

02-733-CD
THOMAS WEAVER et al. -vs- FRANK KOPP et al

FREEBURN & HAMILTON

4415 NORTH FRONT STREET
HARRISBURG, PA 17110

(717) 671-1955

FILED *2 ac sps r/s*
MAY 13 2002 *80.00*
AMY RD
[Signature]
William A. Shaw
Prothonotary

THOMAS WEAVER AND
MONICA WEAVER,
Plaintiffs

v.

FRANK KOPP AND EAGLE
EXPRESS,
Defendants

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 02-753-CD
:
: CIVIL ACTION - LAW
:
:

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 defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

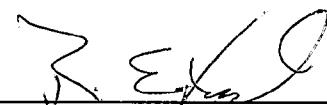
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA LAWYER REFERRAL SERVICE
PO BOX 186
HARRISBURG PA 17108
(800) 692-7375

FILED

MAY 13 2002

William A. Shaw
Prothonotary


Richard E. Freeburn, Esquire
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955
I.D. #30965

Date: 5/9/02

Attorney for Plaintiffs

THOMAS WEAVER AND : IN THE COURT OF COMMON PLEAS
MONICA WEAVER, : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
: NO.
v. :
FRANK KOPP AND EAGLE : CIVIL ACTION - LAW
EXPRESS, :
Defendants :
:

NOTICE

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene viente (20) dias de plazo al partir de la fecha de la demanda y la notification. Usted debe presentar ua apariencia esrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede entrar una orden contra usted sin previo aviso o notificacion y por cualquier queja o alivio que es pedido en la peticion de demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA OR LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

PENNSYLVANIA LAWYER REFERRAL SERVICE
PO BOX 186
HARRISBURG PA 17108
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Richard E. Freeburn, Esquire
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg PA 17110
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I.D. #30965

Date: 5/9/02

Attorney for Plaintiffs

THOMAS WEAVER AND : IN THE COURT OF COMMON PLEAS
MONICA WEAVER, : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
: NO.
v. :
: CIVIL ACTION - LAW
FRANK KOPP AND EAGLE :
EXPRESS, :
Defendants :
:

COMPLAINT

AND NOW come Plaintiffs, Thomas Weaver and Monica Weaver, by their attorneys, Freeburn & Hamilton, and file the following Complaint:

1. Plaintiff, Thomas Weaver, and his wife, Monica Weaver, are adult individuals who reside at 45 Pennsylvania Avenue, Brookville, Jefferson County, Pennsylvania.
2. Defendant, Frank Kopp, is an adult individual who resides at 111 Valley Road, St. Marys, Elk County, Pennsylvania.
3. Defendant, Eagle Express, is a corporation organized under the laws of the Commonwealth of Pennsylvania with offices at 1300 Brusselles Street, St. Marys, Elk County, Pennsylvania.
4. The facts and occurrences hereinafter related took place on or about Friday, January 5, 2001 at approximately 7:30 p.m. on or about SR 255 near the intersection with 5 Point Road in Huston Township, Clearfield County, Pennsylvania.
5. At or about that time and place, Plaintiff, Thomas Weaver was driving a 1999 Ford Taurus automobile in a southerly direction on SR 255.

6. At or about that time and place, Defendant, Frank Kopp, was operating a 1988 Mack truck with attached trailer.

7. At or about that time and place, Defendant, Frank Kopp, lost control of his vehicle, causing the trailer unit on his tractor trailer rig to enter the southbound lane of SR 255 where it violently collided with the automobile operated by Plaintiff, Thomas Weaver.

8. At all times relevant hereto, Defendant, Frank Kopp, was acting within the course and scope of his employment for Eagle Express.

9. The foregoing accident and all of the injuries and damages set forth hereinafter sustained by Plaintiffs, Thomas Weaver and Monica Weaver, are the direct and proximate result of the negligent, careless, wanton and reckless manner in which Defendant, Frank Kopp, operated his motor vehicle as follows:

- a. In failing to have his vehicle under proper and adequate control;
- b. In failing to apply his brakes in time to avoid the collision;
- c. In negligently applying his brakes;
- d. In negligently steering his vehicle;
- e. In negligently turning his vehicle;
- f. In permitting his vehicle to strike and collide with the automobile operated by Plaintiff, Thomas Weaver;
- g. In failing to drive at a speed and in a manner that would allow defendant to stop within the assured clear distance ahead;

- h. In failing to keep a reasonable look-out for other vehicles lawfully on the road;
- i. In failing to yield the right-of-way to the vehicle operated by Plaintiff, Thomas Weaver;
- j. In operating his vehicle so as to create a dangerous situation for other vehicles on the roadway;
- k. In operating his vehicle at an excessive rate of speed under the circumstances;
- l. In operating his vehicle in a manner not consistent with the road and weather conditions prevailing at the time;
- m. In failing to be alert to the conditions on or about the roadway;
- n. In failing to keep reasonable look-out for conditions at or about the roadway;
- o. In failing to have a plan which would have allowed Defendant to react appropriately and to protect the safety of other motorists on the roadway;
- p. In failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- q. In failing to exercise a high degree of care required of a motorist operating a tractor trailer rig on the roadway;
- r. In failing to observe oncoming traffic;
- s. In failing to keep his vehicle within the proper lane.

10. Defendant's conduct, as set forth above, was in violation of the Pennsylvania Motor Vehicle Code, which is intended to protect persons lawfully

on the highway such as Plaintiff, Thomas Weaver, from personal injury, and thus constitutes negligence per se.

COUNT I

Thomas Weaver, Plaintiff v. Frank Kopp, Defendant

11. Paragraphs 1-10 are incorporated herein by reference thereto.
12. By reason of the aforesaid collision, Plaintiff, Thomas Weaver, sustained painful and severe injuries to his nerves, bones and soft tissues which include, but are not limited to, facial, head, neck and shoulder injuries.
13. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has suffered a heightened possibility that he will suffer other or additional injury in the future, and claim is made therefore.
14. The aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, may have aggravated or been aggravated by an existing infirmity, condition or disease, resulting in a prolongation or worsening of the injuries and an enhanced risk of future harm to Plaintiff, and claim is made therefore.
15. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been forced to incur liability for reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose his injuries and to restore himself to health, and claim is made therefore.
16. Plaintiff has not fully recovered from his injuries and it is reasonably likely that he will incur similar expenses in the future, and claim is made therefore.

17. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has suffered a loss of earnings and earning capacity and is entitled to recover the value of the time, earnings and employment benefits he has lost and which he might reasonably have earned in the pursuit of his ordinary calling, and claim is made therefore.

18. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he may have suffered a loss or impairment of future earning capacity, and claim is made therefore.

19. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has incurred incidental costs and expenses the exact amount of which cannot be ascertained at this time, and claim is made therefore.

20. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has undergone and in the future may undergo great physical and mental pain and suffering, great inconvenience in carrying out his daily activities, loss of life's pleasures and enjoyment, and claim is made therefore.

21. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been subjected to severe humiliation, embarrassment, shame, worry and anger.

22. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been subjected to severe mental anguish, emotional distress, nervous shock, fright and horror.

23. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he will continue to endure great mental anguish, emotional distress, shame, worry and anger in the future.

24. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been deprived his enjoyment of the pleasures of life.

25. Plaintiff, Thomas Weaver, could be plagued by persistent pain and limitation and, therefore, avers that his injuries may be of a permanent nature, causing residual problems for the remainder of his lifetime, and claim is made therefore.

26. Plaintiff, Thomas Weaver, sustained a serious injury as defined in the Motor Vehicle Financial Responsibility Law, and is entitled to maintain an action for his non-economic loss.

WHEREFORE, Plaintiff, Thomas Weaver, demands judgment in his favor and against Defendant, Frank Kopp, in an amount in excess of *THOUSAND & 00/100 (\$,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Frank Kopp, Defendant

27. Paragraphs 1-26 are incorporated herein by reference thereto.

28. As a result of the aforementioned injuries sustained by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has been and may in the future be deprived of the aid, assistance, comfort, care, companionship, society

and consortium of her husband, all of which will be of great detriment, and claim is made therefore.

29. As a result of the aforementioned injuries sustained by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has incurred expenses and/or liability for the reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose his injuries and to restore him to health, and claim is made therefore.

WHEREFORE, Plaintiff, Monica Weaver, demands judgment in her favor and against Defendant, Frank Kopp, in an amount in excess of * THOUSAND & 00/100 (\$,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III

Thomas Weaver, Plaintiff v. Eagle Express, Defendant

30. Paragraphs 1-29 are incorporated herein by reference thereto.

31. At all times relevant hereto, Defendant, Frank Kopp, was employed by Defendant, Eagle Express, and was acting in the course and scope of his employment, furthering the interest, activities, affairs or business of Eagle Express.

32. Defendant, Eagle Express, is liable to Plaintiff, Thomas Weaver, for the negligent and wrongful actions of Defendant, Frank Kopp, as set forth above.

WHEREFORE, Plaintiff, Thomas Weaver, demands judgment in his favor and against Defendant, Eagle Express, in an amount in excess of *THOUSAND & 00/100 (\$,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT IV - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Eagle Express, Defendant

33. Paragraphs 1-32 are incorporated herein by reference thereto.

34. As a result of the aforementioned injuries suffered by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has been and may in the future be deprived of the aid, assistance, comfort, care, companionship, society and consortium of her husband, all of which will be of great detriment, and claim is made therefore.

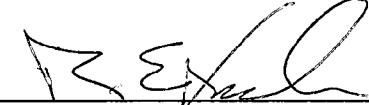
35. As a result of the aforementioned injuries suffered by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has incurred expenses and/or liability for the reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose her husband's injuries and to restore him to health, and claim is made therefore.

WHEREFORE, Plaintiff, Monica Weaver, demands judgment in her favor and against Defendant, Eagle Express, in an amount in excess of * THOUSAND & 00/100 (\$,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully Submitted,

FREEBURN & HAMILTON

By:


Richard E. Freeburn, Esquire
I.D. No. 30965
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955

Date: 5/9/02

Counsel for Plaintiffs

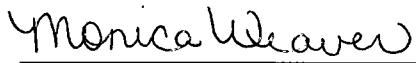
VERIFICATION

We hereby verify that the statements in the foregoing document are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: 2/12/02



THOMAS WEAVER



MONICA WEAVER

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

PRAECIPE FOR ENTRY OF APPEARANCE

To: William Shaw, Prothonotary
Clearfield County, Court of Common Pleas

Kindly enter my appearance on behalf of defendants Frank Kopp and Eagle Express
in the above-captioned action. All papers may be served on the undersigned for purposes
of this action.

Tracey G. Benson
Tracey G. Benson
Julia R. Cronin

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
Telephone No. (814) 355-5474

Counsel for Defendants
Frank Kopp and Eagle Express

FILED

JUN 17 2002

Dated: June 14, 2002

William A. Shaw
Prothonotary

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PRAECIPE FOR ENTRY OF APPEARANCE**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By:

Tracey G. Benson
Tracey G. Benson

Dated: June 14, 2002

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12529

WEAVER, THOMAS & MONICA

02-753-CD

VS.

KOPP, FRANK and EAGLE EXPRESS

COMPLAINT

SHERIFF RETURNS

NOW MAY 14, 2002, THOMAS KONTES, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON FRANK KOPP AND EAGLE EXPRESS, DEFENDANTS.

NOW MAY 23, 2002 SERVED THE WITHIN COMPLAINT ON EAGLE EXPRESS, DEFENDANT BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED JACQUELINE PEARSALL, ASST. MGR.

NOW MAY 23, 2002 SERVED THE WITHIN COMPLAINT ON FRANK KOPP, DEFENDANT BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

Return Costs

Cost	Description
34.37	SHFF. HAWKINS PAID BY: ATTY.
63.20	SHFF. KONTES PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12529

WEAVER, THOMAS & MONICA

02-753-CD

VS.

KOPP, FRANK and EAGLE EXPRESS

COMPLAINT

SHERIFF RETURNS

Sworn to Before Me This

6th Day of August 2002
William A. Shaw

So Answers,

Chester Hawkins
by Marilyn Hams

Chester A. Hawkins

Sheriff

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

FILED

AUG 06 2002

013:18
William A. Shaw
Prothonotary

WAS

Thomas Weaver and Monica Weaver

IN THE COURT OF COMMON PLEAS

vs.

OF ELK COUNTY

No. 02-753

Frank Kopp and Eagle Express

**STATE OF PENNSYLVANIA
COUNTY OF ELK**

Earl Pontious, Deputy Sheriff, being duly sworn according to law, deposes and says, that he served Eagle Express at 1300 Brusselles St., St. Marys, Elk County, PA by handing to Jacqueline Pearsall, Assistant Manager, a true and attested copy of the original Complaint and made known to her the contents thereof on May 23, 2002 at 11:27 A.M.

Thomas C. Kontes, Sheriff, being duly sworn according to law, deposes and says, that he served Frank Kopp, 111 Valley Rd., St. Marys, Elk County, PA at Elk County Sheriff's Office, Elk County Courthouse, Ridgway Elk County, PA by handing to him a true and attested copy of the original Complaint and made known to him the contents thereof on May 23, 2002 at 3:59 P.M.

Elk County Sheriff's Costs - \$63.20 PAID

So Answers:

Sworn to and subscribed before me this 24

day of May A.D. 2002

Carsten A. Frey
11/11/03 Exploring prothonotary
waterthrush 5, 2004

Thomas C. Kort Sheriff
Earl C. Pontious Deputy



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

THOMAS & MONICA WEAVER

TERM & NO. 02-753-CD

VS

SERVE BY: 6/12/02

FRANK KOPP al

DOCUMENT TO BE SERVED:
COMPLAINT

MAKE REFUND PAYABLE TO: FREEBURN & HAMILTON, Attorneys

SERVE: FRANK KOPP (must serve him personally per atty) /
& EAGLE EXPRESS

ADDRESS: Kopp-111 Valley Road, St. Marys
Eagle-1300 Brussels St., St. Marys

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

14th Day of MAY 2002.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

FILED

AUG 07 2002

0 1:51 PM

William A. Shaw
Prothonotary
No. C Four Court

Erg

NOTICE TO PLEAD

TO THE WITHIN NAMED PLAINTIFFS:

You are hereby notified to plead to the enclosed New Matter within twenty (20) days from service hereof or a default judgment may be entered against you.

Tracey G. Benson
Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Counsel for Defendants
Frank Kopp and Eagle Express

Dated: August 6, 2002

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

ANSWER AND NEW MATTER

Defendants Frank Kopp ("Kopp") and Eagle Express ("Eagle Express"), by their counsel, Tracey G. Benson, Esquire, and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., respond to the Complaint of plaintiffs Thomas Weaver and Monica Weaver, and state as follows:

ANSWER

1. Defendants admit only that husband-plaintiff, Thomas Weaver, is an adult individual. Defendants are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 1 of the Complaint, said allegations are deemed to be denied, and proof thereof is demanded.
2. It is admitted that Frank Kopp is an adult individual who resides at 111 Valley Rod, St. Marys, Elk County, Pennsylvania.

3. It is admitted that Eagle Express is a corporation organized under the laws of the Commonwealth of Pennsylvania, with offices at 1300 Brussels Street, St. Marys, Elk County, Pennsylvania.

4. Defendants admit only that on or about Friday, January 5, 2001, at approximately 7:30 p.m., a vehicle owned by Eagle Express and driven by Frank Kopp was involved in an accident on State Route 255 near the intersection with 5 Point Road in Huston Township, Clearfield County, Pennsylvania. The defendants deny any remaining allegations contained in paragraph 4 of the Complaint, and proof thereof is demanded.

5. It is admitted that at the time and location identified in paragraph 4 of the Complaint, husband-plaintiff Thomas Weaver was operating a 1999 Ford Taurus automobile in a generally southerly direction on State Route 255.

6. It is admitted that at the date, time and place identified in paragraph 4 of the Complaint, defendant Frank Kopp was operating a 1988 Mack truck with attached trailer.

7. Defendants admit only that on the date, time and place identified in the Complaint, the vehicle being operated by husband-plaintiff contacted the defendant's vehicle near the left front rear wheel. Defendants deny each and every remaining allegation contained in paragraph 7 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

8. It is admitted that at the time and place identified in the Complaint, Defendant Kopp was operating the tractor trailer in the course and scope of his employment for Eagle Express.

9. Defendants deny each and every allegation contained in paragraph 9 of the Complaint, including subparagraphs (a) through (s) pursuant to Pa.R.Civ.P. 1029(e).

10. Defendants deny each and every allegation contained in paragraph 10 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT I

THOMAS WEAVER, PLAINTIFF V. FRANK KOPP, DEFENDANT

11. Defendants incorporate by reference herein their response to paragraphs 1 through and including 10 of the Complaint as though each were set forth in full.

12. Defendants deny each and every allegation contained in paragraph 12 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

13. Defendants deny each and every allegation contained in paragraph 13 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

14. Defendants deny each and every allegation contained in paragraph 14 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

15. Defendants deny each and every allegation contained in paragraph 15 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

16. Defendants deny each and every allegation contained in paragraph 16 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

17. Defendants deny each and every allegation contained in paragraph 17 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

18. Defendants deny each and every allegation contained in paragraph 18 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

19. Defendants deny each and every allegation contained in paragraph 19 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

20. Defendants deny each and every allegation contained in paragraph 20 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

21. Defendants deny each and every allegation contained in paragraph 21 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

22. Defendants deny each and every allegation contained in paragraph 22 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

23. Defendants deny each and every allegation contained in paragraph 23 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

24. Defendants deny each and every allegation contained in paragraph 24 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

25. Defendants deny each and every allegation contained in paragraph 25 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

26. Defendants deny each and every allegation contained in paragraph 26 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT II - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Frank Kopp, Defendant

27. Defendants incorporate by reference herein their response to paragraphs 1 through and including 26 of the Complaint as though each were set forth in full.

28. Defendants deny each and every allegation contained in paragraph 28 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

29. Defendants deny each and every allegation contained in paragraph 26 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT III

Thomas Weaver, Plaintiff v. Eagle Express, Defendant

30. Defendants incorporate by reference herein their response to paragraphs 1 through and including 29 of the Complaint as though each were set forth in full.

31. Defendant Eagle Express admits that at the time of the accident alleged in the Complaint, defendant Frank Kopp was operating a tractor trailer in the course and scope of his employment with Eagle Express. Any remaining allegations contained in paragraph 31 of the Complaint are denied.

32. Defendants deny each and every allegation contained in paragraph 32 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT IV - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Eagle Express, Defendant

33. Defendants incorporate by reference herein their response to paragraphs 1 through and including 32 of the Complaint as though each were set forth in full.

34. Defendants deny each and every allegation contained in paragraph 34 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

35. Defendants deny each and every allegation contained in paragraph 35 of the Complaint pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants Frank Kopp and Eagle Express pray that the claims asserted against them by Plaintiffs Thomas Weaver and Monica Weaver be dismissed, and that judgment be entered in favor of the defendants and against the plaintiffs on all counts contained in the Complaint.

NEW MATTER

36. Defendants aver that the Complaint fails to state any claim upon which relief can be granted.

37. Defendants aver that Plaintiffs' claims are subject to, and limited by, the provisions of the Pennsylvania Comparative Negligence Act.

38. In order to preserve any defense of contributory negligence pending further investigation and discovery, Defendants aver that Plaintiffs' claims are barred by the contributory negligence of Plaintiff Thomas Weaver.

39. Defendants aver that the incident alleged in the Complaint was caused, in

whole or in part, by the careless, negligent, and reckless conduct of Plaintiff Thomas Weaver as follows:

- a. In failing to operate his vehicle on the state highway at an appropriate and safe speed;
- b. In failing to operate his vehicle in accordance with the laws of the Commonwealth of Pennsylvania and the rules of the road applicable to the location and conditions then and there prevailing;
- c. In failing to maintain the assured clear distance ahead;
- d. In operating his vehicle at a speed that was too fast for conditions then and there prevailing;
- e. In operating his vehicle in a manner causing it to strike the vehicle of the defendants; and
- f. In failing to take appropriate evasive action to avoid collision.

40. Defendants aver that Plaintiffs' claims are subject to, and limited by, the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

41. Defendants aver that Plaintiffs' claims are subject to, and limited by, any insurance coverage elections, including but not limited to, elections for applicable tort coverage, arising under the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

42. Defendants aver that husband-plaintiff has not sustained any serious injuries as required by the Pennsylvania Motor Vehicle Financial Responsibility Law, sufficient to give rise to the causes of action set forth in the Complaint.

43. Defendants aver that if Plaintiffs sustained any of the injuries, losses or damages alleged in the Complaint, which is denied, said injuries were caused or arose, in whole or in part, as a result of forces, actions, conduct and omissions of others over whom the Defendants had neither the opportunity, nor duty of control.

44. Defendants aver that to the extent Plaintiffs have sustained any of the injuries, losses, or damages alleged in the Complaint, which is denied, some or all of said injuries, losses, or damages were not caused by any conduct on the part of the Defendants.

45. Defendants aver that some or all of the injuries, losses, or damages alleged in the Complaint were the result of pre-existing or subsequent injuries, diseases, conditions, or processes that are unrelated to the accident alleged in the Complaint.

46. Defendants aver that Frank Kopp acted at all times in a manner that was reasonable under the circumstances, in response to a sudden emergency that was neither created, nor exacerbated by, any conduct on the part of the Defendants.

47. Defendants aver that some or all of Plaintiffs claims are barred by any applicable statute of limitations.

WHEREFORE, Defendants Frank Kopp and Eagle Express pray that the claims asserted against them by Plaintiffs Thomas Weaver and Monica Weaver be dismissed,

and that judgment be entered in favor of the defendants and against the plaintiffs on all counts contained in the Complaint.

Tracey G. Benson
Tracey G. Benson
Julia R. Cronin

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Counsel for Defendants
Frank Kopp and Eagle Express

Dated: August 6, 2002

VERIFICATION

I, **Christine A. Prechtl, General Manager, Eagle Express**, state that the facts contained in the foregoing **Answer and New Matter** are true and correct to the best of my knowledge, information and belief.

I make this Verification pursuant to 18 Pa.C.S.A. Section 4904 pertaining to unsworn falsification to authorities.



Christine A. Prechtl, General Manager
Eagle Express

VERIFICATION

I, Frank Kopp, state that the facts contained in the foregoing **Answer and New Matter** are true and correct to the best of my knowledge, information and belief. I make this Verification pursuant to 18 Pa.C.S.A. Section 4904 pertaining to unsworn falsification to authorities.



Frank Kopp

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER AND NEW MATTER**, was
hereby served by depositing the same within the custody of the United States Postal
Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson
Tracey G. Benson

Dated: August 6, 2002

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

FILED

NOTICE OF SERVICE OF INTERROGATORIES

TO: William Shaw, Prothonotary
Court of Common Pleas of Clearfield County, PA
Clearfield, PA 16830

AUG 07 2002

On 13:55 1
William A. Shaw
Prothonotary

sent to attorney
GK

Please take notice that the undersigned has served the original and two copies
of Defendants' First Set of Interrogatories to Plaintiffs by mailing them, first-class,
postage prepaid, on this date to the following:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

Tracey G. Benson
Tracey G. Benson, Esquire

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Counsel for Defendants
Frank Kopp and Eagle Express

Dated: August 6, 2002

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF SERVICE OF
INTERROGATORIES**, was hereby served by depositing the same within the custody of
the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson
Tracey G. Benson

Dated: August 6, 2002

THOMAS WEAVER AND : IN THE COURT OF COMMON PLEAS
MONICA WEAVER, : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
: NO. 02-753-CD
v. :
FRANK KOPP AND EAGLE : CIVIL ACTION - LAW
EXPRESS, :
Defendants :
:

REPLY TO NEW MATTER

AND NOW come Plaintiffs, Thomas Weaver and Monica Weaver, by their attorneys, Freeburn & Hamilton, and file the following Reply to New Matter:

36. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

37. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

38. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied. By way of further reply, any implication that Plaintiffs' claims are a result of any contributory negligence on the part of Plaintiff, Thomas Weaver, is specifically denied.

FILED

AUG 28 2002
mjl:101ncc

William A. Shaw
Prothonotary

CKS

39. Plaintiffs specifically deny that Plaintiff, Thomas Weaver was negligent or that any negligence on his part, the same being denied, was a proximate cause of the incident alleged in the complaint, and in particular, Plaintiffs specifically deny that Thomas Weaver:

- a. Failed to operate his vehicle on the state highway at an appropriate and safe speed;
- b. Failed to operate his vehicle in accordance with the laws of the Commonwealth of Pennsylvania and the rules of the road applicable to the location and conditions then and there prevailing;
- c. Failed to maintain the assured clear distance ahead;
- d. Operated his vehicle at a speed that was too fast for conditions then and there prevailing;
- e. Operated his vehicle in a manner causing it to strike the vehicle of defendants; and
- f. Failed to take appropriate evasive action to avoid collision.

40. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

41. Plaintiffs specifically deny that their claims are subject to, and limited by, any insurance coverage elections, including but not limited to, elections for applicable tort coverage, arising under the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended. By way of further reply, Plaintiffs specifically aver that they were subject to Full Tort

rights under their personal automobile insurance policy. In addition, Plaintiffs specifically aver that the automobile that Plaintiff, Thomas Weaver, was operating at the time of the accident was not a private passenger motor vehicle as defined at 75 Pa. C.S. § 1702 because it was not insured by a natural person, and therefore, Plaintiffs would also be entitled to recover Full Tort damages pursuant to 75 Pa. C.S. § 1705(d)(3).

42. Plaintiffs deny that Plaintiff, Thomas Weaver, has not sustained any serious injuries. Plaintiffs deny any implication that they are not entitled under the Pennsylvania Motor Vehicle Financial Responsibility Law to recover Full Tort damages unless Plaintiff, Thomas Weaver, suffered serious injuries. To the contrary, Plaintiffs are entitled to recover Full Tort damages under their personal automobile insurance policy. In addition, Plaintiffs incorporate herein by reference thereto their reply to Paragraph 41 above.

43. Plaintiffs specifically deny that their injuries were caused or arose in whole or in part, as a result of forces, actions, conduct and omissions of others over whom Defendants had neither the opportunity, nor duty of control. By way of further reply, Plaintiffs incorporate herein by reference thereto all of the averments contained in their Complaint.

44. Plaintiffs specifically deny that some or all of their injuries, losses or damages were not caused by any conduct on the part of Defendants. By way of further reply, Plaintiffs incorporate herein by reference thereto all of the averments contained in their Complaint.

45. Plaintiffs specifically deny that some or all of their injuries, losses or damages were the result of pre-existing or subsequent injuries, diseases, conditions or processes that are unrelated to the accident alleged in the

Complaint. By way of further reply, Plaintiffs incorporate herein by reference thereto all of the averments contained in their Complaint.

46. Plaintiffs specifically deny that Defendant, Frank Kopp, acted at all times in a manner that was reasonable under the circumstances, in response to a sudden emergency that was neither created, nor exacerbated by, any conduct on the part of Defendant. By way of further reply, Plaintiffs incorporate herein by reference thereto all of the averments contained in their Complaint.

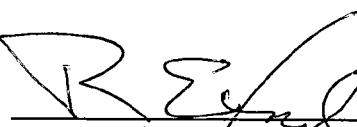
47. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required.

WHEREFORE, Plaintiffs, Thomas Weaver and Monica Weaver, respectfully request that this Honorable Court dismiss Defendants' New Matter and enter judgment in their favor and against Defendants, Frank Kopp and Eagle Express, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully Submitted,

FREEBURN & HAMILTON

By:


Richard E. Freeburn, Esquire
I.D. No. 30965
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955

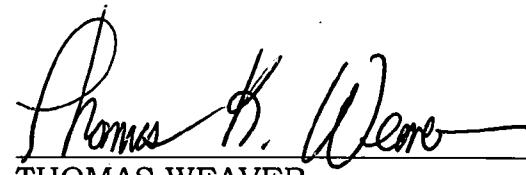
Date: 8/23/02

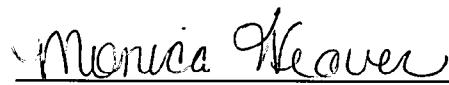
Counsel for Plaintiffs

VERIFICATION

We hereby verify that the statements in the foregoing document are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: 8/19/02

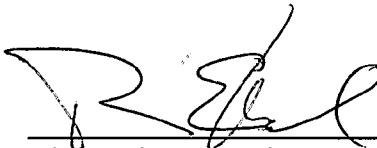

Thomas Weaver
THOMAS WEAVER


Monica Weaver
MONICA WEAVER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Plaintiffs' Reply to New Matter**, has been duly served on the following this 23rd day of August, 2002, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY: 

Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 8/23/02

Attorney for Plaintiffs

THOMAS WEAVER AND : IN THE COURT OF COMMON PLEAS
MONICA WEAVER, : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. : NO. 02-753-CD
FRANK KOPP AND EAGLE : CIVIL ACTION - LAW
EXPRESS, :
Defendants :
:

STIPULATION

I, Tracy G. Benson, Esquire, counsel for Defendants, Frank Kopp and Eagle Express, hereby stipulate, on behalf of Defendants, that Plaintiffs have not waived their right to assert a Full Tort election under their personal automobile insurance policy, or to otherwise assert a right for Full Tort damages, and that the issue of Plaintiffs' tort election is preserved, to be determined at the time of trial.

Respectfully Submitted,

**MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.**

By:

Tracey G. Benson
Tracey G. Benson, Esquire
124 North Allegheny Street
Bellefonte PA 16823
(814) 355-5474

Date: 8/29/02

Counsel for Defendants

FILED

11 SEP 06 2002
M11:131 noce
William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Stipulation**, has been duly served on the following this 4th day of September, 2002, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY:


Georgianne J. Hess, Assistant to
Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 9/4/02

Attorney for Plaintiffs

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

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

Defendants, Frank Kopp and Eagle Express, intend to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Tracey G. Benson
Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Attorney for Defendants
Frank Kopp and Eagle Express

FILED

Dated: December 6, 2002

DEC 09 2002
4/2/101w
William A. Shaw
Prothonotary
1 CENT TO 14-371
Sgt

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Thomas Weaver and Monica Weaver *

Plaintiff(s)

Vs.

* No. 2002-753-CD

Frank Kopp and Eagle Express *

Defendant(s)

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

TO: Commissioner Paul J. Evanko, Pennsylvania State Police
(Name of Person or Entity)

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

See Attached

(Address)

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

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

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

NAME: Tracey G. Benson
ADDRESS: 124 N. Allegheny Street
Bellefonte, PA 16823
TELEPHONE: (814) 355-5474
SUPREME COURT ID # 34984
ATTORNEY FOR: Defendants Frank Kopp
and Eagle Express

BY THE COURT:

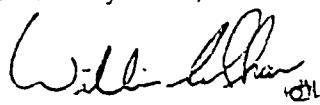
William A. Shaw
Prothonotary/Clerk, Civil Division

DATE:

Seal of the Court

Deputy

Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA



ATTACHMENT

Copies of all records pertaining to the medical, psychiatric or psychological care of Thomas Weaver (Social Security No. 178-62-0691, Date of Birth: 02/21/63), including but not limited to a full and complete copy of any and all records, office notes, admission summaries, discharge summaries, operative reports, lab reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment. **We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.**

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Intent to Serve Subpoena**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: *Tracey G. Benson*
Tracey G. Benson

Dated: December 6, 2002

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

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

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Tracey G. Benson, Esquire certifies that:

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

FILED

DEC 27 2002

William A. Shaw
Prothonotary

Tracey G. Benson
Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Attorney for Defendants
Frank Kopp and Eagle Express

Dated: December 26, 2002

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

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

Defendants, Frank Kopp and Eagle Express, intend to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Tracey G. Benson
Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Attorney for Defendants
Frank Kopp and Eagle Express

Dated: December 6, 2002

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

DEC 09 2002

Attest.

Wm. A. R.
Prothonotary/
Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Thomas Weaver and Monica Weaver

Plaintiff(s)

Vs.

No. 2002-753-CD

Frank Kopp and Eagle Express

Defendant(s)

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

TO: Commissioner Paul J. Evanko, Pennsylvania State Police
(Name of Person or Entity)

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

See Attached

(Address)

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

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

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

NAME: Tracey G. Benson

ADDRESS: 124 N. Allegheny Street
Bellefonte, PA 16823

TELEPHONE: (814) 355-5474

SUPREME COURT ID #: 34984

ATTORNEY FOR: Defendants Frank Kopp
and Eagle Express

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE:

Seal of the Court

Deputy

Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

ATTACHMENT

Copies of all records pertaining to the medical, psychiatric or psychological care of Thomas Weaver (Social Security No. 178-62-0691, Date of Birth: 02/21/63), including but not limited to a full and complete copy of any and all records, office notes, admission summaries, discharge summaries, operative reports, lab reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment. **We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.**

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND EAGLE)
EXPRESS,)
)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Intent to Serve Subpoena**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: *Tracey G. Benson*
Tracey G. Benson

Dated: December 6, 2002

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson
Tracey G. Benson

Dated: December 26, 2002

FILED
11:00 AM
M 17 2002
DEC 27 2002
2002
SAC

William A. Shaw
Prothonotary

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

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

Defendants, Frank Kopp and Eagle Express, intend to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Tracey G. Benson
Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Attorney for Defendants
Frank Kopp and Eagle Express

Dated: December 26, 2002

FILED

DEC 27 2002

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Thomas Weaver and Monica Weaver

Plaintiff(s)

Vs.

No. 2002-753-CD

Frank Kopp and Eagle Express

Defendant(s)

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

TO: CompServices, Inc. - P.O. Box 535370 - Pittsburgh, PA 15253-5370

(Name or Person or Entity)

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

See Attached

(Address)

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

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

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

NAME: Tracey G. Benson

ADDRESS: 124 N. Allegheny Street
Bellefonte, PA 16823

TELEPHONE: (814) 355-5474

SUPREME COURT ID #: 34984

ATTORNEY FOR: Defendants Frank Kopp
and Eagle Express

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE:

Seal of the Court

Deputy

Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

ATTACHMENT

Copies of all records pertaining to the medical, psychiatric or psychological care of Thomas Weaver (Social Security No. 178-62-0691, Date of Birth: 02/21/63), including but not limited to a full and complete copy of any and all workers' compensation or employment disability records, documents reflecting claims made and/or payments issued for wage loss indemnity and/or medical benefits, pleadings, and/or notices pertaining to any claims, hearing transcripts, deposition transcripts, orders or decisions, pertaining to any claims, compromise and release agreements and petitions seeking approval thereof, medical records, office notes, admission summaries, discharge summaries, operative reports, lab reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment, expert reports, IME's, and transcripts of any testimony pertaining thereto. **We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.**

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND EAGLE)
EXPRESS,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Intent to Serve Subpoena**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: *Tracey G. Benson*
Tracey G. Benson

Dated: December 26, 2002

THOMAS WEAVER AND : IN THE COURT OF COMMON PLEAS
MONICA WEAVER, : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. : NO. 02-753-CD
FRANK KOPP AND EAGLE : CIVIL ACTION - LAW
EXPRESS, :
Defendants :
:

**CONSENT OF DEFENDANT TO THE AMENDMENT
OF PLAINTIFFS' COMPLAINT**

AND NOW, come Defendants, Frank Kopp and Eagle Express, by their attorneys, Tracey G. Benson, Esquire, and consent to the amendment of Plaintiff's Complaint to correctly identify Defendant, Eagle Express as Albert Prechtl, t/d/b/a Eagle Express, as set forth in the Amended Complaint attached hereto.

Respectfully submitted,

**MILLER KISTLER CAMPBELL MILLER
WILLIAMS & BENSON, INC.**

By:

Tracey G. Benson
Tracey G. Benson, Esquire
124 North Allegheny Street
Bellefonte PA 16823
(814) 355-5474

FILED

JAN 02 2003

Dated: December 6, 2002

Attorney for Defendants

**William A. Shaw
Prothonotary**

THOMAS WEAVER AND : IN THE COURT OF COMMON PLEAS
MONICA WEAVER, : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. : NO. 02-753-CD
FRANK KOPP and ALBERT : CIVIL ACTION - LAW
PRECHTL, t/d/b/a EAGLE :
EXPRESS, :
Defendants :
:

AMENDED COMPLAINT

AND NOW come Plaintiffs, Thomas Weaver and Monica Weaver, by their attorneys, Freeburn & Hamilton, and file the following Amended Complaint:

1. Plaintiff, Thomas Weaver, and his wife, Monica Weaver, are adult individuals who reside at 45 Pennsylvania Avenue, Brookville, Jefferson County, Pennsylvania.
2. Defendant, Frank Kopp, is an adult individual who resides at 111 Valley Road, St. Marys, Elk County, Pennsylvania.
3. Defendant, Albert Prechtl, is an adult individual, who does business as Eagle Express at 1300 Brusselles Street, St. Marys, Elk County, Pennsylvania.
4. The facts and occurrences hereinafter related took place on or about Friday, January 5, 2001 at approximately 7:30 p.m. on or about SR 255 near the intersection with 5 Point Road in Huston Township, Clearfield County, Pennsylvania.
5. At or about that time and place, Plaintiff, Thomas Weaver was driving a 1999 Ford Taurus automobile in a southerly direction on SR 255.

6. At or about that time and place, Defendant, Frank Kopp, was operating a 1988 Mack truck with attached trailer in a northerly direction on SR 255.

7. At or about that time and place, Defendant, Frank Kopp, lost control of his vehicle, and the tractor and/or trailer entered the southbound lane of SR 255 where it violently collided with the automobile operated by Plaintiff, Thomas Weaver.

8. At all times relevant hereto, Defendant, Frank Kopp, was employed by Defendant, Albert Prechtl, t/d/b/a Eagle Express, and was acting within the course and scope of his employment for Defendant and in furtherance of Defendant's business interests.

9. The foregoing accident and all of the injuries and damages set forth hereinafter sustained by Plaintiffs, Thomas Weaver and Monica Weaver, are the direct and proximate result of the negligent, careless, wanton and reckless manner in which Defendant, Frank Kopp, operated his motor vehicle as follows:

- a. In failing to have his vehicle under proper and adequate control;
- b. In failing to apply his brakes in time to avoid the collision;
- c. In negligently applying his brakes;
- d. In negligently steering his vehicle;
- e. In negligently turning his vehicle;

- f. In permitting his vehicle to strike and collide with the automobile operated by Plaintiff, Thomas Weaver;
- g. In failing to drive at a speed and in a manner that would allow defendant to stop within the assured clear distance ahead;
- h. In failing to keep a reasonable look-out for other vehicles lawfully on the road;
- i. In failing to yield the right-of-way to the vehicle operated by Plaintiff, Thomas Weaver;
- j. In operating his vehicle so as to create a dangerous situation for other vehicles on the roadway;
- k. In operating his vehicle at an excessive rate of speed under the circumstances;
- l. In operating his vehicle in a manner not consistent with the road and weather conditions prevailing at the time;
- m. In failing to be alert to the conditions on or about the roadway;
- n. In failing to keep reasonable look-out for conditions at or about the roadway;
- o. In failing to have a plan which would have allowed Defendant to react appropriately and to protect the safety of other motorists on the roadway;
- p. In failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- q. In failing to exercise a high degree of care required of a motorist operating a tractor trailer rig on the roadway;
- r. In failing to observe oncoming traffic;
- s. In failing to keep his vehicle within its proper lane of travel.

10. Defendant's conduct, as set forth above, was in violation of the Pennsylvania Motor Vehicle Code, which is intended to protect persons lawfully on the highway such as Plaintiff, Thomas Weaver, from personal injury, and thus constitutes negligence per se.

COUNT I

Thomas Weaver, Plaintiff v. Frank Kopp, Defendant

11. Paragraphs 1-10 are incorporated herein by reference thereto.

12. By reason of the aforesaid collision, Plaintiff, Thomas Weaver, sustained painful and severe injuries to his nerves, bones and soft tissues which include, but are not limited to, facial, head, neck and shoulder injuries.

13. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has suffered a heightened possibility that he will suffer other or additional injury in the future, and claim is made therefore.

14. The aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, may have aggravated or been aggravated by an existing infirmity, condition or disease, resulting in a prolongation or worsening of the injuries and an enhanced risk of future harm to Plaintiff, and claim is made therefore.

15. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been forced to incur liability for reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose his injuries and to restore himself to health, and claim is made therefore.

16. Plaintiff has not fully recovered from his injuries and it is reasonably likely that he will incur similar expenses in the future, and claim is made therefore.

17. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has suffered a loss of earnings and earning capacity and is entitled to recover the value of the time, earnings and employment benefits he has lost and which he might reasonably have earned in the pursuit of his ordinary calling, and claim is made therefore.

18. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he may have suffered a loss or impairment of future earning capacity, and claim is made therefore.

19. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has incurred incidental costs and expenses the exact amount of which cannot be ascertained at this time, and claim is made therefore.

20. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has undergone and in the future may undergo great physical and mental pain and suffering, great inconvenience in carrying out his daily activities, loss of life's pleasures and enjoyment, and claim is made therefore.

21. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been subjected to severe humiliation, embarrassment, shame, worry and anger.

22. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been subjected to severe mental anguish, emotional distress, nervous shock, fright and horror.

23. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he will continue to endure great mental anguish, emotional distress, shame, worry and anger in the future.

24. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been deprived his enjoyment of the pleasures of life.

25. Plaintiff, Thomas Weaver, could be plagued by persistent pain and limitation and, therefore, avers that his injuries may be of a permanent nature, causing residual problems for the remainder of his lifetime, and claim is made therefore.

26. Plaintiff, Thomas Weaver, was subject to a full tort option under his personal automobile insurance policy, and is entitled to maintain an action for his non-economic loss.

27. Plaintiff, Thomas Weaver, would otherwise be entitled to maintain an action for his non-economic loss pursuant to 75 Pa.C.S. §1705 in that he was not an occupant of a "private passenger motor vehicle" as that term is defined at 75 Pa.C.S. §1702 and under 75 Pa.C.S. § 1705, and because he sustained a "serious injury" as that term is defined at 75 Pa.C.S. §1702.

WHEREFORE, Plaintiff, Thomas Weaver, demands judgment in his favor and against Defendant, Frank Kopp, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Frank Kopp, Defendant

28. Paragraphs 1-27 are incorporated herein by reference thereto.

29. As a result of the aforementioned injuries sustained by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has been and may in the future be deprived of the aid, assistance, comfort, care, companionship, society and consortium of her husband, all of which will be of great detriment, and claim is made therefore:

30. As a result of the aforementioned injuries sustained by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has incurred expenses and/or liability for the reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose his injuries and to restore him to health, and claim is made therefore.

WHEREFORE, Plaintiff, Monica Weaver, demands judgment in her favor and against Defendant, Frank Kopp, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III

**Thomas Weaver, Plaintiff v. Albert Prechtl,
t/d/b/a Eagle Express, Defendant**

31. Paragraphs 1-30 are incorporated herein by reference thereto.
32. At all times relevant hereto, Defendant, Frank Kopp, was employed by Defendant, Albert Prechtl, t/d/b/a Eagle Express, and was acting in the course and scope of his employment, furthering the interest, activities, affairs or business of Eagle Express.
33. Defendant, Albert Prechtl, t/d/b/a Eagle Express, is liable to Plaintiff, Thomas Weaver, for the negligent and wrongful actions of Defendant, Frank Kopp, as set forth above.

WHEREFORE, Plaintiff, Thomas Weaver, demands judgment in his favor and against Defendant, Albert Prechtl, t/d/b/a Eagle Express, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT IV – LOSS OF CONSORTIUM

**Monica Weaver, Plaintiff v. Albert Prechtl,
t/d/b/a Eagle Express, Defendant**

34. Paragraphs 1-33 are incorporated herein by reference thereto.
35. As a result of the aforementioned injuries suffered by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has been and may in the future be deprived of the aid, assistance, comfort, care, companionship, society and

consortium of her husband, all of which will be of great detriment, and claim is made therefore.

36. As a result of the aforementioned injuries suffered by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has incurred expenses and/or liability for the reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose her husband's injuries and to restore him to health, and claim is made therefore.

WHEREFORE, Plaintiff, Monica Weaver, demands judgment in her favor and against Defendant, Albert Prechtl, t/d/b/a Eagle Express, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully Submitted,

FREEBURN & HAMILTON

By:

Richard E. Freeburn, Esquire
I.D. No. 30965
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955

Date: 12/31/02

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendants' Consent to Amend Plaintiffs' Complaint**, has been duly served on the following this 31st day of December, 2002, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY:



Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 12/31/02

Attorney for Plaintiffs

THOMAS WEAVER AND MONICA WEAVER, Plaintiffs	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	NO. 02-753-CD
FRANK KOPP and ALBERT PRECHTL, t/d/b/a EAGLE EXPRESS, Defendants	:	CIVIL ACTION - LAW

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 defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

PENNSYLVANIA LAWYER REFERRAL SERVICE
PO BOX 186
HARRISBURG PA 17108
(800) 692-7375

FILED

JAN 02 2003

William A. Shaw
Prothonotary



Richard E. Freeburn, Esquire
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955
I.D. #30965

Date: 12/31/02

Attorney for Plaintiffs

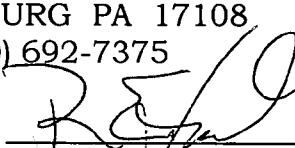
THOMAS WEAVER AND MONICA WEAVER, Plaintiffs	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	NO. 02-753-CD
FRANK KOPP and ALBERT PRECHTL, t/d/b/a EAGLE EXPRESS, Defendants	:	CIVIL ACTION - LAW
	:	
	:	

NOTICE

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene viente (20) dias de plazo al partir de la fecha de la demanda y la notification. Usted debe presentar ua apariencia esrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede entrar una orden contra usted sin previo aviso o notificacion y por cualquier queja o alivio que es pedido en la peticion de demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA OR LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

PENNSYLVANIA LAWYER REFERRAL SERVICE
PO BOX 186
HARRISBURG PA 17108
(800) 692-7375


Richard E. Freeburn, Esquire
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955
I.D. #30965

Date: 12/31/02

Attorney for Plaintiffs

THOMAS WEAVER AND	:	IN THE COURT OF COMMON PLEAS
MONICA WEAVER,	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
v.	:	
FRANK KOPP and ALBERT	:	NO. 02-753-CD
PRECHTL, t/d/b/a EAGLE	:	
EXPRESS,	:	
Defendants	:	CIVIL ACTION - LAW

AMENDED COMPLAINT

AND NOW come Plaintiffs, Thomas Weaver and Monica Weaver, by their attorneys, Freeburn & Hamilton, and file the following Amended Complaint:

1. Plaintiff, Thomas Weaver, and his wife, Monica Weaver, are adult individuals who reside at 45 Pennsylvania Avenue, Brookville, Jefferson County, Pennsylvania.

2. Defendant, Frank Kopp, is an adult individual who resides at 111 Valley Road, St. Marys, Elk County, Pennsylvania.

3. Defendant, Albert Prechtl, is an adult individual, who does business as Eagle Express at 1300 Brusselles Street, St. Marys, Elk County, Pennsylvania.

4. The facts and occurrences hereinafter related took place on or about Friday, January 5, 2001 at approximately 7:30 p.m. on or about SR 255 near the intersection with 5 Point Road in Huston Township, Clearfield County, Pennsylvania.

5. At or about that time and place, Plaintiff, Thomas Weaver was driving a 1999 Ford Taurus automobile in a southerly direction on SR 255.

6. At or about that time and place, Defendant, Frank Kopp, was operating a 1988 Mack truck with attached trailer in a northerly direction on SR 255.

7. At or about that time and place, Defendant, Frank Kopp, lost control of his vehicle, and the tractor and/or trailer entered the southbound lane of SR 255 where it violently collided with the automobile operated by Plaintiff, Thomas Weaver.

8. At all times relevant hereto, Defendant, Frank Kopp, was employed by Defendant, Albert Prechtl, t/d/b/a Eagle Express, and was acting within the course and scope of his employment for Defendant and in furtherance of Defendant's business interests.

9. The foregoing accident and all of the injuries and damages set forth hereinafter sustained by Plaintiffs, Thomas Weaver and Monica Weaver, are the direct and proximate result of the negligent, careless, wanton and reckless manner in which Defendant, Frank Kopp, operated his motor vehicle as follows:

- a. In failing to have his vehicle under proper and adequate control;
- b. In failing to apply his brakes in time to avoid the collision;
- c. In negligently applying his brakes;
- d. In negligently steering his vehicle;
- e. In negligently turning his vehicle;

- f. In permitting his vehicle to strike and collide with the automobile operated by Plaintiff, Thomas Weaver;
- g. In failing to drive at a speed and in a manner that would allow defendant to stop within the assured clear distance ahead;
- h. In failing to keep a reasonable look-out for other vehicles lawfully on the road;
- i. In failing to yield the right-of-way to the vehicle operated by Plaintiff, Thomas Weaver;
- j. In operating his vehicle so as to create a dangerous situation for other vehicles on the roadway;
- k. In operating his vehicle at an excessive rate of speed under the circumstances;
- l. In operating his vehicle in a manner not consistent with the road and weather conditions prevailing at the time;
- m. In failing to be alert to the conditions on or about the roadway;
- n. In failing to keep reasonable look-out for conditions at or about the roadway;
- o. In failing to have a plan which would have allowed Defendant to react appropriately and to protect the safety of other motorists on the roadway;
- p. In failing to operate his vehicle in accordance with existing traffic conditions and traffic controls;
- q. In failing to exercise a high degree of care required of a motorist operating a tractor trailer rig on the roadway;
- r. In failing to observe oncoming traffic;
- s. In failing to keep his vehicle within its proper lane of travel.

10. Defendant's conduct, as set forth above, was in violation of the Pennsylvania Motor Vehicle Code, which is intended to protect persons lawfully on the highway such as Plaintiff, Thomas Weaver, from personal injury, and thus constitutes negligence per se.

COUNT I

Thomas Weaver, Plaintiff v. Frank Kopp, Defendant

11. Paragraphs 1-10 are incorporated herein by reference thereto.

12. By reason of the aforesaid collision, Plaintiff, Thomas Weaver, sustained painful and severe injuries to his nerves, bones and soft tissues which include, but are not limited to, facial, head, neck and shoulder injuries.

13. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has suffered a heightened possibility that he will suffer other or additional injury in the future, and claim is made therefore.

14. The aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, may have aggravated or been aggravated by an existing infirmity, condition or disease, resulting in a prolongation or worsening of the injuries and an enhanced risk of future harm to Plaintiff, and claim is made therefore.

15. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been forced to incur liability for reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose his injuries and to restore himself to health, and claim is made therefore.

16. Plaintiff has not fully recovered from his injuries and it is reasonably likely that he will incur similar expenses in the future, and claim is made therefore.

17. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has suffered a loss of earnings and earning capacity and is entitled to recover the value of the time, earnings and employment benefits he has lost and which he might reasonably have earned in the pursuit of his ordinary calling, and claim is made therefore.

18. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he may have suffered a loss or impairment of future earning capacity, and claim is made therefore.

19. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has incurred incidental costs and expenses the exact amount of which cannot be ascertained at this time, and claim is made therefore.

20. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has undergone and in the future may undergo great physical and mental pain and suffering, great inconvenience in carrying out his daily activities, loss of life's pleasures and enjoyment, and claim is made therefore.

21. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been subjected to severe humiliation, embarrassment, shame, worry and anger.

22. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been subjected to severe mental anguish, emotional distress, nervous shock, fright and horror.

23. As a result of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he will continue to endure great mental anguish, emotional distress, shame, worry and anger in the future.

24. By reason of the aforesaid collision and injuries sustained by Plaintiff, Thomas Weaver, he has been deprived his enjoyment of the pleasures of life.

25. Plaintiff, Thomas Weaver, could be plagued by persistent pain and limitation and, therefore, avers that his injuries may be of a permanent nature, causing residual problems for the remainder of his lifetime, and claim is made therefore.

26. Plaintiff, Thomas Weaver, was subject to a full tort option under his personal automobile insurance policy, and is entitled to maintain an action for his non-economic loss.

27. Plaintiff, Thomas Weaver, would otherwise be entitled to maintain an action for his non-economic loss pursuant to 75 Pa.C.S. §1705 in that he was not an occupant of a "private passenger motor vehicle" as that term is defined at 75 Pa.C.S. §1702 and under 75 Pa.C.S. § 1705, and because he sustained a "serious injury" as that term is defined at 75 Pa.C.S. §1702.

WHEREFORE, Plaintiff, Thomas Weaver, demands judgment in his favor and against Defendant, Frank Kopp, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Frank Kopp, Defendant

28. Paragraphs 1-27 are incorporated herein by reference thereto.

29. As a result of the aforementioned injuries sustained by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has been and may in the future be deprived of the aid, assistance, comfort, care, companionship, society and consortium of her husband, all of which will be of great detriment, and claim is made therefore.

30. As a result of the aforementioned injuries sustained by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has incurred expenses and/or liability for the reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose his injuries and to restore him to health, and claim is made therefore.

WHEREFORE, Plaintiff, Monica Weaver, demands judgment in her favor and against Defendant, Frank Kopp, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III

Thomas Weaver, Plaintiff v. Albert Prechtl, t/d/b/a Eagle Express, Defendant

31. Paragraphs 1-30 are incorporated herein by reference thereto.
32. At all times relevant hereto, Defendant, Frank Kopp, was employed by Defendant, Albert Prechtl, t/d/b/a Eagle Express, and was acting in the course and scope of his employment, furthering the interest, activities, affairs or business of Eagle Express.
33. Defendant, Albert Prechtl, t/d/b/a Eagle Express, is liable to Plaintiff, Thomas Weaver, for the negligent and wrongful actions of Defendant, Frank Kopp, as set forth above.

WHEREFORE, Plaintiff, Thomas Weaver, demands judgment in his favor and against Defendant, Albert Prechtl, t/d/b/a Eagle Express, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT IV – LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Albert Prechtl, t/d/b/a Eagle Express, Defendant

34. Paragraphs 1-33 are incorporated herein by reference thereto.
35. As a result of the aforementioned injuries suffered by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has been and may in the future be deprived of the aid, assistance, comfort, care, companionship, society and

consortium of her husband, all of which will be of great detriment, and claim is made therefore.

36. As a result of the aforementioned injuries suffered by her husband, Thomas Weaver, Plaintiff, Monica Weaver, has incurred expenses and/or liability for the reasonable and necessary medical tests, medical examinations, medical treatment, medications, hospitalizations and similar expenses in an effort to diagnose her husband's injuries and to restore him to health, and claim is made therefore.

WHEREFORE, Plaintiff, Monica Weaver, demands judgment in her favor and against Defendant, Albert Prechtl, t/d/b/a Eagle Express, in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully Submitted,

FREEBURN & HAMILTON

By:



Richard E. Freeburn, Esquire
I.D. No. 30965
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955

Date: 12/31/02

Counsel for Plaintiffs

VERIFICATION

We hereby verify that the statements in the foregoing document are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: 12/18/02

Thomas F. Weaver
THOMAS WEAVER

Monica Weaver
MONICA WEAVER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Plaintiffs' Amended Complaint**, has been duly served on the following this 31st day of December, 2002, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY:



Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 12/31/02

Attorney for Plaintiffs

THOMAS WEAVER AND
MONICA WEAVER,
Plaintiffs

v.

FRANK KOPP and ALBERT
PRECHTL, t/d/b/a EAGLE
EXPRESS,
Defendants

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 02-753-CD
:
: CIVIL ACTION - LAW
:
:

ACCEPTANCE OF SERVICE

I accept service of Plaintiffs' Amended Complaint on behalf of Albert Prechtl, t/d/b/a Eagle Express, and certify that I am authorized to do so.

Respectfully submitted,

**MILLER KISTLER CAMPBELL MILLER
WILLIAMS & BENSON, INC.**

By:

Tracey G. Benson
Tracey G. Benson, Esquire
124 North Allegheny Street
Bellefonte PA 16823
(814) 355-5474

Dated: 12/31/02

Attorney for Defendants

FILED

JAN 02 2003

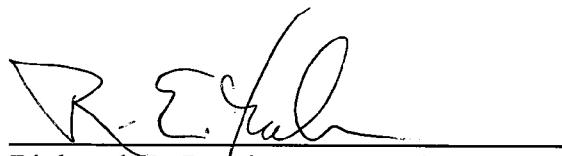
William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Acceptance of Service of Plaintiffs' Amended Complaint**, has been duly served on the following this 31st day of December, 2002, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY:



Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 12/31/02

Attorney for Plaintiffs

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND ALBERT PRECHTL,)
T/D/B/A, EAGLE EXPRESS,)
Defendants.)

NOTICE TO PLEAD

TO THE WITHIN NAMED PLAINTIFFS:

You are hereby notified to plead to the enclosed New Matter within twenty (20) days from service hereof or a default judgment may be entered against you.

Tracey G. Benson
Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Counsel for Defendants
Frank Kopp and Albert Prechtl
t/d/b/a Eagle Express

Dated: February 21, 2003

FILED

FEB 24 2003

**William A. Shaw
Prothonotary**

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

THOMAS WEAVER AND)
MONICA WEAVER,)
Plaintiffs,)
v.) Civil Action No. 02-753-CD
FRANK KOPP AND ALBERT PRECHTL)
t/d/b/a EAGLE EXPRESS,)
Defendants.)

ANSWER AND NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT

Defendants Frank Kopp ("Kopp") and Albert Prechtl, t/d/b/a Eagle Express ("Eagle Express"), by their counsel, Tracey G. Benson, Esquire, and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc., respond to the Amended Complaint of plaintiffs Thomas Weaver and Monica Weaver, and state as follows:

ANSWER

1. Defendants admit only that husband-plaintiff, Thomas Weaver, is an adult individual. Defendants are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 1 of the Amended Complaint, said allegations are deemed to be denied, and proof thereof is demanded.
2. It is admitted that Frank Kopp is an adult individual who resides at 111 Valley Road, St. Marys, Elk County, Pennsylvania.

3. It is admitted that defendant Albert Prechtl is an adult individual who operates a truck transportation business under the fictitious name of Eagle Express, with offices located at 1300 Brussels Street, St. Marys, Elk County, Pennsylvania.

4. Defendants admit only that on or about Friday, January 5, 2001, at approximately 7:30 p.m., a vehicle owned by Eagle Express and driven by Frank Kopp was involved in an accident on State Route 255 near the intersection with 5 Point Road in Huston Township, Clearfield County, Pennsylvania. The defendants deny any remaining allegations contained in paragraph 4 of the Amended Complaint, and proof thereof is demanded.

5. It is admitted that at the time and location identified in paragraph 4 of the Amended Complaint, husband-plaintiff Thomas Weaver was operating a 1999 Ford Taurus automobile in a generally southerly direction on State Route 255.

6. It is admitted that at the date, time and place identified in paragraph 4 of the Amended Complaint, defendant Frank Kopp was operating a 1988 Mack truck with attached trailer in a northerly direction on State Route 255.

7. Defendants admit only that on the date, time and place identified in the Amended Complaint, the vehicle being operated by husband-plaintiff contacted the defendant's vehicle near the left front tire of the trailer unit. Defendants deny each and every remaining allegation contained in paragraph 7 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

8. It is admitted that at the time and place identified in the Amended Complaint, Defendant Kopp was operating the tractor trailer in the course and scope of

his employment by Albert Prechtl, t/d/b/a Eagle Express. Any remaining allegations contained in paragraph 8 of the Amended Complaint are denied because the Amended Complaint fails to identify any specific "business interests" of defendant Albert Prechtl which are alleged to have been furthered by Frank Kopp at the date, time and place alleged in the Amended Complaint.

9. Defendants deny each and every allegation contained in paragraph 9 of the Amended Complaint, including subparagraphs (a) through (s) pursuant to Pa.R.Civ.P. 1029(e).

10. Defendants deny each and every allegation contained in paragraph 10 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT I

THOMAS WEAVER, PLAINTIFF V. FRANK KOPP, DEFENDANT

11. Defendants incorporate by reference herein their response to paragraphs 1 through and including 10 of the Amended Complaint as though each were set forth in full.

12. Defendants deny each and every allegation contained in paragraph 12 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

13. Defendants deny each and every allegation contained in paragraph 13 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

14. Defendants deny each and every allegation contained in paragraph 14 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

15. Defendants deny each and every allegation contained in paragraph 15 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

16. Defendants deny each and every allegation contained in paragraph 16 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

17. Defendants deny each and every allegation contained in paragraph 17 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

18. Defendants deny each and every allegation contained in paragraph 18 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

19. Defendants deny each and every allegation contained in paragraph 19 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

20. Defendants deny each and every allegation contained in paragraph 20 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

21. Defendants deny each and every allegation contained in paragraph 21 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

22. Defendants deny each and every allegation contained in paragraph 22 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

23. Defendants deny each and every allegation contained in paragraph 23 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

24. Defendants deny each and every allegation contained in paragraph 24 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

25. Defendants deny each and every allegation contained in paragraph 25 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

26. Defendants deny each and every allegation contained in paragraph 26 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

27. Defendants deny each and every allegation contained in paragraph 27 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT II - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Frank Kopp, Defendant

28. Defendants incorporate by reference herein their response to paragraphs 1 through and including 27 of the Amended Complaint as though each were set forth in full.

29. Defendants deny each and every allegation contained in paragraph 29 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

30. Defendants deny each and every allegation contained in paragraph 30 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT III

Thomas Weaver, Plaintiff v. Albert Prechtl d/b/a Eagle Express, Defendant

31. Defendants incorporate by reference herein their response to paragraphs 1 through and including 30 of the Amended Complaint as though each were set forth in full.

32. Defendant Albert Prechtl admits that at the time of the accident alleged in the Amended Complaint, defendant Frank Kopp was operating a tractor trailer in the

course and scope of his employment with Albert Prechtl, d/b/a Eagle Express. Any remaining allegations contained in paragraph 32 of the Amended Complaint are denied.

33. Defendants deny each and every allegation contained in paragraph 33 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

COUNT IV - LOSS OF CONSORTIUM

Monica Weaver, Plaintiff v. Albert Prechtl, d/b/a Eagle Express, Defendant

34. Defendants incorporate by reference herein their response to paragraphs 1 through and including 33 of the Amended Complaint as though each were set forth in full.

35. Defendants deny each and every allegation contained in paragraph 35 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

36. Defendants deny each and every allegation contained in paragraph 35 of the Amended Complaint pursuant to Pa.R.Civ.P. 1029(e).

WHEREFORE, Defendants Frank Kopp and Eagle Express pray that the claims asserted against them by Plaintiffs Thomas Weaver and Monica Weaver be dismissed, and that judgment be entered in favor of the defendants and against the plaintiffs on all counts contained in the Amended Complaint.

NEW MATTER

37. Defendants aver that the Amended Complaint fails to state any claim upon which relief can be granted.

38. Defendants aver that Plaintiffs' claims are subject to, and limited by, the provisions of the Pennsylvania Comparative Negligence Act.

39. In order to preserve any defense of contributory negligence pending further investigation and discovery, Defendants aver that Plaintiffs' claims are barred by the contributory negligence of Plaintiff Thomas Weaver.

40. Defendants aver that the incident alleged in the Amended Complaint was caused, in whole or in part, by the careless, negligent, and reckless conduct of Plaintiff Thomas Weaver as follows:

- a. In failing to operate his vehicle on the state highway at an appropriate and safe speed;
- b. In failing to operate his vehicle in accordance with the laws of the Commonwealth of Pennsylvania and the rules of the road applicable to the location and conditions then and there prevailing;
- c. In failing to maintain the assured clear distance ahead;
- d. In operating his vehicle at a speed that was too fast for conditions then and there prevailing;
- e. In operating his vehicle in a manner causing it to strike the vehicle of the defendants; and
- f. In failing to take appropriate evasive action to avoid collision.

41. Defendants aver that Plaintiffs' claims are subject to, and limited by, the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

42. Defendants aver that Plaintiffs' claims are subject to, and limited by, any insurance coverage elections, including but not limited to, elections for applicable tort coverage, arising under the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

43. Defendants aver that husband-plaintiff has not sustained any serious injuries as required by the Pennsylvania Motor Vehicle Financial Responsibility Law, sufficient to give rise to the causes of action set forth in the Amended Complaint.

44. Defendants aver that if Plaintiffs sustained any of the injuries, losses or damages alleged in the Amended Complaint, which is denied, said injuries were caused or arose, in whole or in part, as a result of forces, actions, conduct and omissions of others over whom the Defendants had neither the opportunity, nor duty of control.

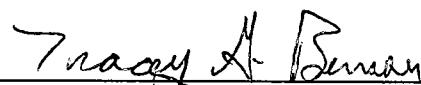
45. Defendants aver that to the extent Plaintiffs have sustained any of the injuries, losses, or damages alleged in the Amended Complaint, which is denied, some or all of said injuries, losses, or damages were not caused by any conduct on the part of the Defendants.

46. Defendants aver that some or all of the injuries, losses, or damages alleged in the Amended Complaint were the result of pre-existing or subsequent injuries, diseases, conditions, or processes that are unrelated to the accident alleged in the Complaint.

47. Defendants aver that Frank Kopp acted at all times in a manner that was reasonable under the circumstances, in response to a sudden emergency that was neither created, nor exacerbated by, any conduct on the part of the Defendants.

48. Defendants aver that some or all of Plaintiffs claims are barred by any applicable statute of limitations.

WHEREFORE, Defendants Frank Kopp and Albert Prechtl, d/b/a/ Eagle Express pray that the claims asserted against them by Plaintiffs Thomas Weaver and Monica Weaver be dismissed, and that judgment be entered in favor of the defendants and against the plaintiffs on all counts contained in the Amended Complaint.



Tracey G. Benson
Julia R. Cronin

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

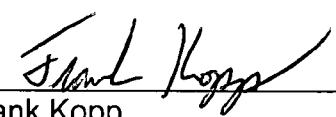
Counsel for Defendants
Frank Kopp and Albert Prechtl,
t/d/b/a Eagle Express

Dated: February 21, 2003

VERIFICATION

I, Frank Kopp, state that the facts contained in the foregoing **Answer and New Matter to Plaintiffs' Amended Complaint** are true and correct to the best of my knowledge, information and belief.

I make this Verification pursuant to 18 Pa.C.S.A. Section 4904 pertaining to unsworn falsification to authorities.



Frank Kopp

VERIFICATION

I, **Albert Prechtl**, state that the facts contained in the foregoing **Answer and New Matter to Plaintiffs' Amended Complaint** are true and correct to the best of my knowledge, information and belief.

I make this Verification pursuant to 18 Pa.C.S.A. Section 4904 pertaining to unsworn falsification to authorities.

Albert A. Prechtl
Albert Prechtl
Eagle Express

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

THOMAS WEAVER AND)
MONICA WEAVER,)
)
Plaintiffs,)
)
v.) Civil Action No. 02-753-CD
)
FRANK KOPP AND ALBERT PRECHTL)
t/d/b/a EAGLE EXPRESS,)
)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER AND NEW MATTER TO AMENDED COMPLAINT**, was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Richard E. Freeburn, Esquire
Freeburn & Hamilton
4415 North Front Street
Harrisburg, PA 17110

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson
Tracey G. Benson

Dated: February 21, 2003

THOMAS WEAVER AND
MONICA WEAVER,
Plaintiffs

v.

FRANK KOPP and ALBERT
PRECHTL, t/d/b/a EAGLE
EXPRESS,

Defendants

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 02-753-CD
:
: CIVIL ACTION - LAW
:
:

FILED

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REPLY TO NEW MATTER

William A. Shaw
Prothonotary

AND NOW come Plaintiffs, Thomas Weaver and Monica Weaver, by their attorneys, Freeburn & Hamilton, and file the following Reply to New Matter:

37. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

38. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

39. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied. By way of further reply, pursuant to Pa. R.C.P. 1030(b), certain

affirmative defenses, including contributory negligence, need not be pleaded, and Plaintiffs need not reply.

40. Plaintiffs incorporate herein by reference thereto their reply to Paragraph 39. By way of further reply:

- a. Plaintiffs deny that Plaintiff, Thomas Weaver, failed to operate his vehicle on the state highway at an appropriate and safe speed;
- b. Plaintiffs deny that Plaintiff, Thomas Weaver, failed to operate his vehicle in accordance with the laws of the Commonwealth of Pennsylvania and the rules of the road applicable to the location and conditions then and there prevailing;
- c. Plaintiffs deny that Plaintiff, Thomas Weaver, failed to maintain the assured clear distance ahead;
- d. Plaintiffs deny that Plaintiff, Thomas Weaver, operated his vehicle at a speed that was too fast for conditions then and there prevailing;
- e. Plaintiffs deny that Plaintiff, Thomas Weaver, operated his vehicle in a manner causing it to strike the vehicle of defendants. To the contrary, Defendants' vehicle struck Plaintiff's vehicle.
- f. Plaintiffs deny that Plaintiff, Thomas Weaver, failed to take appropriate evasive action to avoid the collision.

41. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

42. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied. By way of further reply, Plaintiffs incorporate herein by reference thereto the averments contained in Paragraphs 26 and 27 of their Amended Complaint.

43. Plaintiffs specifically deny that Thomas Weaver did not suffer a serious injury. By way of further reply, the allegations that Thomas Weaver did not suffer a sufficiently serious injury as required by the Pennsylvania Motor Vehicle Financial Responsibility Law constitutes a conclusion of law to which no reply is required. To the extent that a court determines that this paragraph constitutes an averment of fact, the same is specifically denied. By way of further reply, Plaintiffs incorporate herein by reference thereto their reply to Paragraph 42.

44. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied. By way of further reply, Plaintiffs incorporate herein by reference thereto the averments contained in their Complaint. By way of further reply, Plaintiffs specifically deny that their injuries, damages and losses were caused by forces, actions, conduct or omissions by others than Defendants, and further deny any implication that negligence of Defendant, Frank Kopp, was not a substantial contributing factor in bringing about Plaintiffs' injuries, damages and losses.

45. Plaintiffs specifically deny the allegation that some or all of their injuries, damages and losses were not caused by any conduct on the part of Defendants. Plaintiffs incorporate herein by reference thereto their reply to Paragraph 44.

46. Plaintiffs specifically deny the allegation that some or all of their injuries, losses or damages were the result of pre-existing or subsequent injuries, diseases, conditions or processes that are unrelated to the accident alleged in the Complaint. Any implication that Defendants' negligence and motor vehicle accident was not a substantial contributing factor in bringing about Plaintiffs' injuries, loses and damages is specifically denied.

47. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. By way of further reply, Plaintiffs specifically deny that Defendant, Frank Kopp, acted, at all times, in a manner that was reasonable under the circumstances, in response to a sudden emergency that was neither created, nor exacerbated by, any conduct on the part of Defendants. By way of further reply, Plaintiffs incorporate herein by reference thereto all of the averments contained in their Complaint.

48. This paragraph contains no averments of fact, only conclusions of law, to which no reply is required. To the extent that a court determines that this paragraph contains any averments of fact, the same are specifically denied.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendants' New Matter and enter judgment in their favor and against

Defendants in an amount in excess of TWENTY THOUSAND & 00/100 (\$20,000.00) DOLLARS, exclusive of interest and costs and in excess of any jurisdictional amount requiring compulsory arbitration.

Respectfully Submitted,

FREEBURN & HAMILTON

By:


Richard E. Freeburn, Esquire
I.D. No. 30965
4415 North Front Street
Harrisburg PA 17110
(717) 671-1955

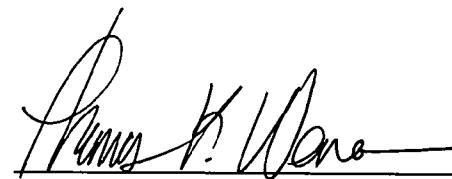
Date: 3/10/03

Counsel for Plaintiffs

VERIFICATION

We hereby verify that the statements in the foregoing document are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Dated: _____



THOMAS WEAVER



MONICA WEAVER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Plaintiffs' Reply to New Matter**, has been duly served on the following this 10th day of March, 2003, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY:



Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 3/10/03

Attorney for Plaintiffs

THOMAS WEAVER AND
MONICA WEAVER,
Plaintiffs

v.
FRANK KOPP and ALBERT
PRECHTL, t/d/b/a EAGLE
EXPRESS,

Defendants

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

: NO. 02-753-CD

: CIVIL ACTION - LAW

PRAECIPE

TO: Prothonotary

Kindly mark the above-captioned matter settled and discontinued.

Respectfully submitted,

FREEBURN & HAMILTON

By:



Richard E. Freeburn, Esquire
I.D. No. 30965
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Date: 3/26/04

Attorney for Plaintiffs

FILED

MAR 30 2004

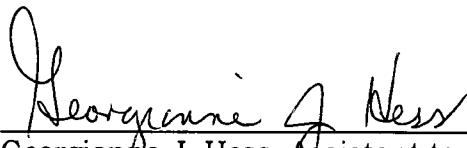
William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Praecipe**, has been duly served on the following this 26th day of March, 2003, by placing the same in the U.S. First Class Mail, postage prepaid, at Harrisburg, Pennsylvania, addressed as follows:

Tracey G. Benson, Esquire
MILLER KISTLER CAMPBELL MILLER WILLIAMS
& BENSON, INC.
124 North Allegheny Street
Bellefonte PA 16823

BY:


Georgianne J. Hess, Assistant to
Richard E. Freeburn, Esquire
Attorney I.D. #30965
FREEBURN & HAMILTON
4415 North Front Street
Harrisburg, PA 17110
(717) 671-1955

Dated: 3/26/03

Attorney for Plaintiffs

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

CIVIL DIVISION

**Thomas Weaver
Monica Weaver**

Vs.

No. 2002-00753-CD

**Frank Kopp
Eagle Express**

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 March 30, 2004, marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$197.57 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 30th day of March A.D. 2004.

William A. Shaw, Prothonotary