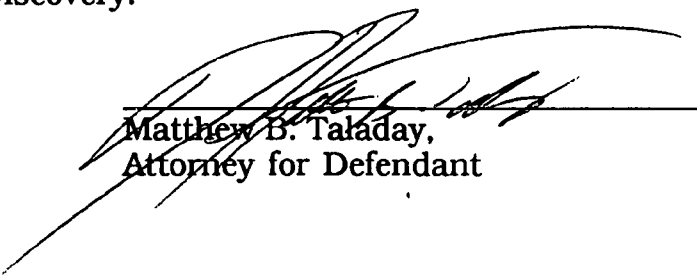
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

JOHN SHOMO,	:	
Plaintiff	:	
	:	
-vs-	:	
	:	
ROBERT SMEAL,	:	No. 02-720-CD
Defendant	:	
	:	
-vs-	:	
	:	
ERIC HUBER,	:	
Additional Defendant	:	

NOTICE OF DEPOSITION

TO: JOHN SHOMO
c/o Laurence B. Green, Esq.

TAKE NOTICE that your deposition by oral examination will be taken on **Tuesday, January 7, 2003 at 11:00 a.m.** at the law office of Hanak, Guido and Taladay, 498 Jeffers Street, DuBois, Pennsylvania. This deposition is being taken for the purpose of discovery and for use at trial, pursuant to the Pennsylvania Rules of Civil Procedure regarding Discovery.


Matthew B. Taladay,
Attorney for Defendant

cc: Schreiber Reporting Service

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

JOHN SHOMO,
Plaintiff

vs.

ROBERT SMEAL,
Defendant

vs.

ERIC HUBER,
Additional Defendant

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No. 02-720-CD

ANSWER TO COMPLAINT TO
JOIN ADDITIONAL
DEFENDANT

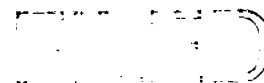
File on behalf of

Additional Defendant

Counsel of Record for
this Party:

Kimberly M. Kubista
Attorney-At-Law
Pa. I.D. 52782

BELIN & KUBISTA
15 N. Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972



FILED

William A. Shaw
Prothonotary

- a) Paragraph 6a is denied that the Additional Defendant, Eric Huber, was operating his four wheeler at a speed too fast for conditions there and then prevailing;

b) Paragraph 6b is denied that the Additional Defendant, Eric Huber, failed to keep a lookout for oncoming traffic while operating his four wheeler on a logging road;

c) Paragraph 6c is denied that Additional Defendant, Eric Huber, failed to remain attentive to road conditions ahead;

d) Paragraph 6d is denied that Additional Defendant, Eric Huber, operated the vehicle in careless disregard for the safety of his passenger, John Shomo;

e) Paragraph 6e is denied that Additional Defendant, Eric Huber, failed to exercise reasonable care and caution as conditions prevailing required;

f) Paragraph 6f is denied that Additional Defendant, Eric Huber, in carrying two passengers on his four wheeler knew or should have known that to do so would impair his ability to safely operate the vehicle;

g) Paragraph 6g is denied that Additional Defendant, Eric Huber, failed to require his passengers to wear proper head protection; and

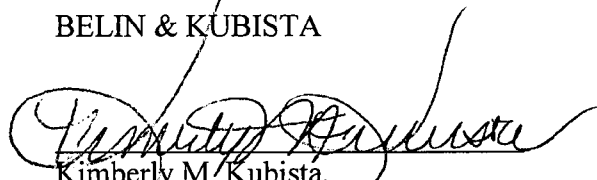
h) Paragraph 6h is denied that Additional Defendant, Eric Huber, operated his four wheeler in violation of the laws of the Commonwealth of Pennsylvania regarding operation of off road vehicles.

7. Paragraph 7 is denied that the Additional Defendant, Eric Huber, is solely or partially liable for injuries sustained by Plaintiff as a result of the collision of September 2, 2000.

8. Paragraph 8 is denied that in the event that Robert Smeal is found to be responsible for the injuries of John Shomo, he is entitled to indemnification in whole or in part by Additional Defendant, Huber, under the principles of indemnification, contribution and liability over.

WHEREFORE, third party Defendant demands judgment in his favor and against the third party Plaintiff.

BELIN & KUBISTA



Kimberly M. Kubista,
Attorney for Additional Defendant

I verify that the statements made in this Answer are true and correct. 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.

1-28-03
Date

Eric Huber
Eric Huber

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

JOHN SHOMO,
Plaintiff

vs.

ROBERT SMEAL,
Defendant

vs.

ERIC HUBER,
Additional Defendant

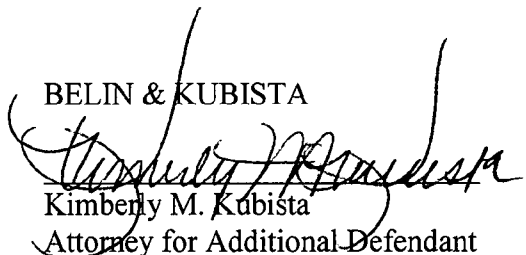
No. 02-720-CD

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of Answer to Complaint to Join Additional Defendant in the above captioned matter on the following party by first-class, postage prepaid mail on the 3rd day of February, 2003:

Mathew Taladay, Esquire
Hanak, Guido & Taladay
498 Jeffers Street
DuBois, PA 15801

BELIN & KUBISTA


Kimberly M. Kubista

Attorney for Additional Defendant

BELIN & KUBISTA

ATTORNEYS AT LAW

15 NORTH FRONT STREET

P. O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

FILED

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

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

William A. Shaw
Prothonotary

07/18/03

CASE NUMBER	TYPE TRIAL REQUESTED	DATE PRESENTED	ESTIMATED TRIAL TIME
No. 02-720-CD	(x) Jury () Non-Jury		
Date Complaint Filed:	() Arbitration		
05/06/02			2 Days

PLAINTIFF(S)

JOHN SHOMO ()
DEFENDANT(S)

ROBERT SMEAL ()
ADDITIONAL DEFENDANT(S)

ERIC HUBER ()

Check Block if
a Minor is a
Party to the
Case

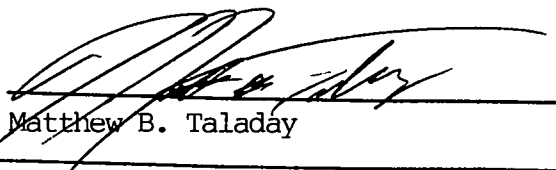
JURY DEMAND FILED BY:
Plaintiff

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
more than \$ 25,000.00	() yes () no	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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


Matthew B. Taladay

FOR THE PLAINTIFF

TELEPHONE NUMBER

Laurence B. Green, Esq.
FOR THE DEFENDANT

(412) 661-1400

TELEPHONE NUMBER

Matthew B. Taladay, Esq.
FOR ADDITIONAL DEFENDANT

(814) 371-7768

TELEPHONE NUMBER

Kimberly M. Kubista, Esq.

(814) 765-8972

FILED

NACC
copy to clA

0/3:47 88th
JUL 18 2003



William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant,

vs.

ERIC HUBER,

Additional Defendant.

CIVIL DIVISION

No.: 02-720-CD

PRECEPTE FOR ENTRY OF
APPEARANCE

Filed on behalf of
John Shomo, Plaintiff

Counsel of Record for this Party:

Michael W. Zimecki, Esquire
PA I.D. #74606

Laurence B. Green, Esquire
PA I.D. #10399
BERGER AND GREEN, P.C.
Firm #777
3850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

FILED

AUG 01 2003

William A. Shaw
Prothonotary/Clerk of Courts

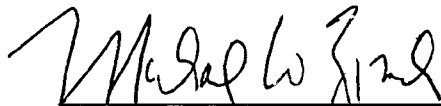
CERTIFICATE OF SERVICE

I, Michael W. Zimecki, Esquire hereby certifies that a true and correct copy of the foregoing Praecipe For Entry Of Appearance has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 30th day of July, 2003:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

Kimberly Kubista, Esquire
Belin and Kubista
15 N. Front Street
Clearfield, PA 16830

BERGER AND GREEN, P.C.



Michael W. Zimecki, Esquire
Attorney for the Plaintiff,
John Shomo

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

JOHN SHOMO,
Plaintiff

vs.

ROBERT SMEAL,
Defendant

vs.

ERIC HUBER,
Additional Defendant

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NO. 2002-720-C.D.

FILED

AUG 15 2003

**William A. Shaw
Prothonotary**

ORDER

NOW, this 15th day of August, 2003, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on August 22, 2003 commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

2. Jury Trial is hereby scheduled for November 6, 2003 and November 7 2003 commencing at 9:00 a.m. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

3. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of Trial shall submit said objections to the Court, in writing, no later than thirty (30) days prior to the commencement of Trial. All objections shall reference

specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall submit its brief in opposition to said objections no later than fifteen (15) days prior to the commencement of Trial.

4. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to trial.

By the Court,

A handwritten signature in cursive script, reading "Judge J. Ammerman", written over a horizontal line.

JUDGE FREDRIC J. AMMERMAN

FILED

AUG 15 2003

013.3.01
William A. Shaw
Prothonotary
Case to Brown

- /2 certified copies to Laurance B. Green, Esquire
- /2 certified copies to Matthew B. Taladay, Esquire
- /2 certified copies to Kimberly M. Kubista, Esquire
- 1 copy to Judge Ammerman
- 1 copy to Court Administrator

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

JOHN SHOMO,
Plaintiff

vs.

ROBERT SMEAL,
Defendant

vs.

ERIC HUBER,
Additional Defendant

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No. 2002-720-C.D.

O R D E R

NOW, this 18th day of August, 2003, it is the ORDER of this Court that this Court's Order of August 15, 2003 be amended in part as follows:

1. Jury Selection will be held on August 22, 2003 commencing at **10:00 a.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court,



JUDGE FREDRIC J. AMMERMAN

FILED

AUG 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED

0/2/15-01
AUG 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

WAS

2 certified copies to Laurance B. Green , Esquire
2 certified copies to Matthew B. Taladay, Esquire
2 certified copies to Kimberly M. Kubista, Esquire
1 copy to Judge Ammerman
1 copy to Court Administrator

CA

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

JOHN SHOMO

vs.

ROBERT SMEAL

vs.

ERIC HUBER

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No. 02-720-CD

ORDER

AND NOW, this 8 day of October, 2003, it is the ORDER of the Court that argument on Plaintiff's Motion in Limine to Preclude Evidence of Plaintiff's Limited Tort Election, Plaintiff's Motion in Limine to Preclude Defendants from Introducing Evidence that Plaintiff was Riding on an Overloaded ATV and Plaintiff's Motion in Limine to Preclude Defendants from Introducing Evidence that Plaintiff was not Wearing Protective Apparel in the above matter has been scheduled for **Thursday, October 16, 2003 at 11:00 A.M.** in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

FILED

BY THE COURT:

OCT 09 2003
0111501 Ice atty Zimpecki
William A. Shaw Ice atty Kubista
Prothonotary/Clerk of Courts

ED
KEL

Ice atty Taladay

FREDRIC J. AMMERMAN

Judge

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	PLAINTIFF'S MOTION IN
	:	LIMINE TO PRECLUDE
ROBERT SMEAL,	:	EVIDENCE OF PLAINTIFF'S
	:	LIMITED TORT ELECTION
	:	
Defendant,	:	Filed on behalf of
	:	John Shomo, Plaintiff
	:	
vs.	:	Counsel of Record for this Party:
	:	
ERIC HUBER,	:	Michael W. Zimecki, Esquire
	:	PA I.D. #74606
	:	
Additional Defendant.	:	Laurence B. Green, Esquire
	:	PA I.D. #10399
	:	BERGER AND GREEN, P.C.
	:	Firm #777
	:	5850 Ellsworth Avenue
	:	Suite 200
	:	Pittsburgh, PA 15232
	:	(412) 661-1400

FILED
OCT 06 2003
m/s:20/12
William A. Shaw
Prothonotary/Clerk of Courts
no CLERK COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant,	:	
	:	
vs.	:	
	:	
ERIC HUBER,	:	
	:	
Additional Defendant.	:	

**MOTION IN LIMINE TO PRECLUDE DEFENDANTS
FROM INTRODUCING EVIDENCE THAT PLAINTIFF
ELECTED THE LIMITED TORT OPTION**

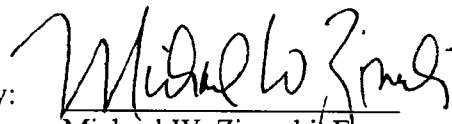
AND NOW, comes the Plaintiff, John Shomo, by and through his attorneys Berger and Green, P.C., and Michael W. Zimecki, Esquire and files the following Motion in Limine, and states as follows:

1. Plaintiff believes that Defendants intend to introduce evidence at the trial of this matter that Plaintiff elected the limited tort option and that his claims are thus barred or limited by the limited tort coverage provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §1701 et seq.
2. For the reasons set forth in the accompanying brief, Plaintiff asserts that Defendants are barred from introducing such evidence as a matter of law.

WHEREFORE, Plaintiff requests this Honorable Court to enter an appropriate order precluding Defendants from introducing evidence that Plaintiff elected the limited tort option.

Respectfully submitted,

BERGER AND GREEN, P.C.

By: 
Michael W. Zimecki Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant,	:	
	:	
vs.	:	
	:	
ERIC HUBER,	:	
	:	
Additional Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Plaintiff's Motion in Limine to Preclude Defendants' From Introducing Evidence of Plaintiff's Limited Tort Election, it is hereby ADJUDGED, ORDERED and DECREED that said Motion is GRANTED. Defendants are precluded from introducing evidence at time of trial that Plaintiff elected the limited tort option or from using limited tort as an affirmative defense to Plaintiff's cause of action.

BY THE COURT:

_____. J.

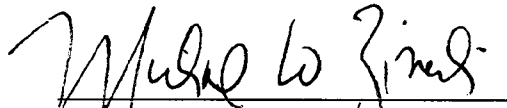
CERTIFICATE OF SERVICE

I, Michael W. Zimecki, Esquire hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion in Limine to Preclude Defendants from Introducing Evidence that Plaintiff Elected Limited Tort has been served by regular, U.S. Mail, postage prepaid, on this 3rd day of October, 2003, upon the following counsel of record:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

Kimberly Kubista, Esquire
Belin and Kubista
15 N. Front Street
Clearfield, PA 16830

BERGER AND GREEN, P.C.



Michael W. Zimecki, Esquire
Attorney for the Plaintiff
John Shomo

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	No.: 02-720-CD
	:	
Plaintiff,	:	Plaintiff's Motion in Limine to
	:	Preclude Defendants from
vs.	:	Introducing Evidence that Plaintiff
	:	Was Riding on an Overloaded ATV
	:	
	:	JURY TRIAL DEMANDED
ROBERT SMEAL,	:	
	:	Filed on Behalf of:
Defendant,	:	John Shomo, Plaintiff
	:	
vs.	:	Counsel of Record for this Party:
	:	
ERIC HUBER,	:	Michael W. Zimecki, Esquire
	:	PA ID# 74606
Additional Defendant.	:	BERGER AND GREEN, P.C.
	:	Firm #777
	:	5850 Ellsworth Avenue
	:	Suite 200
	:	Pittsburgh, PA 15232
	:	(412) 661-1400

[Stamp: FILED]
[Stamp: 02-03-2003]
m/3:20/ [Signature]
Prothonotary, Court of Common Pleas
no clear com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant,	:	
	:	
vs.	:	
	:	
ERIC HUBER,	:	
	:	
Additional Defendant.	:	

**MOTION IN LIMINE TO PRECLUDE DEFENDANTS
FROM INTRODUCING EVIDENCE THAT PLAINTIFF-PASSENGER
WAS RIDING ON AN "OVERLOADED" ATV
FOR THE PURPOSE OF SHOWING THAT PLAINTIFF
WAS CONTRIBUTORILY NEGLIGENT OR THAT PLAINTIFF ASSUMED THE
RISK OF INJURY**

AND NOW, comes the Plaintiff, John Shomo, by and through his attorneys Berger and Green, P.C., and Michael W. Zimecki, Esquire and files the following Motion in Limine, and states as follows:


1. Plaintiff believes that Defendants intend to introduce evidence at the trial of this matter that Plaintiff was riding as a passenger on an "overloaded" all-terrain vehicle (ATV) for the purpose of showing that Plaintiff was contributorily negligent or that Plaintiff assumed the risk of injury.
2. For the reasons set forth in the accompanying brief, Plaintiff asserts that

Defendants are barred from introducing such evidence as a matter of law.

WHEREFORE, Plaintiff requests this Honorable Court to enter an appropriate order precluding Defendants from introducing evidence that Plaintiff was riding as a passenger on an "overloaded" ATV.

Respectfully submitted,

BERGER AND GREEN, P.C.

By: 
Michael W. Zimecki, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant,	:	
	:	
vs.	:	
	:	
ERIC HUBER,	:	
	:	
Additional Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Plaintiff's Motion in Limine to Preclude Defendants' From Introducing Evidence That Plaintiff Was Riding on an Overloaded ATV it is hereby ADJUDGED, ORDERED and DECREED that said Motion is GRANTED. Defendants are precluded from introducing evidence at time of trial that Plaintiff was sitting on the back luggage rack of the ATV, or otherwise riding on an "overloaded" ATV prior to or at the time of the accident giving rise to this action.

BY THE COURT:

_____. J.

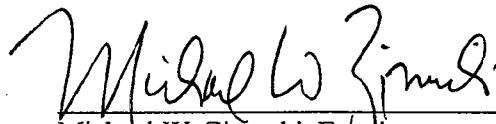
CERTIFICATE OF SERVICE

I, Michael W. Zimecki, Esquire hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion in Limine to Preclude Defendants from Introducing Evidence that Plaintiff was Riding on an Overloaded ATV has been served by regular, U.S. Mail, postage prepaid, on this 3rd day of October, 2003, upon the following counsel of record:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

Kimberly Kubista, Esquire
Belin and Kubista
15 N. Front Street
Clearfield, PA 16830

BERGER AND GREEN, P.C.



Michael W. Zimecki, Esquire
Attorney for the Plaintiff,
John Shomo

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,

Plaintiff,

vs.

ROBERT SMEAL,

Defendant,

vs.

ERIC HUBER,

Additional Defendant.

No.: 02-720-CD

**Plaintiff's Motion in Limine to
Preclude Defendants from
Introducing Evidence that Plaintiff
Was Not Wearing Protective Apparel**

JURY TRIAL DEMANDED

Filed on Behalf of:
John Shomo, Plaintiff

Counsel of Record for this Party:

Michael W. Zimecki, Esquire
PA ID# 74606
BERGER AND GREEN, P.C.
Firm #777
5850 Ellsworth Avenue
Suite 200
Pittsburgh, PA 15232
(412) 661-1400

FILED
OCT 06 2003
M/3:20/4
Clerk of Courts
NO CERT COPY

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

OCT 06 2003

Attest.

[Signature]
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant,	:	
	:	
vs.	:	
	:	
ERIC HUBER,	:	
	:	
Additional Defendant.	:	

**MOTION IN LIMINE TO PRECLUDE DEFENDANTS
FROM INTRODUCING EVIDENCE THAT PLAINTIFF-PASSENGER
WAS NOT WEARING PROTECTIVE APPAREL
FOR THE PURPOSE OF SHOWING THAT PLAINTIFF
WAS CONTRIBUTORILY NEGLIGENT OR THAT PLAINTIFF ASSUMED THE
RISK OF INJURY**

AND NOW, comes the Plaintiff, John Shomo, by and through his attorneys Berger and Green, P.C., and Michael W. Zimecki, Esquire and files the following Motion in Limine, and states as follows:

1. Plaintiff believes that Defendants intend to introduce evidence at the trial of this matter that Plaintiff was not wearing protective apparel while riding as a passenger on an all-terrain vehicle (ATV) for the purpose of showing that Plaintiff was contributorily negligent or that Plaintiff assumed the risk of injury.
2. For the reasons set forth in the accompanying brief, Plaintiff asserts that

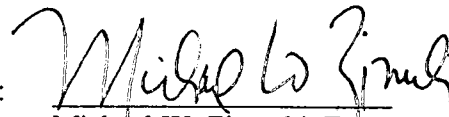
Defendants are barred from introducing such evidence as a matter of law.

WHEREFORE, Plaintiff requests this Honorable Court to enter an appropriate order precluding Defendants from introducing evidence that Plaintiff was not wearing protective apparel.

Respectfully submitted,

BERGER AND GREEN, P.C.

By:

A handwritten signature in dark ink, appearing to read "Michael W. Zimecki", written over a horizontal line.

Michael W. Zimecki, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN SHOMO,	:	CIVIL DIVISION
	:	
Plaintiff,	:	No.: 02-720-CD
	:	
vs.	:	
	:	
ROBERT SMEAL,	:	
	:	
Defendant,	:	
	:	
vs.	:	
	:	
ERIC HUBER,	:	
	:	
Additional Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Plaintiff's Motion in Limine to Preclude Defendants' From Introducing Evidence That Plaintiff Was Not Wearing Protective Apparel it is hereby ADJUDGED, ORDERED and DECREED that said Motion is GRANTED. Defendants are precluded from introducing evidence at time of trial that Plaintiff was not wearing protective apparel.

BY THE COURT:

_____. J.

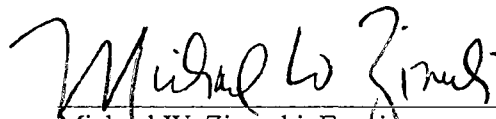
CERTIFICATE OF SERVICE

I, Michael W. Zimecki, Esquire hereby certifies that a true and correct copy of the foregoing Plaintiff's Motion in Limine to Preclude Defendants from Introducing Evidence that Plaintiff was not wearing Protective Apparel has been served by regular, U.S. Mail, postage prepaid, on this 3rd day of October, 2003, upon the following counsel of record:

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801

Kimberly Kubista, Esquire
Belin and Kubista
15 N. Front Street
Clearfield, PA 16830

BERGER AND GREEN, P.C.


Michael W. Zimecki, Esquire
Attorney for the Plaintiff,
John Shomo

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

JOHN SHOMO

:

VS.

:

NO. 02-720-01

FILED

ROBERT SMEAL

:

VS.

:

OCT 21 2003

ERIC HUBER

:

ORDER

William A. Shaw
Prothonotary

NOW, this 16th day of October, 2003, this being the date set for argument on Motions described hereafter filed on behalf of the Plaintiff; with the parties reaching agreement, it is the ORDER of this Court as follows:

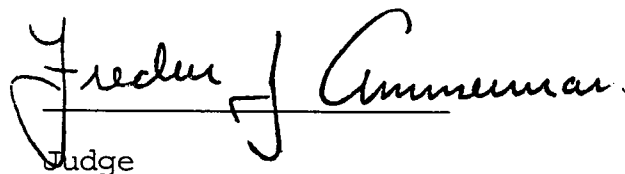
1. Plaintiff's Motion In Limine to Preclude Defendants from Introducing Evidence of Plaintiff's Election of Limited Tort Option is hereby granted. The Defendant shall be precluded from raising the issue of the election of the Limited Tort Option at time of trial.

2. Plaintiff's Motion In Limine to Preclude Defendants from Introducing Evidence that Plaintiff/Passenger was not Wearing Protective Apparel is hereby granted. Defendants shall be precluded from introducing any evidence relative the lack of the use of protective apparel at the time of jury trial.

3. Plaintiff's Motion in Limine to Preclude Defendants from Introducing Evidence that the Plaintiff was

Riding on an Overloaded ATV is hereby granted to the extent that the Defendants agree they will not be making a factual argument that the ATV was overloaded. However, this is not to be construed as preventing the Defendants from presenting testimony that the Plaintiff was inappropriately situated on the ATV and that the same led to his injuries or an exacerbation of what his injuries otherwise would have been.

BY THE COURT,


Judge

FILED

ESL

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OCT 21 2003

2cc atty. Talbot
2cc atty. Kubiak
2cc atty. Green
~~1cc atty. [unclear]~~

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA


JOHN SHOMO,
Plaintiff
-vs-
ROBERT SMEAL,
Defendant
-vs-
ERIC HUBER,
Additional Defendant

Type of Case: Civil Action
No. 02-720-CD
Type of Pleading:
Praecipe for
Discontinuance
Filed on Behalf of:
Plaintiff
Counsel of Record for This
Party:
Michael W. Zimecki, Esq.
Supreme Court No. 74606
Berger and Green
Suite 200
5850 Ellsworth Avenue
Pittsburgh, PA 15232
(412) 661-1400

FILED

JAN 14 2004

William A. Shaw
Prothonotary/Clerk of Courts


Michael W. Zimecki
Attorney for Plaintiff

FILED

1/10
cc

JAN 14 2004

Cert. of Disc.

William A. Shaw

Prothonotary/Clerk of Courts

copy to CIA

to Att'y

KS

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

John Shomo
Plaintiff

Vs.

No. 2002-00720-CD

Robert Smeal
Defendant

Eric Huber
Additional Defendant

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 January 14, 2004, marked:

Settled and Discontinued

Record costs in the sum of \$80.00 have been paid in full by Laurence Green, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of January A.D. 2004.

William A. Shaw, Prothonotary