

02-1180-CD
XL SURETY VS. KEPHART TRUCKING/Timothy Kephart &
David Kephart and Patricia Kephart

XL SURETY, A Division of XL SPECIALTY INSURANCE COMPANY, Formerly INTERCARGO INSURANCE COMPANY	: IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:
v.	: NO. 02-1180-CO
KEPHART TRUCKING CO., and TIMOTHY L. KEPHART, DAVID KEPHART and PATRICIA KEPHART, each Individually as Personal Guarantor	: CIVIL DIVISION - LAW
Defendants	:

NOTICE

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 AN ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

**DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
1 NORTH SECOND STREET
CLEARFIELD PA 16830
814-765-2641, EXT. 32**

NOTICA

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VEINTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. USTED DEBE PRESENTAR UNA APARIENCIA ESCRITA O EN PERSONA O POR ABOGADO Y ARCHIVAR EN LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECCIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDA ENTRAR UNA ORDEN CONTRA USTED SIN PREVIO AVISO O NOTIFICACION Y POR CUALQUIER QUEJA O ALIVIO QUE ES PEDIDO EN LA PETICION DE DEMANDA. USTED PUEDE PERDER DINERO O SUS PROPIEDADES O OTROS DERECHOS IMPORTANTES PARA USTED.

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

**DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
1 NORTH SECOND STREET
CLEARFIELD PA 16830
814-765-2641, EXT. 32**

FILED

JUL 30 2002

**William A. Shaw
Prothonotary**

XL SURETY, A Division of XL SPECIALTY INSURANCE : IN THE COURT OF COMMON PLEAS
COMPANY, Formerly INTERCARGO INSURANCE : CLEARFIELD COUNTY, PENNSYLVANIA
COMPANY :
Plaintiff :
v. : NO. 02-1180 CD
KEPHART TRUCKING CO., and TIMOTHY L. KEPHART, : CIVIL DIVISION - LAW
DAVID KEPHART and PATRICIA KEPHART, each :
Individually as Personal Guarantor :
Defendants :
:

C O M P L A I N T

The Plaintiff, XL SURETY, A Division of XL SPECIALTY INSURANCE COMPANY (formerly INTERCARGO INSURANCE COMPANY), by its attorneys, KNUPP, KODAK & IMBLUM, P.C., brings this action of Assumpsit against the Defendants to recover the sum of FORTY-NINE THOUSAND, FOUR HUNDRED NINETY-FIVE DOLLARS AND THIRTY-ONE CENTS (\$49,495.31), along with interest thereon from March 6, 2002, upon a cause of action of which the following is a statement:

1. The Plaintiff, XL SURETY, A Division of XL SPECIALTY INSURANCE COMPANY (formerly INTERCARGO INSURANCE COMPANY), is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business at 1450 East American Lane, 20th Floor, Schaumburg, Illinois 60173.
2. The Defendant, KEPHART TRUCKING CO., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office and place of business at 983 Woodland Bigler Highway, Post Office box 386, Bigler, Clearfield County, Pennsylvania 16825.
3. The Defendant, TIMOTHY L. KEPHART, is an adult individual residing at 105 Hummingbird Road, Morrisdale, Clearfield County, Pennsylvania 16858.
4. The Defendant, DAVID KEPHART, is an adult individual residing at 129 Harvard Road, Port Matilda, Centre County, Pennsylvania 16870.

5. The Defendant, PATRICIA KEPHART, is an adult individual residing at 129 Harvard Road, Port Matilda, Centre County, Pennsylvania 16870.

6. The Defendant, Kephart Trucking Co., on or about November 26, 2000, posted a Seventy-Five Thousand (\$75,000.00) Dollar Bond through Plaintiff, XL Specialty Insurance company, in favor of the Pennsylvania Turnpike Commission. A true and correct copy of said Bond, being Bond No. 103679, is attached hereto, marked as Exhibit "A" and made a part hereof.

7. On or about October 1, 2001, one of Defendant Kephart Trucking Co.'s vehicles was involved in an incident causing damage to property of the Pennsylvania Turnpike Commission. Due to said damages, Plaintiff, under the terms of the Bond, paid to the Pennsylvania Turnpike Commission the sum of Forty-One Thousand, Two Hundred Forty-Six Dollars and Nine Cents (\$41,246.09) in damages. A true and correct copy of Plaintiff's check number 111031 payable to the Pennsylvania Turnpike Commission is attached hereto, marked as Exhibit "B" and made a part hereof.

8. Defendants Timothy L. Kephart, David Kephart and Patricia Kephart did each execute a General Agreement of Indemnity in favor of Plaintiff. A true and correct copy of said General Agreement of Indemnity is attached hereto, marked as Exhibit "C" and made a part hereof.

9. Pursuant to the terms of the General Agreement of Indemnity attached hereto at Exhibit "C" and made a part hereof, Defendant, Kephart Trucking Co., and individual Defendants Timothy L. Kephart, David Kephart and Patricia Kephart did agree to reimbursement to Plaintiff of any and all expenses, of whatever kind or nature.

10. Defendants have failed to reimburse Plaintiff for the funds paid to the Pennsylvania Turnpike Commission as aforesaid.

11. Due to Defendants' default in payment of said amount due and owing as aforesaid, and pursuant to the terms and conditions of Plaintiff's Exhibits attached hereto and made a part hereof, attorney's fees have been added to said account in the amount of Eight Thousand, Two Hundred Forty-Nine Dollars and Twenty-Two Cents (\$8,249.22).

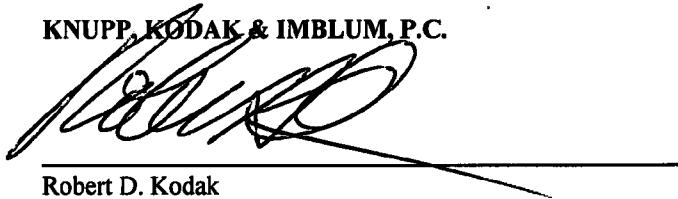
12. The balance due and owing by Defendants to Plaintiff is the sum of Forty-Nine Thousand, Four Hundred Ninety-five Dollars and Thirty-One Cents (\$49,495.31).

13. Plaintiff has frequently demanded payment from Defendants of said amount due and owing as aforesaid, but Defendants have refused and neglected and still refuse and neglect to pay said amount of any part thereof.

WHEREFORE, Plaintiff brings this suit to recover from Defendants the sum of FORTY-NINE THOUSAND, FOUR HUNDRED NINETY-FIVE DOLLARS AND THIRTY-ONE CENTS (\$49,495.31), together with interest thereon from March 6, 2002.

Respectfully submitted,

KNUPP, KODAK & IMBLUM, P.C.



Robert D. Kodak
407 North Front Street
Post Office Box #11848
Harrisburg, PA 17108-1848
(717) 238-7151
Attorney ID No. 18041

Attorney for Plaintiff

Bond # 1036795

SURETY

KNOW ALL MEN BY THESE PRESENTS, THAT _____

Kephart Trucking Company

OF P.O. Box 386, Bigler, PA 16825

(Address & Zip Code)

as Principal, and XL Specialty Insurance Company

OF 1450 East American Lane, Schaumburg, IL 60173

(Address & Zip Code)

a corporation of the State of Illinois, as

Surety, are held and firmly bound unto the PENNSYLVANIA TURNPike

COMMISSION ("OBLIGEE") with its principal office at Harrisburg,

Pennsylvania, in the full and just sum of Seventy-Five Thousand

Dollars (\$ 75,000.00, lawful money of the United States, for the

payment of which sum well and truly to be made, we bind ourselves

our heirs, administrators, executors, successors and assigns,

jointly and severally, firmly by these presents.

WHEREAS, the Principal desires the extension of credit for the use of the Pennsylvania Turnpike System, and the Obligee is willing to extend credit to the Principal for such use, provided a bond with good and sufficient corporate surety, securing the payment for the use of the Pennsylvania Turnpike System is deposited with the Obligee.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal shall within thirty (30) days from the postmarked date of the monthly invoice(s) pay unto the Obligee the amount of the invoice (s), then this obligation shall be null and void, otherwise it shall remain in full force and virtue.

(over)

EXHIBIT A

IT IS FURTHER understood and agreed between the parties, that if the Surety shall so elect, this bond may be cancelled by giving sixty (60) days notice, in writing, by registered mail, addressed to the Chief Financial Officer, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, Pennsylvania 17106-7676, and this bond shall be deemed cancelled at the expiration of the sixty (60) day period; the Surety remaining liable for any and all credit covered by this bond which may have been extended to the Principal to the date of this cancellation, under the terms, conditions, and provisions of this bond.

SIGNED, SEALED AND DELIVERED THIS 26th day
of November, XX 2000

(INDIVIDUAL PRINCIPALS SIGN HERE)
In the presence of: _____ (SEAL)

(Title) _____ (SEAL)

(Title) _____ (Title) _____ (SEAL)

(Title) _____ (Title) _____ (SEAL)

Telephone Number (____) _____

(CORPORATE PRINCIPAL SIGN HERE)
ATTEST: KEPHART TRUCKING COMPANY _____ (SEAL)

(Corporate Name) _____
By _____ President
CORPORATE SECRETARY _____

Telephone Number (814) 857-7704

(SURETY SIGN HERE)

In the presence of: XL SPECIALTY INSURANCE COMPANY _____ (SEAL)

By Lydia A. Mantle, Attorney-in-Fact

PARTNERSHIP

State of _____ County of _____

On the _____ day of _____, in the year _____, before me personally came _____ to me known and known to me to be a partner or partners of the firm of _____ described in and who executed the foregoing instrument, and he (they) thereupon acknowledged to me that he executed the same as and for the act and deed of the said partnership.

My commission expires: _____

Notary Public

PARTNERSHIP

State of _____ County of _____

On the _____ day of _____, in the year _____, before me personally came _____ to me known and known to me to be a partner or partners of the firm of _____ described in and who executed the foregoing instrument, and he (they) thereupon acknowledged to me that he executed the same as and for the act and deed of the said partnership.

My commission expires: _____

Notary Public

DEPARTMENT: CLAIM NUMBER: 502-271
INSURED/ACCOUNT NAME: VESTITURE POLYGRAPH
POLICY NUMBER: 1-123758
CERT NO/ENTRY NO:
LOSS DATE: OCTOBER 01, 1991
CAUSE OF LOSS: PAYMENT CLAIM
COMMENTS:
IN FULL AND FINAL SETTLEMENT OF CLAIM



XLA SURETY

1/3/01

**XL SPECIALTY INSURANCE COMPANY
GENERAL AGREEMENT OF INDEMNITY**

Know All Men By These Presents, that whereas, at the request of the undersigned, hereinafter referred to as Indemnitors, and upon condition that this instrument be executed, the XL Specialty Insurance Company, hereinafter referred to as the Company, has executed, or may hereafter execute a bond or bonds (including undertakings and other like obligations) on behalf of:

Kephart Trucking Company or any Subsidiaries, Affiliates or Divisions of Their
Subsidiaries
hereinafter referred to as Principal,

And Whereas, the Indemnitors have a substantial, material and beneficial interest in the obtaining of the said bond or bonds.

Now, Therefore, in consideration of the premises and other good and valuable consideration, the Indemnitors, for themselves, their heirs, executors, administrators, successors and assigns jointly and severally hereby covenant and agree with the Company, its successors and assigns, co-sureties and reinsurers hereinafter collectively referred to as the Company, in the manner following:

1. To Indemnify and hold the Company harmless from and against any and all demands, liabilities, losses, costs, damages, attorneys' fees and expenses of whatever kind of nature which arise by reason of, or in consequence of, the execution by the Company of any bond on behalf of the Principal and whether or not the company shall have paid any sums in partial or complete payment thereof, including but not limited to; sums paid including interest, or liabilities incurred in settlement of claim; expenses paid or incurred in connection with claims, suits, or judgments under such bonds; expenses paid or incurred in enforcing the terms of this Agreement; expenses paid or incurred in procuring or attempting to procure release from liability under its Bond by the Company; expenses incurred in recovering or attempting to recover losses or expenses paid or incurred; attorneys' fees and all legal expenses related to any items herein, including in-house attorney fees, costs and expenses; investigation, accounting or engineering services; adjustment of claims; premiums on bonds issued by the Company on behalf of the Principal; monies advanced or loaned in accordance with this Agreement. In furtherance of such indemnity:

- A. The liability of the undersigned shall extend to and include all amounts paid by the Company in good faith under the belief that 1) Principal was in default as hereinafter described in this agreement; 2) the Company was or might be liable therefor; 3) such payments were considered necessary or advisable to protect any of the Company's rights as to avoid or lessen the Company's liability or alleged liability.
- B. The Company shall have the right to incur such expense in handling a claim as it shall deem necessary, including but not limited to the expense for investigative, accounting, engineering and legal services.
- C. The Company shall have the foregoing rights, irrespective of the fact that the Undersigned may have assumed, or offered to assume, the defense of the Company upon such claim.
- D. In any claim or suit hereunder, an itemized statement of the aforesaid losses, and expenses, sworn to by an officer of the Company, or the vouchers or other evidence of disbursement by the Company, shall be prima facie evidence of the fact and extent of the liability hereunder of the Undersigned.
- E. The company shall have the right to reimbursement of its expenses, premiums and attorneys' fees, including in-house attorneys' fees, costs and expenses hereunder, irrespective of whether any Bond loss payment has been made by the Company. In any suit on this Agreement, the Company may recover its further expenses and attorneys' fees, including in-house attorneys' fees, costs and expenses incurred in such suit.
- F. If the principal advises the Company in a timely manner of its defenses relating to any claim arising out of any bond written pursuant to this agreement and instructs the Company not to pay or otherwise perform thereunder, based upon such defenses, the undersigned agrees to indemnify, hold harmless and reimburse the Company for any consequential or other damages – including but not limited to attorneys' fees (whether for outside attorneys or in-house counsel), legal costs, bad faith judgments, etc. – which thereafter may arise.

2. To promptly pay or cause to be paid in cash to the Company in advance, or to be paid in advance, at such times and in such manner as may be agreed upon, premium or premiums for such bond or bonds at the rates and at the times specified by the Company and will continue to pay the same where such bond or bonds are continued until the Company shall have been fully discharged and released from any and all liability upon the said bond or bonds, and all matters and things arising therefrom and until there shall have been furnished to the Company satisfactory proof by evidence legally competent of such discharge and release.
3. If for any reason, the Company shall be required or shall deem it necessary to set up a reserve in any amount to cover any contingent claim or claims, loss, costs, attorneys' fees and disbursements, or other expenses in connection with any of said bond or bonds it may issue, and regardless of any proceedings contemplated or taken by the Indemnitors or the pendency of any appeal, the Indemnitors shall immediately upon demand deposit with the Company an amount sufficient to cover such reverse and increase thereof, such funds to be held by the Company as collateral, in addition to the indemnity afforded by this instrument, with the right to use such funds or any part thereof, at any time, in payment or compromise of any judgment, claim, liability, loss, damage, attorneys' fees and disbursements, or other expenses.
4. If any bond or bonds be given in connection with a contract, the Company is hereby authorized, but not required, to consent to any change in the contract or in the plans or specifications relating thereto; and the Company shall have the right, at its option and in its sole discretion to take possession of all or any part of the work of the said contract whenever, in its sole opinion, such action is desirable or necessary, and at the expense of the Indemnitors to complete or to contract for the completion of the same, or to consent to the re-letting or completion thereof by the owner or obligee.

For the better protection of the Company, the Indemnitors hereby assign, transfer and convey to the Company, to be effective as of the date of any such bond but only in the event of any breach, delay, or default on the part of the undersigned in the performance of the contract covered by said bond or bonds, failure or inability of the undersigned to promptly pay, satisfy and discharge any and all obligations which might constitute possible claim under the bond or bonds, or breach of any of the terms of this agreement,

- A. all right, title and interest of the Indemnitors in and to all tools, plant, equipment and materials of every nature and description that may now or hereafter be upon said work, or in, on or about the site thereof, including as well all materials purchased for or chargeable to said contract which may now be in the process of construction or in storage elsewhere, or in transportation to said site, and
- B. all rights of the Indemnitors in and to all subcontractors which have been or may hereafter be entered into, and the materials herein, and
- C. all earned estimates, deferred payments and retained percentages and any and all other monies or properties that may be due and payable or that hereafter may become due and payable to the Indemnitors on account of said contract or any other contract of the Indemnitors on which the Company is or may become surety, or on account of claims, extra work or materials which arise out of, or are supplied in connection with, said contract, or contracts, and any and all monies or properties of the Indemnitors,

and in the event of any breach, delay or default on the part of the Indemnitors in the performance of the contract covered by said bond or bonds, failure or inability of the Indemnitors to promptly pay, satisfy, and discharge any and all obligations which might constitute possible claim under the bond or bonds, or breach of the terms of this agreement, the Indemnitors hereby authorize and empower the Company, its authorized representatives, to enter upon and take possession of said tools, plant, equipment, materials and subcontracts, and to enforce, use and enjoy title thereto and possession thereof, and to sell the same as owner thereof, and agree that all claims, monies and the proceeds of payments and properties hereby assigned shall be the sole property of the Company, and (except for claims, which shall not be credited until they have been fully liquidated and recovered) to be by it credited upon loss, cost, damage, and expense sustained or incurred by it under the said bond or bonds and any other bond or bonds heretofore or hereafter executed at the request of the Indemnitors. The Undersigned hereby irrevocably nominate, constitute, appoint and designate the Company or its designee as their attorney-in-fact with the power, but not the obligation, to exercise all of the rights assigned, transferred and set over to the Company by the Undersigned in this Agreement, and to make, execute and deliver any and all additional or other assignments, documents or papers, including but not limited to: the execution of instruments referred to in this section, the endorsement of checks or other instruments payable to any of the Undersigned deemed necessary and property by the Company in order to give full effect to the intent and meaning of the within assignment for the full protection intended to be given to the Company, under all other provisions of this agreement. The Undersigned hereby ratify and affirm all acts and actions taken and done by the Company or its designee as attorney-in-fact.

5. The Company may, at any time hereafter, without releasing or discharging the Indemnitors from any claim, demand, damage, action, costs, liability or any other expense theretofore incurred or sued, take such action as it might deem necessary or proper to obtain its release from any and all liability under the said bond or bonds, and the Indemnitors further agree that they shall further secure and indemnify the Company against any and all charges, liabilities, attorneys' fees and expenses of whatever nature which the Company may sustain or incur or be put to in obtaining such release.
6. The Company may also alter, change, modify, amend, limit or extend the said bond or bonds, and any renewal or other obligation in place or in lieu thereof, and in any such case the Indemnitors shall be liable to the Company as fully and to the same extent on account of any such altered, changed, modified, amended, limited or extended bond or bonds or renewal or substitution thereof, whenever and as often as made, as though such bond or bonds is or are described at length herein.
7. The Company may also adjust, settle or compromise any claim, demand, suit or judgment arising under said bond or bonds, and with respect to any such claim, demand, suit or judgment, take whatever action it may deem appropriate; and its determination as to whether any such claim, demand or suit shall be settled or defended shall be binding and conclusive upon the Indemnitors. The voucher or other evidence of payment shall be *prima facie* evidence of the fact and the extent of the Indemnitors' liability to the Company. Company, likewise, may adjust, settle or compromise any claim, demand, suit or judgment which is assigned to it under the provisions of this Agreement, including Paragraph 4 hereof, and Indemnitors agree to fully cooperate, at no charge to Company, in the presentation, prosecution and enforcement thereof.
8. It shall not be necessary for the Company to give to the Indemnitors or any of them notice, which is hereby expressly waived, of any act, fact or information coming to the notice or knowledge of the Company concerning or affecting its rights or liabilities under any such bond or bonds by it so executed, or the rights and liabilities of the Indemnitors herein.
9. The Indemnitors do hereby waive:
 - A. All right to claim any of their property, including homestead, as exempt from levy, execution or sale, or other legal process, under the laws of any state or states;
 - B. Any defense based upon the execution of this agreement subsequent to the date of any such bond or bonds, the Indemnitors admitting and covenanting that the execution of any such bond or bonds by the Company was in pursuance of the previous request of the Indemnitors;
 - C. Notice of any breach or breaches of any such bond or bonds or of any contract or contracts in connection with which such bond or bonds may have been given, or any act or default that may give rise to claim hereunder;
 - D. Any right to ask or require the Company to remove or join in any application for the removal of any proceeding from a state court to a federal court;
 - E. Notice of the acceptance of this obligation and of execution of any such bond or bonds;
 - F. The execution of this agreement and the bond or bonds herein referred to, by the Principal.
10. This instrument shall protect any co-sureties, any reinsuring companies, or any other Surety procured at any time by the Company, whether the Company does or does not execute or retain any portion of said bond or bonds.
11. In the event it becomes necessary or advisable in the judgment of the Company to control, administer, operate or manage any or all matters connected with the performance of any contract in connection with which said bond or bonds were executed, for the purpose of minimizing any possible loss or ultimate loss to the Company, the Indemnitors hereby expressly covenant and agree that such action on the part of the Company shall be entirely within its rights and remedies under the terms of this agreement, and as Surety, and do hereby fully release and discharge the Company, in this connection, from liability for all actions taken by it or for its omissions to act, except for deliberate and willful malfeasance.
12. Nothing herein contained shall be considered or construed to waive, abridge, or diminish any right or remedy which the Company might have if this instrument were not executed.
13. This indemnity agreement also applies to and covers all bonds that may be executed by the Company in connection with contracts in which the Principals or Indemnitors participate as a joint venturer, or in any other capacity.

14. Any property of any kind which may have been, or may hereafter be, pledged as collateral security on any one or more of such bonds may, at the option of the Company, be retained as collateral security on any or all bonds coming within the scope of this agreement, whether theretofore or thereafter executed and whether executed by the Company or any other surety or sureties, and for the full and complete performance in all respects of the covenants of the Indemnitors under this agreement; and in the case of any breach of the covenants of the Indemnitors, or in case the Company shall deem it advisable to raise money for the purpose of meeting any actual or prospective claim or demand under any such bond or bonds or to pay any expenses incurred or to be incurred in connection therewith, or in case the Company should be of opinion that said property is likely to so decline in market value that the security to the Company will be inadequate, the Company shall have full power and authority without notice to the Indemnitors or any of them, to sell, assign and deliver said collateral, or any part thereof at public or private sale at the option of the Company, its successors or assigns, with the right to be the purchaser itself at any such public sale, and to use all the proceeds, or such part thereof as may be necessary, in order to protect itself against loss, costs, damages, attorneys' fees and expenses as aforesaid; and, after deducting all legal and other costs and expenses of such sale, and all such loss, costs, damages, attorneys' fees and expenses as aforesaid, and all premiums due the company for any such bond or bonds, shall return the remainder of such collateral or the proceeds of sale, if any, to the person or persons legally authorized to receive the same; provided the Company shall not be responsible for any loss resulting to the said property from any cause other than the act of neglect of its officers or employees.
15. Liability hereunder shall extend to and include the full amount of any and all money paid by the Company in settlement or compromise of any claims, suits and/or judgments thereunder in good faith under the belief that it was liable therefor, whether liable or not, as well as any and all disbursements on account of costs, attorneys' fees and expenses as aforesaid, which may be made under the belief that such were necessary, whether necessary or not.
16. The obligations of the Undersigned hereunder are joint and several. The Company may bring separate suits hereunder against any or all of the Undersigned as causes of action may accrue hereunder. The Company need not proceed first against the Principal. The Undersigned will, on request of the Company, procure the discharge of the Company from any Bond and all liability by reason thereof, whether or not there has been a claim made against the Company.
17. Until the Company is furnished with conclusive evidence of its discharge without loss from any Bonds, and until the Company has been otherwise fully indemnified as hereunder provided, the Company shall have the right of free access to the books, records, and accounts of the Undersigned for the purpose of examining and copying them. The Undersigned hereby authorize third parties, including but not limited to depositories of funds of the Undersigned, to furnish to the Company any information requested by the Company in connection with any transaction. The Company may furnish any information, which it now has or may hereafter acquire concerning the Undersigned, to other persons, firms or entities for the purpose of procuring co-suretyship or reinsurance or of advising such persons, firms, or entities as it may deem appropriate.
18. If one or more Customs Bonds is executed on behalf of the Principals or Indemnitors, the Undersigned consent to the U.S. Customs Service or the Customs Broker handling any transaction providing any and all information relative to entry/entries or other transactions under any and all bonds to the Company.

The undersigned understands and consents that bonds or undertakings may be cancelled by the Company at any time for cause in Company's sole discretion, and that without limitation of the foregoing unless the company waives this provision in writing the bonds or undertaking are cancelable if the undersigned discontinues the use of a licensed Customs Broker satisfactory to the Company.

The undersigned understands and agrees that the Company, as surety on the bond, shall have the immediate right to take possession of the merchandise under bond upon the occurrence or allegation by obligee of any violation of the terms and conditions of the bond or of law or regulation.

Any actions of the importer and his heirs, agents or assigns which jeopardize the bond on the merchandise, or violate United States laws or regulations shall give the Company the immediate right of possession of the merchandise to insure that the terms and conditions of the bonds are fulfilled.

The undersigned also agrees that the Company has the right and standing to maintain an action for replevin of the merchandise under bond against the importer of record, any lien holder or title holder to the merchandise and any owner or possessor of the merchandise.

It is also understood and agreed that the Company's immediate right of possession and right of replevin of the merchandise is in addition to, and not in lieu of, any and all other legal rights and remedies available to the Company

and the exercise of the right to immediate possession or the right of repossession shall not be deemed an election of remedies.

Where the merchandise under bond is a motor vehicle or motor vehicles, a condition of the execution of the bond shall be the immediate delivery of the vehicle to a bonded conversion facility authorized by the Company which delivery shall occur directly from the port of entry to the conversion facility for the purpose of performing all the required conversions necessary to bring the vehicle into conformity with United States Environmental Protection Agency and Department of Transportation emission and safety regulations.

19. The Undersigned agree(s) to give to the Company prompt notice of any facts which might give rise to any claims or suits against the Company upon any bond.

The undersigned agrees that it will notify the Company immediately of the institution of any voluntary or involuntary proceedings in bankruptcy, insolvency or reorganization involving the principal(s) or indemnitor(s) and that in the event the undersigned fails to petition or protest any action taken by the obligee pursuant to the undertaking that the Company may petition or protest same on behalf of the undersigned who agrees to be bound thereby and by the settlement thereof in whole or in part as if such action or settlement were the act of the undersigned. The undersigned understands that the protest or petition of any action taken by any party pursuant to the undertaking, whether such protest or petition is initiated by the undersigned or the Company, does not excuse the undersigned from the timely payment of bills for the undertaking or for amounts paid in pursuance thereof.

20. The Company shall have the right, at its option and in its sole discretion, to issue or cancel or decline the execution of any Bond, or renewal thereof, including a final bond, when it has furnished a bid bond.
21. The Company shall have every right, defense or remedy which a personal Surety without compensation would have, including the right of exoneration.
22. If the execution of this Agreement by any of the Undersigned is found defective or invalid for any reason, such defect or invalidity shall not affect the validity of this Agreement with respect to any other of the Undersigned. The invalidity of any provision of this Agreement by reason of the law of any state or by any other reason shall not affect the validity of any other provision of the Agreement.
23. In the event any of the Undersigned shall fail to execute this instrument or become insolvent, or in the event any of the Undersigned who execute this Agreement shall not be bound for any reason, the other Undersigned shall, nevertheless, be bound hereunder.
24. The Company may, at its option, file or record this Agreement or any other document executed by any or all of the Undersigned, individually or jointly, in connection with the application, issuance or execution of any Bond or Bonds, or renewal thereof, coming within the scope of this instrument as: a security agreement or as part of a financing statement or, as notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency. The filing or recording of such document shall be solely at the option of the Company. The failure to so file shall not release or discharge any of the obligations of the Undersigned under this Agreement.
25. The Company shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein.
26. This Agreement may not be changed or modified orally. No change or modification shall be effective unless specifically agreed to in writing.
27. The Company on this instrument may maintain repeated actions as breaches occur without any former action operating as a bar to any subsequent action.
28. Wherever used in this instrument, the plural shall include the singular, the singular shall include the plural, and the neuter shall include both genders, as the circumstances require.
29. The liability of the Undersigned hereunder shall not be affected by: (a) the failure of the Principal to sign any bond (b) any claim that other indemnity or security was to have been obtained (c) the release of any indemnity (d) the return or exchange of any collateral that may have been obtained.

30. The Undersigned and their successors, executors and administrators agree to hold all money or other proceeds of a Contract, however received, as a trust for the benefit of the Company and to use such money or other proceeds for the purpose of performing the Contract and discharging the obligations of the Bond, and for no other purpose until the Bond is completely exonerated.
31. In the case of the execution of Bonds hereunder, for the importation of merchandise or transportation in Bond of imported merchandise, the Indemnitors consent to service of process upon the customs broker or agent executing the Bond on behalf of the Principal. Indemnitors further consent to such service at the original port of entry, the final port of entry, or such other place, as may be a place of business of the aforementioned customs broker or agent at the sole option of the Company. Indemnitors consent to jurisdiction at the place of service.
32. Indemnitors consent to execution and filing of Bonds by their lawful agent or attorney in fact, at the sole option of the Company, by electronic or such other means as may be elected in lieu of the completion of paper documents and agree in such instances to be bound hereby and by the terms and conditions of such Bonds as fully and completely as they would be had paper documents been employed and manually executed.
33. **CREDIT RELATIONSHIP** – The Undersigned further affirm that they understand bonds are a credit relationship and hereby authorize the Company or its authorized agent(s) to gather such credit information it considers and appropriate for purposes of evaluating whether such credit should be effected or continued.
34. **TERMINATION** – This Agreement is a continuing obligation of the Undersigned unless terminated by written notice to the Company as hereinafter provided, and such termination by a particular Undersigned shall in no way affect the obligation of any other Undersigned who has not given such notice. The liability of the Undersigned hereunder as to the future Bonds of Principal shall not terminate by reason of the failure of the Company to disclose facts known about the Principal, even though such facts materially increase the risk beyond that which the Undersigned might intend to assume. Whether the Company may have reason to believe such facts are unknown to the Undersigned, or whether the Company may have reasonable opportunity to communicate such facts to the Undersigned, the Undersigned hereby waive notice of such facts. In order to terminate liability as to future Bonds of Principal, an Undersigned must:
- Give written notice of such termination by means of certified mail to the Company at its office at 1450 East American Lane, 20th Floor, Schaumburg, IL 60173-6090, and
 - State in such notice the effective date (not less than thirty days after receipt thereof by the Company) of termination of such Undersigned's liability for future Bonds.
- After the effective date of such termination by giving notice, the Undersigned shall nonetheless be liable hereunder for:
- Bonds executed or authorized prior to such date, and renewals, substitutions and extensions thereof; and
 - Bonds executed pursuant to a bid or proposal Bond executed or authorized prior to such date, and renewals, substitutions and extensions thereof; and
 - Any maintenance or guarantee Bonds executed incidental to any other bond executed prior to such date, and renewals, substitutions and extensions thereof.
35. **DEFINITIONS** - The following definitions apply in this Agreement:
- Bond** – Any contractual obligation undertaken by the Company for Principal, before or after the date of this Agreement and any renewal or extension of said obligation.
 - Contract** - Any agreement of Principal, including that, which is bonded by the Company.
 - Principal** – The person(s) or entity (ies) set forth above or any one of them or any combination thereof, or their successors in interest, whether alone or joint venture with other named herein or not.
 - Obligee** – The person(s) or entity (ies) who are protected against loss by a Bond issued by the Company.
 - Surety** – The company, its reinsurers, and any other person(s) or entity (ies) which the Company may procure to act as a surety or as a co-surety on any bond, or any other person or entity who executes a bond at the request of the Company.

F. Undersigned – The er is executing this agreement and the Princ whether or not such Principal shall separately appear as an Indemnitor in this agreement.

36. REMEDIES UPON DEFAULT – In the event of a Default, the Company may at its option and sole discretion:

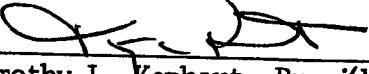
- A. Take over any Contract and arrange for its completion.
 - B. Take possession of the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract.
 - C. Take possession of the office equipment, books and records of Principal as are necessary for completion of any Contract.
 - D. Lend such funds or guarantee a loan for such funds (prior to or after Default), as the Company shall deem necessary for the completion of any Contract and for the discharge of Surety in connection with any Contract. Repayment of such loan shall be the responsibility of the Undersigned.
 - E. Immediately file suit to enforce the provisions of this Agreement.
 - F. Take immediate possession of the merchandise under Bond. The Undersigned agrees that the company has the right and standing to maintain an action for replevin of the merchandise under Bond against the importer of record, any lien holder to the merchandise and any owner or possessor of the merchandise. It is also understood and agreed that the Company's immediate right of possession and right of replevin of the merchandise is in addition to, and not in lieu of, any and all other legal rights and remedies available to the Company and the exercise of the right to immediate possession or right of replevin shall not be deemed an election of remedies.
37. Any and all parties having information of any nature whatever pertaining to the principal or the indemnitors or to transactions or affairs relating to bonds or undertakings which are the subject of this agreement are hereby authorized and requested to release such information to the Company at the Company's request.
38. GOVERNING LAW AND CONSENT TO JURISDICTION – Indemnitors expressly understand and agree that this Agreement, and its terms and provisions, shall be construed in accordance with the laws of the State of Illinois. Indemnitors also agree that the Company, at its option, may institute suit in any federal or state court situated in the County of Cook, State of Illinois wherein the subject matter of such suit includes either (1) any provision of this Agreement or (2) claims brought under this Agreement, and that they shall, and hereby do, consent to the jurisdiction of such court over their person even though they otherwise are not subject to such jurisdiction. Indemnitors further agree that, in the event that they initiate any such litigation, they shall initiate it only in a federal or state court situated in Cook County, Illinois.
39. Indemnitors expressly agree to assign and provide to the Company its rights to the source code in the event of any breach, delay or default on the part of the Indemnitors in the performance of any contract covered by any bond or bonds furnished by the Company.
40. The UNDERSIGNED represent to the Company that they have carefully read this entire Agreement and that there are no other agreements or understandings which in any way lessen or modify the obligations set forth herein.

The individual(s) signing below do(es) hereby affirm, under penalty of perjury, that they are fully empowered to bind, by such signature(s), the legal entities names as Principal/Indemnitor herein.

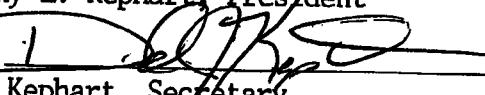
In Testimony Whereof, the Indemnitors have hereunder set their hands and affixed their seals this 29th day of September, 2000.

PRINCIPAL(S) Kephart Trucking Company or any
Subsidiaries, Affiliates or Divisions of Their
Subsidiaries, Affiliates or Divisions now in
existence or hereafter formed or acquired

CORPORATE SEAL
 CHECK IF NO SEAL

BY: 

Timothy L. Kephart, President

ATTEST: 

David Kephart, Secretary

PRINCIPAL(S)

CORPORATE SEAL

 CHECK IF NO SEAL

BY: _____

ATTEST: _____

PRINCIPAL(S)

CORPORATE SEAL

 CHECK IF NO SEAL

BY: _____

ATTEST: _____

INDEMNITOR(S)

<p>Signature</p> <p>Timothy L. Kephart</p> <p>Name Typed</p> <p>105 Hummingbird Road</p> <p>Address</p> <p>Morrisdale PA 16858</p> <p>City, State, Zip</p> <p>SS# 145-50-0541</p> <p>Phone Number 814-345-5443</p>	<p>Signature</p> <p>Name Typed</p> <p>Address</p> <p>City, State, Zip</p> <p>SS#</p> <p>Phone Number</p>
<p>Signature</p> <p>David Kephart</p> <p>Name Typed</p> <p>129 Harvard Road</p> <p>Address</p> <p>Port Matilda PA 16870</p> <p>City, State, Zip</p> <p>SS# 184-50-7203</p> <p>Phone Number 814-235-7629</p>	<p>Signature</p> <p>Patricia Kephart</p> <p>Name Typed</p> <p>129 Harvard Road</p> <p>Address</p> <p>Port Matilda PA 16870</p> <p>City, State, Zip</p> <p>SS# 142-58-2558</p> <p>Phone Number 814-235-2629</p>
<p>Signature</p> <p>Name Typed</p> <p>Address</p> <p>City, State, Zip</p> <p>SS#</p> <p>Phone Number</p>	<p>Signature</p> <p>Name Typed</p> <p>Address</p> <p>City, State, Zip</p> <p>SS#</p> <p>Phone Number</p>

CORPORATION Commonwealth

State of PA

On the 20th day of November, in the year 2000, before me personally came Kephart Trucking Company et al to me known who, being by me duly sworn, did depose and say, that he is the President of the corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

CORPORATION

State of _____ County of _____

On the _____ day of _____, in the year _____, before me personally came _____ to me known
who, being by me duly sworn, did depose and say, that he is the _____ of _____ the
corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to
said instrument is such corporate seal; that it was so affixed by order of the Board
of Directors of said corporation, and that he signed his name thereto by like order.

My commission expires:

Notary Public

CORPORATION

State of _____ County of _____

On the _____ day of _____, in the year _____, before me personally came _____ to me known
who, being by me duly sworn, did depose and say, that he is the _____ of _____ the
corporation described in, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to
said instrument is such corporate seal; that it was so affixed by order of the Board
of Directors of said corporation, and that he signed his name thereto by like order

My commission expires:

Notary Public

Notarial Acknowledgements

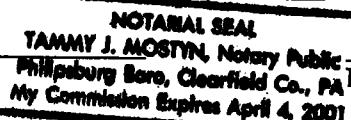
INDIVIDUAL OR PROPRIETORSHIP

Commonwealth

State of PA County of Clearfield

On the 20th day of November, in the year 2000, before me personally came _____ to me known, and known to me to be the individual _____ described in and who executed the foregoing instrument, and who duly acknowledged to me that _____ he _____ executed the same.

My commission expires:



Tammy J. Mostyn

Timothy L. Kephart

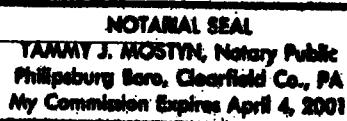
INDIVIDUAL OR PROPRIETORSHIP

Commonwealth

State of PA County of Clearfield

On the 20th day of November, in the year 2000, before me personally came _____ to me known, and known to me to be the individual _____ described in and who executed the foregoing instrument, and who duly acknowledged to me that _____ they _____ executed the same.

My commission expires:



Tammy J. Mostyn

INDIVIDUAL OR PROPRIETORSHIP

State of _____ County of _____

On the _____ day of _____, in the year _____, before me personally came _____ to me known, and known to me to be the individual _____ described in and who executed the foregoing instrument, and who duly acknowledged to me that _____ executed the same.

My commission expires: _____

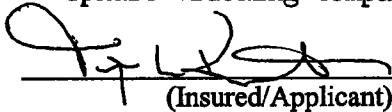
Notary Public

FRAUD STATEMENT

To be attached to and form part of this application:

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading information concerning any fact material thereto commits a fraudulent insurance act which is a crime and subjects such person to criminal and civil penalties.

Kephart Trucking Company et al


(Insured/Applicant)

Timothy L. Kephart President
(Name and Title)

11/16/00
(Date)

VERIFICATION

ROBERT D. KODAK, ESQUIRE, verifies that he is the attorney and agent for the Plaintiff herein and that, as attorney and agent for the Plaintiff, he has sufficient knowledge based upon information received from others concerning the contents of the within document to make this verification; and that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief. He understands that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Robert D. Kodak, Esquire
Attorney and Agent for Plaintiff

Dated: 7/29/02

LAW OFFICES OF
KNUPP, KODAK & IMBLUM, P.C.
CAMERON MANSION
407 NORTH FRONT STREET
PO. BOX 11848
HARRISBURG, PA 17108-1848

FILED

JUL 30 2002

111314
William A. Shaw
Prothonotary

LAW OFFICES OF

KNUPP, KODAK & IMBLUM, P.C.
CAMERON MANSION
407 NORTH FRONT STREET
P.O. BOX 11848
HARRISBURG, PA 17108-1848

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

XL SURETY, A Division of XL

*

SPECIALTY INSURANCE COMPANY,
Formerly INTERCARGO INSURANCE
COMPANY,

*

Plaintiff

*

-v-

*

Docket No. 02-1180-CD

KEPHART TRUCKING CO., and
TIMOTHY L. KEPHART, DAVID
KEPHART and PATRICIA
KEPHART, each individually
as Personal Guarantor,

*

*

*

Defendants

*

Type of Pleading:
ANSWER AND NEW MATTER
OF DEFENDANTS

Filed on Behalf of:
DEFENDANTS:
Kephart Trucking Co.
Timothy L. Kephart
David Kephart
Patricia Kephart

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.
Pa. I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

ASQ AUG 28 2002

• 13:00/AM
William A. Shaw
Prothonotary

3 c/c to Attorney

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

XL SURETY, A Division of XL	*	
SPECIALTY INSURANCE COMPANY,	*	
Formerly INTERCARGO INSURANCE	*	
COMPANY,	*	
Plaintiff	*	
 -v-	*	Docket No. 02-1180-CD
KEPHART TRUCKING CO., and	*	
TIMOTHY L. KEPHART, DAVID	*	
KEPHART and PATRICIA	*	
KEPHART, each individually	*	
as Personal Guarantor,	*	
Defendants	*	

ANSWER AND NEW MATTER OF DEFENDANTS

COME NOW Kephart Trucking Co., Timothy L. Kephart, David Kephart and Patricia Kephart, Defendants, by and through their attorney, Dwight L. Koerber, Jr., Esquire, and file the within Answer and New Matter to the Complaint filed herein against them.

1. It is admitted who the Plaintiff is, but it is denied that Plaintiff has established the name in which it has filed this Complaint is the same on the surety obligation that has been signed.

2. Admitted with the understanding that Defendant Kephart Trucking Co.'s physical location is in Bradford Township, Clearfield County, Pennsylvania, identified by P. O. Box 386, Bigler, Pa., 16825.

3. Admitted.
4. Admitted.
5. Admitted.
6. It is denied that the name on the said surety is the same as the name on the Complaint herein.

7. Admitted subject to the answers set forth in paragraph 6 above.
8. Admitted.
9. Admitted in part and denied in part, as the only expenses that

Defendants are willing to acknowledge are those expenses which are reasonable.

10. Admitted subject to the explanation to paragraph 6 above.
11. Denied. See New Matter.
12. Denied. See New Matter.
13. Denied. Legal conclusion.

NEW MATTER

In further support of their position herein, Defendants assert the following New Matter.

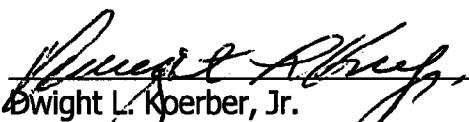
14. Plaintiff has failed to establish a direct link between the Defendants and the name of the surety set forth herein, thereby trying to establish that the correct parties are involved herein.

15. Assuming arguendo that there is an entitlement to recover the principal sought herein, Defendants deny that legal fees assessed in the amount of \$8,249.22, are reasonable. The fees sought herein are entirely disproportionate to the time and effort expended on behalf of the Plaintiff, and should not be allowed.

16. It is denied that Plaintiff has established a basis for a retroactive award of interest, as any award of interest should be measured only from the time, if any, that a judgment is entered.

WHEREFORE, Defendants pray that the Complaint filed herein be denied, that its New Matter be granted, and that judgment be entered in their favor.

Respectfully Submitted,



Dwight L. Koerber, Jr.
Attorney for DEFENDANTS
Kephart Trucking Co., Timothy L. Kephart
David Kephart and Patricia Kephart

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

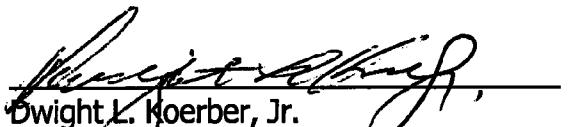
XL SURETY, A Division of XL	*	
SPECIALTY INSURANCE COMPANY,	*	
Formerly INTERCARGO INSURANCE	*	
COMPANY,	*	
Plaintiff	*	
-v-	*	Docket No. 02-1180-CD
KEPHART TRUCKING CO., and	*	
TIMOTHY L. KEPHART, DAVID	*	
KEPHART and PATRICIA	*	
KEPHART, each individually	*	
as Personal Guarantor,	*	
Defendants	*	

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of August , 2002, the undersigned served a certified copy of the foregoing ANSWER AND NEW MATTER OF DEFENDANTS in the above captioned matter upon counsel for Plaintiff. Such documents were served via United States First Class Mail upon the following:

Robert D. Kodak, Esquire
KNUPP, KODAK & IMBLUM, P.C.
Cameron Mansion
407 North Front Street
P. O. Box 11848
Harrisburg, PA 17108-1848

Respectfully Submitted,


Dwight L. Koerber, Jr.
Attorney for DEFENDANTS
Kephart Trucking Co., Timothy L. Kephart
David Kephart and Patricia Kephart

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

XL SURETY, A Division of XL
SPECIALTY INSURANCE COMPANY,
Formerly INTERCARGO INSURANCE
COMPANY, Plaintiff

-vs-

KEPHART TRUCKING CO., and
TIMOTHY L. KEPHART, DAVID
KEPHART and PATRICIA KEPHART,
each Individually as Personal
Guarantor,
Defendants

ANSWER AND NEW MATTER OF DEFENDANTS

Docket No. 02-1180-CD

Law Office
DWIGHT L. KOERBER, JR.
ATTORNEY - AT - LAW
110 NORTH SECOND STREET
P. O. Box 1320
CLEARFIELD, PENNSYLVANIA 16830

FILED

AUG 28 2002

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12767

XL SURETY

02-1180-CD

VS.

KEPHART TRUCKING CO. al

COMPLAINT

SHERIFF RETURNS

NOW AUGUST 5, 2002 AT 3:12 PM DST SERVED THE WITHIN COMPLAINT
ON TIMOTHY L. KEPHART, DEFENDANT AT EMPLOYMENT, 983 WOODLAND
BIGLER HWY., BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING
TO TIMOTHY L. KEPHART A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING.

FILED

NOW AUGUST 5, 2002 AT 3:12 PM DST SERVED THE WITHIN COMPLAINT
ON KEPHART TRUCKING CO., DEFENDANT AT EMPLOYMENT, 983 WOODLAND
BIGLER HWY., BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING
TO TIMOTHY L. KEPHART, P.I.C. A TRUE AND ATTESTED COPY OF THE
ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: NEVLING.

SEP 20 2002 (1st m)
2 230
William A. Shaw
Prothonotary

NOW AUGUST 2, 2002, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS
DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON DAVID KEPHART AND PATRICIA
KEPHART, DEFENDANTS.

NOW AUGUST 13, 2002 SERVED THE WITHIN COMPLAINT ON DAVID AND
PATRICIA KEPHART, DEFENDANTS BY DEPUTIZING THE SHERIFF OF
CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED
AND MADE A PART OF THE RETURN STATING THAT HE SERVED BOTH COPIES
ON PATRICIA KEPHART, WIFE OF DAVID KEPHART.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12767

XL SURETY

02-1180-CD

VS.

KEPHART TRUCKING CO. al

COMPLAINT

SHERIFF RETURNS

Return Costs

Cost	Description
56.17	SHFF. HAWKINS PAID BY: ATTY.
40.00	SHFF. NAU PAID BY: ATTY.
40.00	SURCHARGE PAID BY: ATTY.

13 6.17

Sworn to Before Me This

20 Day Of Sept 2002



So Answers,


Chester A. Hawkins
Sheriff

SHERIFF'S OFFICE

CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

#1276

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.

1. Plaintiff(s) <i>XL SURETY</i>	2. Case Number <i>02-1180-CD</i>										
3. Defendant(s) <i>KEPHART TRUCKING, ET AL</i>	4. Type of Writ or Complaint: <i>COMPLAINT</i>										
<p>5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. → <i>David Kephart</i></p> <p>6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) AT <i>129 Harvard Rd, Port Matilda, PA 16870</i></p>											
<p>7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputy <input type="checkbox"/> Post <input type="checkbox"/> Other</p> <p>Now, <u>20</u> I SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____ Sheriff of Centre County</p>											
<p>8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE</p> <p>NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.</p>											
<p>9. Print/Type Name and Address of Attorney/Originator</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">10. Telephone Number</td> <td style="width: 50%;">11. Date</td> </tr> <tr> <td colspan="2">12. Signature</td> </tr> </table>		10. Telephone Number	11. Date	12. Signature							
10. Telephone Number	11. Date										
12. Signature											
SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE											
<p>13. I acknowledge receipt of the writ or complaint as indicated above. <input type="checkbox"/> SIGNATURE of Authorized CCSD Deputy of Clerk and Title <input type="checkbox"/> 14. Date Filed <input type="checkbox"/> 15. Expiration/Hearing Date</p>											
TO BE COMPLETED BY SHERIFF											
<p>16. Served and made known to <u>Patricia Kephart</u>, on the <u>13</u> day of <u>Aug</u>, 20 <u>02</u>, at <u>10:54</u> o'clock, <u>A</u> m., at <u>SAME AS ABOVE</u>, County of Centre</p>											
<p>Commonwealth of Pennsylvania, in the manner described below:</p> <p>Defendant(s) personally served.</p> <p><input checked="" type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is <u>WIFE</u></p> <p><input type="checkbox"/> Adult in charge of Defendant's residence.</p> <p><input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s).</p> <p><input type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business.</p> <p><input type="checkbox"/> _____ and officer of said Defendant company.</p> <p>Other _____</p>											
<p>On the _____ day of _____, 20_____, at _____ o'clock, _____ M.</p> <p>Defendant not found because:</p> <p><input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____</p>											
<p>Remarks:</p>											
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">Advance Costs <i>75.00</i></td> <td style="width: 10%;">Docket <i>9.00</i></td> <td style="width: 10%;">Service <i>15.00</i></td> <td style="width: 10%;">Sur Charge <i>—</i></td> <td style="width: 10%;">Affidavit <i>3.50</i></td> <td style="width: 10%;">Mileage <i>10.00</i></td> <td style="width: 10%;">Postage <i>.50</i></td> <td style="width: 10%;">Misc. <i>2.00</i></td> <td style="width: 10%;">Total Costs <i>40.00</i></td> <td style="width: 10%;">Costs Due or Refund <i>35.00</i></td> </tr> </table>		Advance Costs <i>75.00</i>	Docket <i>9.00</i>	Service <i>15.00</i>	Sur Charge <i>—</i>	Affidavit <i>3.50</i>	Mileage <i>10.00</i>	Postage <i>.50</i>	Misc. <i>2.00</i>	Total Costs <i>40.00</i>	Costs Due or Refund <i>35.00</i>
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<p>17. AFFIRMED and subscribed to before me this <u>16</u> day of <u>Aug</u> <u>2002</u></p> <p><i>Alene Peters</i> Notary Public Bellefonte Boro, Centre County My Commission Expires Sept. 5, 2005</p>											
<p>18. Signature of Dep. Sheriff <i>Taylor L. Peters</i> <input type="checkbox"/> 19. Date <u>8-14-02</u></p>											
<p>20. <input type="checkbox"/> <i>Alene Peters</i> <input type="checkbox"/> 21. Signature of Sheriff <i>Taylor L. Peters</i> <input type="checkbox"/> 22. Date</p>											
<p>23. <input type="checkbox"/> <i>Alene Peters</i> <input type="checkbox"/> 24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE My Commission Expires <input type="checkbox"/> Member Pennsylvania Association of Notaries OF AUTHORIZED AUTHORITY AND TITLE.</p>											
<p>25. Date Received</p>											

SHERIFF'S OFFICE

CENTRE COUNTY

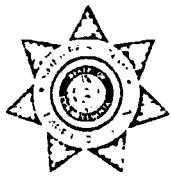
#1276

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.

1. Plaintiff(s) <i>XL SURETY</i>	2. Case Number <i>02-1180-CD</i>										
3. Defendant(s) <i>KEPHART TRUCKING ET AL</i>	4. Type of Writ or Complaint: <i>COMPLAINT</i>										
<p>SERVE → { 5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <i>Patricia Kephart</i></p> <p>AT { 6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <i>129 HARVARD RD., Port Matilda, Pa. 16870</i></p>											
<p>7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputy <input type="checkbox"/> Post <input type="checkbox"/> Other</p> <p>Now, <u>20</u> I, SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____ Sheriff of Centre County</p>											
<p>8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE</p> <p>NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.</p>											
<p>9. Print/Type Name and Address of Attorney/Originator</p>											
<p>10. Telephone Number</p>											
<p>11. Date</p>											
<p>12. Signature</p>											
SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE											
<p>13. I acknowledge receipt of the writ or complaint as indicated above. <input type="checkbox"/> SIGNATURE of Authorized CCSD Deputy of Clerk and Title</p>											
<p>14. Date Filed</p>											
<p>15. Expiration/Hearing Date</p>											
TO BE COMPLETED BY SHERIFF											
<p>16. Served and made known to <u>Patricia Kephart</u>, on the <u>13</u> day of <u>Aug.</u>, 20 <u>02</u>, at <u>10:54</u> o'clock, <u>A</u> m., at <u>SAME AS ABOVE</u>, County of Centre</p>											
<p>Commonwealth of Pennsylvania, in the manner described below:</p>											
<p><input checked="" type="checkbox"/> Defendant(s) personally served.</p>											
<p><input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____</p>											
<p><input type="checkbox"/> Adult in charge of Defendant's residence.</p>											
<p><input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s).</p>											
<p><input type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business. _____ <input type="checkbox"/> and officer of said Defendant company.</p>											
<p><input type="checkbox"/> Other _____</p>											
<p>On the _____ day of _____, 20_____, at _____ o'clock, _____ M.</p>											
<p>Defendant not found because:</p>											
<p><input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____</p>											
<p>Remarks:</p>											
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Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund		
<p>17. AFFIRMED and subscribed to before me this <u>16</u></p>											
<p>20. day of <u>Aug</u> 2002</p>											
<p>21. Signature of Sheriff <u>Teddy J. W.</u></p>											
<p>22. Date <u>8-14-02</u></p>											
<p>23. <u>Corinne Peters</u> Notary Public</p>											
<p>24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ATTORNEY Member, Pennsylvania Association of Notaries</p>											
<p>25. Date Received</p>											



#1276

Sheriff's Office Clearfield County

CHESTER A. HAWKINS
SHERIFF

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

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

Robert Snyder
CHIEF DEPUTY

Cynthia Butler-Aughenbaugh
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

XL SURETY

TERM & NO. 02-1180-CD

vs

SERVE BY: 8/29/02

KEPHART TRUCKING CO. al

DOCUMENT TO BE SERVED:
COMPLAINT

MAKE REFUND PAYABLE TO: KNUPP, KODAK & IMBLUM, Attorneys

SERVE: DAVID KEPHART and PATRICIA KEPAHRT

ADDRESS: 129 Harvard Rod, Port Matilda, Pa.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF CENTRE COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 2nd Day of AUGUST 2002.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

PA 2003-27
PD 7-5-02

XL SURETY, A Division of XL SPECIALTY
INSURANCE COMPANY, Formerly INTER-
CARGO INSURANCE COMPANY

Plaintiff

v.

KEPHART TRUCKING CO., and TIMOTHY L.
KEPHART, DAVID KEPHART and PATRICIA
KEPHART, each individually as Personal
Guarantor

Defendants

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

:

: NO. 02-1180-CD

: CIVIL ACTION - LAW

JUL 14 2003

:

*William A. Shaw
Prothonotary*

PLAINTIFF'S REPLY TO DEFENDANTS' NEW MATTER

AND NOW, this 11th day of July, 2003, comes Plaintiff, XL SURETY, A Division of XL SPECIALTY INSURANCE COMPANY, Formerly INTERCARGO INSURANCE COMPANY, by and through its Counsel, ROBERT D. KODAK, ESQUIRE, KNUPP, KODAK & IMBLUM, P.C., and respectfully replies to Defendants' New Matter as follows:

Plaintiff incorporates Paragraphs 1 through 13 of its Complaint herein as if fully and at length set forth.

14. Denied. Plaintiff has, in fact, established a direct link between the Defendants and the surety named in the caption correctly reflecting the parties involved herein.

15. Denied. Defendants are to pay legal fees to the Plaintiff based upon a percentage of recovery and that percentage and contingent fee arrangements have always been deemed to be reasonable by the Courts in the Commonwealth of Pennsylvania.

16. Denied. Plaintiff, in any action, is always entitled to interest from the date that the cause of action accrues, not from the date the Judgment is entered.

WHEREFORE, Plaintiff respectfully requests that Judgement be entered in its favor and against Defendants as prayed for in its Complaint.

Respectfully submitted,

KNUPP, KODAK & IMBLUM, P.C.



Robert D. Kodak
407 North Front Street
Post Office Box #11848
Harrisburg, PA 17108-1848
(717) 238-7151
Attorney I.D. No. 18041
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, ROBERT D. KODAK, ESQUIRE, hereby certify that I have this date served a true and correct copy of the Plaintiff's Reply to Defendants' New Matter in the above-captioned matter upon the below listed individual(s) by causing same to be deposited in the United States mail, first class postage prepaid at Harrisburg, Dauphin County, Pennsylvania, addressed as follows:

DWIGHT L KOERBER JR ESQUIRE
POST OFFICE BOX 1320
CLEARFIELD PA 16830

KNUPP, KODAK & IMBLUM, P.C.



Robert D. Kodak
407 North Front Street
Post Office Box 11848
Harrisburg, PA 17108-1848
(717) 238-7151
Attorney I.D. No. 18041
Attorney for Plaintiff

Dated: 7/11/07

VERIFICATION

I, Nancy L. Stangel, Claims Examiner
(name) (title)

of XL SURETY, A Division of XL SPECIALTY INSURANCE COMPANY, verify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C. S. §4904, relating to unsworn falsification to authorities.

**XL SURETY, Div. of XL SPECIALTY
INSURANCE COMPANY**

By: Nancy L. Stangel
Title: Claims Examiner

Dated: 7-9-03

28439

LAW OFFICES OF
KNUPP, KODAK & IMBLUM, P.C.
CAMERON MANSION
407 NORTH FRONT STREET
P.O. BOX 11848
HARRISBURG, PA 17108-1848

LAW OFFICES OF
KNUPP, KODAK & IMBLUM, P.C.
CAMERON MANSION
407 NORTH FRONT STREET
P.O. BOX 11848
HARRISBURG, PA 17108-1848

NO
MHC
E
EE

REQUEST FOR ASSIGNMENT OF NON-JURY PROCEEDING

XL SURETY, A Division of XL SPECIALTY
INSURANCE COMPANY, Formerly INTERCARGO
INSURANCE COMPANY

Plaintiff

vs.

KEPHART TRUCKING CO., and TIMOTHY L.
KEPHART, DAVID KEPHART and PATRICIA
KEPHART, each individually as Personal Guarantor

Defendant

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PENNSYLVANIA
:
:
:
:
:
: NO. 02-1180-CD
:
:
:
:
: CIVIL ACTION - LAW

We hereby request that the above-captioned non-jury proceeding be assigned for judicial disposition.

TO: Prothonotary

CC: Court Administrator

Dated: August 13, 2003



Robert D. Kodak
407 North Front Street
Post Office Box 11848
Harrisburg, PA 17018-1848
(717) 238-7159
Attorney I.D. No. 18041

Attorney for Plaintiff

Fax: (717) 238-7158

FILED

AUG 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED
M 17 2003
AUG 15 2003
copy to cJA
William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

02-1180-CD

DATE PRESENTED 08/25/03

CASE NUMBER

TYPE TRIAL REQUESTED

ESTIMATED TRIAL TIME

Date Complaint Jury Non-Jury
Filed: Arbitration

3 days/hours

XL SURETY, Div. of XL SPECIALTY INSURANCE COMPANY, Formerly INTERCARGO
PLAINTIFF(S) INSURANCE COMPANY

KEPHART TRUCKING CO., and TIMOTHY L. KEPHART,
DAVID KEPHART & PATRICIA KEPHART, EACH Check block if a Minor
DEFENDANT(S) IND. AS PERSONAL GUARANTORS is a Party to the Case

FILED

ADDITIONAL DEFENDANT(S)

AUG 27 2003

William A. Shaw
Prothonotary/Clerk of Courts

JURY DEMAND FILED BY:

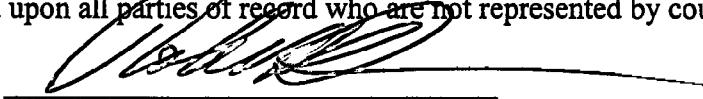
DATE JURY DEMAND FILED:

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED
\$49,500.00+ INTEREST

More than
& 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:



ROBERT D. KODAK, ESQUIRE
FOR THE PLAINTIFF

717-238-7151

TELEPHONE NUMBER

DWIGHT L. KOERBER, JR., ESQUIRE
FOR THE DEFENDANT

814-765-9611

TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

FILED NO
cc
AUG 27 2003 copy to CIA
William A. Shaw
Prothonotary/Clerk of Courts
Clerk

XL SURETY, A Division of XL SPECIALTY
INSURANCE COMPANY, Formerly INTER-
CARGO INSURANCE COMPANY

Plaintiff

v.

KEPHART TRUCKING CO. and TIMOTHY L.
KEPHART, DAVID KEPHART and PATRICIA
KEPHART, each Individually as Personal
Guarantors

Defendants

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

:

:

: NO. 02-1180-CD

:

: CIVIL ACTION - LAW

:

JAN 06 2004

William A. Shaw
Prothonotary, Clerk of Courts

STIPULATION OF SETTLEMENT

AND NOW, this 5 day of January, 2004, comes Plaintiff, XL
SURETY, a Division of XL SPECIALTY INSURANCE COMPANY, formerly INTERCARGO
INSURANCE COMPANY, by and through its attorneys, ROBERT D. KODAK, ESQUIRE, KNUPP,
KODAK & IMBLUM, P.C.,

and

KEPHART TRUCKING CO., TIMOTHY KEPHART, DAVID KEPHART and PATRICIA
KEPHART, Defendants, by and through their attorney, DWIGHT L. KOERBER, JR., ESQUIRE,

and

The above-captioned matter having been amicably settled between the Plaintiff and Defendants, it
is hereby stipulated and agreed as follows:

1. Plaintiff filed its Complaint with the Office of the Prothonotary of Clearfield County, Pennsylvania, on July 30, 2002 to the above term and number.
2. Service was properly made upon Defendants as more fully set forth in the records of the Prothonotary of Clearfield County.

3. Responsive pleadings were timely filed by Defendants' Counsel and same were timely answered by Plaintiff through Counsel.

4. After pleadings were completed and the case was at issue, Plaintiff did request the matter be listed for non-jury trial and same is set for the call of the Non-Jury Trial List - Winter 2004, on January 6, 2004, at 11:00 a.m.

5. In settlement of this legal action, Defendants shall pay to Plaintiff the sum of Thirty Thousand (\$30,000.00) Dollars (hereinafter the "Settlement Amount").

6. The Settlement Amount shall be paid as follows:

- A. The sum of Ten Thousand (\$10,000.00) Dollars on or before March 20, 2004;
- B. The sum of Ten Thousand (\$10,000.00) Dollars on or before April 20, 2004; and
- C. The final sum of Ten Thousand (\$10,000.00) Dollars on or before May 20, 2004.

7. Said payments will be made payable to Plaintiff and delivered on or before their due dates to Plaintiff at Knupp, Kodak & Imblum, P.C., Post Office Box 11848, Harrisburg, PA 17108-1848, to the attention of Robert D. Kodak, Esquire. Each payment shall reflect the file number of 28439.

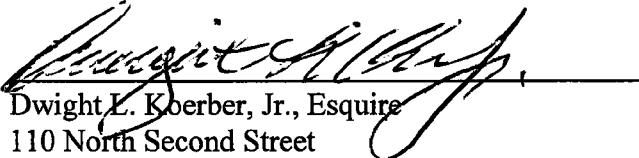
8. Upon receipt of the full Thirty Thousand (\$30,000.00) Dollars settlement proceeds, Plaintiff will mark the above-captioned matter as being settled and discontinued with prejudice.

9. The parties agree that Clearfield County shall retain jurisdiction of this matter for the purposes set forth in this Stipulation of Settlement until the Defendants' payment of all sums due hereunder.

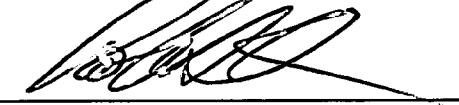
10. By executing this Stipulation of Settlement, the attorneys for the parties affirm to this Honorable Court that they have the respective authority of their clients to do so.

Respectfully submitted,

KNUPP, KODAK & IMBLUM, P.C.



Dwight L. Koerber, Jr., Esquire
110 North Second Street
Post Office Box 1320
Clearfield, PA 16830
Attorney ID No. 16332
Attorney for Defendant
814-765-9611 Fax: 814-765-9503

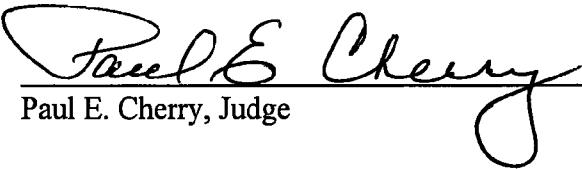


Robert D. Kodak, Esquire
407 North Front Street
Post Office Box 11848
Harrisburg, PA 17108-1848
Attorney I.D. No. 18041
Attorney for Plaintiff
717-238-7159 Fax: 717-238-7158

Dated: January 5, 2004

THIS STIPULATION OF SETTLEMENT IS HEREBY APPROVED.

BY THE COURT,



Paul E. Cherry, Judge

JAN 06 2004
William A. Shaffer
Prothonotary, Court of Common Pleas

4cc
01/08/2007 to Ally Keeber
William A. Smyth
Prob. Court, Cler., & Co. Courts
Kell

Date: 01/07/2004

Time: 12:41 PM

Page 1 of 1

Clearfield County Court of Common Pleas

User: DGREGG

ROA Report

Case: 2002-01180-CD

Current Judge: Paul E. Cherry

XL Surety vs. Kephart Trucking Co., Timothy L. Kephart, David Kephart, Patricia Kephart

Civil Other

Date		Judge
07/30/2002	Filing: Civil Complaint Paid by: Kodak, Robert D. (attorney for XL Surety) Receipt number: 1846121 Dated: 07/30/2002 Amount: \$80.00 (Check) Assumpsit to recover \$49,495.31 plus interest from March 6, 2002. Filed by Atty. Kodak. 4 cc to Sheriff.	No Judge
08/28/2002	Filing: Answer and New Matter of Defendants. Filed on behalf of Defendants. Three CC to Atty. Koerber	No Judge
09/20/2002	Sheriff Return of Service filed. Now August 31, 2002, served complaint on all Defendants.	No Judge
07/14/2003	Plaintiff's Reply To Defendants' New Matter. filed by s/Robert D. Kodak, Esquire Certificate of Service Nancy L. Stangel no cc	No Judge
08/15/2003	Request For Assignment Of Non-Jury Proceeding. filed by s/Robert D. Kodak, Esquire no cc Copy to C/A	No Judge
08/27/2003	Certificate of Readiness. filed by s/Robert D. Kodak, Esquire no cc Copy to C/A	No Judge
01/06/2004	Stipulation of Settlement, And Now, this 5th day of January, 2004. s/Dwight L. Koerber, Jr., Esquire s/Robert D. Kodak, Esquire. January 5, 2005, This Stipulation of Settlement is hereby APPROVED. by the Court, s/Paul E. Cherry, Judge 4 cc Atty Koerber	Paul E. Cherry

Date: 12/23/2003

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 01:56 PM

ROA Report

Page 1 of 1

Case: 2002-01180-CD

Current Judge: Paul E. Cherry

XL Surety vs. Kephart Trucking Co., Timothy L. Kephart, David Kephart, Patricia Kephart

Civil Other

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08/28/2002	Filing: Answer and New Matter of Defendants. Filed on behalf of Defendants. Three CC to Atty. Koerber No Judge ✓
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XL SURETY, A Division of XL SPECIALTY
INSURANCE COMPANY, Formerly
INTERCARGO INSURANCE COMPANY
Plaintiff
v.
KEPHART TRUCKING CO., and TIMOTHY L.
KEPHART, DAVID KEPART and PATRICIA
KEPHART, each individually as Personal
Guarantor
Defendants
In the Court of COMMON PLEAS of
CLEARFIELD County, Pennsylvania
NO. 02-1180-CD
CIVIL DIVISION - LAW

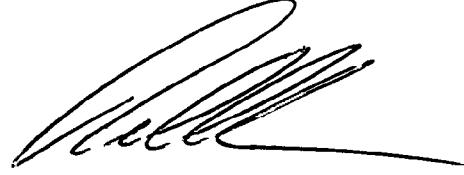
P R A E C I P E

TO THE PROTHONOTARY:

Please mark the above-captioned matter as settled and discontinued with prejudice.

TO CLEARFIELD County
Prothonotary

Dated: June 2, 2004



Robert D. Kodak
Attorney I.D. No. 18041

Attorney for Plaintiff

FILED

JUN 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED No cc
JUN 11 2004 2 Cert of Disc. to Atty Kodak
William A. Shaw Copy to CLA
Prothonotary/Clerk of Courts
cc

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

XL Surety

Vs.

No. 2002-01180-CD

Kephart Trucking Co.
Timothy L. Kephart
David Kephart
Patricia Kephart

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 June 4, 2004, marked:

Settled and Discontinued wih Prejudice

Record costs in the sum of \$80.00 have been paid in full by Robert D. Kodak, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of June A.D. 2004.

William A. Shaw, Prothonotary