

02-788-C0
TRUMAN NIEPER -vs- CURWENSVILLE DAM INN, INC.

Date: 03/25/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 01:26 PM

ROA Report

Page 1 of 2

Case: 2002-00788-CD

Current Judge: John K. Reilly Jr.

Violet Neeper Adm vs. Curwensville Dam Inn, Inc.

Civil Other

Date	Judge	
05/16/2002	X Filing: Civil Complaint Paid by: Ferraraccio & Noble Receipt number: 1842706 Dated: 05/16/2002 Amount: \$80.00 (Check) Three CC Attorney	No Judge ✓
05/23/2002	X Praeclipe For Entry of Appearance, filed by Atty. Taladay Entry of appearance for Curwensville Dam Inn, Inc.	No Judge ✓
05/29/2002	X Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
06/14/2002	X Answer and New Matter. Filed by s/Matthew B. Taladay, Esq. Verification s/Glenn Stephenson Certificate of Service no cc	No Judge ✓
06/20/2002	X Amended Answer and New Matter. Filed by s/Matthew B. Taladay, Esq. Verification s/Matthew B. Taladay, Esq. Certificate of Service no cc	No Judge ✓
	X Certificate of Service, Notice of Deposition upon Theron G. Noble, Esq. Filed by s/Matthew B. Taladay, Esq. no cc	No Judge ✓
06/25/2002	X Reply to New Matter. Filed by s/Theron G. Noble, Esq. Notice of Service no cc	No Judge ✓
06/28/2002	X Verification. s/Truman Neeper, Plaintiff Notice of Service no cc	No Judge ✓
07/05/2002	X Notice of Service, filed by Atty. Taladay Mailed July 2, 2002, to Atty. Noble First Set of Discovery Materials. No Cert. Copies	No Judge ✓
08/23/2002	Filing: Subpoena Paid by: Taladay, Mathew B. (attorney for Curwensville Dam Inn, Inc.) Receipt number: 1847388 Dated: 08/23/2002 Amount: \$12.00 (Check)	No Judge ✓
09/17/2002	X Notice of Service, Defendant's Response To Request For Production of Documents upon THERON G. NOBLE, ESQ. s/Matthew B. Taladay, Esq. no cc	No Judge ✓
12/05/2002	X Filing: Notice of Service of Plaintiffs' Answer to Interrogatories. No CC.	No Judge ✓
06/05/2003	X Petition To Substitute Party. Filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge ✓
06/10/2003	X Rule To Show Cause, Now, this 10th day of June, 2003, issued upon the Defendant. RULE RETURNABLE, for filing Written Response, is set for the 30th day of June, 2003, and argument on the PETITION set for the 11th day of July, 2003, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 1 cc to Atty	John K. Reilly Jr. ✓
06/13/2003	X Notice of Service, Request For Admissions upon: MATTHEW B. TALADAY, ESQ. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr. ✓
06/19/2003	X Notice of Service, Defendant's Response to Request For Admissions upon: THERON G. NOBLE, ESQ. filed by s/Matthew B. Taladay, Esq. no cc	John K. Reilly Jr. ✓
	X ORDER, AND NOW, this 18th day of June, 2003, re; Plaintiff's Motion To Substitute Party is GRANTED, etc. by the Court, s/JKR,JR.,P.J. 2 cc Atty Noble	John K. Reilly Jr. ✓
06/26/2003	X Notice of Service, Petition To Substitute Party upon: MATTHEW B. TALADAY, ESQ. filed by s/Theron G. Noble, Esq. no cc	John K. Reilly Jr. ✓
07/08/2003	X Notice of Service, Defendant's ANSWERS TO INTERROGATORIES upon: Theron G. Noble, Esq. filed by s/Matthew B. Taladay, Esquire no cc	John K. Reilly Jr. ✓
07/18/2003	X Certificate of Readiness. filed by s/Matthew B. Taladay, Esquire no cc John K. Reilly Jr. Copy to C/A	✓

Entry of Appearance:

File in original and certify copies. If the case has been active in a way that it would have been sent to Marcy at any time, make a copy of the entry of appearance and send it to her. She needs it to keep her cards up to date. If the case has never gone to Marcy (ex.: Mortgage Foreclosure complaint filed, followed by a Sheriff Return) and the Defendant has an attorney enter his appearance, Marcy does not need to see it.

Date: 08/24/2004

Clearfield County Court of Common Pleas

User: ASELFridge

Time: 02:29 PM

ROA Report

Page 1 of 1

Case: 2002-00788-CD

Current Judge: Fredric Joseph Ammerman

Violet Neeper Adm vs. Curwensville Dam Inn, Inc.

Civil Other

Date	Selected Items	Judge
07/25/2003	✗ Petition To Strike Certificate of Readiness. filed by s/Theron G. Noble, Esquire Notice of Service no cc	John K. Reilly Jr.
07/28/2003	✗ RULE TO SHOW CAUSE, NOW, this 28th day of July, 2003, issued upon John K. Reilly Jr. Defendant. Rule Returnable for filing Written Response 31st Day of July, 2003 and Argument on the Petition set for the 31st day of July, 2003 at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble	John K. Reilly Jr.
07/31/2003	✗ ORDER, NOW, this 31st day of July, 2003, re; CA to list the above-captioned matter for the call of the Civil List in April 2004. No further continuances to be granted. by the Court, s/JKR,JR.,P.J. 1 cc Atty Noble, Taladay	John K. Reilly Jr.
04/06/2004	✗ Order, NOW, this 1st day of April, 2004, following Civil Call, Order that Civil Pre-Trial Conference with counsel for the parties scheduled for April 16, 2004 at 2:00 p.m. in President Judge Ammerman's Chambers. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attys Noble, Taladay	Fredric Joseph Ammerman
04/08/2004	✗ ORDER, NOW, this 1st day of April, 2004, Civil Pre-Trial Conference with counsel for the parties scheduled for Friday, April 16, 2004 at 2:00 p.m. in President Judge Ammerman's Chambers. by the Court, s/FJA, P.J. 2 cc Atty Taladay, Noble	John K. Reilly Jr.
04/16/2004	✗ ORDER, NOW, this 16th day of April, 2004, re: Non-Jury Trial scheduled for two days, June 30th and July 1st, 2004, beginning at 9:00 a.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 2 cc Atty Noble, Taladay	Fredric Joseph Ammerman
05/10/2004	✗ ORDER, NOW, this 7th day of May, 2004, re: Civil Non-Jury Trial RESCHEDULED from June 30, 2004 and July 1, 2004 to Thursday and Friday, July 1 and 2, 2004 at 9:00 a.m. each day in Courtroom No. 1. by the Court, s/FJA, P.J. 1 cc Atty Noble, Taladay	Fredric Joseph Ammerman
07/02/2004	✗ ORDER, filed. cert. to Atty. Noble & Taladay NOW, this 1st day of July, 2002, following Non-Jury Trial, ORDER of this Court that counsel for both parties submit brief to the Court no later than August 9, 2004	Fredric Joseph Ammerman
08/24/2004	✗ ORDER filed, NOW, this 17th day of August, 2004, following Non-Jury Trial, with the Court believing that the Plaintiff has not met its burden of proof to show negligence on the part of the Defendant, the Court hereby renders a verdict in favor of the Defendant. BY THE COURT /s/ Fredric J. Ammerman, President Judge. 1CC to Attys. Noble & Taladay	Fredric Joseph Ammerman

List of Jurors for CRIMINAL COURT
Scheduled for Thursday, August 19, 2004 at 8:45AM in Court Room 1
Number of Jurors Selected 265 Session # 6

Page 10
Date Printed 01/30/2004

Juror#	Juror Name	Address Line 1	Address Line 2	Address Line 3
72	933 NYE, DR. GEORGE N.	EX 7-21-04	603 N FOURTH ST	DUBOIS, PA 15801
73	36 OROSZ, KEVIN	BURNSIDE PA 15721		
74	1551 OSHALL, DANIEL	RR 1 BOX 51-A	FALLEN TIMBER PA 16639	
75	2206 PARISA, ARLENE	EX 7-19-04		LUTHERSBURG, PA 15848
55	PEAKS, BARBARA	24155 CROSSING HOLLOW RD		
76	2304 PEARCE, TIMOTHY	3939 STIFFLER HILL RD	CHERRY TREE PA 15724	
77	4579 PETERS, IRENE R.	EX 8-5-04	RR 1 BOX 245	DUBOIS PA 15801
78	337 PETERS, JAMES E	314 PARK AVE	CLEARFIELD PA 16830	
79	3846 PETRO, DAWN	P. O. BOX 207	HAWK RUN, PA. 16840	
80	2715 PETROSKY, RONALD SR	2524 DRANE HIGHWAY	OSCEOLA MILLS PA 16666	
81	1201 PHILLIPS, CAROLYN	EX 8-2-04	39 W MAIN ST	MAHANFEY PA 15757
82	3576 PHILLIPS, RONALD L	EX 7-26-04	P O BOX 208	HYDE PA 16841
83	953 PINCHOCK, PAUL T.	EX 7-21-04		DUBOIS, PA 15801
84	2822 PLUBELL, LEOLA	EX 7-19-04	BOX 22	LECONTE'S MILLS PA 16650
85	3055 PLUMMER, JOHN		2145 GINTER MORANN HWY	GINTER, PA. 16651
86	4945 POWELL, DANIELLE	EX 7-18-04	1189 KENDRICK RD	HOUTZDALE PA 16651
87	87 POWELL, MARY ANN		516 RAY ST	PHILIPSBURG PA 16866
88	4598 PRONTOCK, THOMAS A.		R. D. 1. BOX 500	DUBOIS. PA 15801
89	1859 QUICK, SUSAN		RR 1 BOX 410	WEST DECATUR PA 16878
90	1132 KAFFERTY, MICHAEL	EX 7-21-04	P O BOX 15	GRAMPIAN PA 16838

11

9

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

VIOLET NEEPER, Administrator of the Estate of TRUMAN NEEPER,	:	Type of Case: Civil Action
Plaintiff	:	No. 02-788-CD
-vs-		
CURWENSVILLE DAM INN, INC., a Pennsylvania Corporation, Defendant	:	Type of Pleading: Trial Brief
	:	Filed on Behalf of: Defendant
	:	Counsel of Record for This Party: Matthew B. Taladay, Esq. Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P.O. Box 487 DuBois, PA 15801 (814) 371-7768

RECEIVED
AUG 10 2004
COURT ADMINISTRATOR'S
OFFICE

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

VIOLET NEEPER, Administrator of the Estate of TRUMAN NEEPER,	:	
	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-788-CD
	:	
CURWENSVILLE DAM INN, INC.,	:	
a Pennsylvania Corporation,	:	
Defendant	:	

DEFENDANT'S TRIAL BRIEF

AND NOW, comes the Defendant, Curwensville Dam Inn, Inc., by its attorneys, Hanak, Guido and Taladay, and hereby submits the within Trial Brief.

A Background

Plaintiff seeks damages for injuries sustained by Truman Neeper on October 10, 2001 while, as a patron seated at the bar of the Curwensville Dam Inn, Mr. Neeper fell backwards from a barstool.

B Basis of Claim

Plaintiff's Complaint alleges that the Defendant was negligent as follows:

- (a) in failing to inspect its stools to assure they were safe and could sustain an adequate amount of weight;
and

(b) in failing to provide a safe stool in [sic] which Mr. Neeper could sit down while he ate his lunch.

C. Plaintiff's Burden of Proof

The mere fact that an accident occurs on a business premises does not give rise to an inference that the plaintiff was a victim of negligence on the part of the Defendant. Pennsylvania law places the burden on the plaintiff to establish the existence of negligence by proving four elements: (1) duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages. See Swift vs. Northeastern Hospital of Philadelphia, 690 A.2d 719 (Pa.Super. 1997). Thus, establishing a breach of a legal duty is a condition precedent to a finding of negligence. Id.

The nature of the duty which is owed in any given situation hinges primarily upon the relationship between the parties at the time of the plaintiff's injury. The standard of care that a possessor of land owes to one who enters upon the land depends on whether the entrant is a trespasser, a licensee or an invitee. Id.

In the present situation, it is undisputed that the Plaintiff was a business invitee of the Defendant. A "business invitee" is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land. Id. at 722.

Pennsylvania has adopted the Restatement (2nd) of Torts Section 343 which governs the duty which the owner of property owes to its business invitee, which provides as follows:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he:

(A) Knows or by the exercise of reasonable care would discover the condition, and would realize that it involves an unreasonable risk of harm to such invitees, and

(B) Should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(C) Fails to exercise reasonable care to protect them against the danger. D'Aprile vs. Rolling Hill Hospital, 28 Pa. D&C 4th 430 (Montgomery Co. 1995).

Applying §343 of the Restatement (2nd) of Torts, a party is subject to liability for physical harm caused to an invitee only if he knows of or reasonably should have known of the condition and the condition involves an unreasonable risk of harm, he should expect that the invitee will not realize it or will fail to protect himself against it, and the party fails to exercise reasonable care to protect the invitees against the danger. Swift vs. Northeastern Hospital of Philadelphia, 690 A.2d at 722, citing Blackman vs. Federal Realty Investment Trust, 444 Pa.Super. 411, 415, 664 A.2d 139, 142 (1995). Thus, under §343, the Plaintiff as a business invitee must prove either that the proprietor of the land had a hand in creating the harmful condition, or he had actual or constructive notice of such condition. See Moultrie vs. Great Atlantic and Pacific Tea Co., 281 Pa.Super. 525, 535, 422 A.2d 593, 598 (1980).

The principle of law from which the rule set forth in the Restatement §343 was derived is that a possessor of land is not an insurer of the safety of those on his premises. As such, the mere existence of a harmful condition in a public place of business, or the

mere happening of an accident due to such a condition is neither, in and of itself, evidence of a breach of the proprietor's duty of care to his invitees, nor raises a presumption of negligence. Moultrie vs. Great A&P Tea Co., 281 Pa.Super. 525, 529-530, 422 A.2d 593, 595-596 (1980). Therefore, in order to impose liability on a possessor of land, the plaintiff must present evidence which tends to prove that the possessor deviated in some particular from his duty of reasonable care under the existing circumstances. Id., see also, Zito vs. Merit Outlet Stores, 647 A.2d 573, 574-575 (Pa.Super. 1994).

In order to meet the required burden of proof, the plaintiff must prove by a preponderance of the evidence that the defendant knew or, in the exercise of reasonable care, should have known of the existence of a harmful condition on the business premises which was not equally obvious to the Plaintiff's decedent.

D. Evidence of Notice

Testimony at trial in this matter established that Plaintiff's Decedent, Truman Neeper, had been patronizing the Curwensville Dam Inn, formerly known as the Ponderosa, on a daily basis for more than thirty years. (T-6). When questioned regarding any prior problems with the barstools at the Curwensville Dam Inn, Mr. Neeper testified as follows:

Q. Prior to that day of your fall, had you ever had any problem with the stools at the Curwensville Dam Inn?

A. No.

Q. And am I correct in my understanding that usually when you went to the Dam Inn, you sat in one of the stools at the bar?

A. Right.

Q. You never had any problem before this day with any stool being unsteady?

A. No.

(T-18).

On the date of his accident, Mr. Neeper was seated beside a friend named Ray Litz. At trial in this matter, Mr. Litz testified that he did not hear Mr. Neeper make any complaints regarding his barstool before his fall. In addition, Mr. Litz testified that he was not aware of any problems with the stools in the establishment and had never complained to Glenn Stephenson or the staff about any problem with the barstools.

Plaintiff also called Darlene Lansberry McCully who, at the time of the incident, was a patron at the Defendant establishment and was seated several barstools away from Mr. Neeper. Ms. McCully did not actually see the Plaintiff's decedent fall but heard a "thud" which she described as sounding like "a large man hitting the floor".

At trial in this matter, Ms. McCully testified that she examined the stool that Mr. Neeper had been sitting on after the incident. She claimed that her examination revealed that the top of the stool was "wobbly" and not properly attached to the base. However, when confronted with her deposition transcript, Ms. McCully admitted that on the date of her July 23, 2003 sworn deposition she stated that she did not perform any inspection of the

stool that Mr. Neeper was sitting on after the incident. This witness further admitted that she at no time reported the existence of any defective or unstable barstools to either Mr. Stephenson or any other employees or agents of the Curwensville Dam Inn.

Curiously enough, Ms. McCully also disputed that the barstool that was physically present in the Courtroom at the time of trial was the same stool upon which Mr. Neeper was sitting at the time of his accident. This witness further admitted to having ill will against Mr. Stephenson for banning her for life from the Curwensville Dam Inn because of an altercation in which she was involved on the premises. This witness also admitted that she left her employment with the Curwensville Dam Inn on less than favorable terms.

Ms. McCully testified that prior to Mr. Neeper's fall, she thinks she "may have heard" Mr. Neeper complaining about his stool, but she is "not sure".

Mr. Neeper in his deposition represented that as soon as he sat down on his barstool on the date of his incident, he noticed that it "wiggled". He also represented discussion with his close friend Earl Lippert about a stool with "bent leg on it". (T-16).

It must be noted, however, that Mr. Neeper states that he had only been seated "about a minute" when he fell. However, the other witnesses testifying at trial indicated that he had been present in the bar for a much longer period of time. Sue Peterman, the bartender on duty, testified that she had served Mr. Neeper a shot of peppermint Schnapps prior to his fall. Mr. Neeper said nothing to Ms. Peterman regarding a problem with his barstool.

Mr. Lippert also testified that Mr. Neeper made some complaint about his barstool immediately prior to his fall. However, it should be noted that Plaintiff was able to produce no other witnesses

to support the contention of a "wobbly barstool" either before or after Mr. Neeper's fall, despite the fact that there were numerous patrons present in the establishment at the time of this incident. It should further be noted that Mr. Lippert admitted that he personally escorted Mr. Neeper's attorney to Neeper's residence within weeks after the incident, knowing that Mr. Neeper intended to make a claim for money damages. Mr. Lippert admitted his animosity for Glenn Stephenson and his disapproval of the changes that occurred at the Curwensville Dam Inn after its change in management.

It is noteworthy that no witnesses other than the Plaintiff's decedent and his friend corroborate the claim of a "wobbly stool". Further, there had been no mention of any problems with barstools in the establishment until after Mr. Neeper began pursuing an action for money damages.

Even more significant is the fact that the Plaintiff at trial did not present one witness or scintilla of evidence to show actual or constructive notice of any dangerous or defective condition on the premises that was causally related to the decedent's injuries. Conversely, the defense presented testimony that its staff and employees regularly conducted inspections and maintenance of the barstools on the premises.

While the barstools on the premises at the time of Mr. Neeper's fall were of the vintage variety, and had been in place for a number of years, the prior owners as well as Mr. Stephenson and his staff performed regular maintenance and inspection. Numerous witnesses at trial corroborated the testimony of Glenn Stephenson that within a week or so prior to Mr. Neeper's incident that all of the

stools were thoroughly inspected, the rubber "feet" changed, and maintenance activities performed.

The Plaintiff has submitted no evidence to show that the Defendants or its agents had actual notice of any harmful or defective condition on the premises. Nor is there any evidence to support the finding of constructive notice on the part of the Defendant. What will amount to constructive notice of a defective or dangerous condition existing on a business premises necessarily varies under the circumstances of each case. *D'Aprile vs. Rolling Hill Hospital*, 28 Pa. D&C 4th at 434, citing *Davanti vs. Hummell*, 409 Pa. 28, 185 A.2d 554 (1962). Some of the factors which would support a finding of constructive notice include a sufficient length of time elapsing between the origin of the defect and the accident, the signs and physical conditions of the premises, the nature of the business conducted thereon, the number of persons using the premises and the frequency of such use, the nature of the defect and its location on the premises, its probable cause and the opportunity which defendant, as a reasonably prudent person, had to remedy it. *Id.*

The Plaintiff failed to submit any evidence to show any dangerous or defective condition contributing to the Plaintiff's fall. Nor is there anything on record to support an inference that the Defendant's agents did not exercise reasonable care to keep the premises properly maintained. For the reason, the claim against the Defendant must be denied.

E. Causation

In order to prevail, the Plaintiff must prove a causal connection between the alleged acts of negligence and the Plaintiff's injury. *Swift vs. Northeastern Hospital of Philadelphia*, 690 A.2d 719 (Pa.Super. 1997). In the present case, the Plaintiff's burden of causation is to prove that the Plaintiff's fall occurred because of a defective barstool. A review of the evidence reveals that Plaintiff has failed to meet that burden.

While it is undisputed that on October 9, 2001 Truman Neeper fell backward from his barstool, there is insufficient evidence to support the contention that this fall occurred because of a substandard, defective barstool. Plaintiff provided no explanation for how or why Mr. Neeper's fall occurred.

It is notable that not a single person who was present that day actually saw Mr. Neeper fall. Plaintiff offered no testimony or evidence to explain how the event occurred. Further, there was no expert analysis or testimony regarding the structural integrity of the barstool in question and whether this in any way could have caused the Plaintiff's fall.

There are numerous possibilities as to why Mr. Neeper could have fallen from his barstool. His personal physician, Dr. Bruno Romeo, testified that as of August, 2001, Mr. Neeper was advised to use supplemental oxygen 24 hours a day. Dr. Romeo further admitted that without the supplemental oxygen, Plaintiff's blood oxygen saturation was found to be dangerously low, which could cause light-headedness, dizziness or blackout. Significantly, Mr. Neeper never used supplemental oxygen while in the Curwensville Dam Inn,

supporting the distinct possibility that he could have simply become dizzy or blacked-out, leading to his fall.

Glenn Stephenson testified that shortly before Mr. Neeper's fall he had installed new carpet in the area around the bar. He also replaced the rubber feet on the barstools, which led to the barstool's greatly increased resistance to sliding. Numerous witnesses testified that Mr. Neeper was a sizable man, with a body weight of between 250 and 280 pounds. Mr. Stephenson stated that it was Mr. Neeper's habit to seat himself on a barstool, and then push back away from the bar with his arms, sliding the stool backwards to his preferred position. It is certainly plausible that Mr. Neeper's fall may have occurred as he was attempting to reposition the stool and inadvertently tipped himself over.

The barstool that was displayed at the Courtroom at the time of the trial, and which was allegedly the stool upon which Mr. Neeper was seated at the time of this accident, certainly appeared to have one leg that was bent. However, there is no indication that this was the cause as opposed to a result of Mr. Neeper's fall.

It would certainly be expected that a barstool with perfectly sound legs would sustain damage in the form of a bent leg when subjected to the forces that would have been generated when tipped onto two legs while bearing a person with the body weight of Mr. Neeper. This is because the cylindrical legs which are designed to support vertical pressure are subjected to the lateral forces generated by the tipping process. An example of this concept that comes to mind is that of an empty aluminum soda can, which can endure

significant amount of pressure applied to its top and bottom, but deforms easily when subjected to lateral pressure.

Because the Plaintiff has failed to meet its legal burden of showing that Mr. Neeper sustained injury because of a defective condition on the premises of which the proprietor had notice, there can be no recovery under the law. While Mr. Neeper's accident was unfortunate and regrettable, the law will not permit recovery where the elements of liability have not been established.

F. Damages

Because Defendant contends that liability has not been proven, it respectfully submits that no damages are awardable. Notwithstanding, Plaintiff's claim for damages will be addressed herein.

Medical Expenses: Mr. Neeper's doctor, Bruno J. Romeo, testified that Mr. Neeper was hospitalized from October 12, 2001 to October 16, 2001 with secondary fractures of the 7th and 8th ribs. He was again hospitalized on October 24 - 28, 2001 for symptoms which Dr. Romeo related to the rib fracture. Dr. Romeo further related that any medical treatments incurred by Mr. Neeper following October 28, 2001 were unrelated to the accident at issue.

The evidence submitted at trial shows that the total admissible medical expenses incurred by Mr. Neeper and related by Dr. Romeo to the subject incident are in the amount of \$9,599.40 without deduction or monies paid by Defendant to Plaintiff. Defendant submitted evidence indicating payment of \$5,000.00 toward Plaintiff's medical expenses paid on behalf of the Defendant to Plaintiff's counsel.

This payment was not disputed by Plaintiff. Therefore, in the event that this Court finds Defendant liable to Plaintiff, the total net amount of recoverable medical expenses is \$4,599.40.

Non-Economic Damages: In the days after his fall, Mr. Neeper began to experience left-sided discomfort. He was admitted to the hospital where he was provided with a Fentanyl patch and Darvocet, which adequately controlled his pain.

At the time of his re-admission to the hospital on October 24, 2001, Mr. Neeper was experiencing some shortness of breath and ongoing left-sided chest pain. He was again discharged with pain medication.

Mr. Neeper was re-admitted to the hospital on November 13, 2001 for reasons unrelated to the subject accident. At that time, his left-sided rib pain had improved. Mr. Neeper continued to take pain medications for two to three months after the accident. (T. 23). However, after this time period, his pain improved to the point where he only experienced the discomfort at night when he had attempted to sleep on his left side with his hand at the bottom of rib cage. He gave deposition testimony was follows:

Q. Except for the discomfort that you get when you are sleeping on your left side, do you have any other discomfort in your ribs or left side?

A. Not really, no.

(T-29.)

Numerous witnesses at trial testified that following his release from the hospital, Mr. Neeper continued to patronize the

Curwensville Dam Inn, and did not make any complaints about ongoing rib pain.

Based on the evidence of record, any discomfort that Mr. Neeper experienced as a result of this fall, was relatively brief in duration. Except for the two short hospital stays, his daily routine and activities were not greatly altered, and after two to three months the rib fractures cause him no daily discomfort, and only some inconvenience at night when he attempted to sleep in a certain position.

The evidence presented at trial further indicates that Mr. Neeper was suffering from numerous other physical conditions, including congestive heart disease, chronic constructive pulmonary disease, and a fractured femur which had not properly healed, all of which impacted his health and daily activities. The subject accident did not cause any further significant disability or impairment.

In the event that this Court determines that Defendant is in any way liable to Plaintiff, the record does not support a significant award of non-economic damages.

Plaintiff further seeks money damages based on the Defendant's decision to prohibit Mr. Neeper from further patronizing the bar because of liability concerns. It is Defendant's position that because the Defendant business is a privately owned establishment, it may in its discretion refuse to admit certain patrons for legitimate business reasons. Therefore, there is no cognizable basis for Plaintiff's claim for recovery.

G. Conclusion

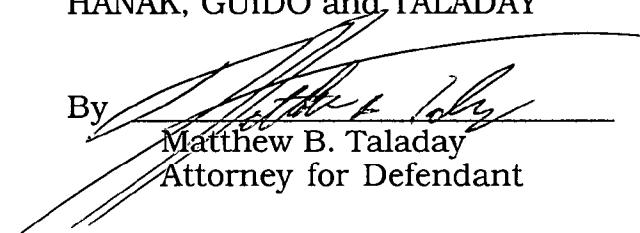
For the foregoing reasons, the Defendant respectfully requests this Court to enter judgment in favor of Defendant and against Plaintiff.

Respectfully submitted,

HANAK, GUIDO and TALADAY

Date: 08/09/04

By


Matthew B. Taladay
Attorney for Defendant

Truman \rightarrow deceased

7/1 - 7/2/04

NONJury.

Nepper v Cullen, Dam
Noble Taladay

Bar Stool NOT admitted

Deps of Truman nepper
Medicare bills

Ex 2

Ex 3

Admitted

Bills from 1st hospitalization (Ex 4)

Dr Bruno Romeo — stipulated qualifications.

internal medicine & pulmonary care

April 96. PL became patient of his.

Oct 5th, 01. last time he saw PL

before accident. complained of
bowel problems, shortness of breath

chronic lung disease

he had
bronchitis
empyema

COPD

chronic obstructive
pulmun. disease.

Oct 10, 01 - fall.

Oct 12, 01 PL in hosp. 7th, 8th rib left side
fractures.

PL told him he fell of Bar stool & hit
left side.

in hosp for "pain control". sharp, stabbing pain
10/10 - 10/16/04. discharged on pain med.

10/24 in hosp again for left side chest
pain + shortness of breath.

left pleural effusion - collection of
Fluid in chest cavity

Fluid build up was secondary to broken ribs. Fluid was drained.

10/24 - 10/28 discharge. Breathing improved, still had pain chest on meds

~~3rd~~ 11/13/01 in hospital again no breathing.

Doc R says NOT related to fall.

11/13 - 11/15.

11/21/01 - office visit. still left side pain.

2/5/02 - office visit: still pain & soreness.

3/25/02 " "

4/29/02 no chest pain

No further treatment of PC re The broken ribs.

Cross -

PC was advised prior to fall to use Ox around the clock.

PC complained of being dizzy

light-headed. Ox was to alleviate

This, PC had Ox for home use.

~~10/15/01~~ - 7/16/01 - Ox saturation test done in office. 82-85% at room air

~~and again~~ at this level would be subject to dizziness, not fainting or passing out. If level dropped he would be.

Dr R from observations had reason to believe PL was not always using his Ox

Reduced -

Ray Litz Kelley Town Rd. Retired
meat cutter.

knew PL - "old buddies"
would see him at The Ponderosa (now
The Dam & Inn")

Marie & Pete Peters - Mic owners.
Now owned by Glen Stevensons.

Day of fall - Ray L was
there, only on stool open at
the bar. PL sat left Ray & Earl
→ upper.

PL 1st got pop, "to start out with"

Ray talking to guy on his right
(PL on left) heard thump, turned
around - PL laying on floor.

~~at~~

PL got up and threw the stool
8 or 10 feet. said something like
"god damn stool"

Cross - He didn't see the fall. 4

He never complained to bar ne the
equ. on the place.

PL sometimes yes - sometimes no
used Ox in his car.

He did not see PL use Ox in bar.

Darlene McGulley - C-ville. 35.

She was an ee of bar but
NOT working at time of
fall. She was there as a
customer.

isn't this
hearsay?

11. It does seem to me that he
made a comment about the stool
being wobbly b/f he fell "

After fall
she looked → SEAT of stool ~~would~~ would lean
at stool to left or right depending
on how one would sit.

Legs were OK.

in the bar - There was 1 stool
w/ a wobbly seat.

PL was on the one w/ the
wobbly seat.

The stool PI was on she believes was NOT used again. [not admiss as proof of Negli]

There may have been about 18 stools around bar

CROSS - she worked there for about 6 mo total. she ~~had~~ quit. denies being fired. ~~she~~ agrees that she has been told she is NOT permitted in the place for life. denies ill will toward owner.

says she was banned for life b/c of statement she made in her depo.

★

PG 14. line 4.

said she didn't suspect the stool after PI fell.
see rest of page.

she can't say for certain what she did w/ the stool.

PG 13 line 19. "I could have been the one that moved the bar stool, I'm not sure."

Re direct. she had gotten in a fight at bar. she was shut off, i.e. out. she later talked to owner & he said she was out for 6 mo.

Later she called Mr. Stevenson & 6
asked if allowed back in. He said
"Never" due to statement given in
her deposition.

She quit in Jan 02.

Fight was Nov 02.

she talked to him 1st Spring 03
talked to him, last Fall 03,
on phone

Sue Peterman - Cville. bartender

worked as bartender at Ponderosa.

worked there 6 yrs as Ponderosa.

now owned by Mr. Stevenson. she
then became bar manager.

June 01.

she knew PL from working at The Cville
SOI. PL came to Ponderosa

"faithfully, every day"

PL normally ordered food. a draft.

pop, a shot of peppermint schnapps.

Day of Fall - PL came in 3 or 3:30pm
bar was full. PL sat at end near
end of the bar.

PL had shot. ordered MT Dew.

She was over by the cooler, putting
pop in. Heard thump.

→ Darlene handed her the stool.

She put it up. They gave him another stool. He got up, said he was OK. He said it was that good dam stool.

Stool Darlene gave her the one leg was bent under.

~~she said it was not the one leg bent~~ She is now looking at the stool they brought to Court.

One leg ~~is~~ appears to be bent a little, but she says the one PL ~~is~~ sat on the leg was more bent and would not stand.

She doesn't know what the stool PI was on

looked like b/f PI sat on it.

For Defense

Jenifer Stevenson -

6/01. Stevensons started running the bar. Now she became manager.

Darlene McCully - wanted more

8

hours. was to be framed as cook. she came early that day, for training. she didn't like it, walked out & QUIT.

Around Thanksgiving ~~02~~. D.M. & another customer had a dispute. D.M. was told by Ms S. to get out & NOT come back.

CROSS - None

Glen Stevenson - he was NOT there when PL fell, but PL was still there when he arrived.

Sue pointed out the stool in question. Leg was bent in. he pulled on it. took it out of service.

Stools ~~were~~ and bar a floor were ~~inspected~~ daily.

He is trying to say that PL was a big guy and would ~~try~~ sit on stool then try and move the stool into ~~the~~ desired position while he was sitting on it.

PL never brought Ox in w/ him

△ Ex A - photo of bar as it was.

OUT of order

Earl Lippert, Jr. - Dimelung
76. Hotel.

new PI -

for △

Melissa Dotts - Bloomington.
Housewife/mom

saw owner fix & inspect every stool,
tightened bolts etc.

FERRARACCIO & NOBLE

**301 East Pine Street
Clearfield, PA 16830
(814) 765-4990
(814) 375-2221
FAX: (814) 765-9377**

Hon. Fredric J. Ammerman, PJ
Court of Common Pleas
Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830

August 7, 2004

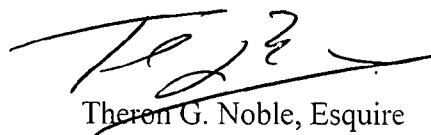
Re: Nepper v. Curwensville Dam Inn, Inc.;
02-788-CD
Plaintiff's Post Trial Brief

Dear Judge Ammerman:

Please find enclosed and file Plaintiff's Post Trial Brief. As per the attached NOTICE OF SERVICE, I have sent a true and correct copy of the same as therein indicated under cover of this letter.

With regards, I am

Sincerely,



Theron G. Noble, Esquire

tn/TGN w.encl.

cc: Ms. Violet Nepper w.encl.

Matthew B. Taladay, Esquire w.encl.

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

VIOLET NEEPER, ADMINISTRATOR OF THE
ESTATE OF TRUMAN NEEPER,

PLAINTIFF, : No. 02-788-CD

v.

CURWENSVILLE DAM INN, INC., a
Pennsylvania Corporation,

DEFENDANT. : Type of Pleading:

Plaintiff's Post-Trial Brief

Filed By:

Plaintiff

Counsel of Record:

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

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

)
VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
)
PLAINTIFF,)
)
v.)
)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
)
DEFENDANT.)
)
No. 02- 788 -CD

PLAINTIFF'S POST-TRIAL BRIEF IN SUPPORT OF JUDGMENT

AND NOW, comes the Plaintiff, Violet Neeper, Administrator of the Estate of Truman Neeper, by and through her counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who, submits the following as its Post Trial Brief:

Procedural Posture

Non-jury trial was held in this matter on July 1, 2004. At the conclusion of trial, briefs by both parties were ordered to be produced by August 9th. This matter is ripe for judgment to be issued.

Statement of Facts

Truman Neeper faithfully patronized the Ponderosa for many years, enjoying food, beverage and companionship. Plaintiff's Exhibit 2 and Testimony of Sue Peterman. The Ponderosa changed ownership and became the Curwensville Dam Inn sometime during the summer of 2001. Testimony of Sue Peterman. At the time of this incident, October 9, 2001, there is no question that ownership belonged to the Defendant. See Defendant's Answer and New Matter. Likewise, there is no issue as to jurisdiction or venue. See Defendant's Answer & New Matter.

On, or about October 9, 2001, Mr. Neeper arrived at the Dam Inn around his normal time, somewhere between 3:00 - 4:00 P.M.. Testimony of Sue Peterman. Arriving at the same time was Mr. Neeper's longtime acquaintance, Mr. Earl Lippert. Plaintiff's Exhibit 2. They proceeded to sit beside each other, but not in the area that Mr. Neeper normally sat. Plaintiff's

Exhibit 2, Testimony of Ray Litz, Earl Lippert, Darlene McCulley and Sue Peterman. For whatever reason, on that particular day and time, the Dam Inn was very busy and Mr. Neeper sat down on a stool, of which he had limited if any choice. Mr. Neeper then ordered a Mountain Dew and something to eat. Plaintiff's Exhibit 2. There is some evidence, that Mr. Neeper had his "breath easy", being one shot of peppermint schnapps. Testimony of Sue Peterman.

Each witness has a different estimate of the time between Mr. Neeper's arrival and when the bar stool collapsed. Plaintiff's Exhibit 2, Testimony of Ray Litz, Earl Lippert, Darlene McCulley and Sue Peterman. Mr. Neeper places this time as almost instantaneously, while everyone else places it from a few moments until 10 - 15 minutes. Mr. Litz greatly assists in this determination by his recollection that after helping Mr. Neeper up after the fall, he remembers that Mr. Neeper's soda pop was at least "half full".

There is also no dispute that Mr. Neeper fell, forcibly striking the floor given the "loud thump" heard by all of the witnesses. Testimony of Ray Litz, Earl Lippert, Darlene McCulley and Sue Peterman. Likewise, the testimony was consistent that Mr. Neeper landed on his back, feet closest to the bar. Testimony of Ray Litz, Earl Lippert, Darlene McCulley and Sue Peterman.

Prior to the fall, Mr. Neeper noticed that the stool was unsteady. Plaintiff's Exhibit 2. Mr. Neeper even made comment about the condition of the stool to Earl Lippert. Plaintiff's Exhibit 2. This was even overheard by Darlene McCulley, who could not remember exactly what Mr. Neeper had stated but clearly remembered him as stating something about the stool being "wobbly". Testimony of Darlene McCulley.

There is little evidence of the actual fall. Mr. Neeper testified that he just went "ass over tin cups". Plaintiff's exhibit 2. According to Earl Lippert, he saw the stool and Mr. Neeper falling together and Mr. Neeper did not grab at anything or holler. Testimony of Earl Lippert. This leads one to believe that Mr. Neeper did not lose his balance as one losing their balance will grab at something. Likewise, one losing their balance will fall, followed by the stool. In this situation, according to Mr. Lippert, the stool and Mr. Neeper fell together.

After the fall, the stool was noticed to have an unsteady leg as it was bent underneath whereas the other three legs protruded out from the base. Testimony of Sue Peterman and Darlene McCulley. Sue Peterman testified that the leg was more significantly bent than what was presented in Court. She pointed, during her testimony, that the leg was bent inwards by approximately another 4 inches. Ms. Peterman also testified that after this incident she gave the stool to the owner, Mr. Glenn Stephenson, who pulled on the leg, quipping "now its fixed". At this time, Mr. Stephenson was a much larger man, having lost 170 pounds such that he could have significantly lessened the bent leg as he pulled on it. Testimony of Glenn Stephenson. As Mr. Stephenson testified, once metal is bent, it is easier or more prone to again bend.

Darlene McCulley was employed by the defendant as a bar maid. Testimony of Darlene McCulley and Jennifer Stephenson. Although she was an "ear witness", she was off duty and in the bar as a patron. However, on occasions when she would switch shifts with Ms. Peterman, it would be Mrs. McCulley's task to clean the bar stools. When she did so, she noticed that two stools were "wobbly". Testimony of Darlene McCulley. One had an unsteady seat while one had an unsteady leg. Testimony of Darlene McCulley. Mrs. McCulley noticed this prior to Mr. Neeper's accident. Testimony of Darlene McCulley.

The defective stool was taken out of service after Mr. Neeper's fall. Testimony of Ray Litz, Sue Peterman, Darlene McCulley and Glenn Stephenson. It was replaced with a stool from the garage. Testimony of Glenn Stephenson. After this stool was taken out of service, Mrs. McCulley did not notice any unsteady stools in use at the Dam Inn.

Earl Lippert also noticed, a few days prior to Mr. Neeper's fall, that one of the stools had a leg bent inwards. Testimony of Earl Lippert. Mr. Lippert observed this while the owner was placing "rubber stoppers" on some of the bar stool legs. Testimony of Earl Lippert.

The bar stools, which were very old, were part of the acquisition from the previous owners. Testimony of Sue Peterman and Glenn Stephenson. There were about 15 in use at the Dam Inn, while another approximate 10 were out of service and kept in the garage. Testimony of Glenn Stephenson. The condition of the ones in use was the same as those no longer in service. Testimony of Glenn Stephenson.

After the fall, Mr. Neeper was "very shaken". Testimony of Sue Peterman. A few days later, as his pain worsened, Mr. Neeper went to the Clearfield Hospital. Plaintiff's Exhibit 2. Mr. Neeper was admitted to the hospital from October 12, 2001 to October 16, 2001, diagnosed with 7th and 8th, left sided, broken ribs. Testimony of Dr. Bruno Romeo. Mr. Neeper was discharged with a course of pain management. On October 24th, Mr. Neeper was again admitted in the Hospital, until October 28th. Testimony of Dr. Bruno Romeo. This time Mr. Neeper was diagnosed with a pleural effusion, related to the trauma of his rib fractures. Testimony of Dr. Bruno Romeo.

Although Dr. Romeo related the broken ribs and subsequent surgery to drain the fluid in the chest cavity to the fall at the Dam Inn, he did not relate a third hospitalization in mid November to this incident. Testimony of Dr. Bruno Romeo. Dr. Romeo attributed this treatment to Mr. Neeper's chronic obstructive pulmonary disease (COPD). Testimony of Dr. Bruno Romeo. Dr. Romeo did note that however upon discharge in mid-November, Mr. Neeper was still on pain management for his broken ribs. Likewise, Dr. Romeo did also testify that one suffering from COPD was more suspect to broken ribs as they restrict deep breaths. Testimony of Dr. Bruno Romeo.

Dr. Romeo also testified that he saw Mr. Neeper in his office four additional times through the end of April 2002. Testimony of Dr. Bruno Romeo. It was not until the office visit of April 29, 2002 that Mr. Neeper no longer mentioned left sided chest pain attributable to the broken ribs. Testimony of Dr. Bruno Romeo. Mr. Neeper, despite not letting Dr. Romeo know of additional problems, did continue to experience problems past that time as he could no longer sleep on his side as he was accustomed given that it hurt. Plaintiff's Exhibit 2. Mr. Neeper was used to sleeping on his side and despite trying to fall asleep on his back would invariably roll to his side, experience pain and invariably would awaken. Plaintiff's Exhibit 2.

Mr. Neeper was not permitted to patronize the Dam Inn after filling suit in this matter. Testimony of Glenn Stephenson. This greatly deprived Mr. Neeper his primary enjoyment in life, visiting and arguing with his friends, while enjoying a meal and a beverage.

Lastly, it should be noted that Mr. Neeper was in to see Dr. Romeo, for a normal office visit, about a week prior to this incident. Testimony of Dr. Bruno Romeo. At that time, Mr. Neeper was not complaining of any dizziness or any other such thing which would make him more apt to fall off a stool. Testimony of Dr. Bruno Romeo.

Argument

As in any negligence action, the plaintiff must establish four elements in order to obtain a favorable verdict, as follows: (1) the existence of a duty or obligation created by law; (2) a failure on the part of the defendant to conform to that duty, or a breach thereof; a casual connection between the defendant's breach and the resulting injury; and (4) actual loss or damage suffered by the plaintiff. T.A. v. Allen, 447 Pa.Super. 302, 669 A.2d 360 (1995).

A. Duty

There is no doubt that Defendant owed Mr. Neeper a duty of care in that he was business patron. The evidence clearly established that Mr. Neeper came to Defendant's place of business, as he did almost daily, to purchase food and drink. As such, Pennsylvania law imposes a duty upon the defendant in this case as Mr. Neeper was its business invitee. Cutler v. Peck Lumber Manufacturing Co., 350 Pa. 8, 37 A.2d 739 (1944), Ferencz v. Milie, 517 Pa. 141, 35 A.2d 95 (1987).

B. Breach of Duty

The second element requires that Mr. Neeper demonstrate that the defendant breached the duty of "reasonable care". Restatement Second of Torts at §343 states:

A possessor of land is subject to liability for physical harm caused to his

invitees by a condition on the land if, but only if, he

- (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and**
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and**
- (c) fails to exercise reasonable care to protect them against the danger.**

In examining the first prong of this particular issue, Mr. Neeper's estate must show that defendant either knew or "should have known" that the stool was defective, and also that a defective stool could cause an unreasonable risk of harm. The plaintiff does not assert that the defendant's president "knowingly" permitted a defective stool to be used. Plaintiff however does assert that "reasonable care" by the corporate entity would have caused the defective stool to be discovered or not used.

Mr. Stephenson testified that he performed routine maintenance on the stools once "every week or two". This demonstrates that the defendant's president realized that defective stools could cause harm.

Mr. Neeper's estate, through the testimony of Earl Lippert, produced evidence that the defendant should have known that there was a stool with a significantly bent leg, more of a bent than was presented in court. Mr. Lippert observed this a few days prior to the complained of incident when Mr. Stephenson was putting rubber stoppers on the legs of some of the stools.¹ If Mr. Lippert observed this condition from afar, certainly Mr. Stephenson could have and should have observed it while he placed the rubber stoppers on the stool.

Darlene McCulley, as an employee of Defendant's at the time, provided most useful testimony to Mr. Neeper's case. She testified that a part of her job, when she occasionally opened for defendant was to clean the stools. She testified that two of the stools were in fact defective, one with a bent leg and one with a loose seat. This shows negligence in two respects. First, the stools were defective and should have been observed by Mr. Stephenson, supporting Earl Lippert's testimony. Aside from that aspect, as an employee of the defendant, it was negligent of the employee not to have this situation corrected by doing something about the stools or bringing this to Mr. Stephenson's attention. Unlike Earl Lippert who owed no legal duty to Mr. Neeper, this failure to act is attributable to the defendant.

¹ The defense produced rebuttal testimony stating that another observer did not notice the bent leg. This witness was also eating, drinking and socializing and not paying full attention to Mr. Stephenson throughout the maintenance process.

For these reasons, there can be little doubt that the defendant "knew", through a least one employee, or "should have known", through its president, that there was a defective stool.

The second prong requires that Mr. Neeper did not realize the defective condition. Mr. Neeper testified, through his deposition, that this accident happened very shortly after he sat down. In fact, Mr. Neeper recollects that he fell to the ground, as the stool collapsed, while he was starting to say something about the condition of the stool. This was also supported by Darlene McCulley who testified that she had overheard Mr. Neeper say something about the stool and her recollection was within five minutes the accident happened. The fact that this happened very shortly after Mr. Neeper arrived at the defendant's was likewise supported by almost all witnesses placing the time from a few minutes to fifteen minutes. Circumstantial evidence also supports the conclusion that it happened very soon after Mr. Neeper's arrival in that he had only drunk about 1/2 of his Mountain Dew.

On this point, it should also be noted that Mr. Neeper sat in the last available stool that day. Mr. Neeper sat in an area he normally did not sit because his customary area was already occupied.

The evidence also supports the defendant failed to do anything about the defective stool, until after the accident when all the stools were replaced. The failure to act in correcting the bent leg, in plaintiff's theory, was that Mr. Stephenson did not discover the defect, although "he should have", just as Darlene McCulley as an employee "should have" told Mr. Stephenson about the stools. In short, to avoid this accident, the defendant only needed to do what it did after the accident, remove the stool from use, either replacing it with a stool from the garage or using one less stool until it was replaced.

C. Causation

Dr. Romeo clearly testified that Mr. Neeper's injuries were caused by his fall from the stool. Mr. Neeper's injuries, namely two broken left-sided ribs, were the type of injury one would expect from such an incident. Dr. Romeo conservatively attributed the two hospitalizations in October, 2001 to these injuries, declining to go further due to Mr. Neeper's previous pulmonary disease.

D. Damages

Medical Bills

The easiest aspect of this case is to determine the "out of pocket" loss suffered by Mr. Neeper. Admitted into evidence were (i) Mr. Neeper's hospital bill for the initial hospitalization and (ii) the Medicare lien. Relating Dr. Romeo's testimony to this evidence, Mr. Neeper's economic

damages were as follows:

Date	Provider	Amount
10/12-16/01	Clearfield Hospital	\$5,228.21
10/16/01	Dr. Romeo	\$ 310.73
10/24/01	Clearfield EMS	\$ 360.52
10/24-28/01	Clearfield Hospital	\$3,616.88
10/24/01	Dr. Cardamone	\$ 8.21
10/25/01	Dr. Vetrano Cruz	\$ 24.22
10/28/01	Dr. Romeo	<u>\$ 278.84</u>
Total out of pocket.....		<u>\$9,887.61²</u>

As to non-economic damages, Mr. Neeper suffered pain and suffering resulting from his injuries. This pain was significant enough to require prescription pain killers, which were prescribed into January, being three months from date of injury. Although the pain improved, Mr. Neeper reported the pain as being present until his examination of April. Dr. Romeo testified that this would be what he would expect for broken ribs.

In addition to the broken ribs, besides more insignificant minor injuries, Mr. Neeper also developed a pleural effusion from the injuries. This required the surgical procedure performed during the second hospitalization in October. Mr. Neeper also continued to suffer from the injuries in that he could not sleep. This lasted at least up until his deposition of July 22, 2002.

In considering an award for pain and suffering, the trier of fact should also consider that Mr. Neeper suffered from COPD. When one already has breathing difficulties, broken ribs can exacerbate the situation, which Plaintiff would argue happened in this case as evidenced by the third hospitalization. Although not recoverable per se, it should also be considered in the overall verdict for pain and suffering.

Plaintiff will decline to argue for an exact amount for non-economic damages.

The last item of damages would be for the loss of enjoyment of life. Besides the loss necessarily associated with his injuries, a rather unique issue occurred when the Defendant banned Mr. Neeper from its place of business. As the evidence showed, this activity, going to

² In an odd issue, Defendant failed to plead or produce evidence of a \$5,000 offset for a payment of medical bills. It was raised inappropriately as part of the defendant's motion in limine, which aspect was not discussed as the conversation focused on the Medicare lien. The Court indicated that it would rule on the motion following Plaintiff's case in chief, but didn't do so. Whatever and however the Court decides to deal with this matter is acceptable to Plaintiff.

the defendant's business to eat, drink and socialize with his friends, was a daily and integral part of Mr. Truman Neeper. The defendant banned him, not because he was elderly or prone to injury, but because he filed suit. This loss of enjoyment was caused "but for" the injuries Mr. Neeper sustained.

Restatement Second of Torts § 430 states that:

In order that a negligent actor shall be liable for another's harm, it is necessary not only that the actor's conduct be negligent toward the other, but also that the negligence of the actor be a legal cause of the other's harm.

Restatement Second of Torts § 431 states that:

The actor's negligent conduct is a legal cause of harm to another if

- (a) his conduct is substantial factor in bringing about the harm, and**
- (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.**

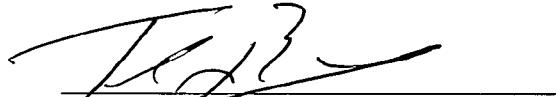
This is an issue for the trier of fact in the case to determine. It certainly fits within the definition of legal cause, especially since the defendant has not and can not produce a rule of law relieving it from liability. This is especially true in circumstances such as here that one holds a liquor license and is open to business for the public. The defendant had no legitimate reason to bar Mr. Neeper from its premises, other than out of spite and revenge which further escalated his damages.

Conclusion

In order to recover in this case, Mr. Neeper's estate must show that the defendant (i) owed a duty to Mr. Neeper, (ii) this duty was breached; (iii) Mr. Neeper suffered damages, and (iv) the damages were caused by the breach of duty. As a business invitee, the Defendant certainly owed Mr. Neeper a duty of care. This duty was breached in that (i) the new owner didn't perform routine maintenance on the bar stools as the prior owner had; (ii) an employee knew of the defective stools and failed to do anything about it; and (iii) the defect was discoverable upon routine examination as evidenced by another patron. As a result of these negligent acts, Mr. Neeper fell and broke ribs, eventually causing him to also suffer a pleural effusion. Mr. Neeper suffered slightly less \$10,000 in medical bills as well as pain, suffering and loss of enjoyment of life.

WHEREFORE, Plaintiff requests that JUDGMENT be entered in his favor, and against defendant, in an amount in excess of \$20,000, plus costs and interest.

Respectfully Submitted,



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

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

VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
PLAINTIFF,)
v.) No. 02- 788 -CD
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 7th day of August, 2004, Plaintiffs' Post Trial Brief to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,



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

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

TRUMAN NEEPER, an adult individual,

PLAINTIFF,

: No. 02- 788 -CD

v.

CURWENSVILLE DAM INN, INC., a
Pennsylvania Corporation,

DEFENDANT.

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiff

Counsel of Record:

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

FILED

MAY 16 2002
012:02 PM
William A. Shaw PO
Prothonotary 80-
3 cent toatty

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

NOTICE TO DEFEND

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

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

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

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02-_____ -CD

CIVIL COMPLAINT

NOW COMES the Plaintiff, Truman Neeper, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his CIVIL COMPLAINT:

The Parties

1. Plaintiff is Truman Neeper, an adult individual, who does, and at all material times, did reside at RD #3, Box 36, Clearfield, Clearfield County, Pennsylvania 16830.
2. That defendant is Curwensville Dam Inn, Inc., upon information and belief is a duly formed and existing corporation under the laws of Pennsylvania with a principal address of Route 453, Olanta, Clearfield County, Pennsylvania.

Background

3. That Defendant is in the business of operating and bar and restaurant.
4. On or about October 10, 2001, Mr. Neeper, at approximately 4:00 P.M., a frequent patron of Defendant's, went to the Defendant's place of business for the purpose of ordering lunch.
5. As he approached the bar area, Mr. Neeper pulled out a bar stool and proceeded to sit down.

6. Shortly after he sat down, the bar stool collapsed, causing Mr. Neeper to fall to the floor in a very forceful manner, striking the collapsed stool as he fell.
7. As a result of the fall, Mr. Neeper suffered injuries to his person including most noticeably three (3) broken ribs.
8. As a result of these injuries, Mr. Neeper, an elderly individual, was hospitalized on three separate occasions in the months of October and November.

Count I: Negligence

9. That the averments of paragraphs 1 - 8 inclusive, are hereby incorporated as if again fully set forth at length.
10. That as a business patron Defendant owed Mr. Neeper a great duty of care.
11. That Defendant did breach that duty of care in that it was negligent as follows:
 - (a) in failing to inspect its stools to assure they were safe and could sustain an adequate amount of weight; and
 - (b) in failing to provide a safe stool in which Mr. Neeper could sit down while he ate his lunch.
12. That as a direct and proximate result of the Defendant's act(s) of negligence, Mr. Neeper did suffer the aforementioned physical injuries.
13. That Mr. Neeper has incurred approximately \$15,000 in medical bills to date for treatment of his injuries, for which he should be compensated in an amount to be determined at time of trial..
14. That associated with his injuries, Mr. Neeper did suffer severe pain and suffering, and although improving, still suffers from his injuries and should be compensated in an amount to be determined at time of trial.
15. That associated with this incident, Mr. Neeper did also suffer damage to some personal property for which he should be compensated at time of trial in an amount to be determined.

Miscellaneous

16. That venue is proper.
17. That jurisdiction is proper.

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

Respectfully Submitted,



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

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02-_____ -CD

VERIFICATION

I, Truman Neeper, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached CIVIL COMPLAINT, in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 13th day of May, 2002.

Truman Neeper, Plaintiff W. H. Nepper

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an adult individual, Plaintiff : Type of Case: Civil Action
No. 02-788-CD
-vs- : Type of Pleading:
CURWENSVILLE DAM INN, INC., a Pennsylvania Corporation, Defendant : Praeclipe for Entry of Appearance
Filed on Behalf of:
Defendant
Counsel of Record for This Party:
Matthew B. Taladay, Esq.
Supreme Court No. 49663
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

FILED

MAY 23 2002

William A. Shaw
Prothonotary

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

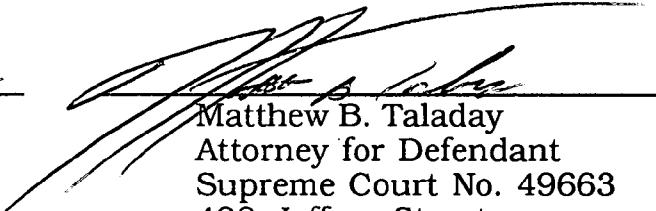
TRUMAN NEEPER, an adult :
adult individual, :
Plaintiff :
: :
-vs- : No. 02-788-CD
: :
CURWENSVILLE DAM INN, INC., :
a Pennsylvania Corporation, :
Defendant :
:

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance for the Defendant,
Curwensville Dam Inn, Inc., in the above captioned matter.

Dated: 5-22-02


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

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

In The Court of Common Pleas of Clearfield County, Pennsylvania

02-788 Sheriff Docket # 12524
02-78-CD CD

NEEPER, TRUMAN

VS.

CURWENSVILLE DAM INN, INC.

COMPLAINT

SHERIFF RETURNS

NOW MAY 20, 2002 AT 10:16 AM DST SERVED THE WITHIN COMPLAINT ON CURWENSVILLE DAM INN, INC., DEFENDANT AT EMPLOYMENT, RT. 453, OLANTA, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO GLEN STEVENSON, OWNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

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

FILED

MAY 29 2002

011471
William A. Shaw
Prothonotary

Sworn to Before Me This

29th Day Of May 2002

WILLIAM A. SHAW
Prothonotary

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

So Answers,

Chester A. Hawkins
Sgt. Marilyn Harris
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an
adult individual,

Plaintiff

-vs-

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

Type of Case: Civil Action

No. 02-788-CD

Type of Pleading:

Answer and
New Matter

Filed on Behalf of:

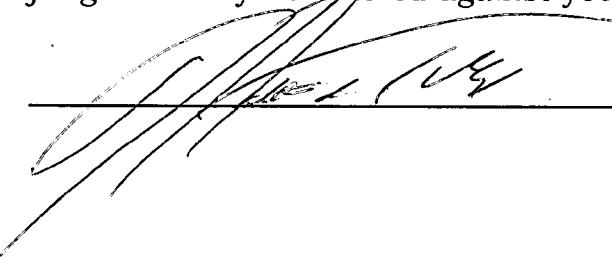
Defendant

Counsel of Record for This
Party:

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

(814) 371-7768

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



FILED

JUN 14 2002

mllo:491ncc
William A. Shaw
Prothonotary
JAD

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

TRUMAN NEEPER, an adult adult individual,	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-788-CD
	:	
CURWENSVILLE DAM INN, INC., a Pennsylvania Corporation,	:	
Defendant	:	

ANSWER

AND NOW, comes the Defendant, Curwensville Dam Inn, Inc., by its attorneys, Hanak, Guido and Taladay, and hereby responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is admitted that on October 10, 2001 Mr. Neeper was a patron of the business operated by Defendant at approximately 4:00 p.m. Defendant is without information regarding the purpose of his visit and therefore the same are denied and strict proof thereof is required at trial.
- 5.
6. Admitted in part and denied in part. It is denied that the bar stool upon which the Plaintiff sat collapsed. It is admitted

that the Plaintiff fell to the floor. The remaining allegations are denied and strict proof is demanded at trial.

7. After reasonable investigation,
8. After reasonable investigation,

Count I - Negligence

9. Defendant incorporates paragraphs 1 through 8 of its response as if set forth in full.

10. Paragraph 10 constitutes a statement of law to which no response is required.

11. Denied.

12. Denied.

13. Defendant denies any duty to compensate Plaintiff.

With regard to the remaining averments of paragraph 13, after reasonable investigation, Defendant is without information sufficient to form a belief as to the truth, therefore the same are denied and strict proof thereof is demanded.

14. Defendant denies any duty to compensate Plaintiff.

With regard to the remaining averments of paragraph 14, after reasonable investigation, Defendant is without information sufficient to form a belief as to the truth, therefore the same are denied and strict proof thereof is demanded.

15. Defendant denies any duty to compensate Plaintiff.

With regard to the remaining averments of paragraph 15, after reasonable investigation, Defendant is without information sufficient to form a belief as to the truth, therefore the same are denied and strict proof thereof is demanded.

16. The allegations contained in paragraph 16 constitute a conclusion of law to which no response is required.

17. The allegations contained in paragraph 17 constitute a conclusion of law to which no response is required.

WHEREFORE, Defendant demands judgment in its favor.

NEW MATTER

18. Defendant incorporates paragraphs 1 through 17 of its response as if set forth in full herein.

19. Plaintiff's injuries, if any, were solely and proximately the result of his own negligence, which is as follows:

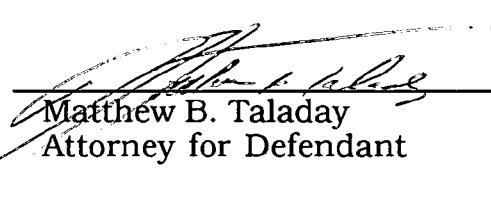
- (a) By failing to exercise reasonable care for his own safety by sitting improperly upon and remaining stationery on the stools provided by Defendant;
- (b) In rocking, leaning or otherwise maneuvering his bar stool causing it to tip; and
- (c) In failing to exercise reasonable care for his own safety by sitting properly and stately upon the bar stool.

20. Plaintiff's claims are barred or limited by the doctrine of comparative negligence.

WHEREFORE, Defendant demands judgment in its favor.

Respectfully submitted,
Hanak, Guido and Taladay

By


Matthew B. Taladay
Attorney for Defendant

VERIFICATION

I, **Glenn Stephenson**, being the President of Curwensville Dam Inn, Inc., who, being duly authorized, does hereby verify that I have read the foregoing Answer & New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 6/10/02

Glenn Stephenson

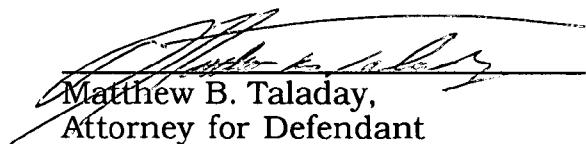
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

TRUMAN NEEPER, an adult adult individual,	:	
	:	
Plaintiff	:	
	:	
-vs-	:	No. 02-788-CD
	:	
CURWENSVILLE DAM INN, INC.,	:	
a Pennsylvania Corporation,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 13th day of June, 2002, a true and correct copy of Defendant's Answer and New Matter was sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830



Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an
adult individual,

Plaintiff

-vs-

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

Type of Case: Civil Action

No. 02-788-CD

Type of Pleading:

Amended Answer
and New Matter

Filed on Behalf of:

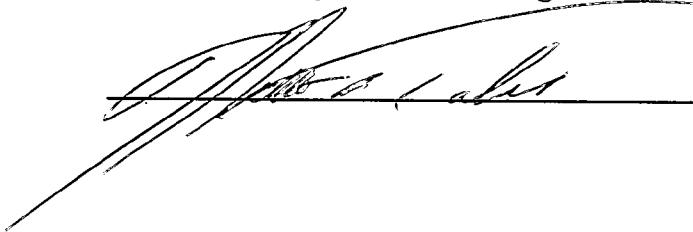
Defendant

Counsel of Record for This
Party:

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

(814) 371-7768

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



FILED

JUN 20 2002

11:00 AM
William A. Shaw
Prothonotary

No C/C



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

TRUMAN NEEPER, an adult adult individual,	:	
Plaintiff	:	
-vs-	:	No. 02-788-CD
CURWENSVILLE DAM INN, INC.,	:	
a Pennsylvania Corporation,	:	
Defendant	:	

AMENDED ANSWER

AND NOW, comes the Defendant, Curwensville Dam Inn, Inc., by its attorneys, Hanak, Guido and Taladay, and hereby responds to Plaintiff's Complaint as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted in part and denied in part. It is admitted that on October 10, 2001 Mr. Neeper was a patron of the business operated by Defendant at approximately 4:00 p.m. Defendant is without information regarding the purpose of his visit and therefore the same are denied and strict proof thereof is required at trial.

5. Admitted. By way of further answer, based on information, it is believed that Mr. Neeper did not sit squarely on the barstool, but rather was leaning, tilting or otherwise sitting only partially on the stool.

6. Admitted in part and denied in part. It is denied that the bar stool upon which the Plaintiff sat collapsed. It is admitted that the Plaintiff fell to the floor. The remaining allegations are denied and strict proof is demanded at trial.

7. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph 7 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

8. After reasonable investigation, Defendant is without information sufficient to form a belief as to the truth of the averments of paragraph 8 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

Count I - Negligence

9. Defendant incorporates paragraphs 1 through 8 of its response as if set forth in full.

10. Paragraph 10 constitutes a statement of law to which no response is required.

11. Denied.

12. Denied.

13. Defendant denies any duty to compensate Plaintiff. With regard to the remaining averments of paragraph 13, after reasonable investigation, Defendant is without information sufficient to form a belief as to the truth, therefore the same are denied and strict proof thereof is demanded.

14. Defendant denies any duty to compensate Plaintiff.

With regard to the remaining averments of paragraph 14, after

reasonable investigation, Defendant is without information sufficient to form a belief as to the truth, therefore the same are denied and strict proof thereof is demanded.

15. Defendant denies any duty to compensate Plaintiff.

With regard to the remaining averments of paragraph 15, after reasonable investigation, Defendant is without information sufficient to form a belief as to the truth, therefore the same are denied and strict proof thereof is demanded.

16. The allegations contained in paragraph 16 constitute a conclusion of law to which no response is required.

17. The allegations contained in paragraph 17 constitute a conclusion of law to which no response is required.

WHEREFORE, Defendant demands judgment in its favor.

NEW MATTER

18. Defendant incorporates paragraphs 1 through 17 of its response as if set forth in full herein.

19. Plaintiff's injuries, if any, were solely and proximately the result of his own negligence, which is as follows:

- (a) By failing to exercise reasonable care for his own safety by sitting improperly upon and remaining stationery on the stools provided by Defendant;
- (b) In rocking, leaning or otherwise maneuvering his bar stool causing it to tip; and
- (c) In failing to exercise reasonable care for his own safety by sitting properly and stately upon the bar stool.

20. Plaintiff's claims are barred or limited by the doctrine of comparative negligence.

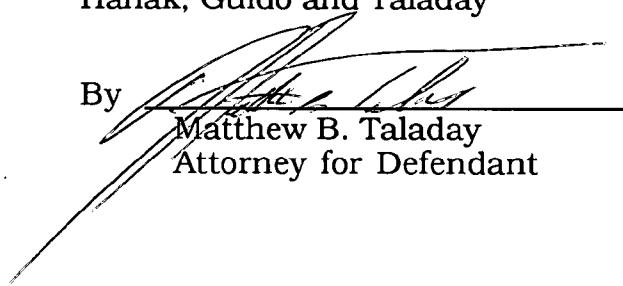
WHEREFORE, Defendant demands judgment in its favor.

Respectfully submitted,

Hanak, Guido and Taladay

By

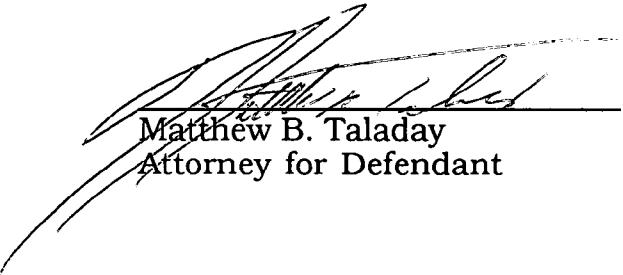
Matthew B. Taladay
Attorney for Defendant

A handwritten signature in black ink, appearing to read "Matthew B. Taladay", is written over a horizontal line. The signature is fluid and cursive, with a distinct upward flourish at the end.

VERIFICATION

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

June 19, 2002


Matthew B. Taladay
Attorney for Defendant

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

TRUMAN NEEPER, an adult
adult individual,

Plaintiff

-vs-

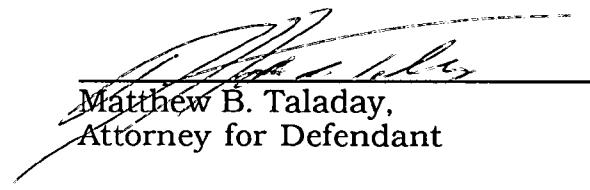
No. 02-788-CD

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

CERTIFICATE OF SERVICE

I certify that on the 19th day of June, 2002, a true and correct copy of Defendant's Amended Answer and New Matter was sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an adult individual,	Type of Case: Civil Action
Plaintiff	No. 02-788-CD
-vs-	Type of Pleading:
CURWENSVILLE DAM INN, INC., a Pennsylvania Corporation, Defendant	Certificate of Service
	Filed on Behalf of:
	Defendant
	Counsel of Record for This Party:
	Matthew B. Taladay, Esq. Supreme Court No. 49663 Hanak, Guido and Taladay 498 Jeffers Street P.O. Box 487 DuBois, PA 15801
	(814) 371-7768

FILED

JUN 20 2002

10:45 AM
William A. Shaw
Prothonotary

mc 91 925

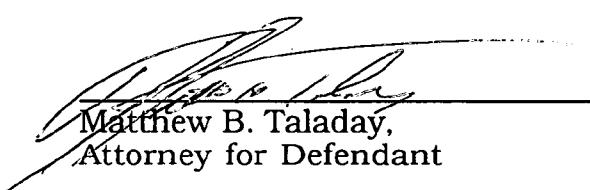
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

TRUMAN NEEPER, an adult adult individual,	:	
Plaintiff	:	
-vs-		No. 02-788-CD
CURWENSVILLE DAM INN, INC.,	:	
a Pennsylvania Corporation,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I certify that on the 19th day of June, 2002, a Notice of Deposition, copy of which is attached hereto, was sent via first class mail, postage prepaid, to the following:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

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

TRUMAN NEEPER, an adult individual,

PLAINTIFF,

: No. 02-788-CD

v.

CURWENSVILLE DAM INN, INC., a
Pennsylvania Corporation,

DEFENDANT.

: Type of Pleading:

REPLY TO NEW MATTER

: Filed By:

: Plaintiff

: Counsel of Record:

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

FILED

JUN 25 2002

mjl:001/noc
William A. Shaw
Prothonotary

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02- 788 -CD

REPLY TO NEW MATTER

NOW COMES the Plaintiff, Truman Neeper, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his REPLY TO NEW MATTER:

18. Plaintiff hereby incorporates his averments as contained in paragraphs 1 - 17, inclusive, as if the same were again fully set forth at length.

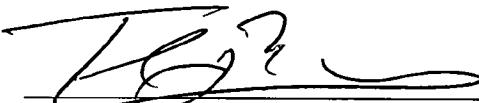
19. Denied. It is strictly DENIED that Plaintiff did anything negligently vis a vis the damages as set forth in his civil complaint which solely or proximately resulted in his damages and strict proof of the same is demanded at time of trial. Specifically, it is DENIED that:

- (a) Plaintiff failed to use reasonable care in the manner which he sat or attempted to remain upon Defendant's stool;
- (b) Plaintiff did anything to cause the stool to tip other than sit upon the same which then collapsed; and
- (c) See (a) above.

20. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response might be deemed necessary, the same is DENIED and strict proof demanded at time of trial.

WHEREFORE, Plaintiff requests JUDGMENT in his favor as per his CIVIL COMPLAINT.

Respectfully Submitted,



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

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

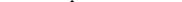
TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02- 788 -CD

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 24th day of June, 2002, Plaintiffs' REPLY TO NEW MATTER to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,



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

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02-788-CD

VERIFICATION

I, Truman Neeper, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached REPLY TO NEW MATTER in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 26th day of June, 2002.

Truman Neeper
Truman Neeper, Plaintiff

FILED

JUN 28 2002

williams
William A. Shaw
Prothonotary

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02- 788 -CD

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 27th day of June, 2002, Plaintiffs' VERIFICATION OF REPLY TO NEW MATTER to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,

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

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an
adult individual,

Plaintiff

-vs-

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

Type of Case: Civil Action

No. 02-788-CD

Type of Pleading:

Notice
of Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

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

(814) 371-7768

FILED

JUL 05 2002

William A. Shaw
Prothonotary

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

TRUMAN NEEPER, an adult
adult individual,

Plaintiff

-vs-

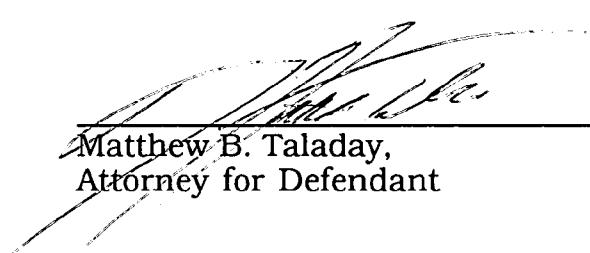
No. 02-788-CD

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendant, do hereby certify that I propounded
on Plaintiffs, via United States mail, first class, postage pre-paid, this
2nd day of July, 2002, Defendant's FIRST SET OF DISCOVERY
MATERIALS to the below indicated person, at said address, being
counsel of record for the Plaintiff:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an
adult individual,

Plaintiff

-vs-

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

Type of Case: Civil Action

No. 02-788-CD

Type of Pleading:

Notice
of Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

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

(814) 371-7768

FILED

SEP 17 2002

1711042/10CC
William A. Shaw
Prothonotary

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

TRUMAN NEEPER, an adult
adult individual,

Plaintiff

-vs-

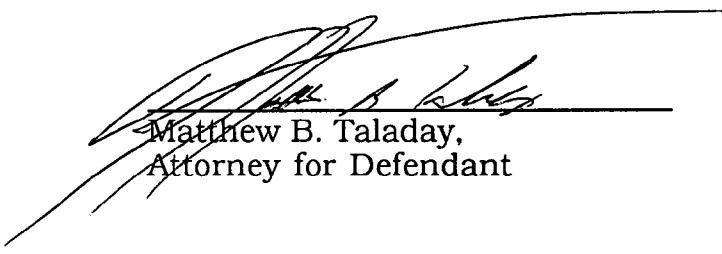
No. 02-788-CD

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendant, do hereby certify that I propounded
on Plaintiffs, via United States mail, first class, postage pre-paid, this
16th day of September, 2002, Defendant's RESPONSE TO REQUEST
FOR PRODUCTION OF DOCUMENTS to the below indicated person, at
said address, being counsel of record for the Plaintiff:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02- 788 -CD

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 4th day of December, 2002, Plaintiffs' ANSWER TO INTERROGATORIES to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,

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

1990

057602

William A. Shaw
Prothonotary

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

TRUMAN NEEPER, an adult individual,

PLAINTIFF,

: No. 02- 788 -CD

v.

CURWENSVILLE DAM INN, INC., a
Pennsylvania Corporation,

DEFENDANT.

: Type of Pleading:

PETITION TO SUBSTITUTE PARTY

: Filed By:

: Plaintiff

: Counsel of Record:

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

FILED

JUN 05 2003

William A. Shaw
Prothonotary

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

TRUMAN NEEPER, an adult individual,)
)
 PLAINTIFF,)) No. 02- 788 -CD
 v.)
)
 CURWENSVILLE DAM INN, INC., a)
 Pennsylvania Corporation,)
)
 DEFENDANT.)

RULE TO SHOW CAUSE

Now, this 10 day of June, 2003, upon consideration of the attached Plaintiff's PETITION TO SUBSTITUTE PARTY, a RULE is hereby issued upon the Defendant to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the 30 day of June, 2003 and argument on the PETITION set for the 11 day of July, 2003, at 1:30, P.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

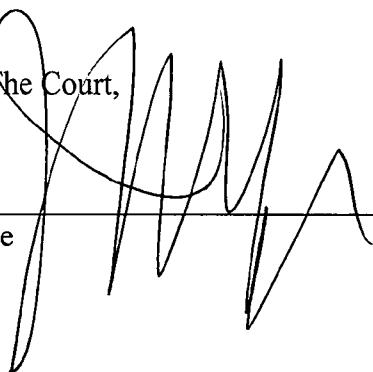
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

FILED

JUN 10 2003
0/11/03/w
William A. Shaw
Prothonotary
1 copy to Atty

By The Court,

Judge


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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)) No. 02- 788 -CD
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

PETITION TO SUBSTITUTE PARTY

AND NOW, comes the Plaintiff, Truman L. Neeper, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his PETITION TO SUBSTITUTE PARTY:

1. This matter, a personal injury lawsuit based in negligence, was commenced with the filing of a civil complaint on or about May 16, 2002.
2. That Plaintiff, Truman L. Neeper, died intestate on February 11, 2003.
3. That Mr. Neeper's daughter, Violet Neeper, is the administrator of his estate and letters of administration have been issued, a true and correct copy attached hereto as Exhibit "A".

WHEREFORE, Plaintiff requests that Violet Neeper, Administrator of the Estate of Truman L. Neeper, be substituted as Plaintiff in this matter.

Respectfully Submitted,



T G. Noble, Esquire
Attorney for Plaintiff

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02- 788 -CD

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Plaintiff's MOTION TO SUBSTITUTE PARTY, the same is hereby granted and Violet Neeper, Administrator of the Estate of Truman Neeper, is substituted as Plaintiff. Further, the caption shall be as follows:

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

VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02- 788 -CD

By the Court,

Judge

SHORT CERTIFICATE

Certificate of Appointment of Administratrix

Commonwealth of Pennsylvania
County of Clearfield

SS:

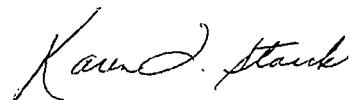
Exhibit "A"

Social Security # 210-09-8873

The undersigned, Register for the Probate of Wills and granting Letters of Administration in and for the County of Clearfield, in the Commonwealth of Pennsylvania;

DO HEREBY CERTIFY and made known, that on the **25th** day of **February**, in the year of our Lord, **Two Thousand Three**, Letters of Administration on the Estate of **Truman Leroy Neeper**, deceased, were granted unto **Violet Arlene Neeper**, **she**, having first given security well and truly to administer the same. I further certify that said letters are in full force and effect at the present time, and entitled to full faith and credit.

GIVEN under my hand and seal of office this **25th** day of **February** in the year of our Lord, **Two Thousand Three**.



Register of Wills

My Commission Expires
First Monday in January, 2004

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)
No. 02-788-CD

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 4th day of June, 2003, Plaintiffs' PETITION TO SUBSTITUTE PARTY, to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,

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

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)
v.) No. 02- 788 -CD
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

Date: June 12, 2003

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 12th day of June, 2003, Plaintiffs' REQUEST FOR ADMISSIONS and INTERROGATORIES, to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,

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

FILED

JUN 13 2003

William A. Shaw
Prehistoric

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

TRUMAN NEEPER, an
adult individual,

Plaintiff

-vs-

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

Type of Case: Civil Action

No. 02-788-CD

Type of Pleading:

Notice
of Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

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

(814) 371-7768

FILED

JUN 19 2003

*William A. Shaw
Prothonotary*

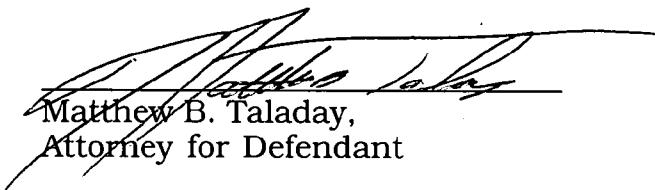
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

TRUMAN NEEPER, an adult adult individual,	:	
		Plaintiff
-vs-		
		No. 02-788-CD
CURWENSVILLE DAM INN, INC., a Pennsylvania Corporation,	:	
		Defendant

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendant, do hereby certify that I propounded
on Plaintiffs, via United States mail, first class, postage pre-paid, this
18th day of June, 2003, Defendant's RESPONSE TO REQUEST FOR
ADMISSIONS to the below indicated person, at said address, being
counsel of record for the Plaintiff:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

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

TRUMAN NEEPER, an adult individual,)
PLAINTIFF,)) No. 02- 788 -CD
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

ORDER

AND NOW, this 18th day of June, 2003, upon consideration of Plaintiff's MOTION TO SUBSTITUTE PARTY, the same is hereby granted and Violet Neeper, Administrator of the Estate of Truman Neeper, is substituted as Plaintiff. Further, the caption shall be as follows:

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

VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
PLAINTIFF,)) No. 02- 788 -CD
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

FILED

JUN 19 2003

William A. Shaw
Prothonotary

By the Court,

Judge

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

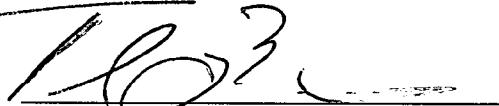
VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
PLAINTIFF,)
v.) No. 02- 788 -CD
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 25th day of June, 2003, the ORDER issued to Plaintiffs' PETITION TO SUBSTITUTE PARTY, to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,



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

FILED

JUN 26 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

VIOLET NEEPER, Administrator
of the Estate of TRUMAN
NEEPER,

Plaintiff

-vs-

CURWENSVILLE DAM INN, INC.,
a Pennsylvania Corporation,
Defendant

Type of Case: Civil Action

No. 02-788-CD

Type of Pleading:

Notice of Service

Filed on Behalf of:

Defendant

Counsel of Record for This
Party:

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

(814) 371-7768

FILED

JUL 08 2003

William A. Shaw
Prothonotary

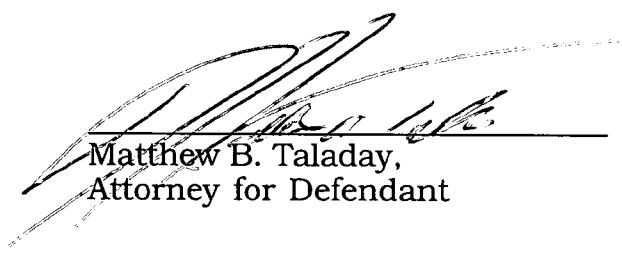
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

VIOLET NEEPER, Administrator :
of the Estate of TRUMAN :
NEEPER, :
Plaintiff :
: :
-vs- : No. 02-788-CD :
: :
CURWENSVILLE DAM INN, INC., :
a Pennsylvania Corporation, :
Defendant :
:

NOTICE OF SERVICE

I, Matthew B. Taladay, of Hanak, Guido and Taladay, being
counsel of record for Defendant, do hereby certify that I propounded
on Plaintiffs, via United States mail, first class, postage pre-paid, this
7th day of July, 2003, Defendant's ANSWERS TO INTERROGATORIES
to the below indicated person, at said address, being counsel of record
for the Plaintiff:

Theron G. Noble, Esq.
Attorney for Plaintiff
301 East Pine Street
Clearfield, PA 16830


Matthew B. Taladay,
Attorney for Defendant

FILED

IN 1017 AP-NOCC
JUL 08 2003

BS
William A. Shaw
Prothonotary

FILED

BS
William A. Shaw
Prothonotary

FILED

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

CERTIFICATE OF READINESS

William A. Shaw
TO THE PROTHONOTARY

07/18/03

CASE NUMBER	TYPE	TRIAL REQUESTED	DATE PRESENTED
			ESTIMATED TRIAL TIME

No. 02-788-CD
Date Complaint Jury Non-Jury
Filed: Arbitration
05/16/02

2 Days

PLAINTIFF(S)

VIOLET NEEPER, ADMINISTRATOR OF THE
ESTATE OF TRUMAN NEEPER

()

DEFENDANT(S)

CURWENSVILLE DAM INN, INC. ()
ADDITIONAL DEFENDANT(S)

Check Block if
a Minor is a
Party to the
Case

()

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
-----------------	---------------	----------------------------

more than
\$ 25,000.00 yes no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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


Matthew B. Taladay

FOR THE PLAINTIFF

TELEPHONE NUMBER

Theron G. Noble

(814) 375-2221

FOR THE DEFENDANT

TELEPHONE NUMBER

Matthew B. Taladay

(814) 371-7768

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

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

VIOLET NEEPER, ADMINISTRATOR OF THE
ESTATE OF TRUMAN NEEPER,

PLAINTIFF,

: No. 02- 788 -CD

v.

CURWENSVILLE DAM INN, INC., a
Pennsylvania Corporation,

DEFENDANT.

: Type of Pleading:

: **PETITION TO STRIKE**
: **CERTIFICATE OF READINESS**

: Filed By:

: Plaintiff

: Counsel of Record:

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

FILED

JUL 25 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

FILED

VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
PLAINTIFF,)
v.)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

JUL 28 2003
William A. Shew
Prothonotary/Clerk of Courts
No. 02- 788 -CD

RULE TO SHOW CAUSE

Now, this 28th day of July, 2003, upon consideration of the attached Plaintiff's PETITION TO STRIKE CERTIFICATE OF READINESS, a RULE is hereby issued upon the Defendant to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the 31 day of July, 2003 and argument on the PETITION set for the 31 day of July, 2003, at 9:30, A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,

Judge

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

)
VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
)
PLAINTIFF,)
)
v.)
)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
)
DEFENDANT.)
)
No. 02- 788 -CD

PLAINTIFF'S PETITION TO STRIKE CERTIFICATE OF READINESS

AND NOW, comes the Plaintiff, Violet Neeper, Administrator of the Estate of Truman Neeper, by and through counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of its PETITION TO STRIKE CERTIFICATE OF READINESS:

1. That Defense counsel filed a certificate of readiness on July 18, 2003.
2. That certification was made that (i) discovery was completed and (ii) serious settlement discussion have been made.
3. Discovery has not been completed in that (i) depositions, although scheduled, are not completed; (ii) Medicare has notified of a lien which appears not to be accurate; and (iii) given the death of original Plaintiff, one treating physician has requested another AUTHORIZATION be presented before additional communications occur.
4. That other than rejecting Plaintiff's demand as "unreasonable", Defendants have not offered any settlement, despite an obvious risk of liability, as such it can not be certified that "serious settlement discussions" have occurred.
5. This matter should be ready to be placed on the trial list for next term of court.

WHEREFORE, Plaintiff requests that the CERTIFICATE OF READINESS, filed by the Defendant, by stricken, or in the alternative, this matter be CONTINUED , until next term of court.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff

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

VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
PLAINTIFF,)
v.) No. 02- 788 -CD
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
DEFENDANT.)

ORDER

AND NOW, this _____ day of _____, 2003, upon Plaintiff's PETITION
TO STRIKE CERTIFICATE OF READINESS, the same is hereby GRANTED.

By the Court,

Hon. John K. Reilly, Jr., PJ

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

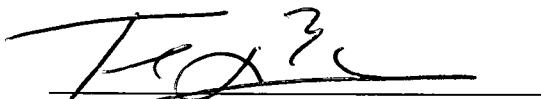
)
VIOLET NEEPER, ADMINISTRATOR OF THE)
ESTATE OF TRUMAN NEEPER,)
)
PLAINTIFF,)
)
v.)
)
CURWENSVILLE DAM INN, INC., a)
Pennsylvania Corporation,)
)
DEFENDANT.)
)
No. 02- 788 -CD

NOTICE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, of Ferraraccio & Noble, being counsel of record for the Plaintiff, does hereby certify that I did mail, via United States mail, first class, postage pre-paid, this 24th day of July, 2003, Plaintiffs' PETITION TO STRIKE CERTIFICATE OF READINESS, to the below indicated person, at said address, being counsel of record for the Defendant:

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

Respectfully Submitted,



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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

TRUMAN NEEPER, an adult individual : :

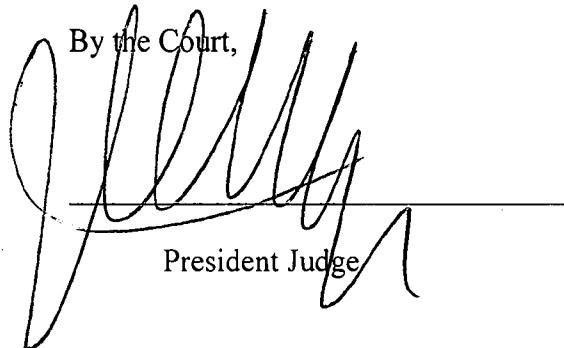
-VS- : No. 02-⁷⁸⁸~~288~~-CD

CURWENSVILLE DAM INN, INC., a : :

Pennsylvania Corporation : :

ORDER

NOW, this 31st day of July, 2003, upon consideration of Plaintiff's Petition To Strike Certificate of Readiness, it is the ORDER of this Court that said Petition be and is hereby granted and the Court Administrator to list the above-captioned matter for the call of the civil list in April 2004. No further continuances to be granted.

By the Court,

President Judge

FILED

JUL 31 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED
11:09 AM
JUL 31 2003
1cc Atty Noble
1cc Atty Taladay
William A. Shaw
Prothonotary/Clerk of Courts
JES

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

VIOLET NEEPER, Administrator *
of the Estate of TRUMAN NEEPER, *
Plaintiffs *
*
vs. * NO. 2002-788-C.D.
*
CURWENSVILLE DAM INN, INC., *
Defendant *

O R D E R

NOW, this 1st day of April, 2004, following Civil Call, it is the ORDER of this Court that Civil Pre-Trial Conference with counsel for the parties as set forth above and the Court be and is hereby scheduled for Thursday, April 16, 2004 at 2:00 p.m. in President Judge Ammerman's Chambers, Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN
PRESIDENT JUDGE

FILED

APR 06 2004

William A. Shaw
Prothonotary, Clerk of Courts

Prothonotary/Clerk of Courts
William A. Shaw
APR 06 2004
DL 10:30 AM 2004 2 cc AMY Toldada
FILED 2 cc AMY 1664

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

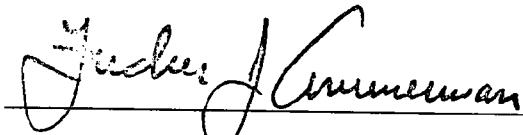
VIOLET NEEPER, Administrator *
of the Estate of TRUMAN NEEPER, *
Plaintiffs *
*
vs. *
*
CURWENSVILLE DAM INN, INC., *
Defendant *

NO. 2002-788-C.D.

O R D E R

NOW, this 1st day of April, 2004, following Civil Call, it is the ORDER of this Court that Civil Pre-Trial Conference with counsel for the parties as set forth above and the Court be and is hereby scheduled for Friday, April 16, 2004 at 2:00 p.m. in President Judge Ammerman's Chambers, Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN
PRESIDENT JUDGE

FILED

APR 08 2004

William A. Shaw
Prothonotary

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

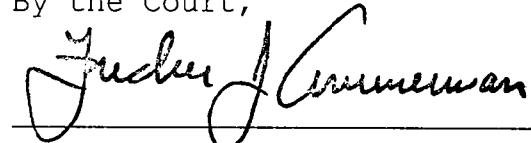
VIOLET NEEPER, Administrator *
of the Estate of TRUMAN NEEPER, *
Plaintiffs *
*
vs. * NO. 2002-788-C.D.
*
CURWENSVILLE DAM INN, INC., *
Defendant *

O R D E R

NOW, this 16th day of April, 2004, following Pre-Trial Conference with counsel for both parties and the Court, it is the ORDER of this Court as follows:

1. Non-Jury Trial be scheduled for two days, June 30, 2004 and July 1, 2004, beginning at 9:00 a.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN
President Judge

FILED

APR 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

PROTHONOTARY, CLERK OF COURTS
William A. Seward
APR 16 2004
FILED 3:30 PM APR 16 2004
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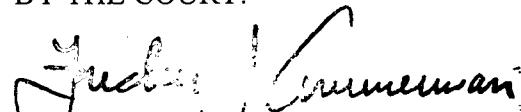
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

VIOLET NEEPER, Administrator of :
the Estate of TRUMAN NEEPER :
: vs. : No. 02-788-CD
: :
CURWENSVILLE DAM INN, INC. :
:

ORDER

NOW, this 7th day of May, 2004, it is the ORDER of the Court
that Civil Non-Jury Trial in the above matter has been rescheduled from June 30, 2004
and July 1, 2004 to Thursday and Friday, July 1 and 2, 2004 at 9:00 A.M. each day
in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

MAY 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 1cc Amy Noble
10:15 AM MAY 10 2004 1cc Amy Toland
MAY 10 2004
William A. Shaw
Prothonotary/Clerk of Courts

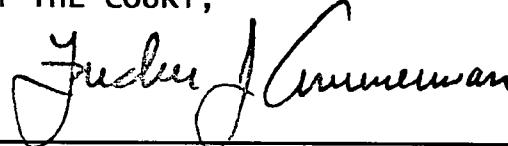
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

VIOLET NEEPER, Administrator :
of the Estate of TRUMAN
NEEPER :
-vs- : No. 02-788-CD
CURWENSVILLE DAM INN, INC. :

O R D E R

NOW, this 1st day of July, 2004, upon completion
of non-jury trial in the above-captioned matter, it is the
ORDER of this Court that counsel for both parties submit
appropriate brief to the Court by no later than August 9,
2004.

BY THE COURT,



President Judge

FILED

JUL 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

CC
FILED
Oct 22 2004
Atty, Noble, Taladay

William A. Shaw
Prothonotary/Clerk of Courts

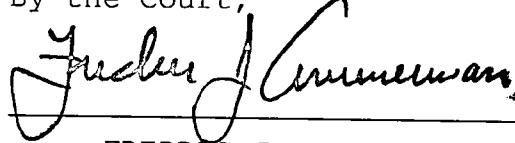
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

VIOLET NEEPER, *
Administratrix of the *
Estate of TRUMAN NEEPER, *
Plaintiff *
*
vs. * No. 2002-788-C.D.
*
CURWENSVILLE DAM INN, INC. *
a Pennsylvania Corporation, *
Defendant *

O R D E R

NOW, this 17th day of August, 2004, following Non-Jury Trial, with the Court believing that the Plaintiff has not met it's burden of proof to show negligence on the part of the Defendant, the Court hereby renders a verdict in favor of the Defendant.

By the Court,



FREDRIC J. AMMERMAN
President Judge

FILED

AUG 20 2004

William A. Shaw
Prothonotary/Clerk of Courts