

02-925-CD
JOSIE M. PEACE etal -vs- JAMES E. WESTOVER etal

Date: 10/06/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 10:24 AM

ROA Report

Page 1 of 1

Case: 2002-00925-CD

Current Judge: Paul E. Cherry

Josie M. Peace, Joseph M. Peace vs. James E. Westover, Renea Westover, Gwen Westover

Civil Other

Date		Judge
06/07/2002	Filing: Praecipe for Issuance of Writ of Summons Paid by: Seaman, Laurance B. (attorney for Peace, Josie M) Receipt number: 1843738 Dated: 06/07/2002 Amount: \$80.00 (Check) Three CC and Writs issued to Attorney	No Judge ✓
08/12/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
06/28/2004	Complaint, filed by s/Laurance B. Seaman, Esq. Three CC Attorney Seaman	No Judge ✓
07/02/2004	Affidavit of Service, Plaintiff's Complaint upon James E. Westover, Renea Westover, and Gwen Westover, filed by s/Laurance B. Seaman, Esq. No CC	No Judge ✓
07/13/2004	Entry of Appearance, on behalf of Defendants, filed by s/Bret J. Southard No CC	No Judge ✓
	Preliminary Objections, filed by s/Bret J. Southard One CC Attorney Southard	No Judge ✓
	Certificate of Service, Certificate of Service for the Interrogatories and Requests for Production of Documents Directed to Plaintiffs upon Laurance B. Seaman, Esq., filed by s/Bret J. Southard No CC	No Judge ✓
08/19/2004	Notice of Deposition, on Thursday, September 23, 2004 at 1:00 p.m. Bret J. Southard, Esquire will take the deposition of Joseph M. Peace at the offices of Gates & Seaman located at 2 North Front Street, Clearfield PA. Filed by s/ Bret J. Southard, Esq. Certificate of Service, Deposition Notice of Josie M. Peace upon Laurance B. Seaman, Esquire via U.S. Mail, First Class. No CC.	Paul E. Cherry ✓
	Notice of Deposition, that on Thursday, September 23, 2004 at 1:00 p.m., Bret J. Southard, Esq. will take the deposition of Joseph M. Peace at the offices of Gates and Seaman located at 2 North Front St. Clfd Pa. Certificate Of Service, on the 18th of August, 2004, copy of the Deposition Notice of Joseph M. Peace served upon Laurance B. Seaman, Esq. by first class mail. No cc.	Paul E. Cherry ✓
	ORDER, AND NOW, this 18th day of August, 2004, upon consideration of Defendants' Preliminary Objections filed in the above matter, it is the ORDER of this Court that argument, scheduled for 23rd day of September, 2004, at 2:30 p.m. By the Court, Paul E. Cherry, 2 cc & Memo Re: Service (attached to original), to Atty B. Southard	Paul E. Cherry ✓
09/23/2004	Plaintiff's Answers To Interrogatories and Requests For Production Of Documents, filed by s/ Laurance B. Seamen, Esquire. No CC. Certificate of Service, upon Bret J. Southard, Esquire, s/by Laurance B. Seaman, Esq.	Paul E. Cherry ✓
09/27/2004	Order, NOW, this 23rd day of September, 2004, the Court being advised that counsel for Plaintiff has not received due and proper service of today's hearing, it is the ORDER of this Court that the argument on Defendant's Preliminary Objections shall be continued until the 12th day of October, 2004, at 1:00 p.m. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Attys: Seaman, Southard	Paul E. Cherry ✓

*** ACTIVITY REPORT ***

Sep.22 '04 1:28

Tx. TOTAL PAGES 007409
Rx. TOTAL PAGES 002939
PRINT TOTAL PAGES 006754

No.	DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Tx.							
1	Sep.21	13:45	1'49	412 261 2447	G3	03	OK
Rx.							
1	Sep.21	12:18	0'50	*****	G3	01	OK
2	Sep.21	14:09	1'55	*****	G3	03	OK
3	Sep.21	17:05	1'49	*****	G3	03	OK

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father
and guardian,

Plaintiff

vs.

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

No. 02- 925 -CD

Type of Case: Civil

Type of Pleading:
PRAECIPE FOR ISSUANCE OF
WRIT OF SUMMONS

Filed on behalf of:
Plaintiff

Counsel of Record for this
Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

FILED

JUN 07 2002

William A. Shaw
Prothonotary

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

JOSIE M. PEACE, a minor, by JOSEPH :
M. PEACE, her father and guardian, :
Plaintiff :

vs. :

No. 02-925 -CD

JAMES E. WESTOVER, RENEA WESTOVER, :
and GWEN WESTOVER, Defendants :

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Please issue a Writ of Summons against Defendants,
JAMES E. WESTOVER, RENEA WESTOVER and GWEN WESTOVER, and enter
my appearance on behalf of Plaintiff.

BY: 

Laurance B. Seaman, Esquire

Date: June 7, 2002

FILED

JUN 07 2002

0132810th Summard 80.00
William A. Shaw
Prothonetary

3cc atty

3 Unit Summons to
atty.

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

COPY

SUMMONS

Josie M Peace
Joseph M Peace

Vs.

NO.: 2002-00925-CD

James E Westover
Renea Westover
Gwen Westover

TO: JAMES E WESTOVER
RENEA WESTOVER
GWEN WESTOVER

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 06/07/2002



William A. Shaw
Prothonotary

Issuing Attorney:

Laurance B. Seaman
P.O. Box 846
Clearfield, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12619

PEACE, JOSIE M. & JOSEPH M.

02-925-CD

VS.

WESTOVER, JAMES E., RENE A & GWEN

SUMMONS & PRAECIPE

SHERIFF RETURNS

NOW JUNE 13, 2002 AT 10:55 AM DST SERVED THE WITHIN SUMMONS & PRAECIPE ON JAMES E. WESTOVER, DEFENDANT AT RESIDENCE, RD#1 BOX 469, LAJOSE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JAMES E. WESTOVER A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS & PRAECIPE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW JUNE 13, 2002 AT 10:55 AM DST SERVED THE WITHIN SUMMONS & PRAECIPE ON RENE A WESTOVER, DEFENDANT AT RESIDENCE, RD#1 BOX 469, LAJOSE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JAMES WESTOVER HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS & PRAECIPE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW JUNE 13, 2002 AT 10:55 AM DST SERVED THE WITHIN SUMMONS & PRAECIPE ON GWEN WESTOVER, DEFENDANT AT RESIDENCE, RD#1 BOX 469, LAJOSE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JAMES WESTOVER, FATHER A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS & PRAECIPE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
47.89	SHFF. HAWKINS PAID BY: ATTY.
30.00	SURCHARGE PAID BY: ATTY.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12619

PEACE, JOSIE M. & JOSEPH M.

02-925-CD

VS.

WESTOVER, JAMES E., RENE A & GWEN

SUMMONS & PRAECIPE

SHERIFF RETURNS

Sworn to Before Me This

So Answers,

12th Day Of August 2002
William A. Shaw

Chester A. Hawkins
by *Maury Hamr*
Chester A. Hawkins
Sheriff

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

FILED

AUG 12 2002
07:40
William A. Shaw
Prothonotary

ESK

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
02-925-CD
JURY TRIAL DEMANDED

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, PLAINTIFF

VS

JAMES F. WESTOVER, RENEA WESTOVER
and GWEN WESTOVER, DEFENDANTS

C O M P L A I N T

FILED
8/3:24
JUN 28 2004

[Signature]
William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

3 cc
Atty *[Signature]*
Seaman

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

JOSIE M. PEACE, a minor, :
by JOSEPH M. PEACE, her :
father and guardian, :
Plaintiff :

vs. :

JAMES E. WESTOVER, RENE :
WESTOVER and GWEN :
WESTOVER, Defendants :

No. 02 - 925 - CD
JURY TRIAL DEMANDED

Type of Case: Civil

Type of Pleading: COMPLAINT

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

FILED

JUN 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

JOSIE M. PEACE, a minor, by	:	
JOSEPH M. PEACE, her father and	:	
guardian, Plaintiff	:	
	:	
vs.	:	No. 02 - 925 - CD
	:	JURY TRIAL DEMANDED
JAMES E. WESTOVER, RENEA	:	
WESTOVER and GWEN WESTOVER,	:	
Defendants	:	

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAVID MEHOLICK, COURT ADMINISTRATOR
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641, Extension 1303

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, Plaintiff

vs.

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

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:
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No. 02 - 925 - CD
JURY TRIAL DEMANDED

COMPLAINT

NOW COMES, Plaintiff, Josie M. Peace, a minor, by Joseph M. Peace, her father and guardian, by and through her attorneys, Gates & Seaman, and asserts the following causes of action and in support thereof avers the following:

1. Plaintiff, Josie M. Peace, a minor (born: January 5, 1995), resides with her father and natural guardian, Joseph M. Peace, who is her sole surviving parent, in Newburg Borough, Clearfield County, Pennsylvania, at 34 Water Street, Mahaffey, PA 15757.

2. On June 26, 2000, Defendants, James E. Westover and Renea Westover, adult individuals who were husband and wife, resided in Chest Township, Clearfield County, Pennsylvania, at R. D. #1, Box 469, LaJose, PA 15753.

3. On June 26, 2000, Defendant, Gwen Westover, an adult individual and the daughter of Defendants, James E. Westover and Renea Westover, resided in Chest Township, Clearfield County, Pennsylvania, with her parents at R. D. #1, Box 469, LaJose, PA 15753.

4. On June 26, 2000, Defendants, James E. Westover and/or Renea Westover and/or Gwen Westover owned, possessed, kept and maintained at their residence a certain dog which Plaintiff believes and therefore avers was either a pure bred Great Dane or a Great Dane mix (hereinafter referred to as "the Dog").

5. On June 26, 2000, Defendants, James E. Westover and Renea Westover, husband and wife, by virtue of a deed dated August 24, 1978 and recorded in Clearfield County Deed Book 770, Page 147, were the owners of the house and real estate where all three (3) Defendants resided, (hereinafter referred to as "the Premises").

6. At all times relevant hereto, the Dog was kept on the Premises at a location outside the residential dwelling and it is believed and therefor averred that the Dog was confined only by a collar and chain of unknown length.

7. Plaintiff, Josie M. Peace, had stayed overnight June 25, 2000 with the family of Matthew and Vickie Hullihen, her half sister and the niece of Defendant, James E. Westover.

8. On June 26, 2000, Defendant, Gwen Westover, picked up Plaintiff, Josie M. Peace, and Vickie and her husband Matthew's children, Tanner (age 4 years) and Matthew (age 6 months) to watch them for the day, and Defendant, Gwen Westover, took all three (3) children to the Premises.

9. Defendants, James E. Westover, Renea Westover

and Gwen Westover, the owners and keepers of the Dog, knew that the Dog had dangerous, mean, aggressive and vicious propensities and that the Dog had previously growled meanly at and/or attacked or attempted to attack humans and to bite humans.

10. Later, on June 26, 2000, when Defendants, James E. Westover, Renea Westover and Gwen Westover, were unloading a vehicle at the Premises and taking items into the house, Defendant, James E. Westover, told Tanner and Plaintiff, Josie M. Peace, not to go near the Dog without an adult. It is believed and therefore averred that the other Defendants had also warned these two (2) children about the Dog.

11. On June 26, 2000, after said warnings, the Dog, without provocation, attacked and repeatedly bit Plaintiff, Josie M. Peace, about her head, skull, neck, shoulders and left arm, seriously injuring her.

12. That solely as a direct and proximate result of the attack by the Dog, Plaintiff, Josie M. Peace, sustained the following injuries:

(a) lacerations and teeth marks on her head, particularly the back left portion of her skull;

(b) various abrasions about the head, skull, neck and shoulders;

(c) abrasions and puncture mark about the left arm, wrist and hand;

- (d) red marks about the face;
- (e) swelling under the left eye;
- (f) bruising about the left shoulder and upper left forearm;
- (g) a fear of dogs and other large animals;
- (h) permanent scarring and loss of hair;
- (i) great physical pain and suffering; and
- (j) inability to engage in her normal activities.

COUNT I
(ABSOLUTE LIABILITY)

13. Paragraphs 1 through 12 hereof are hereby incorporated herein by reference.

14. Defendants, James E. Westover, Renea Westover and Gwen Westover, by keeping the Dog at the Premises, harbored a dangerous dog, in violation of Section 3 of the Dog Law, The Act of December 11, 1996, P. L. 151, effective in 60 days [3 P.S. §459-502-A(a)].

15. Defendants, James E. Westover, Renea Westover and Gwen Westover, were in violation of 3 P.S. §459-201 in that they failed to obtain the required dog license for the Dog.

16. Defendants, James E. Westover, Renea Westover and Gwen Westover, are absolutely liable for the damages sustained by Plaintiff, Josie M. Peace.

WHEREFORE, Plaintiff, Josie M. Peace, a minor, by her

father and guardian, Joseph M. Peace, claims damages from all Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs of suit.

COUNT II
(NEGLIGENCE)

17. Paragraphs 1 through 16 hereof are incorporated herein by reference.

18. The aforesaid violation of the Dog Law, harboring a dangerous dog, constitutes negligence per se.

19. The injuries suffered by Plaintiff, Josie M. Peace, were directly and proximately caused by the negligence and/or carelessness of Defendants, James E. Westover, Renea Westover and Gwen Westover, in that they:

(a) failed to keep the Dog confined to a portion of the Premises not accessible to invitees and visitors such as Plaintiff, Josie M. Peace;

(b) failed to keep Plaintiff, Josie M. Peace, under proper supervision to see that she did not approach close enough to the Dog so that it could attack her;

(c) failed to keep the Dog in an enclosure not accessible to visitors and invitees, such as Plaintiff, Josie M. Peace, to the Premises;

(d) failed to keep the Dog muzzled;

(e) otherwise allowed or permitted the Dog to be located

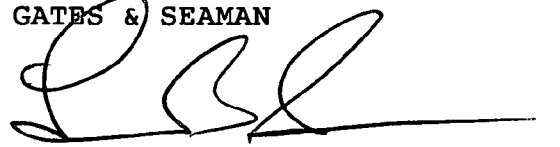
on a portion of the Premises that from time to time was frequented by young children such as Plaintiff, Josie M. Peace;

(f) failed to exercise adequate supervision over Plaintiff, Josie M. Peace, who was temporarily under their custody and control at the time the Dog attacked her; and

(g) failed to exercise due care required of owners of real estate to protect guests and invitees, such as Plaintiff, Josie M. Peace, from injury.

WHEREFORE, Plaintiff, Josie M. Peace, a minor, by her father and guardian, Joseph M. Peace, claims damages from all Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs.

GATES & SEAMAN



Laurance B. Seaman, Esquire
Attorney for Plaintiff

Date: June 28, 2004

Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

V E R I F I C A T I O N

I, JOSEPH M. PEACE, state that I am the father of minor Plaintiff JOSIE M. PEACE, in this action, that I make this affidavit for myself and on her behalf because the minor is nine (9) years of age and lacks sufficient mental capacity to understand the facts set forth in the foregoing Complaint, and that the facts set forth in the foregoing Complaint are true and correct to my knowledge, information and belief. I understand that the statements I have made here are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification.



Joseph M. Peace

Date: 4 - 5 -, 2004

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, Plaintiff

vs.

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

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:
:
: No. 02 - 925 - CD
: JURY TRIAL DEMANDED
:
:
:

AFFIDAVIT OF SERVICE

I, LAURANCE B. SEAMAN, ESQUIRE, Attorney for Plaintiff,
JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and
guardian, hereby depose and state that a certified copy of
Plaintiff's Complaint was served by regular first class U. S.
mail, postage prepaid, on June 28, 2004, upon the following:

James E. Westover
R. D. #1, Box 469
LaJose, PA 15753

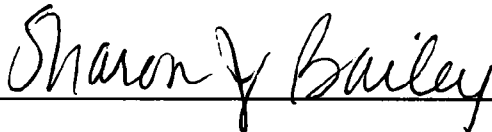
Renea Westover
R. D. #1, Box 469
LaJose, PA 15753

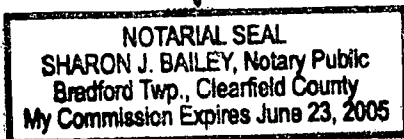
Gwen Westover
R. D. #1, Box 469
LaJose, PA 15753

The original Certificates of Mailing for the above-noted
individuals are attached hereto and made a part hereof as Exhibit
"A".



Laurance B. Seaman, Esquire

Sworn to and subscribed before
me this 30th day of June, 2004.





FILED

 JUL 02 2004
01:11:30
William A. Shaw
Prothonotary/Clerk of Courts

no c/c

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**

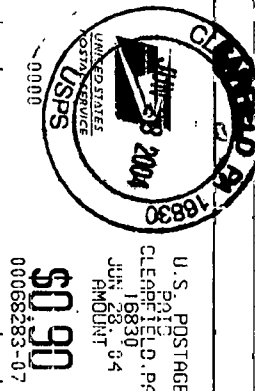
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER

Received From:

GATES & SEAMAN
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

One piece of ordinary mail addressed to:

James E. Westover
R. D. #1, Box 469
LaJose, PA 15753



PS Form 3817, January 2001

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**

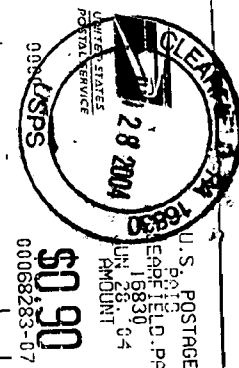
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER

Received From:

GATES & SEAMAN
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

One piece of ordinary mail addressed to:

Gwen Westover
R. D. #1, Box 469
LaJose, PA 15753



PS Form 3817, January 2001

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**

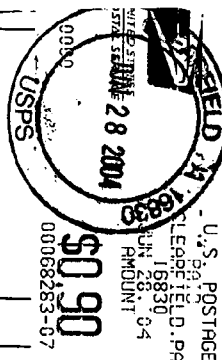
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER

Received From:

GATES & SEAMAN
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

One piece of ordinary mail addressed to:

Renea Westover
R. D. #1, Box 469
LaJose, PA 15753



PS Form 3817, January 2001

JOSIE M. PEACE, a minor, by JOSEPH :IN THE COURT OF COMMON PLEAS OF
M. PEACE, her father and guardian :CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. :
:No. 02-925-CD
JAMES E. WESTOVER, RENE :
WESTOVER and GWEN WESTOVER :JURY TRIAL DEMANDED
Defendants :

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Defendants in the above-captioned matter.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

By: 

Bret J. Southard, I.D. #59032

Attorneys for Defendants

10 West Third Street
Williamsport, PA 17701
(570) 323-8404
(570) 323-8585 Facsimile

FILED

JUL 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

W 2

JOSIE M. PEACE, a minor, by JOSEPH	:IN THE COURT OF COMMON PLEAS OF
M. PEACE, her father and guardian	:CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:
	:
v.	:No. 02-925-CD
	:
JAMES E. WESTOVER, RENE A	:
WESTOVER and GWEN WESTOVER	:JURY TRIAL DEMANDED
Defendants	:

CERTIFICATE OF SERVICE

BRET J. SOUTHARD hereby certifies that on this 17 day of July, 2004, he filed an original and one copy of the foregoing Entry of Appearance with William A. Shaw, Prothonotary, Clearfield County Courthouse, P.O. Box 549, Clearfield, PA 16830 via U.S. Mail, postage prepaid, First Class rates.

He further certifies that on this same date he served a true and correct copy of same upon the following in the manner indicated:

VIA U.S. MAIL, POSTAGE PREPAID, FIRST CLASS RATES

Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

13

Bret J. Southard

2

FILED

7/10:48 AM
JUL 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

NB
CC

JOSIE M. PEACE, a minor, by JOSEPH L. PEACE, her father and guardian
Plaintiffs
v.
JAMES E. WESTOVER, RENE
WESTOVER and GWEN WESTOVER
Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
:
JURY TRIAL DEMANDED

FILED

JUL 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

AND NOW, come the Defendants, James E., Renea, and Gwen Westover, by and through their attorneys, Bret J. Southard and MITCHELL MITCHELL GALLAGHER WEBER SOUTHARD & WISHARD P.C., and files the within Preliminary Objections of which the following is a statement:

1. This is a dog bite case.
2. Plaintiffs allege that a five year old girl was bitten by a dog owned by and/or under the supervision of the defendants on June 26, 2000.
3. Count I of the complaint alleges absolute liability "by keeping the dog at the premises (and in) harboring a dangerous dog" in violation of Pennsylvania's dog law, 3 P.S. §459-201. Complaint at 13 *et seq.* Absolute liability on a dog owner is not imposed for dog attacks such that Count I alleging absolute liability does not provide an avenue of recovery. McCloud v. McLaughling, 837 A.2d 541 (Pa. Super 2003).
4. In addition, Count II of the complaint alleges negligence. The particulars of negligence are set forth at paragraph 19 of the complaint as follows:
 - (a) failed to keep the Dog confined to a portion of the Premises not accessible to invitees and visitors such as Plaintiff, Josie M. Peace;
 - (b) failed to keep Plaintiff, Josie M. Peace, under proper supervision to see that

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian :IN THE COURT OF COMMON PLEAS OF
Plaintiffs :CLEARFIELD COUNTY, PENNSYLVANIA
:

v. :No. 02-925-CD
:

JAMES E. WESTOVER, RENE A :
WESTOVER and GWEN WESTOVER :JURY TRIAL DEMANDED
Defendants :

FILED

JUL 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

AND NOW, come the Defendants, James E., Renea, and Gwen Westover, by and through their attorneys, Bret J. Southard and MITCHELL MITCHELL GALLAGHER WEBER SOUTHARD & WISHARD P.C., and files the within Preliminary Objections of which the following is a statement:

1. This is a dog bite case.
2. Plaintiffs allege that a five year old girl was bitten by a dog owned by and/or under the supervision of the defendants on June 26, 2000.
3. Count I of the complaint alleges absolute liability "by keeping the dog at the premises (and in) harboring a dangerous dog" in violation of Pennsylvania's dog law, 3 P.S. §459-201. Complaint at 13 *et seq.* Absolute liability on a dog owner is not imposed for dog attacks such that Count I alleging absolute liability does not provide an avenue of recovery. McCloud v. McLaughling, 837 A.2d 541 (Pa. Super 2003).
4. In addition, Count II of the complaint alleges negligence. The particulars of negligence are set forth at paragraph 19 of the complaint as follows:
 - (a) failed to keep the Dog confined to a portion of the Premises not accessible to invitees and visitors such as Plaintiff, Josie M. Peace;
 - (b) failed to keep Plaintiff, Josie M. Peace, under proper supervision to see that

she did not approach close enough to the Dog so that it could attack her;

(c) failed to keep the Dog in an enclosure not accessible to visitors and invitees, such as Plaintiff, Josie M. Peace, to the Premises;

(d) failed to keep the Dog muzzled;

(e) otherwise allowed or permitted the Dog to be located on a portion of the Premises that from time to time was frequented by young children such as Plaintiff, Josie M. Peace;

(f) failed to exercise adequate supervision over Plaintiff, Josie M. Peace, who was temporarily under their custody and control at the time the Dog attacked her; and

(g) failed to exercise due care required of owners of real estate to protect guests and invitees, such as Plaintiff, Josie M. Peace, from injury.

5. The complaint concedes that the dog was indeed confined by a collar and chair. Complaint at 6.

6. There is no obligation in the dog law to keep the dog confined to a portion of the premises not accessible to invitees and visitors such as alleged in paragraph 19a.

7. There is no requirement under the dog law to keep a dog in an enclosure not accessible to visitors and invitees such as alleged in paragraph 19c.

8. There is no requirement in the dog law that the dog be muzzled. Complaint at 19d.

9. Paragraph 19g states no facts and instead constitutes a general allegation of negligence in violation of Pa.R.C.P. 1029(a) and the rule of law set forth in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, it is respectfully requested that Count I be dismissed and that paragraphs 19a, c, d, and g be stricken.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

By: 

Bret J. Southard, I.D. #59032

Attorneys for Defendants

10 West Third Street
Williamsport, PA 17701
(570) 323-8404
(570) 323-8585 Facsimile

JOSIE M. PEACE, a minor, by JOSEPH	:IN THE COURT OF COMMON PLEAS OF
M. PEACE, her father and guardian	:CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:
	:
v.	:No. 02-925-CD
	:
JAMES E. WESTOVER, RENE A	:
WESTOVER and GWEN WESTOVER	:JURY TRIAL DEMANDED
Defendants	:

CERTIFICATE OF SERVICE

BRET J. SOUTHARD hereby certifies that on this 12 day of July, 2004, he filed an original and one copy of the foregoing Preliminary Objections with William A. Shaw, Prothonotary, Clearfield County Courthouse, P.O. Box 549, Clearfield, PA 16830 via U.S. Mail, postage prepaid, First Class rates.

He further certifies that on this same date he served a true and correct copy of same upon the following in the manner indicated:

VIA U.S. MAIL, POSTAGE PREPAID, FIRST CLASS RATES

Laurance B. Seaman, Esquire
 Gates & Seaman
 2 North Front Street
 P.O. Box 846
 Clearfield, PA 16830



Bret J. Southard

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Southard
~~Aug 6 2004~~

William A. Shaw

Prothonotary/Clerk of Courts

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs
v.
JAMES E. WESTOVER, RENE A WESTOVER and GWEN WESTOVER
Defendants

**:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
:
:JURY TRIAL DEMANDED
:**

CERTIFICATE OF SERVICE

BRET J. SOUTHARD hereby certifies that on this 12 day of July, 2004, he filed an original and one copy of this Certificate of Service for the Interrogatories and Requests for Production of Documents Directed to Plaintiffs with William A. Shaw, Prothonotary, Clearfield County Courthouse, P.O. Box 549, Clearfield, PA 16830 via U.S. Mail, postage prepaid, First Class rates.

He further certifies that on this same date he served a true and correct copy of same upon the following in the manner indicated:

VIA U.S. MAIL, POSTAGE PREPAID, FIRST CLASS RATES

Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830



Bret J. Southard

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William A. Shaw
Prothonotary/Clerk of Courts

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William A. Shaw
Prothonotary/Clerk of Courts

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs

v.

JAMES E. WESTOVER, RENE WESTOVER and GWEN WESTOVER
Defendants

:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
:JURY TRIAL DEMANDED
:

NOTICE OF DEPOSITION

TO: Josie M. Peace
c/o Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

PLEASE TAKE NOTICE that on Thursday, September 23, 2004 at 1:00 p.m., Bret J. Southard, Esquire will take the deposition of Joseph M. Peace at the offices of Gates & Seaman located at 2 North Front Street, Clearfield, PA 16830.


The deposition will be conducted in the presence of a certified court reporter pursuant to Pennsylvania Rules of Civil Procedure and shall continue until completed.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

By: 

Bret J. Southard, I.D. #59032
Attorneys for Defendants

10 West Third Street
Williamsport, PA 17701
(570) 323-8404


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William A. Shaw
Prothonotary/Clerk of Courts

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs

v.

JAMES E. WESTOVER, RENEA WESTOVER and GWEN WESTOVER
Defendants

:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
:
:JURY TRIAL DEMANDED
:

CERTIFICATE OF SERVICE

BRET J. SOUTHARD hereby certifies that on this 18 day of August, 2004, he filed an original and one copy of the Deposition Notice of Josie M. Peace with William A. Shaw, Prothonotary, Clearfield County Courthouse, P.O. Box 549, Clearfield, PA 16830 via U.S. Mail, postage prepaid, First Class rates.

He further certifies that on this same date he served a true and correct copy of same upon the following in the manner indicated:

VIA U.S. MAIL, POSTAGE PREPAID, FIRST CLASS RATES

Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830



Bret J. Southard

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs
v.
JAMES E. WESTOVER, RENE A WESTOVER and GWEN WESTOVER
Defendants

:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
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:JURY TRIAL DEMANDED
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NOTICE OF DEPOSITION

TO: Joseph M. Peace
c/o Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

PLEASE TAKE NOTICE that on Thursday, September 23, 2004 at 1:00 p.m., Bret J.

Southard, Esquire will take the deposition of Joseph M. Peace at the offices of Gates & Seaman located at 2 North Front Street, Clearfield, PA 16830.

The deposition will be conducted in the presence of a certified court reporter pursuant to Pennsylvania Rules of Civil Procedure and shall continue until completed.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

By: 13

Bret J. Southard, I.D. #59032
Attorneys for Defendants

10 West Third Street
Williamsport, PA 17701
(570) 323-8404

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AUG 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs
v.
JAMES E. WESTOVER, RENE A WESTOVER and GWEN WESTOVER
Defendants

:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
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:JURY TRIAL DEMANDED
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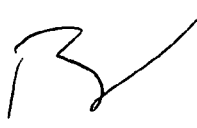
CERTIFICATE OF SERVICE

BRET J. SOUTHARD hereby certifies that on this 14 day of August, 2004, he filed an original and one copy of the Deposition Notice of Joseph M. Peace with William A. Shaw, Prothonotary, Clearfield County Courthouse, P.O. Box 549, Clearfield, PA 16830 via U.S. Mail, postage prepaid, First Class rates.

He further certifies that on this same date he served a true and correct copy of same upon the following in the manner indicated:

VIA U.S. MAIL, POSTAGE PREPAID, FIRST CLASS RATES

Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830



Bret J. Southard

CD

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

JOSIE M. PEACE, a minor, by JOSEPH :
M. PEACE, her father and guardian :

vs. :

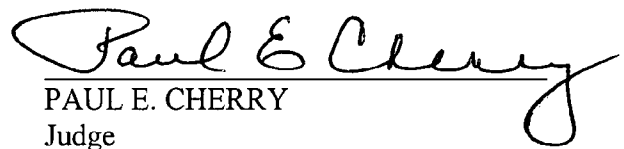
: No. 02-925-CD
:

JAMES W. WESTOVER, RENE :
WESTOVER, and GWEN WESTOVER :

ORDER

AND NOW, this 18th day of August, 2004, upon consideration
of Defendants' Preliminary Objections filed in the above matter, it is the ORDER
of the Court that argument on said Objections has been scheduled for the 23
day of September, 2004, at 2:30 P.M, in Courtroom No.
2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED

AUG 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED

REC 9 Memo re: service

013:27/021

(see attached)

AUG 19 2004

to Atty. B. Southard

William A. Shaw
Prothonotary/Clerk of Courts



**OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA**

**CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830**

**DAVID S. MEHOLICK
COURT ADMINISTRATOR**

**PHONE: (814) 765-2641
FAX: 1-814-765-6089**

**MARCY KELLEY
DEPUTY COURT ADMINISTRATOR**

COPY

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

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JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs

v.

JAMES E. WESTOVER, RENE WESTOVER and GWEN WESTOVER
Defendants

:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
:JURY TRIAL DEMANDED
:

BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS

I. STATEMENT OF THE CASE

This is a dog bite case.

Plaintiffs allege that a five year old girl was bitten by a dog owned by and/or under the supervision of the defendants on June 26, 2000. Count I of the complaint alleges absolute liability "by keeping the dog at the premises (and in) harboring a dangerous dog" in violation of Pennsylvania's dog law, 3 P.S. §459-201. Complaint at 13 *et seq.* Absolute liability on a dog owner is not imposed for dog attacks, such that Count I alleging absolute liability does not provide an avenue of recovery. McCloud v. McLaughling, 837 A.2d 541 (Pa. Super 2003).

In addition, Count II of the complaint alleges negligence. The particulars of negligence are set forth at paragraph 19 of the complaint as follows:

(a) failed to keep the Dog confined to a portion of the Premises not accessible to invitees and visitors such as Plaintiff, Josie M. Peace;

(b) failed to keep Plaintiff, Josie M. Peace, under proper supervision to see that she did not approach close enough to the Dog so that it could attack her;

(c) failed to keep the Dog in an enclosure not accessible to visitors and invitees, such as Plaintiff, Josie M. Peace, to the Premises;

(d) failed to keep the Dog muzzled;

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**COURT ADMINISTRATOR'S
OFFICE**

(e) otherwise allowed or permitted the Dog to be located on a portion of the Premises that from time to time was frequented by young children such as Plaintiff, Josie M. Peace;

(f) failed to exercise adequate supervision over Plaintiff, Josie M. Peace, who was temporarily under their custody and control at the time the Dog attacked her; and

(g) failed to exercise due care required of owners of real estate to protect guests and invitees, such as Plaintiff, Josie M. Peace, from injury.

The complaint concedes that the dog was indeed confined by a collar and chair. Complaint at 6. There is no obligation in the dog law to keep the dog confined to a portion of the premises not accessible to invitees and visitors such as alleged in paragraph 19a. There is no requirement under the dog law to keep a dog in an enclosure not accessible to visitors and invitees such as alleged in paragraph 19c. There is no requirement in the dog law that the dog be muzzled. Complaint at 19d.

Paragraph 19g states no facts and instead constitutes a general allegation of negligence in violation of Pa.R.C.P. 1029(a) and the rule of law set forth in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983).

II. PROCEDURAL HISTORY

This action was instituted via praecipe for Writ of Summons filed on or about June 7, 2002. Plaintiffs' complaint filed on or about June 26, 2004. Preliminary objections were filed in response to the complaint. The within brief is respectfully offered in support of those preliminary objections.

III. STATEMENT OF THE QUESTION PRESENTED

1. Does Pennsylvania law provide for absolute liability in dog bite cases?

Suggested answer is in the negative.

2. Must certain of plaintiffs claims of negligence be stricken in that they attempt to purport duties not imposed by Pennsylvania Law?

Suggested answer is in the affirmative.

II. ARGUMENT

Count I of plaintiffs' complaint purports to establish absolute liability against the dog owners and/or keepers simply because the minor plaintiff was bitten on the property that they owned or controlled, by a dog that they owned or controlled. However such a theory of recovery is inconsistent with Pennsylvania Law. Specifically in McCloud v. McLaughlin, 837 A.2d 541 (Pa. Super 2003) it was held that

“[t]he mere fact that appellee McLaughlin was the owner of the dog in question does not establish negligence. What appellant is arguing is that McLaughlin should be absolutely liable for any damage done by her dog. First off, the Commonwealth does not impose absolute liability on the owner for dog attacks. As we have stated in previous cases; ‘We are convinced that proof of negligence, in contrast to holding anyone absolutely liable, is the vehicle by which accountability for injury sustained because of a dog bite is to be established’”. Id at 544 quoting Deardorff v. Burger, 606 A.2d 489, 493 (Pa. Super 1992).

Because absolute liability for dog bites does not exist in this Commonwealth, Count I is not a viable avenue of recovery and should be dismissed.

Moreover, it has been held that the Pennsylvania Dog Law establishes the standard of care, Burger, supra., Miller v. Hurst, 448 A.2d 614 (1982). With respect to restraining animals, the Dog Law provides “[i]t shall be unlawful for the owner or keeper of any dog to fail to keep at any time such dog either 1) confined within the premises of the owner; 2) firmly secured by

means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secure; or 3) under the reasonable control of some person, or when engaged in lawful hunting, exhibition or field training”. 3 P.S. §459-305. Here the dog was confined by collar and chain by plaintiffs own admission. Complaint at 6. Consequently the dog was “confined within the premises of the owner” as required by the statute. Therefore, it is immaterial that the dog was not confined to a portion of the premises not accessible to visitors, was not kept in an enclosure, and was not muzzled. The law imposes no such requirement.

A similar issue was decided by the Court of Common Pleas of Lehigh County in Rosen v. Tate, 64 D&C 4th 524 (Lehigh County 2003). In that case, a visiting child was bitten by a dog on the defendant’s back porch. The dog was confined within the back yard by a five foot fence. Although the bite occurred on the defendant’s property, “[i]t is clear that the dog was confined within the premises of the owner as required by the statute, and that Tate cannot be held liable under this theory advanced by Rosen”. Id at 528.

That is not to say that these plaintiffs cannot go forward on their theory that this dog was an allegedly dangerous dog. The Rosen v. Tate court similarly permitted such a claim to go forward ruling that it was an issue for the jury whether the dog was in fact dangerous. However with respect to the restraint claims, in Tate as here, there was compliance with that portion of the dog law such that those claims cannot go forward. There is no obligation to muzzle the dog under the dog law. There is no obligation other than to keep it restrained within the confines of the yard which occurred here.

Beyond that, paragraph 19g simply indicates a failure to exercise due care required of owners of real estate to protect guests and invitees. Such a statement states no facts of any kind but instead is a general allegation of negligence in violation of Pennsylvania Rule of Civil

Procedure 1019(a) and the rule of law set forth in Connor v. Allegheny General Hospital, SCI Pa 306, 461 A.2d 600 (1983). In particular, Pa.R.C.P. 1019(a) requires that the facts upon which a cause of action is based be stated on a concise and summary form. Pursuant to Connor, a failure to object to general allegations of negligence provides an avenue for plaintiffs to amend their complaint even after the statute of limitations has expired. The allegations set forth in paragraph 19g set forth no facts, either concise or otherwise. How these defendants failed in their obligations to the minor plaintiff other than what is already set forth in the complaint is not pleaded. For example, what “due care” should have been exercised? What “protection” should have been provided? How, in addition to what is already pleaded in the complaint, did these defendants fail in their obligations to the minor plaintiff?

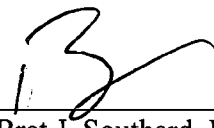
Pa.R.C.P. 1019(a) requires a concise and summary statement of facts. None are provided. Consequently this paragraph should be stricken.¹

V. CONCLUSION

For reasons set forth herein, Count I does not afford an avenue of recovery. The claims alleging inappropriate restraint do not afford an avenue of recovery. They should be stricken. Beyond that to the extent that plaintiffs have additional facts showing why these defendants allegedly failed in their obligations, they should be pleaded now.

¹It is conceded that the statute of limitations considerations that would be present in other cases do not exist in full here simply because of the minor tolling statute. However the father plaintiff's claims are subject to the two year statute of limitations.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

By: 
Bret J. Southard, I.D. #59032

Attorneys for Defendants

10 West Third Street
Williamsport, PA 17701
(570) 323-8404
(570) 323-8585 Facsimile

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs

v.

JAMES E. WESTOVER, RENE A WESTOVER and GWEN WESTOVER
Defendants

:IN THE COURT OF COMMON PLEAS OF
:CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:No. 02-925-CD
:
:JURY TRIAL DEMANDED
:

CERTIFICATE OF SERVICE

BRET J. SOUTHARD hereby certifies that on this 12 day of July, 2004, he filed an original and two copies of the foregoing Brief in Support of Preliminary Objections with William A. Shaw, Prothonotary, Clearfield County Courthouse, P.O. Box 549, Clearfield, PA 16830 via U.S. Mail, postage prepaid, First Class rates.

He further certifies that on this same date he served a true and correct copy of same upon the following in the manner indicated:

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Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830



Bret J. Southard

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO. 02-925-CD
CIVIL ACTION - LAW
JURY TRIAL DEMANDED

JOSIE M. PEACE, a minor,
by JOSEPH M. PEACE, her
father and guardian,
Plaintiff

--VS--

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

PLAINTIFF'S ANSWERS TO
INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS

FILED

SEP 23 2004

CLERK OF COURT
CLEARFIELD COUNTY, PA.

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

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

JOSIE M. PEACE, a minor, :
by JOSEPH M. PEACE, her :
father and guardian, :
Plaintiff :

vs. :

JAMES E. WESTOVER, RENE :
WESTOVER and GWEN :
WESTOVER, Defendants :

No. 02 - 925 - CD
JURY TRIAL DEMANDED

Type of Case: Civil

Type of Pleading: PLAINTIFF'S
ANSWERS TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

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William A. Shaw
Prothonotary/Clerk of Courts

JOSIE M. PEACE, a minor, by JOSEPH M. PEACE, her father and guardian
Plaintiffs

v.

JAMES E. WESTOVER, RENE A WESTOVER and GWEN WESTOVER
Defendants

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

:

:

:No. 02-925-CD

:

:

:JURY TRIAL DEMANDED

:

PLAINTIFF'S ANSWERS TO
INTERROGATORIES

1. Please state:

a. Your birth date;
January 5, 1995

b. The other members of the household in which you reside and their relationship to you;

Joseph Peace - Father
Raymond Peace - Brother

c. The extent of your education and last grade completed in school;
3rd Grade

d. The name and address of your employer, if any;
N/A

e. Your social security number.

164-76-5680

2. Please state the names and addresses of all persons who you know or believe have relevant knowledge concerning either the liability or damages issues in this case, and the general subject matter of that knowledge.

1. See Answer to Interrogatory No. 3.
1, 2 & 3 Liability and damages

4. Liability - During the course of Mr. Walstrom's investigation, Defendant, James Westover, told him that, on the day Josie was attacked by the dog, that when Josie and Tanner (another small child Gwen Westover was babysitting that day) got out of the vehicle at the Westover home, he told them not to go near the dog, which later attacked Josie, without an adult. James Westover also told Mr. Walstrom that while Tanner knew the dog which attacked Josie, that Josie did not know the dog.

5 - 9. Liability - Aware of the dog's mean and vicious propensities and that Defendants were also aware of the same.

2. Clearfield Hospital Emergency Room Medical Personnel - Damages.

3. Please state the names, addresses and job classifications of all persons you expect or intend to call as non-expert witnesses on your behalf at the trial of this case.

1. Plaintiff
2. Joseph Peace
3. Defendants
4. Harold Walstrom - State Dog Enforcement Officer
5. Dawn Gibson - Bartender
P. O. Box 326
Burnside, PA 15721
6. Ed Westover - Truck driver
Box 102
Burnside, PA 15721
7. Vickie Hullihen
3112 Clover Run Road
Mahaffey, PA 15757
8. Matt Hullihen
3112 Clover Run Road
Mahaffey, PA 15757
9. Janice Harrier
2071 Main Street
LaJose, PA 15753

4. Please identify, in the following detail, each person whom you expect to call as an expert witness at trial, stating as to each person:

a. Full name, home address, business address, and qualifications;

Clearfield Hospital Emergency Room
personnel who examined and treated
Plaintiff, names to be supplied

b. The subject matter on which the expert is expected to testify;
Damages.

c. The substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The answers or separate report must be signed by each expert.

No report yet obtained.

5. Please state whether you, your attorney, or anyone else acting in your behalf, obtained from any person or persons, including the parties to this action, any reports, statements, recordings, memoranda, or testimony whether signed or not, and whether prepared by someone other than said person or witness or not, concerning the alleged occurrence or any claim or defense of any party to this action? If so, as to each person please state the following: No Statements.

- a. Name and address of witness or person referred to;
- b. Date of taking or making same;
- c. Name and address of the person in whose possession the same now is;
- d. Name, address and employer of the person at whose request the same was made or taken;

6. Please state whether any photographs have been taken by you, your attorney or anyone else acting in your behalf in connection with the occurrence and injuries complained of in your Complaint. If so, state: Some photos have been supplied. Additional ones will be shown Defendants' attorney at Deposition.

- a. The date or dates when such photographs were taken;
- b. The name and present address of the person taking the photographs;
- c. Where the photographs were taken;
- d. The objects, subjects, particular view or sight which each photograph represents;
- e. The present whereabouts of the photographs and name and present address of the person presently in possession or custody thereof.

7. Please describe each and every injury or disease which you claim to have incurred as a result of the occurrence giving rise to this lawsuit.

Dog bites resulting in pain and suffering and emotional trauma and permanent scarring.

8. Please state each and every date on which you were examined or treated by any doctor, physician or medical practitioner with respect to any injury, illness or disability which you claim to have sustained or suffered as a result of the alleged occurrence, setting forth in detail as to each such date of examination or treatment: See medical records already supplied.

a. The name and address of each such doctor, physician, or medical practitioner;

b. The nature and extent of the examination or treatment received from each such doctor, physician, or medical practitioner;

c. The diagnosis and prognosis made by each such doctor, physician or medical practitioner;

d. The amount of charge made to you, or any other person or organization for your account, by each doctor, physician or medical practitioner, fully itemized as indicated in any bill rendered therefor.

9. Please state each and every date on which you were examined, treated, or cared for while an inpatient or outpatient at any hospital, clinic, or other institution, for any injury or disability which you claim to have suffered or sustained as a result of the alleged occurrence, setting forth in detail as to each such date of examination, treatment or care:

See medical records already supplied.

a. The name and address of each such hospital, clinic or other institution;

b. The nature and extent of any such examination, treatment or care at such hospital, clinic or other institution;

c. The inclusive dates of any period of confinement with respect to any such examination, treatment or care, at any such hospital, clinic or institution;

d. The amount charged you by each such hospital, clinic, or other institution, fully itemized as indicated in any bill rendered therefor.

10. Please state whether you have received any other medical, nursing, examination, or care or any other medical services by any health care provider whatsoever for which you are making claim in this lawsuit which has not been set forth in answers to the preceding interrogatories. If so, please state: None

a. The names and addresses of those rendering such other medical or nursing examination, treatment, attention or care;

b. The dates of all examinations, treatments, attention or care;

c. The nature and extent of all such examinations, treatments, attention or care;

d. The amounts actually paid for any such examinations, treatments, attention or care.

11. Please state whether you are still afflicted with or suffering from the effects of any injury, illness or disability you received at the time of the alleged occurrence. If so, please:

a. Describe in complete detail the nature, extent, and duration of each and every one of your present injuries, illnesses or disabilities.

Permanent scarring.

12. Please state whether you are presently receiving any medical treatment, or whether you anticipate in the future any medical treatment for any condition related to the alleged occurrence which is the subject of this lawsuit. If so, please state: None anticipated.

a. The physician or other health care provider who is or will provide the treatment;

b. The nature of the treatment;

c. The duration of the expected treatment.

13. Please state whether you were disabled as a result of the occurrence giving rise to this lawsuit. If so, please state: No.

a. A description of the disability;

b. The percentage of disability, if you have received such a rating;

c. Whether the disability is temporary or permanent, and if temporary, when it is expected to terminate.

14. Please state whether you have any scars or other disfigurements by reason of your alleged injuries, and if so, please describe them.

Permanent scarring on Plaintiff's head,, arms and back of neck.

15. Please state whether you were required to wear a cast, brace, crutch or artificial support as a result of the injuries alleged to have been received by you as a result of the occurrence giving rise to this action. If so, please state: NO.

a. The name of the item;

b. A description of the item;

c. The length of time you were required to wear the item;

d. The name and address of the doctor, physician or medical practitioner prescribing the use of such item.

16. Please state whether x-rays were taken of you with reference to the injuries alleged to have been received by you as a result of the occurrence giving rise to this lawsuit. If so, please state:

It is not believed any x-rays were taken.

a. When the x-rays were taken;

b. Where the x-rays were taken;

c. The name and address of the person now having control or custody of the x-rays.

17. As to your claim for pain and suffering, please state:

- a. The specific nature of pain or area of the body affected by the pain;
Head and neck.
- b. The treatment prescribed for the relief of any such pain or suffering;
See medical records.
- c. The treatment pursued for relief of any such pain or suffering;
See medical records.
- d. All drugs used for the relief of pain, specifying the name, quantity and general time period in which the drugs were taken;
Tylenol.
- e. Whether any of the pain references in (a) above continues at the present time, and if so, what is its nature. None.

18. Please state whether there is any activity in which you would engage before the occurrence that you cannot engage in now as a result of the injuries, illnesses or disabilities you allege were received in the occurrence giving rise to this lawsuit. If so, please state:

None.

a. A description of all such activities whether recreational, vocational or other;

b. In what way the occurrence or injuries, illnesses or disabilities restricted the activity;

c. Whether you will be able to engage in the activity in the future, and if so, when.

19. Please state whether you were afflicted with or suffering from any medical, dental, psychiatric or psychological condition, including illness, injury, ailment, impairment or disability before the alleged occurrence. If so, please state as to each condition: None .

a. A full and complete description of each such condition, including its nature, extent and severity;

b. The duration of time, in months and days, that you had any such condition prior to the alleged occurrence;

c. Any medical, dental, psychiatric, psychological or hospital examination, treatment or care you have received for any such condition;

d. The names and addresses of any doctor, dentist, psychiatrist, psychologist, or hospital involved with any examination, treatment or care of any such condition;

e. The dates of each and every such examination, treatment or care for any such condition.

20. Please state whether during the five-year period prior to or at any time subsequent to the date of the alleged occurrence you sustained any injury, illness or disability other than those that you have described in responses to any of the preceding interrogatories. If so, please state:

None.

- a. A full and detailed description of each such injury, illness or disability;
- b. Where and when you sustained each such injury, illness or disability;
- c. For what time period, giving dates, you suffered from any such injury, illness or disability;
- d. The name and address of each doctor, medical practitioner, health care provider, hospital, clinic or other institution visited by you or in which you were confined for the purposes of care or treatment, specifying the dates of such visits or the period of time of such confinement.

21. Please provide the name and address of your regular family physician for the five-year period of time preceding the date of the occurrence giving rise to this lawsuit through the date of answering these interrogatories.

Dr. Faltola
Punxsutawney, PA 15767

22. Please state the last time, prior to the occurrence giving rise to this lawsuit, that you had a physical examination, providing the name and address of the doctor, physician, or medical practitioner performing the examination.

Exact date unknown.

Dr. Faltola

23. Please state whether you have ever made a claim for personal injuries other than those alleged to have resulted from the occurrence giving rise to this lawsuit. If so, please state:

None.

a. Whether you have ever been involved in any lawsuit or workers' compensation proceeding which involved said claim for personal injuries;

b. The nature of any such lawsuit or claim;

c. The name and last known address of the parties to said lawsuit or claim;

d. The court and address where said lawsuit or claim was filed, if any;

e. The date any such lawsuit or claim was filed;

f. The disposition of any such lawsuit or claim.

24. Please state whether you have ever been denied any life, health or automobile insurance coverage, or had to pay increased insurance premiums therefor, because of any physical infirmity, ailment, disease, or other cause. If so, please state: None.

- a. The name and address of the insurance company denying said coverage;
- b. The date said coverage was denied;
- c. The reason(s) for denial of said coverage or payment of increased premiums.

25. Please state whether, during the five years preceding the date of the occurrence giving rise to this lawsuit, if you were employed in one or more gainful occupations. If so, please state:

NO.

a. All occupations, including the names and addresses of employers and the addresses where you performed the duties of your employment;

b. The average weekly, bi-weekly, or monthly earnings in each occupation (including tips, overtime, bonus, commission, etc.) and the basis of computing the same;

c. The dates when you engaged in each such occupation;

d. A description of the nature of the work in each such occupation.

26. If you have been employed since the date of the occurrence giving rise to this lawsuit,
please state: N/A

a. All occupations, including the names and addresses of employers and the addresses where you performed the duties of your employment;

b. The average weekly, bi-weekly, or monthly earnings in each occupation (including tips, overtime, bonus, commission, etc.) and the basis of computing the same;

c. The dates when you engaged in each such occupation;

d. A description of the nature of the work in each such occupation.

27. Please state whether you claim to have suffered any lost wages, salary or profits as a result of the occurrence giving rise to this lawsuit. If so, please state: No.

- a. The total amount of earnings or profits to date;
- b. Explain precisely how that earnings or profits loss claim was calculated;
- c. The amount of future lost earnings or profits claimed, if any;
- d. The exact manner in which the figure noted in (c) above was calculated;
- e. Whether the calculations were made by an actuary, and if so, please identify said actuary by name and address.

28. Please itemize by name, address and amount all medical bills paid or incurred by you in connection with the occurrence giving rise to this lawsuit, including but not limited to cost of ambulance, doctor's bills, cost of 2/rays, hospital expenses nurse's expenses, cost of medicines, cost of surgical apparatus, and any other costs claimed by you.

Clearfield Hospital - \$1,107.90
(\$1,000.00 paid by Millville Ins. Co.)

Wal-Mart - prescription for Augmentin - \$60.62

29. Please itemize any other expense or financial losses which you have paid or incurred which you attribute to the occurrence giving rise to this lawsuit.

1. Mileage to Clearfield Hospital on June 26, 2000 - 48 miles
2. Mileage to Clearfield Hospital on June 28, 2000 - 48 miles
3. Mileage to Clearfield Hospital on June 30, 2000 - 48 miles
4. Mileage to Clearfield Hospital on July 5, 2000 - 48 miles

Total Miles -192 miles

(round trip) 192 miles x \$.375 per mile = \$72.00

30. Please state whether you are claiming any losses not heretofore listed. If so, please
state: NO.

a. Nature of the loss;

b. The amount of the loss and basis for computing same.

31. If you have filed a claim for workers' compensation benefits as a result of the occurrence giving rise to this lawsuit, please state: NO.

a. The name, address and telephone number of the Workers' Compensation Judge, if any, to whom the case has been assigned for hearings;

b. The dates and place at which all hearings have been held, and the dates and places for which future hearings have been scheduled.

32. Please state whether you have applied for or received Social Security disability benefits as a result of injuries or losses that you maintain are caused by or related to the occurrence giving rise to this lawsuit. If so, please state: No.

- a. The dates of any and all such applications;
- b. Whether you applied for Social Security disability benefits at any time prior to the accident;
- c. Whether and when Social Security disability benefits were awarded;
- d. The names of any and all Administrative Law Judges ruling on your claim(s).

33. Please state whether any other benefit payments, not heretofore listed, were made to you as a result of the occurrence giving rise to this lawsuit, including but not limited to benefits paid under any no-fault automobile insurance policy, medical or hospitalization insurance; disability insurance; any other type of insurance benefits; employer's disability or sick leave payments. If so, please state: None.

- a. the type of benefit payment(s);
- b. The amount of any such benefit payment(s);
- c. The date upon which any such benefit payment was made;
- d. The source of any such benefit payment.

34. If you claim that you suffered injuries which made you unable to attend to your usual daily duties, please state:

- a. Exactly what activities to which you are making reference;
Vigorous physical activities
- b. The time period for which you were unable to perform those activities;
a few days
- c. Precisely what damages resulted therefrom;
felt sad
- d. Precisely what conditions caused you to be unable to perform said activities.
dog bites in head - had numerous stitches.

35. Please set forth every fact and identify every document upon which plaintiffs rely in support of the contention set forth at paragraph 9 of the complaint.

Other people witnessed those allegations and Defendants made oral statements supporting those facts. No documents.

36. Please set forth every fact and identify every document upon which plaintiffs rely in support of the allegations set forth in paragraph 10 of the complaint.

Witnesses heard the warnings and Defendant, James E. Westover, told State Dog Law Enforcement Officer, Harold Walstrom, that he had given that warning.
No documents.

37. Please provide current photographs of all injuries, scars, or other damages being claimed by the plaintiffs.

Have already been supplied or will be at deposition.

Respectfully submitted:

GATES & SEAMAN

By: 

Laurance B. Seaman, Esquire
Attorney for Plaintiff

Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

Dated September 20, 2004.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

By 

Bret J. Southard I.D.# 59032
Attorneys for Defendants
10 West Third Street
Williamsport PA 17701
(570) 323-8404

V E R I F I C A T I O N

I, JOSEPH M. PEACE, state that I am the father of minor Plaintiff JOSIE M. PEACE, in this action, that I make this affidavit for myself and on her behalf because the minor is nine (9) years of age and lacks sufficient mental capacity to understand the facts set forth in the foregoing Complaint, and that the facts set forth in the foregoing Complaint are true and correct to my knowledge, information and belief. I understand that the statements I have made here are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification.


Joseph M. Peace

Date: 9-23 -, 2004

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, Plaintiff

vs.

JAMES E. WESTOVER, RENE
WESTOVER and GWEN WESTOVER,
Defendants

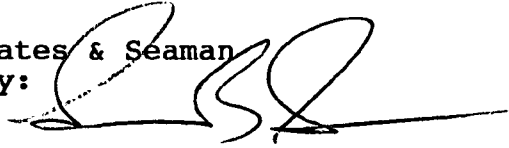
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: No. 02 - 925 - CD
: JURY TRIAL DEMANDED
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September,
2004, a true and correct copy of Plaintiff's Answers to
Interrogatories and Requests for Production of Documents was
sent by regular U. S. mail to:

Bret J. Southard, Esquire
MITCHELL MITCHELL GALLAGHER WEBER SOUTHARD & WISHARD, P.C.
10 West Third Street
Williamsport, PA 17701

Gates & Seaman
By:


Laurance B. Seaman, Esquire
Attorney for Plaintiff

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSIE PEACE, a minor, by JOSEPH M.:

PEACE, her father and guardian :

VS. : NO. 02-925-CD

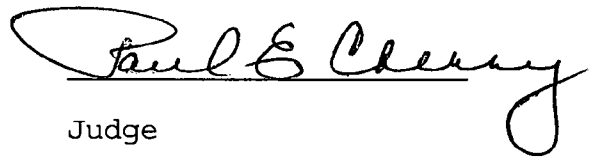
JAMES E. WESTOVER, RENEA :

WESTOVER and GWEN WESTOVER :

O R D E R

NOW, this 23rd day of September, 2004, the Court being advised that counsel for Plaintiff has not received due and proper service of today's hearing, it is the ORDER of this Court that the argument on Defendant's Preliminary Objections shall be continued until the 12th day of October, 2004, at 1:00 p.m.

BY THE COURT:


Judge

FILED^{EOK}
12:10 PM SEP 27 2004
Atty: Seaman,
Southard

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
02-925-CD

JOSIE M. PEACE, a minor,
by JOSEPH M. PEACE, her
father and guardian,
Plaintiff

-VS-

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

PETITION TO COMPROMISE
MINOR'S ACTION AND ALLOW
COUNSEL FEES AND EXPENSES

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

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

JOSIE M. PEACE, a minor, :
by JOSEPH M. PEACE, her :
father and guardian, :
Plaintiff :

No. 02 - 925 - CD
JURY TRIAL DEMANDED

Type of Case: Civil

Type of Pleading: PETITION TO
COMPROMISE MINOR'S ACTION AND ALLOW
COUNSEL FEES AND EXPENSES

vs.

Filed on behalf of: Plaintiff

JAMES E. WESTOVER, RENE :
WESTOVER and GWEN :
WESTOVER, Defendants :

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

FILED
O 11:30 AM 2004
OCT 26 2004

William A. Shaw
Prothonotary

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, Plaintiff

vs.

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

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No. 02 - 925 - CD
JURY TRIAL DEMANDED

**PETITION TO COMPROMISE MINOR'S ACTION AND ALLOW
COUNSEL FEES AND EXPENSES**

TO THE HONORABLE PAUL E. CHERRY, JUDGE:

The Petition of JOSEPH M. PEACE, father and guardian
of JOSIE M. PEACE, a minor, respectfully represents:

1. I, Joseph M. Peace, am the sole surviving parent
and guardian of Josie M. Peace, a minor (born January 5, 1995),
who is the Plaintiff in this action.

2. This action was brought as a result of injuries
sustained by Plaintiff on June 26, 2000 when she was attacked
and bitten by a dog

3. The injuries sustained by Plaintiff were:

(a) lacerations to the rear left portion of her
skull, which are permanent, but which are not visible
without parting her hair; and

(b) various other abrasions about the head, skull,
neck, arms and shoulders, which have all healed well.

4. Plaintiff has suffered no mental, emotional or

psychological damages.

5. The following medical bills were incurred for Plaintiff, with Defendants' carrier paying the sum of \$1,000.00 under its med-pay provisions of its homeowner's policy:

(a) Clearfield Hospital Emergency Room and follow-up examinations - \$1,107.90; and

(b) Wal-Mart for prescription - \$60.92.

6. Laurance B. Seaman, Esquire, and the law firm of Gates & Seaman, were retained by your Petitioner to represent Plaintiff on a contingent fee basis, copy of the Contingent Fee Agreement being attached hereto and made a part hereof as Exhibit "A".

7. Plaintiff's attorneys have expended the following time: (i) Laurance B. Seaman, Esquire - 37.75 hours; and (ii) Andrew P. Gates, Esquire - 14.25 hours, thoroughly investigating this case, preparing and filing a Complaint, participating in discovery in responding to interrogatories and request for production of documents and in attending a deposition of your Petitioner, as well as responding to Preliminary Objections filed on behalf of Defendants.

8. Attorneys for Plaintiff incurred the following expenses:

6-30-2000	To Laurance B. Seaman, Esquire, travel to scene of dog mauling and return to Clearfield, PA (64 miles @\$.325 cents)	\$ 20.80
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8-11-2000	To Clearfield Hospital for copy of medical records	\$ 27.78
6-07-2002	To William A. Shaw, Prothonotary filing Writ of Summons	\$ 80.00
6-07-2002	To Chester A. Hawkins, Sheriff, service	\$ 75.00
6-07-2002	To Chester A. Hawkins, Sheriff, surcharge	\$ 30.00
3-31-2004	To McLaughlin Photography, Reprints of photographs	\$ 16.75
10-18-2004	To Sargent's Court Reporting Service, Inc. for copy of deposition of Joseph Peace	<u>\$ 119.70</u>
Total Costs Advanced:		\$ 370.03
Less: Received from Clearfield County Sheriff, refund		<u>\$ 27.11</u>
Total Amount Due:		\$ 342.92

9. Petitioner and counsel seek approval of a settlement on behalf of Plaintiff in the lump sum amount of \$15,000.00, which was negotiated with attorneys for Defendants' carrier, in exchange for a General Release, a photocopy of which is attached hereto and made a part hereof as Exhibit "B".

10. Petitioner approves the proposed settlement because he believes it represents a full and fair settlement of the case, equal to or greater than that which may be obtained should the matter be fully litigated, and because it adequately compensates Plaintiff.

11. Petitioner requests approval of attorney's fees of \$5,000.00, one-third ($1/3^{\text{rd}}$) of the settlement amount, in accordance with the Contingent Fee Agreement and payment of

expenses as set forth in Paragraph 8 hereof.

WHEREFORE, your Petitioner requests that your Honorable Court enter an Order approving the settlement and allowing counsel fees and expenses as herein requested.


GATES & SEAMAN

Laurance B. Seaman, Esquire
Attorney for Plaintiffs

Date: October 25, 2004

Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

CONTINGENT FEE AGREEMENT

We, JOSEPH M. PEACE and CLAIRENE J. PEACE, of R. D. #2, Box 327, Mahaffey, PA 15757, as parents and natural guardians of our daughter, JOSIE M. PEACE, born January 5, 1995, intending to be legally bound hereby, do hereby employ LAURANCE B. SEAMAN, ESQUIRE and GATES & SEAMAN, Attorneys at Law, and appoint them our attorneys to represent us as parents and natural guardians of JOSIE M. PEACE in regards to a claim which we may have for losses incurred as a result of injuries sustained by JOSIE M. PEACE, when she was attacked and bitten by a dog at approximately 1:30 o'clock p.m. on June 26, 2000 at the residence of Gwen Westover and James and Renee Westover, in Clearfield County, Pennsylvania. We direct said attorneys to represent us fully in regards to said claim and do all that is necessary and incidental to said claim. Further, for services rendered as a result of this Agreement, we agree to pay said attorneys, in the event a recovery is made in the aforementioned claim, Thirty-three and one-third (33 1/3 %) percent of the total amount recovered. In the event there is an appeal taken by any party, requiring the filing of Briefs and/or Argument, we agree to pay said attorneys, in the event a recovery is made in the aforementioned claim, Forty (40%) Percent of the total amount recovered. In the event of a recovery said attorneys are authorized to direct such recovery to be paid to the appropriate beneficiaries and said attorneys are authorized to retain said applicable percentage from any funds that come into their

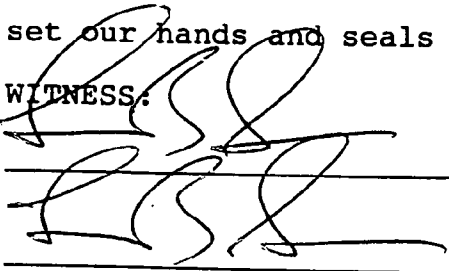
possession.

In addition, we agree to pay all investigation costs, court costs, litigation costs and other expenses incurred in connection with said claim, whether or not any amount is recovered, but said attorneys may only incur such costs and expenses as we may specifically approve. Said attorneys are specifically authorized to protect the outstanding bills of doctors, hospitals, and other individuals or institutions directly or indirectly connected with the aforesaid claim. In the event there are, at any time, such costs and expenses that are unpaid, or in the event said attorneys have advanced such costs and expenses, said attorneys are authorized to retain from funds coming into their possession such sums as are necessary to pay such costs, expenses, and bills, and to reimburse themselves for any such costs and expenses advanced on our behalf.

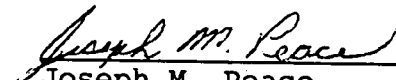
No settlement or other disposition of the case shall be made without our consent and we specifically agree not to settle the case or otherwise dispose of it without the written consent of said attorneys and the payment of all outstanding obligations connected with this matter.

IN WITNESS WHEREOF, we, the undersigned, have hereunto set our hands and seals this 29 day of June, 2000.

WITNESS:

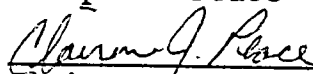


Handwritten signature of a witness, appearing to be "RBS", written over a horizontal line.



Handwritten signature of Joseph M. Peace, written over a horizontal line.

Joseph M. Peace



Handwritten signature of Clairene J. Peace, written over a horizontal line.

Clairene J. Peace

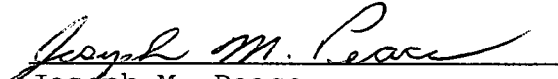
We understand and agree that the acceptance of our proportionate share of the aforesaid

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS, that we, Joseph M. Peace and Josie M. Peace, a minor, their heirs, personal representatives, successors and assigns, hereinafter collectively referred to as "Releasor", for and in consideration of Fifteen Thousand Dollars (\$15,000.00) to me in hand paid by or in behalf of James E. Westover, Renea Westover, Gwen Westover, and Millville Mutual Insurance Company, the successors and assigns of each, the agents, servants, workmen and employees of each, their officers, directors, shareholders, and the heirs, personal representatives, successors and assigns of each, and the insurers of each, their respective successors and assigns, hereinafter sometimes collectively referred to as "Releasees", at and before the sealing and delivery hereof, the receipt whereof we do hereby acknowledge, as for divers other good causes and valuable considerations, have remised, released, quitclaimed, and forever discharged, and by these presents, for ourselves, our heirs, personal representatives, successors and assigns, do remise, release, quitclaim, and forever discharge the said Releasees and every of them, and all other parties of and from all, and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demands, whatsoever in law or equity, or otherwise howsoever, which against the said Releasees we ever had, now have, or which we, our heirs, personal representatives, successors or assigns, hereafter can, shall, or may have, for, upon or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents, arising out of an incident that occurred on June 26, 2000, and which is more fully described in and is the subject of a Complaint filed at number 02-925-CD in the Court of Common Pleas for Clearfield County, Pennsylvania.

V E R I F I C A T I O N

I, JOSEPH M. PEACE, state that I am the father of minor Plaintiff JOSIE M. PEACE, in this action, that I make this Petition for myself and on her behalf because she is a minor and lacks sufficient mental capacity to understand the facts set forth in the foregoing Petition, and that the facts set forth in the foregoing Petition are true and correct to my knowledge, information and belief. I understand that the statements I have made here are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification.


Joseph M. Peace

Date: 10-25, 2004

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, Plaintiff

vs.

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN WESTOVER,
Defendants

No. 02 - 925 - CD
JURY TRIAL DEMANDED

FILED 2cc
10/10/46 SD/Any
OCT 27 2004 Seaman

ORDER

AND NOW, this 27 day of October, 2004, upon consideration of the foregoing Petition and on

Motion of Laurance B. Seaman, Esquire, IT IS ORDERED that the proposed compromise of this action be and is approved and Joseph M. Peace, father and guardian, is authorized to execute Exhibit "B" to the Petition.

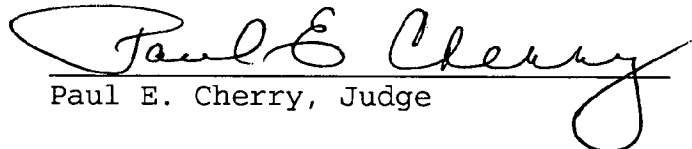
IT IS FURTHER ORDERED that Defendants, James E. Westover, Renea Westover and Gwen Westover, by their carrier, Millville Mutual Insurance Company, are hereby authorized to pay the lump sum of \$15,000.00 to "Joseph M. Peace, father and guardian of Josie M. Peace, a minor, and Gates & Seaman, Attorneys", which sum shall be distributed as follows:

- a. To Gates & Seaman - counsel fees ----- \$ 5,000.00
- b. To Gates & Seaman - expenses ----- \$ 342.92; and
- c. To Joseph M. Peace, as Guardian
of Josie M. Peace----- \$ 9,657.08,

to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations, savings and

loan associations or credit unions, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, or in one or more accounts in the name of the minor investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions. No withdrawal can be made from any such account until the minor attains majority, except as authorized by a prior order of this Court. Proof of the deposit shall be promptly filed of record.

BY THE COURT:


Paul E. Cherry, Judge

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

JOSIE M. PEACE, a minor, :
by JOSEPH M. PEACE, her :
father and guardian, :
Plaintiff :

vs. :

JAMES E. WESTOVER, RENE :
WESTOVER and GWEN :
WESTOVER, Defendants :

No. 02 - 925 - CD
JURY TRIAL DEMANDED

Type of Case: Civil

Type of Pleading: PROOF OF DEPOSIT

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
Laurance B. Seaman, Esquire

Supreme Court No.: 19620

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

FILED
DEC 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

Date
Opened: 12/01/2004

Term: 30 Months

Tax
ID: 164-76-5680

Number: 100688026

CERTIFICATE OF DEPOSIT COPY**AND**

Account Number: 100688026

CERTIFICATE OF DEPOSIT SIGNATURE CARDAmount of
Deposit: Nine Thousand Six Hundred Fifty-seven Dollars And Eight Cents

\$ 9657.08

This Time Deposit is Issued to:

Issuer:

JOSIE M PEACE

NO WITHDRAW UNTIL AGE 18

UNLESS BY COURT ORDER

34 WATER ST

MAHAFFEY

PA 15757-6343

FIRST NATIONAL BANK

4140 EAST STATE STREET

HERMITAGE PA 16148

Not Negotiable - Not Transferable - Additional terms are below.

Additional Terms and Disclosures

This form contains the terms for your time deposit. It is also the Truth-in-Savings disclosure for those depositors entitled to one. There are additional terms and disclosures on page two of this form, some of which explain or expand on those below. You should keep one copy of this form.

Maturity Date: This account matures 06/01/2007

(See below for renewal information.)

Rate Information: The interest rate for this account is 2.9700 % with an annual percentage yield of 3.00 %.

This rate will be paid until the maturity date specified above. Interest begins to accrue on the business day you deposit any noncash item (for example, a check).

Interest will be compounded quarterly

Interest will be credited quarterly, unless monthly interest check/transfer is requested

☒ The annual percentage yield assumes that interest remains on deposit until maturity. A withdrawal of interest will reduce earnings.

☐ If you close your account before interest is credited, you will not receive the accrued interest.

The NUMBER OF ENDORSEMENTS needed for withdrawal or any other purpose is: 1

Minimum Balance Requirement: You must make a minimum deposit to open this account of \$ 5,000.00

☐ You must maintain this minimum balance on a daily basis to earn the annual percentage yield disclosed.

Withdrawals of Interest: Interest ☐ accrued ☒ credited during a term can be withdrawn: at any time without incurring a penalty

Early Withdrawal Penalty: If we consent to a request for a withdrawal that is otherwise not permitted you may have to pay a penalty. The penalty will be an amount equal to: Twelve (12) months

interest on the amount withdrawn.

Renewal Policy:

☐ **Single Maturity:** If checked, this account will not automatically renew. Interest ☐ will ☐ will not accrue after maturity.

☒ **Automatic Renewal:** If checked, this account will automatically renew on the maturity date. (see page two for terms)
Interest ☐ will ☒ will not accrue after final maturity.

ACCOUNT OWNERSHIP: You have requested and intend the type of account marked below.

☐ Individual☐ Joint Account - With Survivorship (and not as tenants in common)☐ Joint Account - No Survivorship (as tenants in common)☐ Trust: Separate Agreement Dated _____☐

☐ Revocable Trust Designation as defined in this agreement (Beneficiaries' names and addresses)

* The renewal term will be 24 months.

BACKUP WITHHOLDING CERTIFICATIONS

TIN: 164-76-5680

☒ **Taxpayer I.D. Number** - The Taxpayer Identification Number shown above (TIN) is my correct taxpayer identification number.

☒ **Backup Withholding** - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

☐ **Exempt Recipients** - I am an exempt recipient under the Internal Revenue Service Regulations.

SIGNATURE - I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

X

DATE

SIGNATURES: I AGREE TO THE TERMS STATED ON PAGE ONE AND PAGE TWO.

X

X

X

JOSIE M. PEACE, a minor,
by JOSEPH M. PEACE, her
father and guardian,
Plaintiff

JAMES E. WESTOVER, RENEA
WESTOVER and GWEN
WESTOVER, Defendants

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, PA 16830
(814) 765-1766

William A. Shaw
Prothonotary

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

JOSIE M. PEACE, a minor, by
JOSEPH M. PEACE, her father and
guardian, Plaintiff

vs.

JAMES E. WESTOVER, RENE
WESTOVER and GWEN WESTOVER,
Defendants

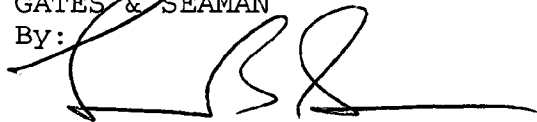
No. 02 - 925 - CD
JURY TRIAL DEMANDED

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Kindly mark the above-captioned matter as "Settled,
Discontinued and Ended".

GATES & SEAMAN
By:



Laurance B. Seaman, Esquire
Attorney for Plaintiff

Date: January 13, 2005

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

CIVIL DIVISION

**Josie M. Peace
Joseph M. Peace**

Vs.

No. 2002-00925-CD

**James E. Westover
Renea Westover
Gwen Westover**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on January 13, 2005, marked:

Discontinued, settled and ended.

Record costs in the sum of \$157.89 have been paid in full by Attorney Gates.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of January A.D. 2005.

William A. Shaw, Prothonotary