

**02-1456-CD**  
**Merrill Jones al vs Michael Trejo**

**02**

02-1456-CD  
MERRILL JONES, et al. vs. MICHAEL TREJO

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

IN THE COURT OF COMMON FLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

MERRILL JONES and RUTH JONES, : No.: 2002- **1456-cp**  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Complaint  
vs. : Filed on behalf of:  
MICHAEL TREJO, : Plaintiffs  
Defendant : Counsel of Record for  
This Party: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

**FILED**

17 SEP 20 2002 *ew*  
012:50 *ws*  
William A. Shaw *ws*  
Prothonotary *ws*

3 copy to Atts

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs : Civil Action  
: :  
vs. : :  
MICHAEL TREJO, :  
Defendant : :  
:

**NOTICE**

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

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

David Meholick  
Court Administrator's Office  
Clearfield County Courthouse  
Clearfield, PA 16330  
(814) 765-2641

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs : Civil Action  
:  
vs. :  
:  
MICHAEL TREJO, :  
Defendant :  
:

COMPLAINT

AND NOW, comes Merrill Jones and Ruth Jones, his wife, and Jones Auto Salvage, also known as Jones Salvage, by and through their attorney, Girard Kasubick, Esq., and files the following Complaint:

1. The Plaintiffs, Merrill Jones and Ruth Jones, his wife, who reside at P.O. Box 153, Smokerun, Clearfield County, Pennsylvania 16681.

2. The Plaintiff, Jones Auto Salvage, a/k/a Jones Salvage is a Sole Proprietorship owned by Merrill Jones and Ruth Jones is the business manager, with its principal place of business at P.O. Box 153, Smokerun, Clearfield County, Pennsylvania 16681.

3. The Defendant is Michael Trejo, who resides at 250 W. Main Street, Santa Paula, Ventura County, California 93060.

4. The Plaintiff, Merrill Jones, was the owner and still has title to a 1976 Wells Cargo Trailer, VIN WC16769.

5. The Plaintiff, Jones Auto Salvage, was the owner and still has title to a 1939 Chevrolet Slant Back restored motor vehicle, VIN 3JA0431071 and a 1939 Chevrolet Slant Back unrestored motor vehicle, VIN 14JA1212213.

6. The Plaintiffs advertised the Wells Cargo Trailer and the two (2) 1939 Chevrolet Slant Back motor vehicles for sale in 1993 as a package deal for all three (3) vehicles for Sixty-five Thousand (\$65,000.00) Dollars with delivery to Colorado.

7. In or about April 1993, the Plaintiff, Merrill Jones, and the Defendant, Michael Trejo, negotiated an oral agreement wherein the Defendant was to pay Forty Thousand (\$40,000.00) Dollars for the three (3) vehicles, but there would be no delivery requirements by Sellers which was included in the Sixty-five Thousand (\$65,000.00) Dollar advertised price.

8. The Defendant and Plaintiff, Merrill Jones, did agree that the Defendant would be given some time to pay in full and no specific time was established between the parties.

9. The Defendant paid Three Thousand Five Hundred (\$3,500.00) Dollars on April 19, 1993, but made no additional payments until March 18, 1997 when he paid Four Thousand Five Hundred (\$4,500.00) Dollars.

10. The Defendant did eventually pay the full Forty Thousand (\$40,000.00) Dollars to the Plaintiffs by receipt of checks by Plaintiffs on July 3, 1999 with all payments as shown on the attached Exhibit "A".

11. The Plaintiff, Ruth Jones, as business manager for Jones Auto Salvage, a/k/a Jones Salvage, sent a letter and statement to the Defendant dated June 11, 1999, attached hereto and incorporated herein and marked Exhibit "B", wherein the Plaintiff will commence charging a storage fee of Ten (\$10.00) Dollars per day commencing June 11, 1999 for the three (3) vehicles due to the Defendant's failure to complete the deal.

12. The Defendant by various letters in late 1999 indicated he was working on the removal of the three (3) vehicles from Plaintiff's possession, but that he wanted something worked out on the storage fee.

13. In letter of December 22, 1999 from Defendant to Plaintiff's attorney, Ronald E. Archer, Esq., the Defendant stated that a transport company would remove the three (3) vehicles by January 1, 2000, but no transport company nor the Defendant contacted any of the Plaintiffs or Plaintiff's attorney with a specific date or time when the transport company would be at the Plaintiff's place of business to pickup the three (3) vehicles, and to the best of Plaintiffs' knowledge none came to Plaintiff's place of business.

14. Plaintiffs are still in possession of the three (3) vehicles and the titles to them.

15. The Defendant has incurred storage costs at Ten (\$10.00) Dollars per day since June 11, 1999 until August 31, 2002 for a total of 1177 days for a total amount due of Eleven Thousand Seven Hundred Seventy (\$11,770.00) Dollars.

16. The charge per day for storage of antique vehicles of Ten (\$10.00) Dollars per day is fair and reasonable in the trade.

17. Plaintiffs are willing to transfer the titles to the three (3) vehicles upon Defendant removing them from Plaintiff's storage and paying the storage costs due including additional storage costs after August 31, 2002.

18. The Defendant has not paid any storage costs nor removed the three (3) motor vehicles from Plaintiff's property.

WHEREFORE, Plaintiffs request Your Honorable Court to enter judgment in favor of the Plaintiffs for Eleven Thousand Seven Hundred Seventy (\$11,770.00) Dollars, plus additional storage cost, interest, court costs, and attorney fees.

  
\_\_\_\_\_  
Girard Kasubick, Esq.  
Attorney for Plaintiffs

VERIFICATION

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

Merrill E. Jones  
Merrill Jones

Ruth Jones  
Ruth Jones

STATEMENT

M. Michael Tigo  
250 W Main St Santa Paula Calif 93060

ALL SALES FINAL - NO RETURN OF ANYTHING  
IN ACCOUNT WITH

JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

March 18, 1997	
Balance	32000.00
August 18-1998	
# 265980 -	8,000.00
# 265981 -	8,000.00
# 266031	5,000.00
Total	\$ 21,000.00 - 21000.00
Balance	11000.00
March 15-1999	
# 271994 -	7,000.00
Balance	4000.00
July 3-1999	
# 274949	2,800.00
Money Order	
# 83565389285	700.00
# 83565589296	500.00
Total	\$ 4,000.00 4,000.00

STATEMENT

M. Michael Tigo  
250 W Main Street

ALL SALES FINAL - NO RETURN OF ANYTHING  
IN ACCOUNT WITH

JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

1	39-4 Door <sup>Chvr</sup> Slant Back Restored Serial No 3JA0431071
1	39-4 Door <sup>Chvr</sup> Slant Back unrestored Serial No 14JA1212213
1	Enclosed Well Cargo trailer Serial No. WC 16769
	All 3 Pieces 40,000.00
	April 19-1993 Paid one Check No # 594991949 Amount 3500.00
	Balance 36,500.00
	March 18-1997 Paid Check # 243843 Balance 32,000.00

June 11, 1999

Dear Mike,

This is a follow-up to my last phone call to your Voice Mail on June 7, 1999 at 9:20 P.M. EST. Since you have not replied back in any manner I find it necessary to send you this information.

As of June 7, 1999, since vehicles have not been paid in full, outside storage was begun at <sup>\*</sup>10.00 per day, as shown by enclosed photos.

Please be advised that as of June 30, 1999, if vehicles are not paid in full, and removed from our property, the vehicles will be put up for resale and you will forfeit your payments already made.

This will be your final notice on this matter.

Sincerely,

Mrs Merrill (Ruth) Jones

June 11 1999Mr. Michael Trejo250 W. MAIN ST. SANTA PAULA, CA 93060-3247ALL SALES FINAL - NO RETURN OF ANYTHING  
IN ACCOUNT WITH

## JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

1	1939 4 Door Chevy Slant Back Restored	
1	1939 4 Door Chevy Slant Back - UNrestored	
1	Wells Cargo Trailer	
	Storage At \$10.00 For All three vehicles per Day starting June 11, 1999.	

**FILED**

SEP 20 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
COMMONWEALTH OF PENNSYLVANIA

<b>MERRILL JONES and RUTH JONES, his wife, and JONES AUTO SALVAGE a/k/a JONES SALVAGE, Box 153 Smoke Run, Pennsylvania 16681</b>	<b>:</b>	<b>No.: 2002-1456-CD</b>
	<b>:</b>	
	<b>:</b>	
	<b>:</b>	<b>CIVIL ACTION – LAW</b>
	<b>:</b>	
<b>Plaintiffs</b>	<b>:</b>	
	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
	<b>:</b>	
<b>MICHAEL TREJO 250 West Main Street Santa Paula, California 93060-3247</b>	<b>:</b>	
	<b>:</b>	
	<b>:</b>	
<b>Defendant</b>	<b>:</b>	
	<b>:</b>	

**FILED**

DEC 20 2002

William A. Shaw  
Prothonotary

**ANSWER WITH NEW MATTER**

**NOW COMES**, the Defendant-Counterclaimant, Michael Trejo, by and through his attorney, Philip L. Zulli, Esquire, and files the following Answer with New Matter to Plaintiffs' Complaint and avers as follows:

1. Admitted.
2. Admitted in part; denied in part. Admitted that the Plaintiff Jones auto salvage, a/k/a Jones salvage is a sole proprietorship owned by Merrill Jones, and that its principal place of business is P.O. Box 153, Smoke Run, Clearfield County, Pennsylvania 16681. The Defendant-Counterclaimant is without sufficient information or belief to either admit or deny the averment that Plaintiff, Ruth Jones is the business manager, and therefore the averment is denied. By way of further answer, the Defendant-Counterclaimant Michael Trejo negotiated his agreement with the Plaintiff Merrill Jones and the Plaintiff Ruth Jones was not

a party to the agreement negotiated and entered between Plaintiff Merrill Jones and Defendant-Counterclaimant Michael Trejo, and had no authority to unilaterally amend it after the fact.

3. Admitted.
4. Admitted.
5. Denied. The Defendant-Counterclaimant is without sufficient information and belief as to whether title is in the name of Jones Auto Salvage and therefore the averment is denied. By way of further answer, Defendant-Counterclaimant believed Merrill Jones was the titled owner of the vehicles.
6. Admitted in part; denied in part. Admitted that the Plaintiff Merrill Jones advertise the Wells cargo trailer and two 1939 Chevrolet slant back vehicles for sale in 1993 as a package deal for all three vehicles for \$65,000 with delivery to Colorado. Denied that Plaintiff Ruth Jones advertised the Wells cargo trailer and two 1939 Chevrolet slant back vehicles as stated.
7. Admitted in part; denied in part. Admitted that Plaintiff Merrill Jones and Defendant-Counterclaimant Michael Trejo negotiated an agreement wherein the Defendant-Counterclaimant was to pay \$40,000 for the three vehicles. Denied that there would be no delivery requirements by Plaintiff. By way of further answer, included within the purchase price of \$40,000 was an easel-mounted display book featuring the 1939 Chevrolet slant back models. In further answer, the agreement required Plaintiff Merrill Jones to deliver the vehicles and goods as far west as Colorado. Defendant, Michael Trejo, would meet Plaintiff in Colorado to take title and possession. Denied that Sellers were Merrill Jones and Ruth

Jones. In further answer, Merrill Jones was the seller.

8. Admitted.
9. Admitted. By way of further answer, Plaintiff, Merrill Jones, accepted payments towards the unique goods via checks made payable to the Plaintiff, Merrill Jones, through March 15, 1999, without complaint by either Plaintiff, Merrill Jones, or Plaintiff, Ruth Jones, including a check in the amount of \$7,000 dated March 15, 1999.
10. Admitted in part; denied in part. Admitted that the Defendant-Counterclaimant did pay the full \$40,000 to the Plaintiffs. Inasmuch as Exhibit A. is not attached to the copy of the complaint served upon the Defendant, the Defendant-Counterclaimant is without sufficient information or belief to either admit or deny that all payments are shown for Plaintiffs' attached Exhibit A.
11. Admitted in part; denied in part. Admitted that the Plaintiff Ruth Jones sent a letter and statement to the Defendant-Counterclaimant dated June 11, 1999 and that said statement is attached and marked as Exhibit B. Denied that the letter is attached as Exhibit B. Denied that Plaintiff, Ruth Jones, whether as a business manager, or in any other capacity, had the authority to unilaterally alter the agreement entered between Plaintiff Merrill Jones and Defendant-Counterclaimant Michael Trejo. By way of further answer, by the time of the June 11, 1999, statement from Plaintiff, Ruth Jones, the Defendant-Counterclaimant Michael Trejo had nearly paid in full the \$40,000 owed to Plaintiff Merrill Jones.
12. Admitted in part; denied in part. Admitted that the Defendant-Counterclaimant sent various letters to the Plaintiff Merrill Jones in 1999. Denied that he was working on the removal of

the three vehicles from Plaintiffs possession as averred. By way of clarification, Defendant-Counterclaimant was demanding Plaintiff to deliver the vehicles pursuant to the agreement. Defendant-Counterclaimant denied ther, and denies now, that any storage fees are owed to the Plaintiff as more fully set forth within the New Matter.

13. Admitted in part; denied in part. Admitted that Defendant-Counterclaimant sent a letter to Plaintiff's attorney Ronald E. Archer, Esquire, December 22, 1999. Admitted that Defendant-Counterclaimant agreed to have a transport company remove the three vehicles, notwithstanding (by way of further answer) that the duty to deliver the vehicles was upon the Plaintiff Merrill Jones. Denied that the Defendant-Counterclaimant did not contact the Plaintiffs or Plaintiff's attorney with a specific date or time when a transport company would be at the Plaintiff's place of business to pick up the three vehicles. By way of further answer, as more fully set forth in the New Matter, Defendant-Counterclaimant contacted Plaintiff's attorney on November 30th, 1999 to obtain trailer dimensions for the transport company and again by letter dated December 22, 1999, and again on December 31, 1999, for directions to Merrill Jones' house so the vehicles could be picked up by the transport company. By way further answer, the transport company was in Smoke Run on January 1 or 2, 2000, waiting to take delivery of the vehicles. Defendant-Counterclaimant spoke with Plaintiff Merrill Jones' attorney Mr. Archer who advised Defendant-Counterclaimant that Plaintiff, Ruth Jones would not release the vehicles until the storage fees were paid. By way of further answer, Mr. Archer was supposed to have sent a proposal on January 3 or 4, 2000, but the Defendant-Counterclaimant never did receive such a proposal.

14. Admitted. By way of further answer, Plaintiffs have refused to deliver the vehicles and titles to the Defendant, notwithstanding the Defendant-Counterclaimant having paid in full for the vehicles.
15. Denied. Denied that the Defendant-Counterclaimant has incurred storage costs at \$10 per day since June 11, 1999, until August 31, 2002 for a total of 1177 days. Denied that the Defendant-Counterclaimant owes the Plaintiffs \$11,770. By way of further answer, the agreement negotiated was solely between the Plaintiff Merrill Jones and Defendant-Counterclaimant Michael Trejo.
16. Admitted. By way of further answer, what is reasonable in the trade is irrelevant, inasmuch as the agreement negotiated between Plaintiff Merrill Jones and Defendant-Counterclaimant Michael Trejo did not provide for the charging of storage fees or costs.
17. Admitted. By way of further answer, storage costs were never part of the agreement; Ruth Jones had no authority to unilaterally alter the agreement; and the Defendant-Counterclaimant Michael Trejo does not owe the Plaintiffs any storage costs.
18. Admitted. Admitted that the Defendant-Counterclaimant has not paid any storage costs. By way of further answer, storage costs were not required under the agreement negotiated. Admitted that the Defendant-Counterclaimant has not removed the three vehicles from Plaintiff Merrill Jones' property. By way of further answer, Plaintiffs have refused to allow the Defendant-Counterclaimant to take delivery of the vehicles, notwithstanding that Defendant-Counterclaimant paid Merrill Jones \$40,000 for the vehicles.

WHEREFORE, the Defendant-Counterclaimant requests your Honorable Court to enter judgment

in favor of the Defendant-Counterclaimant and against the Plaintiffs.

### **NEW MATTER**

**NOW COMES**, the Defendant-Counterclaimant, Michael Trejo, by and through his attorney, Philip L. Zulli, Esquire, and pleads the following New Matter and Counterclaims in answer and countersuit to Plaintiffs' Complaint in the above captioned matter.

19. Paragraphs 1 through 18 above are hereby incorporated by reference.
20. Defendant-Counterclaimant, Michael Trejo, is an adult individual who resides at 250 West Main Street, Santa Paula, California 93060-3247.
21. Plaintiff, Merrill Jones, is an adult individual who resides at Smoke Run, Clearfield County, Pennsylvania, with an address of Box 153, Smoke Run, PA 16681.
22. Plaintiff, Ruth Jones, is an adult individual who resides at Smoke Run, Clearfield County, Pennsylvania, with an address of Box 153, Smoke Run, PA 16681.
23. The property that is the subject of this action is as follows:
  - a) One 1939 four-door, slant-back antique automobile, with tire on rear, restored with all new parts, of which only 68 were made and of which this one is Body Number 8;
  - b) One 1939 unrestored, four-door, slant-back antique automobile with tire on rear, of which this one is Body Number 3, with two new rear fenders and a rear bumper, plus other parts;
  - c) One 20-foot Wells Cargo closed trailer, insulated, carpeted, and paneled, with burglar alarm and two spares.
  - d) One easel-mounted sales display book for the 1939 Chevrolet slant-back automobiles.

(This above-described property shall hereinafter be referred to in this Answer with New Matter as "the unique goods").

24. The Plaintiff, Merrill Jones, ran an advertisement in the *Generator and Distributor*, volume 32, No. 4, April, 1993, on page 34. (A true and correct copy of the said advertisement and magazine cover are attached hereto and marked as **Exhibit 1**.)
25. Three photographs of two automobiles and a cargo trailer were displayed, on the advertisement and the following text appeared under the top photograph:

PACKAGE DEAL: (1) 1939 4-door, slant back with tire on rear. Only 68 made, I have body number 8. Restored with all new parts, used only the body shell. Won first place in every show it was entered in.

The following text appeared under the middle photograph:

(1) 1939 unrestored, 4-door, slant back with tire on rear. Body Number 3. Have two new rear fenders and a rear bumper, plus other parts.

The following text appeared under the bottom photograph:

(1) 20 foot Wells Cargo closed trailer. Insulated, carpeted, and paneled, with burglar alarm and two spares. Will deliver "as far West as Colorado". May be the last tow cars left. \$65,000; (814) 378-5037; Merrill Jones, Box 153, Smoke Run, PA 16681.

(See "Exhibit 1.")

26. One day during the month of April, 1993, during a phone conversation, the Defendant-Counterclaimant, Michael Trejo, and the Plaintiff, Merrill Jones, entered into an oral contract.

27. The oral contract between the Defendant-Counterclaimant, Michael Trejo, and the Plaintiff, Merrill Jones, was as follows: Plaintiff, Merrill Jones, agreed to sell to Defendant-Counterclaimant, and Defendant-Counterclaimant, Michael Trejo, agreed to purchase the unique goods, depicted and described in the advertisement attached hereto as Exhibit 1, (plus one easel-mounted sales display book for the 1939 Chevrolet slant-back automobiles, that was not described within the advertisement described at paragraph 25 above), and after receipt of final payment, Merrill Jones agreed to transfer title to the unique goods and deliver them "as far West as Colorado", for the price of \$40,000, to be paid over a non-specified period of time, during which time Merrill Jones agreed to keep the vehicles indoors pending receipt of final payment by Defendant-Counterclaimant of the full contract price of \$40,000. (This oral contract will hereinafter be referred to as the "said contract").
28. The payment of storage fees was not requested by Merrill Jones nor agreed to by Michael Trejo as part of the terms of this contract for the purchase of the unique goods pending receipt of full payment of the purchase price of \$40,000 by the Plaintiff, Merrill Jones.
29. Pursuant to the said contract, Plaintiff, Merrill Jones, accepted payments towards the unique goods via checks made payable to the Plaintiff, Merrill Jones, through March 15, 1999, without complaint by either Plaintiff, Merrill Jones, or Plaintiff, Ruth Jones, including a check in the amount of \$7,000 dated March 15, 1999. (A true and correct copy of said check, No. 271994, is attached hereto and marked as "Exhibit 2.")
30. At the time of entering into the said contract, and prior and subsequent thereto, the Plaintiff, Merrill Jones, was engaged in the business of selling, *inter alia*, antique automobiles.

31. The said contract consummated in April, 1993, was between Michael Trejo and Merrill Jones.
32. Plaintiff, Ruth Jones was not a party to the said contract.
33. Defendant-Counterclaimant received a letter along with a statement dated June 11, 1999, from the Plaintiff, Ruth Jones, unilaterally stating that because Defendant-Counterclaimant had not paid the \$40,000 in full as of June 7, 1999, an outside storage fee of \$10 per day began to be assessed as of June 7, 1999. (A true and correct copy of said letter is attached hereto and marked as "**Exhibit 3.**")
34. On June 30, 1999, Defendant-Counterclaimant remitted final payment of \$4,000 upon the contract price of \$40,000, and was ready and willing to receive the unique goods described at paragraph 23 above according to the terms of the said contract, and Defendants had notice thereof.
35. Defendant-Counterclaimant received a letter dated October 21, 1999, from the Plaintiff, Merrill Jones, attorney Ronald Archer which acknowledged in writing that the agreed-upon purchase price was \$40,000 and that the final payment was made on June 30, 1999, and that Mr. Jones did not charge any interest on the amount due, nor charge any storage fees during a six-year period (A true correct copy of said letter is attached hereto and marked as "**Exhibit 4.**")
36. Said letter also acknowledged that Merrill Jones received the full amount due for the vehicles, and that the vehicle titles were ready to be transferred to Michael Trejo as soon as arrangements were made to remove the vehicles from Mr. Jones property. See **Exhibit 4.**

37. The Plaintiff, Merrill Jones,'s demand that Defendant-Counterclaimant remove the vehicles from Plaintiff, Merrill Jones, property in Pennsylvania was a breach of the oral contract and contrary to the written advertisement that Plaintiff, Merrill Jones, would deliver the vehicles "as far West as Colorado".
38. By letter dated November 10, 1999, the Defendant-Counterclaimant Michael Trejo advised Ronald E. Archer, attorney for the Plaintiff, Merrill Jones,, that according to the original deal that he had with Merrill Jones, Mr. Jones would deliver the unique goods "as far West as Colorado", and this promise had made the deal all the more enticing for Defendant-Counterclaimant . Defendant-Counterclaimant also advised attorney Archer that Mr. Jones stated that the vehicles would be in safekeeping and stored inside and out of the weather. Defendant-Counterclaimant specifically disavowed that rental space was part of the deal that he had made with Plaintiff, Merrill Jones and he should not be charged for rental space. (A true and correct copy of said letter is attached hereto and marked as "**Exhibit 5.**")
39. On or about December 22, 1999, Defendant-Counterclaimant wrote to the Plaintiff, Merrill Jones,' attorney, Ronald Archer, confirming his conversation on that day to forward information that Attorney Archer requested regarding the advertisement that Merrill Jones placed in the magazine. Defendant-Counterclaimant requested directions to Merrill Jones property and stated that he wanted to remove the vehicles by Saturday, January 1, 2000. (A true and correct copy of said letter is attached hereto and marked as "**Exhibit 6.**")
40. Defendant-Counterclaimant contacted Bob and Shannon Crislipp of Auto Transport Company via fax to retrieve the unique goods from the Defendant's property on January 1, 2000. (A

true and correct copy of a letter and faxed cover sheet dated December 24, 1999, is attached hereto and marked as "**Exhibit 7.**")

41. On December 31, 1999, Defendant-Counterclaimant was informed via telephone conversation by Ronald Archer, attorney for the Plaintiff, Merrill Jones,, that Plaintiff demanded rental and storage fees prior to release of the unique goods, and Attorney Archer advised Defendant-Counterclaimant that he will be sending Defendant-Counterclaimant a letter suggesting a resolution of the matter.
42. When Auto Transport Company arrived at Smoke Run, Pennsylvania, on January 1, 2000, the Plaintiffs, Merrill and Ruth Jones through their Attorney Ronald Archer refused to release the vehicles into the custody and control of Auto Transport Company.
43. The Plaintiff, Merrill Jones, has refused to deliver the unique goods mentioned in paragraph 23 above "as far West as Colorado", notwithstanding having received the agreed-upon contract price of \$40,000.
44. By letter dated January 24, 2000, Defendant-Counterclaimant wrote to Attorney Ronald E. Archer confirming his conversation with Mr. Archer on December 31, 1999, confirming that Archer had said that he would be sending Defendant-Counterclaimant a letter on Monday or Tuesday January 3rd or 4th, 2000, but noting that Defendant-Counterclaimant had not yet received any such letter. ( A true and correct copy of said letter is attached hereto and marked as "**Exhibit 8.**")
45. On January 10, 2001, Defendant-Counterclaimant 's undersigned counsel conversed with Defendant's counsel Ronald Archer and by letter dated January 10, 2001, confirmed that

Defendant still had possession of the unique goods for which the Defendant-Counterclaimant had remitted the full purchase price, and requested the amount of storage fees that were then requested by the Defendant Mr. Jones.

46. By letter dated January 22, 2001, Defendant-Counterclaimant 's undersigned counsel demanded written assurance that Mr. Jones 1) still has possession of these vehicles, 2) has not sold them to anyone else, and 3) has no intention of selling them to anyone other than Mr. Trejo. A true and correct copy of said letter is attached hereto and marked as "**Exhibit 9.**")
47. Shortly after said letter dated January 22, 2001, Attorney Archer assured undersigned counsel that Mr. Jones was still in possession of the vehicles; that he had not sold them to anyone else; and that he had no intention of selling them to anyone other than Mr. Trejo and that the vehicles were still in safekeeping.
48. By letter dated June 29, 2001, Defendant-Counterclaimant through undersigned counsel submitted a demand for possession of the vehicles and offered to pay \$2000 and storage fees, but Defendants Merrill Jones and Ruth Jones still refused to surrender the vehicles. (A true and correct copy of said letter is attached hereto and marked as "**Exhibit 10**".)
49. The Defendants Merrill Jones and Ruth Jones have refused to surrender the unique goods mentioned in paragraph 23 above to the Defendant-Counterclaimant at the Defendants' residence and place of storage of said vehicles in Clearfield County, Pennsylvania, notwithstanding that Defendant-Counterclaimant offered to cover for Defendant's failure to deliver the unique goods "as far West as Colorado", by retaining a third party to take delivery of the unique goods in Clearfield County.

50. The restored and the unrestored four-door, slant-back 1939 automobiles and the Wells Cargo trailer and the easel mounted sales display book for the 1939 Chevrolet slant back antique automobiles, are unique goods identified to Defendant-Counterclaimant 's contract with Plaintiff, Merrill Jones,, for which payment has been tendered in full, and any attempt by Defendant-Counterclaimant to cover for Plaintiff, Merrill Jones,' failure to deliver these unique goods would be unavailing, irasmuch as the unique goods are not capable of being substituted by other goods.
51. Due to the Defendant's failure to deliver said goods, the Defendant-Counterclaimant has been damaged in the sum of \$40,000 plus interest, costs and attorney fees.
52. Plaintiff, Merrill Jones, made a material misrepresentation of fact by representing that he would deliver the unique goods to Defendant-Counterclaimant "as far West as Colorado" when he in fact had no intention of making such a delivery.
53. Plaintiff, Merrill Jones, made a material misrepresentation of fact by representing that he would relinquish the unique goods to Defendant-Counterclaimant and transfer the titles to the vehicles upon payment of the agreed-upon purchase price of \$40,000 when he in fact had no intention of relinquishing the unique goods to Defendant-Counterclaimant or transferring titles to the vehicles to Defendant-Counterclaimant .
54. Plaintiff, Merrill Jones, has knowingly made said misrepresentations to Defendant-Counterclaimant for the purpose of obtaining payment of the \$40,000 purchase price.
55. Defendant-Counterclaimant justifiably relied upon these misrepresentations of the Plaintiff, Merrill Jones, and upon the advertisement placed by Merrill Jones in the *Generator and*

*Distributor* and remitted the agreed-upon purchase price of \$40,000.

56. Defendant-Counterclaimant has incurred damages of at least \$40,000, plus costs and attorney fees, as a result of justifiably relying upon Defendant Merrill Jones misrepresentations by remitting \$40,000 for the unique goods that Plaintiffs, Merrill and Ruth Jones have refused to deliver or relinquish to Defendant-Counterclaimant .
57. Not until June 11, 1999, after Defendant-Counterclaimant had paid \$36,000 towards the purchase price of \$40,000, and more than six years after Plaintiff, Merrill Jones, agreed to the terms of the said contract, did the Defendants Merrill Jones and Ruth Jones demand Defendant-Counterclaimant to pay a storage fee of \$10 per day.
58. Defendants' insistence upon charging Defendant-Counterclaimant storage charges when it was the Plaintiff, Merrill Jones,' obligation to deliver the unique goods to Defendant-Counterclaimant is arbitrary, outrageous, and a willful breach of contract.
59. Defendants conduct is arbitrary, wilful, vexatious, obdurate, fraudulent and calculated to cause Defendant-Counterclaimant harm and deprive him of the unique goods for which he has tendered payment in full.

### **COUNTERCLAIMS**

#### **COUNT 1**

##### **Michael Trejo v. Merrill Jones and Ruth Jones**

#### **REPLEVIN**

60. The Defendant-Counterclaimant incorporates by reference paragraphs 1 through 59 of the Answer with New Matter, as if fully set forth herein.

61. The property that is the subject of this action is “the unique goods” described and set forth at Paragraph 23 above.
62. The value of the unique goods is \$40,000.
63. The location of the unique goods is the property of the Defendants, Merrill Jones and Ruth Jones: Box 153, Smoke Run, Clearfield County, Pennsylvania, 16681.
64. Venue in this Court is appropriate because the Defendants reside in Clearfield County, Plaintiff, Merrill Jones, conducts business and has his principle place of business in Clearfield County, and the unique goods identified to the hereinafter described contract are located in Clearfield County.

**WHEREFORE**, Defendant-Counterclaimant demands judgment in replevin in its favor and against the Defendants for:

- a) the possession, title and delivery of all the unique goods identified at Paragraph 23 above;
- b) punitive damages;
- c) attorney fees and costs of suit; and
- d) any and all other relief which this Court deems appropriate.

## **COUNT 2**

### **Michael Trejo v. Merrill Jones**

#### **BREACH OF CONTRACT**

65. The Defendant-Counterclaimant incorporates by reference paragraphs 1 through 64 of the Answer with New Matter, as if fully set forth herein.

66. The Plaintiff, Merrill Jones,' failure to deliver the unique goods identified at paragraph 23 above, despite Defendant having received and acknowledged payment of the agreed-upon purchase price of \$40,000, is arbitrary, capricious and without good cause, and is a breach of the said contract described above.
67. The failure and refusal by the Plaintiff, Merrill Jones, to honor and comply with his agreement and with his promises to the Defendant-Counterclaimant was knowing and willful and a bad faith breach of the said contract to deliver the unique goods.
68. As a direct and proximate result of the foregoing breach of contract by the Plaintiff, Merrill Jones,, the Defendant-Counterclaimant has been injured and damaged by the loss of the \$40,000 that he paid for the unique goods as well as the unique enjoyment that he would possess from possessing these unique goods, plus costs and attorney fees.
69. The restored and the unrestored four-door, slant-back 1939 automobiles and the Wells Cargo trailer and the easel mounted sales display book for the 1939 Chevrolet slant back antique automobiles, are unique goods identified to Defendant-Counterclaimant 's contract with Plaintiff, Merrill Jones,, for which payment has been tendered in full, and any attempt by Defendant-Counterclaimant to cover for Plaintiff, Merrill Jones,' failure to deliver these unique goods would be unavailing, inasmuch as the unique goods are not capable of being substituted by other goods, and the only fair and just remedy is specific performance of the said contract.

**WHEREFORE**, the Defendant-Counterclaimant respectfully demands judgment in favor of the Defendant-Counterclaimant and against the Plaintiff, Merrill Jones, in excess of \$50,000, including:

- a) specific performance of the said contract and direct the Defendants to immediately surrender and deliver all the unique goods to the Defendant-Counterclaimant and transfer title of the two motor vehicles and trailer to the Defendant-Counterclaimant;
- b) \$42,500 together with costs and interest;
- c) punitive damages;
- d) attorney fees; and
- e) any and all other relief which this Court deems appropriate.

### **COUNT 3**

#### **Michael Trejo v. Merrill Jones**

##### **FRAUD**

- 70. The Defendant-Counterclaimant incorporates by reference paragraphs 1 through 69 of the Answer with New Matter, as if fully set forth herein.
- 71. Defendant intended to deceive and defraud Defendant-Counterclaimant out of the sales price for the unique goods by falsely and fraudulently representing that upon receipt of \$40,000, Defendant would deliver the unique goods “as far West as Colorado”.
- 72. Defendant intended to deceive and defraud Defendant-Counterclaimant out of the sales price of the unique goods by falsely and fraudulently representing that upon receipt of \$40,000, Defendant would transfer title to the unique goods to Defendant-Counterclaimant .
- 73. Defendant-Counterclaimant justifiably relied upon Plaintiff, Merrill Jones,' representations which were intended to induce, and did induce, Defendant-Counterclaimant to give Defendant \$40,000.

74. Defendant knew, or had reasonable cause to know, that Defendant would not deliver the unique goods or transfer title to the unique goods to Defendant-Counterclaimant notwithstanding Defendant-Counterclaimant's payments to Plaintiff, Merrill Jones, totaling \$40,000.
75. Defendant-Counterclaimant was induced to comply with its obligations pursuant to the oral contract with Plaintiff, Merrill Jones, and to pay for the purchased goods based upon Defendant's aforesaid misrepresentations.
76. As a result of Defendant's fraudulent conduct, Defendant-Counterclaimant sustained substantial monetary losses including, but not limited to, the loss of the \$40,000 purchase price and interest, plus costs and attorney fees.

**WHEREFORE**, the Defendant-Counterclaimant respectfully demands judgment in favor of the Defendant-Counterclaimant and against the Plaintiff, Merrill Jones, in excess of \$50,000, including:

- a) specific performance of the said contract and direct the Defendant to immediately surrender and deliver all the unique goods to the Defendant-Counterclaimant and transfer title of the two motor vehicles and trailer to the Defendant-Counterclaimant;
- b) \$42,500 together with costs and interest;
- c) punitive damages;
- d) attorney fees; and
- e) any and all other relief which this Court deems appropriate.

**COUNT 4**

**Michael Trejo v. Merrill Jones**

**FALSE ADVERTISEMENT**

77. The Defendant-Counterclaimant incorporates by reference paragraphs 1 through 76 of the Answer with New Matter, as if fully set forth herein.
78. Plaintiff, Merrill Jones, advertisement referenced in attached Exhibit 1 purporting to transport the unique goods “as far West as Colorado” was a false representation of fact.
79. This false statement deceived the Defendant-Counterclaimant and a substantial segment of the advertising audience at whom the advertisement was directed.
80. The representation to transport the unique goods “as far West as Colorado” as opposed to requiring the purchaser to take delivery of the unique goods in Pennsylvania, made a difference in Defendant-Counterclaimant ’s purchasing decision.
81. The false statement by the Plaintiff, Merrill Jones, caused the Defendant-Counterclaimant an ascertainable loss in the amount of \$2,500 in extra transport fees to transport the unique goods from Pennsylvania to Santa Paula, California, versus the transport fees from Colorado to California.

**WHEREFORE**, the Defendant-Counterclaimant respectfully demands judgment in favor of the Defendant-Counterclaimant and against the Plaintiff, Merrill Jones, in excess of \$50,000, including:

- a) specific performance of the said contract and direct the Defendant to immediately surrender and deliver all the unique goods to the Defendant-Counterclaimant and transfer title of the two motor vehicles and trailer to the Defendant-Counterclaimant;
- b) \$2,500 to cover the cost of transporting the unique goods from Pennsylvania to California together with costs and interest;

- c) punitive damages;
- d) attorney fees; and
- e) any and all other relief which this Court deems appropriate.

## **COUNT 5**

### **Michael Trejo vs. Ruth Jones**

#### **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

- 82. The Defendant-Counterclaimant incorporates by reference paragraphs 1 through 81 of the Answer with New Matter, as if fully set forth herein.
- 83. A contract existed between Michael Trejo and Merrill Jones as described above and confirmed in writing by Plaintiff, Merrill Jones, ' attorney, Ronald Archer, by letter dated October 21, 1999. (See attached Exhibit 4.)
- 84. Plaintiff, Ruth Jones letter to Michael Trejo, dated June 11, 1999, (See attached Exhibit 3) unilaterally imposing storage fees was purposefully intended to disrupt and breach Defendant-Counterclaimant 's existing contract with Plaintiff, Merrill Jones, with the specific intention of causing Defendant-Counterclaimant harm, by depriving him of \$40,000 and the unique goods which he paid in full.
- 85. Plaintiff, Ruth Jones' refusal to allow Auto Transport Company to take delivery and possession of the unique goods on January 1, 2000, was purposefully intended to disrupt and breach Defendant-Counterclaimant 's existing contract with Plaintiff, Merrill Jones, was and specifically and spitefully intended to cause Defendant-Counterclaimant harm, by denying him delivery and possession of the goods for which he had already paid \$40,000

in full satisfaction of the agreed-upon contract price.

86. Inasmuch as Ruth Jones was not a party to the said contract between Michael Trejo and Merrill Jones, Ruth Jones had no right or privilege to interfere with the terms of the said contract.

87. Inasmuch as Merrill Jones had accepted \$36,000, over a period of six years, without complaint or protest, or request for storage fees, towards the contract price of \$40,000, Ruth Jones had no right or privilege to interfere with the terms of the said contract.

88. Plaintiff, Ruth Jones, by her conduct of interference and refusal to allow Defendant-Counterclaimant to take delivery of the unique goods, has caused Defendant-Counterclaimant to sustain immediate, irreparable, and substantial losses, including the loss of possession of the unique goods and the loss of \$40,000 plus interest, costs and attorney fees.

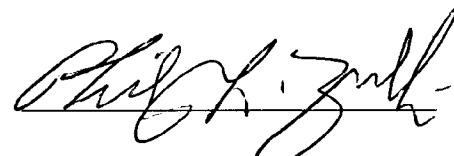
89. Unless Ruth Jones is enjoined from such conduct, Defendant-Counterclaimant will suffer immediate, irreparable, and substantial losses, including the loss of possession of the unique goods and the loss of \$40,000 plus interest, costs and attorney fees.

**WHEREFORE**, the Defendant-Counterclaimant respectfully demands judgment in favor of the Defendant-Counterclaimant and against the Plaintiff, Ruth Jones in excess of \$50,000, including:

- a) \$42,500 together with costs and interest;
- b) punitive damages;
- c) attorney fees; and

d) any and all other relief which this Court deems appropriate.

Respectfully submitted:



Philip L. Zulli, Esquire  
Attorney Id. No. 47499

1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

## CARS FOR SALE



1950 Styleline Deluxe, burgundy, 2,000 miles on rebuilt engine, transmission and clutch. Clean, solid, attractive classic. Sacrifice \$3,300 or best offer/trade? Call Pete (319) 377-1425 Marion, Iowa.



1940 Special Deluxe 4-door. All restored to original condition. Dark gray, Hampton interior, spindles, steering wheel. Sacrifice at \$12,500. (309) 782-9883 days.



1967 Corvette first place winner at Nashville 1991 30th Anniversary Meet. Featured in Nov-Dec 1991 G&D. 327 cu in engine 300 horsepower, automatic transmission. Tilt, telescopic steering wheel. 39,000 original miles. Excellent in every respect \$29,500; Richard Ballou, (313) 475-3485.



1940 Master 85 Business Coupe restored, VCCA junior, AACA preservation winner. Light green, trailered car. Asking \$7,000; Call Donald Zimmons; (914) 877-6961 after 6 pm



1928 3-window Coupe; 4-cylinder, 33,684 miles, green with black fenders and top. Excellent condition to show or drive. New tires, VIN #4866992. Set of pictures available, SASE. \$10,000 or offer. Ken Carson, PO Box 216, Toledo, IA 52342; phone (515) 484-2520 days; (515) 484-3547 evenings..



PACKAGE DEAL: (1) 1939 4-door slant back with tire on rear. Only 68 made, I have body number 8. Restored with all new parts, used only the body shell. Won first place in every show it was entered in.



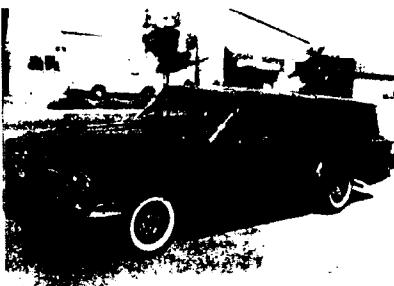
(1) 1939 unrestored 4-door slant back with tire on rear. Body number 3. Have two new rear fenders and a rear bumper, plus other parts.



(1) 20 foot Wells Cargo closed trailer. Insulated, carpeted, and paneled, with burglar alarm and two spares. Will deliver as far West as Colorado. May be the last two cars left. \$65,000; (814) 378-5037; Merrill Jones, Box 153, Smoke Run, PA 16681.

1937 1/2 ton Pickup. \$4,000; (916) 529-2305 or write SASE to A. Leon Jr., 38 Rio Vista Ln., Red Bluff, CA 96080.

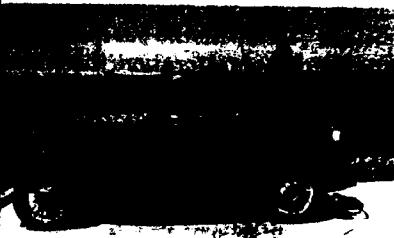
1965 Chevelle Malibu Super Sport Hardtop No.2 condition-complete restoration of a solid hard to find body style. 283 V8 auto transmission. Roman Red paint. White interior, never any dents or fillers asking \$7,500. May consider "partial" interesting trade. Gene Beban, 24200 Walnut St. (Space 22), Lomita, CA 90717-1246; (310) 530-6879.



1960 Sedan Delivery with factory tri-power 348, 4-speed transmission and heavy duty posi-track rear end. This very unusual muscle car is in showroom fresh, top Concours condition and must be seen to be appreciated. Only \$18,500; Gary Almeida, Turlock, CA 95380; (209) 667-7828 (days) and (209) 632-1239 (evenings).



1940 4-door Special Deluxe Sedan 63,550; original miles, very good unrestored, condition, all buttons, knobs, handles and latches are original, no rust broken glass or lights. Front brake cylinder leaks "new brakes", I have a heart condition and am sure someone out there could take care of and enjoy this vehicle. \$5,500; Dewey Luck, 3455 Snowy Butte Lane, Central Point, OR 97502; (503) 664-7713.



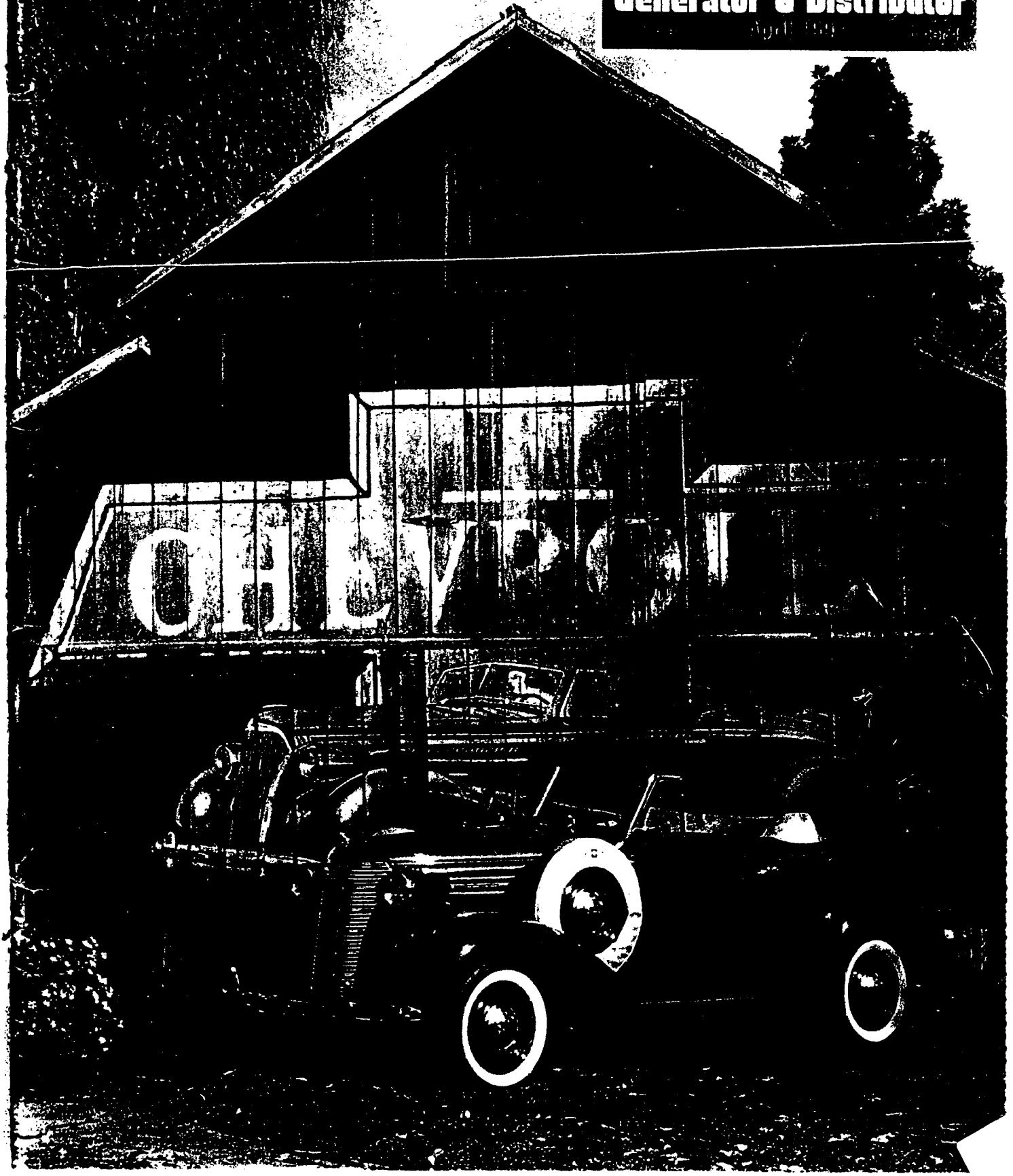
1931 5-window Business Coupe. Older restoration. Runs and drives great. Two tone paint, lower color is a gray/green, upper color is Maple Brown. Black fenders and aprons. Pale yellow wheels and pinstriping. \$9,750 obo. David Ahrens, 14200 Westdale Dr., Bakersfield, CA 93312; (805) 589-4883; Please call before 2:00 pm or on weekends.

1932 Confederate Sedan. Australian Holden body, complete restoration to original Australian specifications. This is an unusual Sedan. Dual sidemounts. White side wall tires. Luggage rack and trunk. All leather trim body red fenders black. Drives very well. Refer photo May 1984 G&D priced at US \$23,500; You pay shipping. Eileen Hall, 180 Andrew Road, Greenbank 4124 Logan City, Old Australia; Phone 07 2970754.



## Generator & Distributor

Aug 1975





June 11, 1999

Dear Mike,

This is a follow-up to my ~~last~~ phone call to your voice mail on June 7, 1999 at 9:20 P.M. EST. Since you have not replied back in any manner I find it necessary to ~~send~~ you this information.

As of June 7, 1999, since vehicles have not been paid in full, outside storage was begun at ~~10.00~~<sup>0\*</sup> per day, as shown by enclosed photos.

Please be advised that as of June 30, 1999, if vehicles are not paid in full, and removed from our property, the vehicles will be put up for resale and you will forfeit your payments already made.

This will be your final notice on this matter.

Sincerely,

Mrs. Merrill (Ruth) Jones

June 11 1999

Mr. Michael Trejo

250 W. MAIN ST. SANTA PAULA, CA 93060

**ALL SALES FINAL — NO RETURN OF ANYTHING  
IN ACCOUNT WITH**

# JONES' SALVAGE

**PHONE: HOUTZDALE 378-5037      SMOKE RUN, PA.**

1 1939 4 Door Chevy SLANT BACK  
Restored

1 1939 4 Door Chevy SLANT  
BACK - UNrestored

1 Wells Cargo TRAILER

Storage At \$10.00 For All  
three vehicles per Day  
starting JUNE 11, 1999.

RONALD E. ARCHER  
ATTORNEY AT LAW  
711 HANNAH STREET  
HOOTZDALE, PA. 16651  
814 - 378-7641  
FAX 814 - 378-5558

October 21, 1999

Mr. Michael Trejo  
250 West Main Street  
Santa Paula, CA 93060

**Re: Vehicle sale from Merrill Jones**

Dear Mr. Trejo:

I have been contacted by Merrill Jones concerning the sale of one restored 1939 4-door Chevrolet slant-back automobile, one unrestored 1939 4-door Chevrolet slant-back automobile, and one Wells cargo trailer.

Mr. Jones informed me that the sale of the above vehicles was negotiated and agreed upon in about 1993. The agreed upon price was \$40,000.00, and the final payment was made on June 30, 1999. Mr. Jones did not charge any interest on the amount due, nor did he charge any storage fees during that six-year period.

Mr. Jones acknowledges that he has now received the full amount due for the vehicles. The vehicle titles are ready to be transferred to you as soon as you make the arrangements to remove the vehicles from Mr. Jones' property.

I have enclosed copies of the letters from Mr. Jones to you in which he informed you that he has cancelled insurance on the vehicles, and that a daily storage rate of \$10.00 per day began to accrue in June of 1999. I have enclosed a photograph showing that the vehicles are currently being stored outdoors on Mr. Jones' property.

Mr. Jones has placed his real estate up for sale, and negotiations have been ongoing with prospective purchasers of his real estate. I am certain that whoever purchases the property will want the vehicles moved from the property.

I am requesting that within 15 days of receipt of this letter you either make arrangements to have the vehicles delivered to you in California or that you make arrangements to store them at another location in the area. It would appear to be in your best interest to have the vehicles in your possession and to protect your investment in the vehicles from the harsh winter weather we experience in this area of Pennsylvania.

I would appreciate you contacting me upon receipt of this letter so that we may discuss the best way to resolve this matter.

Yours truly,

*Ronald E. Archer*

Ronald E. Archer

REA:ps  
Enclosures  
cc: Merrill Jones

Exhibit 4

November 10, 1999

Michael Trejo  
250 W. Main St.  
Santa Paula, Calif 93060.  
805-525-1371

Ronald E. Archer  
Attorney At Law  
711 Hannah St.  
Houtzdale, Pa. 16651

**Re: Purchase of vehicles and trailer from Merril Jones**

Dear Mr. Archer:

I received your letter concerning the purchase of the vehicles and the trailer on October 30, 1999. Mr. Archer, I made every effort on my part to pay these vehicles off as soon as possible. Unfortunately it was beyond my control to get this done sooner. Mr. Jones and I agreed to this deal a few years ago, and Mr. Jones had put these vehicles up for sale when I was not able to complete this deal as quickly as we would have liked. There was no one else interested in making this deal, so he has very patiently waited. The original deal was that Mr. Jones would "deliver" the Wells Cargo trailer with the restored 1939 Chevrolet Slantback inside, to meet me as far west as Colorado, which made the deal all the more enticing. Mr. Jones also stated that the vehicles were in safe keeping and would be in the spot I last saw them. Which was stored inside and out of the weather. In the process Mr. Jones had some health problems and Mrs. Jones has changed the original deal and demanded they be off the property, and is charging for rental space. That was not part of the deal I made with Mr. Jones, we do not feel that there should be a charge for rental space on these items. We would also like to let Ruth and Merrill know that I honestly appreciate the fact that they were very patient with us, and to understand that I tried everything in my power to get this matter resolved, however due to my own health problems which occurred, it was physically and financially unavoidable. We are currently and have been working to get these vehicles and trailer to my premise, obviously it hasn't been as easy a process as some people might think, common sense would dictate that we did not invest the money and efforts to leave the vehicles and trailer in Pennsylvania. We need to resolve the matter of the removal of the rental charges and possibly some help in the transportation fee for the unrestored vehicle as Mr. Jones' health no longer enables him to bring the restored 1939 and the trailer to Colorado, it only makes it harder for us to resolve this matter. We are working on getting enough money together to get these vehicles home.

Please advise us as to how to best resolve this matter.

Respectfully,  
  
Michael Trejo

December 22, 1999

93060

Michael Trejo  
250 W. Main St.  
Santa Paula, Calif

805-525-1371

Ronald E. Archer  
Attorney At Law  
711 Hannah St.  
Houtzdale, Pa. 16651

**Re: Proposal for the removal and transport of vehicles and trailer from Merril Jones home in Pennsylvania to the home of Michael Trejo in California.**

Mr. Archer, per our conversation yesterday, I am sending you the information you requested and a copy of the ad that Merrill Jones placed in a magazine.

First and foremost, we need to resolve the matter of the removal of the rental fees, as stated before, that was not part of the original deal with Merrill Jones and that is a deterrent in being able to remove the vehicles and trailer as soon as possible, it only makes it harder for us to resolve this matter.

We would like to have the 1939 restored Chevrolet slantback, the Wells Cargo trailer and the unrestored 1939 Chevrolet slantback that we have purchased from Merrill Jones removed by Saturday January 1, 2000.

Since all three are going to the same address, we have found a transport company that is willing to bring all three for the total cost of \$2550.00. We calculate the amount of \$1500.00 approximately would be the cost of transporting the Wells Cargo Trailer and the 1939 restored Chevrolet slantback from Pennsylvania to Colorado, which is what had been agreed to with Merrill Jones.

Enclosed is a copy of an ad placed by Merrill Jones in which he states that he would deliver the vehicle as far west as Colorado on the package deal.

Also we would like the Easel mounted showroom sales Display Book that displays the Slantback models, to be shipped separately. I will pay shipping and handling charges plus insurance fee.

I need simple directions to give the transport company and the address where vehicles are at. I also need the name, address and phone number of who they should contact to make arrangements for the removal and transport of the vehicles and trailer.

We are currently and have been working to get these vehicles and trailer to my premise, I hope to hear from you as soon as possible so that this matter can be resolved.

Respectfully,

Michael Trejo

Exhibit 6

DECEMBER 24, 1999

MICHAEL TREJO  
250 W. MAIN ST.  
SANTA PAULA, CA. 93060  
805-525-1371

TO: BOB AND SHANNON CRISLIP;

HERE IS THE DESCRIPTION OF THE VEHICLES WE WOULD LIKE TRANSPORTED.

1939 CHEVROLET BEIGE SLANTBACK RESTORED IS APPROX. 2900 LBS.

1939 CHEVROLET BLACK SLANTBACK UNRESTORED WITH PARTS INSIDE (2 REAR FENDERS, A BUMPER AND ADDITIONAL MISC. PARTS) IS ALSO APPROX. 2900 LBS.

WELLS CARGO ENCLOSED TRAILER IS WHITE WITH OCCASIONAL ORANGE STRIPES AT PERIMETER IS APPROX. 24' LONG, 96" WIDE AND 9' TALL.

THE VEHICLES AND TRAILER ARE IN A SMALL COMMUNITY CALLED SMOKE RUN, PENNSYLVANIA. IT IS NORTH OF ALTOONA, PENNSYLVANIA.

I AM IN THE PROCESS OF OBTAINING THE SIMPLE DIRECTIONS. I WILL FAX THEM TO YOU AS SOON AS I RECEIVE THEM. IT MAY TAKE A LITTLE TIME BECAUSE OF THE HOLIDAY.

MY NAME, ADDRESS AND PHONE NUMBER ARE AT THE TOP OF THIS LETTER. THE EASIEST WAY IF YOU ARE USING THE 5 FREEWAY IS TO GO WEST ON HIGHWAY 126, IT IS JUST

5 MINUTES NORTH OF SAUGUS, CALIFORNIA WHICH IS WHERE MAGIC MOUNTAIN IS.

SHOULD THERE BE ANY ADDITIONAL QUESTIONS PLEASE CALL ME,

MICHAEL TREJO  
805-525-1371 (HM)  
805-552-9773 (PGR)

Exhibit 7  
8000000000

# kinko's

Express Yourself.

## fax cover sheet

Kinko's of Ventura • Telephone: (805) 339-2000 • Fax: (805) 339-2039 • E-mail: usa5003@kinkos.com

Date December 24, 1999

Number of pages 2 (including cover page)

to: Name Bob & Shannon Crislip  
Company Auto Transport  
Telephone (530) 945-9633  
Fax (580) 225-2912

from: Name MICHAEL TREJO  
Company —  
Telephone (805) 525-1371  
(805) 552-9773 (PGR)

Comments

RE: TRANSPORT OF "2" 1939 CHEVROLET'S AND  
"1" WELLS CARGO ENCLOSED AUTO TRAILER, FROM  
PENNSYLVANIA TO CALIFORNIA —

VOTE: SHANNON, PLEASE CALL ME TO VERIFY RECEIVING  
THIS FAX. THANK YOU - "MIKE"

More than 900 locations worldwide. For the location nearest you, call 1-800-2-KINKOS. Visit our Web site at [www.kinkos.com](http://www.kinkos.com).

January 24, 2000

Michael Trejo  
250 W. Main St.  
Santa Paula, Calif 93060  
805-525-1371

Ronald E. Archer  
Attorney At Law  
711 Hannah St.  
Houtzdale, Pa. 16651

**Re: Purchase of vehicles and trailer from Merrill E. Jones**

Dear Mr. Archer:

I spoke with you on December 31, 1999 and you told me you were going to send me a letter with a proposal, promissory note or information as to a possible solution for getting this matter resolved, since the transport company I had waiting in Pennsylvania to pick up the vehicles and Wells Cargo Trailer were not able to be picked up on January 1, 2000 as I had planned to do, because you say that Merrill Jones did not want to release the vehicles and trailer because he wants rental fees. As of yet I have not received the letter you said you would be sending on Monday or Tuesday, January 3rd or 4th, 2000. I want to resolve this matter as soon as possible, however I am not able to do so without you sending me information in writing as to what needs to be done to get this taken care of. I have been waiting to hear from you, as I was trying to resolve this matter by the date of January 15, 2000 as you had stated. I would appreciate receiving your response as soon as possible.

Respectfully,  
  
Michael Trejo

c-Merrill E. Jones

**Offices of Philip L. Zulli, Esquire**

**1501 North Front Street**

**Harrisburg, Pennsylvania 17102**

**Philip L. Zulli, Esquire**  
(717) 238 - 9004

**Fax (717) 238 - 9010**

**Timothy P. Keating, Esquire**  
(717) 234 - 5911

January 22, 2001

Via Fax: 814 - 378 - 5558  
and U.S. 1<sup>st</sup> class mail

Ronald E. Archer, Esquire  
711 Hannah Street  
Houtzdale, PA 16651

**Re: Merrill Jones – Michael Trejo Purchase Contract for two 1939 Vehicles  
and Wells cargo trailer and easel mounted sales display book for 1939  
Chevrolet slant-backs**

Dear Mr. Archer:

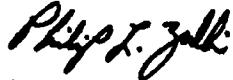
I am writing because I have not yet heard from you regarding the amount of storage fees requested by Mr. Jones, or the condition of the restored 1939, 4-door Chevrolet slant-back automobile. Although my previous letter only mentioned the two 1939 automobiles, my client has reminded me, and I thus mention that the \$40,000 purchase price (now paid for more than one year) included an enclosed Wells cargo trailer and an easel-mounted sales display book for the 1939 Chevrolet slant-backs.

My client is feeling quite insecure at this point, because he has received a report from a fellow auto enthusiast that your client has been trying to sell these vehicles. I certainly hope that this report is not true. Given that your client has accepted full payment for these vehicles, including the trailer and display book, to now sell them to someone else would be a serious matter indeed. Therefore, I urgently request that you promptly provide me with written assurance that Mr. Jones 1) still has possession of these vehicles, 2) has not sold them to anyone else, and 3) has no intention of selling them to anyone other than Mike Trejo.

With respect to the known point of contention, my client's view is that the cost of storage was included with the deal for \$40,000. Nonetheless, please promptly advise of the amount of your client's claim for storage costs, because settlement may be more expedient than litigation. In any event, my client has fulfilled the terms of the original contract and demands possession of the vehicles, trailer and easel-mounted display book.

Thank-you for your attention to this matter. Please contact me by Wednesday, January 24, 2001. Please note, though, that I will be in court all day and not available Monday, January 22, 2001.

Very truly yours,



Philip L. Zulli, Esquire

cc: Mr. Michael Trejo

---

1-877-TRUCLAW

1-877-878-5529

Zulli@msn.com

1-877-4-CARLAW

1-877-422-7529

---

Exhibit 9

**Law Offices of Philip L. Zulli, Esquire  
1501 North Front Street  
Harrisburg, Pennsylvania 17102**

**Philip L. Zulli, Esquire  
(717) 238 - 9004**

**Fax (717) 238 - 9010**

**Timothy P. Keating, Esquire  
(717) 234 - 5911**

**June 29, 2001**

**Via fax: 814-378-5558**

**Ronald E. Archer, Esq.  
711 Hannah Street  
Houtzdale, PA 16651**

**Re: Jones-Trejo dispute  
Demand for possession; offer of settlement on storage fees**

**Dear Mr. Archer:**

As you know, your client Merrill Jones made an agreement with my client Michael Trejo in 1993 for the purchase of two 1939 automobiles and a cargo trailer and an easel-mounted sales display book for the 1939 Chevrolet slant back automobiles. The agreed upon purchase price was \$40,000. Mr. Jones agreed that Mr. Trejo would be able to pay for the vehicles over a period of time. When the vehicles were paid for in full, Mr. Jones would deliver the vehicles and the trailer as far as Colorado. The easel-mounted display book would be sent by postal courier. Storage charges were never part of the deal.

The letter dated June 11, 1999, mailed to Mr. Trejo and addressed to "Mike" insisting that storage fees have already started to accrue was from Mrs. Ruth Jones and not from Mr. Jones. Mrs. Jones was not a party to the contract, and, in my view, had no authority to unilaterally alter the contract Mr. Trejo entered with Mr. Jones. Your letter dated October 21, 1999, was the first letter, in my view, that had authority to speak on behalf of Mr. Jones.

I still dispute that Mr. Jones had or has any authority to unilaterally alter a contract that he had previously entered with Mr. Trejo. That Mr. Jones never raised a note of protest about how long it was taking Mr. Trejo to pay off the vehicles until the summer of 1999, indicates to me a course of dealing that demonstrates that the parties knew it would take several years for Mr. Trejo to pay for the vehicles in full. Furthermore, that the question of storage fees was never raised during all this time, demonstrates in my view that the parties' original intention at the time of the formation of the contract was not to charge storage fees. Whether storage fees are warranted is not relevant to the legal principle that the payment of storage charges was not part of the original contract, and that Mr. Jones was without legal authority to unilaterally alter the contract after formation and a course of dealing involving several years of non-collection or request for the payment of storage fees.

On the other hand, I am not unmindful that Mr. Jones was extremely patient, and I fully understand his frustration that Mr. Trejo took as long as he did to pay off the vehicles, notwithstanding that Mr. Jones never established a deadline for the full payment of the vehicles.

Please also consider that Mr. Jones' refusal or inability to follow through on his original agreement to deliver the vehicles and trailer as far as Colorado requires Mr. Trejo to incur additional costs of approximately \$2500 beyond the original intent and terms of the contract. Furthermore, when

Mr. Archer  
June 29, 2001  
Page two

Mr. Trejo hired his own transporter at his own expense and tried to take delivery of the vehicles, your client or Mrs. Jones refused to allow the transporter to take delivery of the vehicles on behalf of Mr. Trejo. Consequently, your client could have mitigated his damages at that time by letting Mr. Trejo take delivery of the vehicles, and then sue him for the storage fees that he believed Mr. Trejo owed him. Instead, while protesting that he wanted the vehicles removed from his property, Mr. Jones kept the vehicles on his property and increased his alleged damages due to the unilaterally imposed daily storage charges.

While I appreciate that the Jones may feel that they are entitled to some compensation for the energy expenses that they incurred in housing these vehicles within an enclosed building, I do not believe that amount equals the \$6,330 they are demanding in storage fees.

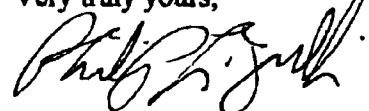
Assuming for the sake of argument, that your client is entitled to storage fees, even though the payment of storage fees was not part of the original contract, I believe Mr. Trejo is entitled to a set off for having to now pay for the total cost of transporting these vehicles from Pennsylvania to California and for the mitigation that would have occurred if he had been allowed to take delivery of these vehicles in 1999.

With all of the foregoing in mind, I have prevailed upon my client to agree to pay \$2000 in storage fees. This amount will be paid by certified funds, in some form acceptable to your client, upon Mr. Trejo (or his agent) taking delivery of the vehicles in Pennsylvania, and prior to departing with them for California. Mr. Trejo is ready, willing and able to take possession of these vehicles almost immediately, and hereby makes final demand for possession.

I request that we get this matter resolved now. Considering that my client has paid your client \$40,000, I cannot see how a court of law would not take a dim view of your client's refusal to now allow Mr. Trejo to take possession of the vehicles, which you and your client acknowledge that he has paid for in full.

I request that you communicate this offer to your client immediately, and communicate his reply to me by Monday, July 2, 2001. In any event, I will commence a civil action in the Court of Common Pleas on Friday, July 6, 2001, unless I receive written acceptance of Mr. Trejo's offer of settlement.

Very truly yours,



Philip L. Zulli, Esquire

cc: Mr. Michael Trejo

VERIFICATION

*Answer with new matter*  
The undersigned having read the foregoing Complaint states that the language within is true and correct to the best of the undersigned signer's knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 of the Crimes Code (relating to unsworn falsification to authorities).

January 28, 2002  
October 29, 2002

Michael Trejo  
Michael Trejo

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
COMMONWEALTH OF PENNSYLVANIA

<b>MERRILL JONES and RUTH JONES, his wife, and JONES AUTO SALVAGE a/k/a JONES SALVAGE, Box 153 Smoke Run, Pennsylvania 16681</b>	: No.: 2002-1456-CD
	:
	:
	:
<b>Plaintiffs</b>	<b>CIVIL ACTION – LAW</b>
	:
	:
<b>v.</b>	:
	:
<b>MICHAEL TREJO 250 West Main Street Santa Paula, California 93060-3247</b>	:
	:
	:
<b>Defendant</b>	:

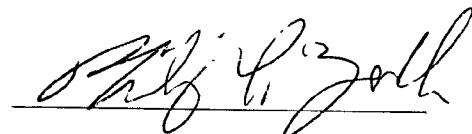
**CERTIFICATE OF SERVICE**

I, PHILIP L. ZULLI, ESQUIRE, certify that I have served a copy of the Answer with New Matter, on this date by Federal Express overnight delivery service on December 19, 2002, and United States First Class Mail on December 20, 2002, to the following parties:

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651

Attorney for Plaintiffs

DATED: December 19, 2002



Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

FILED

DEC 20 2002

M 12:20 PM

William A. Shaw  
Prothonotary

1 CENT TO BETTY

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Reply to New Matter  
vs. : and Counterclaims  
MICHAEL TREJO, : Filed on behalf of:  
Defendant : Plaintiffs  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

JAN 12 2003

William A. Shaw  
Prothonotary

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: :  
vs. :  
: :  
MICHAEL TREJO, :  
Defendant :  
:

REPLY TO NEW MATTER

AND NOW, comes, MERRILL JONES and RUTH JONES, his wife, and Jones Auto Salvage, also known as Jones Salvage, Plaintiffs, by and through their attorney, Girard Kasubick, Esquire, and files the following Reply to New Matter and Counterclaims:

19. The provisions of Paragraphs 1 through 18 of the Complaint are incorporated herein by reference thereto.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted in part and denied in part. It is admitted that the parties entered into an oral contract to sell the unique goods in the advertisement plus the display book. It is denied that the unique goods were to be delivered "as far West as Colorado". The oral negotiations between Merrill Jones and Michael Trejo resulted in a reduction of the sale price from \$65,000.00 to \$40,000.00, but the oral negotiations also resulted in an agreement between the parties that seller would have no delivery requirements of the unique good and buyer would be solely responsible for obtaining the unique goods and transfer of title. This is further set forth in Paragraph 7 of Plaintiff's Complaint which is incorporated herein by reference thereto. It is admitted the oral agreement resulted in a \$40,000.00 sale price in return for no delivery requirements by seller. It is admitted that no specific time for payment was set, but a reasonable time was implied. It is admitted that Merrill Jones was to preserve the vehicles and keep them indoors.

28. Admitted in part and denied in part. It is admitted storage costs were not discussed in April, 1993 as part of the oral contract. It is denied that Merrill

Jones never requested storage fees because he did so through his attorney-in-fact, agent, and business manager, Ruth Jones, who had authority to do so by Merrill Jones, by letter and statement dated June 11, 1999, being Exhibit 3 to Defendant's Answer, New Matter and Counterclaim. The payment of storage costs requested by June 11, 1999 letter and statement is for damages for breach for failure to pay the purchase price after more than six (6) years under the oral contract and for failure to remove the unique goods after payment in full was received by Plaintiffs.

29. Admitted in part and denied in part. It is admitted the Plaintiffs accepted the check and payments. It is denied the Plaintiffs never complained, because the Plaintiffs attempted to contact Defendant by phone numerous times over the years, but Defendant would rarely respond to messages and when he did he usually did not have money, but hoped to send some soon. Defendants Exhibit 3 to Answer, New Matter, and Counterclaim states that Plaintiff, Ruth Jones, attempted to contact Defendant, but received no response.

30. Admitted. In further reply, Plaintiffs business did do other types of business also.

31. Denied. It was between Merrill Jones and Jones Auto Salvage a/k/a Jones Salvage who were the owners of the unique goods, but Merrill Jones was the sole proprietor of Jones Auto Salvage a/k/a Jones Salvage.

32. Admitted.

33. Admitted. By further reply, said letter was sent with full knowledge by Merrill Jones and with his authorization and with Ruth Jones acting as attorney-in-fact, agent, and business manager.

34. Admitted in part and denied in part. It is admitted Defendant remitted final payment on June 30, 1999 and Plaintiffs received and credited this final payment on July 3, 1999. It is denied that Defendant was ready and willing to receive the unique goods at that time. Attached hereto and marked Exhibit "A" is the June 30, 1999 letter of Defendant and copies of the check and money order payments with said letter. The letter requests the title of the vehicles and trailer, but makes no mention of a time or place in Colorado to arrange for a delivery, although Plaintiffs denies deliver to Colorado was a term of the oral contract as is set forth in Paragraph 27 above which is incorporated herein by reference thereto. The Plaintiffs were not contacted in

anyway by Defendant from date of letter of June 30, 1999 until Plaintiff's attorney received the letter of November 10, 1999 from Defendant in response to Plaintiff's attorney letter of October 21, 1999, being Exhibits 4 and 5 of Defendant's Answer, New Matter, and Counterclaim.

35. Admitted.

36. Admitted.

37. Denied. The contract clearly was not the written advertisement as the Defendant admits that the sale price was \$40,000.00 not the \$65,000.00 stated in the written advertisement. It is further denied that the oral contract required any delivery of the unique goods "as far West as Colorado" as is set forth in Paragraph 7 of the Plaintiff's Complaint and as is set forth in Paragraph 27 of this Reply to New Matter, both of which are incorporated herein by reference thereto.

38. Admitted in part and denied in part. It is admitted Defendant sent the November 10, 1999 letter to Attorney Archer. It is denied that the oral contract required delivery "as far West as Colorado" as is set forth in Paragraph 7 of Plaintiff's Complaint and Paragraph 27 of this Reply to New Matter both of which

are incorporated herein by reference thereto. By further reply in this letter, Defendant admits he was not diligent in completing the oral contract "as quickly as we would have liked". Also, Defendant states that he had physical and financial problems that resulted in the delay to complete the oral contract. It is admitted the vehicles were to be stored indoors and they have been.

39. Admitted in part and denied in part. It is admitted Defendant sent the December 22, 1999 letter to Attorney Archer. It is admitted as to the request and statements made in this letter. It is denied that the statements and requests made in said letter concerning the delivery requirements are conditions to be performed by Plaintiffs under the oral contract, because the oral contract placed all delivery requirements on Defendant.

40. Denied. After reasonable investigation Plaintiffs herein are without personal knowledge, information or belief as to the truth of this averment and proof thereof is demanded.

41. Denied. After reasonable investigation Plaintiffs herein are without personal knowledge, information or belief as to the truth of this averment and proof thereof is demanded. By further reply it is

admitted Plaintiffs would have been demanding storage fees at this time.

42. Denied. The Plaintiffs have never had any contact from anyone representing Auto Transport Company on January 1, 2000 or any date prior or after this date. The Plaintiffs have no knowledge of anyone from Auto Transport Company being in Smoke Run, Pennsylvania on January 1, 2000 or any date near that date. The Plaintiffs have no knowledge that Ronald Archer, Esq., their attorney at that time, made any refusal to Auto Transport Company or its agents in Smoke Run, Pennsylvania on January 1, 2000, or any date near that date and proof thereof is demanded.

43. Admitted in part and denied in part. It is admitted Plaintiff Merrill Jones has refused to deliver the unique good "as far West as Colorado". It is denied that delivery "as far West as Colorado" was a part of the oral contract in April 1993 as set forth in Paragraph 7 of the Plaintiff's Complaint and as set forth in Paragraph 27 of this Reply to New Matter, both of which are incorporated herein by reference thereto.

44. Admitted in part and denied in part. It is admitted the Defendant sent the January 24, 2000 letter

to Attorney Archer. It is denied as to the content of the telephone conversation between Defendant and Attorney Archer on December 31, 1999, because Plaintiffs have no knowledge of said conversation and proof thereof is demanded.

45. Admitted in part and denied in part. It is admitted that Plaintiffs would have received the purchase price and would have requested storage fees on January 10, 2001. It is denied the attorneys conversed on that date, because Plaintiffs have no knowledge of said conversation and proof thereof is demanded.

46. Admitted.

47. Admitted in part and denied in part. It is admitted that the vehicles are in Plaintiff's possession and have not been sold to anyone else, however whether Attorney Archer assured Defendant's Counsel of this sometime after January 22, 2001 is unknown to Plaintiffs and Plaintiffs have no knowledge of this and proof thereof is demanded.

48. Admitted in part and denied in part. It is admitted Defendant's attorney sent to Attorney Archer the letter of June 29, 2001 and that the letter made an offer to resolve matters. It is admitted that Plaintiffs have

not surrendered the vehicles, but Plaintiffs would surrender the vehicles upon payment of the \$10.00 per day storage from June 11, 1999 and arrangements of a specific date upon which Defendant made arrangements to pick up the vehicles and transfer titles. The provisions of June 29, 2001 letter of Defendant's attorney as to the interpretation of the oral contract are denied as have been previously denied in Plaintiff's Complaint and this Reply to New Matter all of which is incorporated herein by reference thereto. It is denied that Defendant or his agents have ever presented themselves at Plaintiff's residence or place of business in Smoke Run, Pennsylvania at which time Plaintiffs refused to surrender the vehicles.

49. Denied. Defendant or his proper transporting agents have never presented themselves to Plaintiffs in Smoke Run, Pennsylvania wherein Plaintiffs refused to surrender the unique goods. If Defendant or his proper transporting agents were ever in Smoke Run, Pennsylvania they never talked to Merrill Jones or Ruth Jones. Furthermore, the Defendant or his transporting agents never informed Plaintiffs of a specific date they would be in Smoke Run, Pennsylvania.

50. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

51. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

52. Denied. This paragraph is denied as is set forth in Paragraph 7 of the Plaintiff's Complaint and Paragraph 27 of this Reply to New Matter, both of which are incorporated herein by reference thereto.

53. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

54. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

55. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

56. Denied. The Defendant has preserved the unique goods and requests storage fees for failure of Defendant to remove the unique goods as per the oral contract as is set forth in the Plaintiff's Complaint and Reply to New Matter all of which is incorporated herein by reference thereto.

57. Admitted, however it is denied that the terms of the contract included delivery to Colorado as is set forth in Paragraph 7 of the Plaintiff's Complaint and

Paragraph 27 of Plaintiff's Reply to New Matter both of which are incorporated herein by reference thereto.

58. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

59. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

**REPLY TO COUNTERCLAIMS**

**COUNT 1 - REPLEVIN**

60. The provisions of Paragraph 1 through 59 of the Complaint and Reply to New Matter of Plaintiffs are incorporated herein by reference thereto.

61. Admitted.

62. Denied. Although the purchase price of the unique goods was \$40,000.00, the Plaintiffs believe an appraised value may be a different figure, and this paragraph is further denied as a conclusion of law or fact for which no responsive pleading is required.

63. Admitted.

64. Admitted.

WHEREFORE, Plaintiffs requests your Honorable Court to enter judgment in favor of Plaintiffs and against Defendant for Defendant to pay storage fees of Ten

(\$10.00) Dollars per day, plus cost and attorney fees, after which Defendant can obtain the unique goods at his costs in Smoke Run, Pennsylvania.

**COUNT 2 - BREACH OF CONTRACT**

65. The provisions of Paragraph 1 through 64 of the Complaint and Reply to New Matter of Plaintiffs are incorporated herein by reference thereto.

66. Denied. This is a conclusion of law or fact for which no responsive pleading is required. By further denial the Defendant, nor any agent of his has appeared at Plaintiff's residence or business to best of Plaintiff's knowledge to obtain the unique goods since Defendant had the duty of delivery under the oral contract.

67. Denied. This is a conclusion of law or fact for which no responsive pleading is required. By further denial Plaintiff has not breached the oral contract, because there was no delivery requirement and Defendant has not made any specific attempt to remove unique goods. Plaintiffs seek storage fees as damages for failure of Defendant to obtain unique goods.

68. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

69. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

WHEREFORE, Plaintiffs requests your Honorable Court to enter judgment in favor of Plaintiffs and against Defendant for Defendant to pay storage fees of Ten (\$10.00) Dollars per day, plus cost and attorney fees, after which Defendant can obtain the unique goods at his costs in Smoke Run, Pennsylvania.

**COUNT 3 - FRAUD**

70. The provisions of Paragraph 1 through 69 of the Complaint and Reply to New Matter of Plaintiffs are incorporated herein by reference thereto.

71. Denied. Plaintiffs never agreed to deliver the unique goods "as far West as Colorado" as is set forth in Paragraph 7 of Plaintiff's Complaint and Paragraph 27 of this Reply to New Matter, both of which are incorporated herein by reference thereto.

72. Denied. Plaintiffs have still preserved the unique goods for Defendant and have not deceived or defrauded Defendant. After six (6) years, Defendant

still had not paid for unique goods in full and Plaintiffs sought storage fees for preserving the unique goods until Defendant paid in full and until Defendant came to Pennsylvania to obtain the unique goods since Plaintiff had no delivery requirements under the oral contract. To the best of Plaintiffs knowledge neither Defendant nor his agents have ever been to Smoke Run, Pennsylvania for pick-up of the unique goods and Plaintiffs are still preserving them for storage costs.

73. Denied. This is a conclusion of law or fact for which no responsive pleading is required. The reply to Paragraph 72 above is incorporated herein by reference thereto.

74. Denied. This is a conclusion of law or fact for which no responsive pleading is required. The reply to Paragraph 72 above is incorporated herein by reference thereto.

75. Denied. This is a conclusion of law or fact for which no responsive pleading is required. The reply to Paragraph 72 above is incorporated herein by reference thereto.

76. Denied. This is a conclusion of law or fact for which no responsive pleading is required. The reply

to Paragraph 72 above is incorporated herein by reference thereto.

WHEREFORE, Plaintiffs requests your Honorable Court to enter judgment in favor of Plaintiffs and against Defendant for Defendant to pay storage fees of Ten (\$10.00) Dollars per day, plus cost and attorney fees, after which Defendant can obtain the unique goods at his costs in Smoke Run, Pennsylvania.

**COUNT 4 - FALSE ADVERTISEMENT**

77. The provisions of Paragraph 1 through 76 of the Complaint and Reply to New Matter of Plaintiffs are incorporated herein by reference thereto.

78. Denied. The Plaintiff Merrill Jones was willing to transport the unique goods "as far West as Colorado" for the advertised price of \$65,000.00. The Defendant was not willing to pay \$65,000.00 and the parties negotiated a reduction in sale price in return for no delivery requirements by Merrill Jones. The unique goods are as advertised in the publication and there is no misrepresentation. Defendant obtained a better deal than the advertisement since Defendant would only be spending \$40,000.00 to purchase, plus \$2,500.00

(as set forth in Counterclaim) for transporting costs or a total of \$42,500.00, instead of \$65,000.00 to purchase, plus transporting costs from Colorado to California for a total greater than \$65,000.00.

79. Denied. No deception occurred. The unique goods represented are as advertised. The terms for purchase were not deceptive because Plaintiff, Merrill Jones would of accepted them. A better financial deal to the buyer than as advertised is not a deceptive practice as set forth in Paragraph 78 above which is incorporated herein by reference thereto.

80. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

81. Denied. This is a conclusion of law or fact for which no responsive pleading is required. The Reply to Paragraphs 78 and 79 are also incorporated herein by reference thereto.

WHEREFORE, Plaintiffs requests your Honorable Court to enter judgment in favor of Plaintiffs and against Defendant for Defendant to pay storage fees of Ten (\$10.00) Dollars per day, plus cost and attorney fees, after which Defendant can obtain the unique goods at his costs in Smoke Run, Pennsylvania.

COUNT 5 - INTENTIONAL INTERFERENCE  
WITH CONTRACTUAL RELATIONS

82. The provisions of Paragraph 1 through 81 of the Complaint and Reply to New Matter of Plaintiffs are incorporated herein by reference thereto.

83. Admitted in part and denied in part. It is admitted a contract existed and as to the content shown in Attorney Ronald Archer's letter of October 21, 1999. It is denied that Plaintiffs had any obligations of delivery of unique goods to Defendant as set forth in Paragraph 7 of the Complaint and Paragraph 27 of the Reply to New Matter, both of which are incorporated herein by reference thereto. Attorney Archer's letter does state that Defendant is to arrange for delivery or storage to another location.

84. Denied. Ruth Jones was agent, business manager for Merrill Jones and his business and attorney-in-fact for Merrill Jones, individually, and she had full authority to act on behalf of Merrill Jones. Ruth Jones was acting with knowledge of Merrill Jones and with consent of Merrill Jones for breach by Defendant to make payment of \$40,000.00 for unique goods within a

reasonable time, since more than six (6) years had past under the oral contract.

85. Denied. Plaintiff, Ruth Jones, never spoke with or met with any employee or agent of Auto Transport Company on January 1, 2000 or on any other date and never refused any delivery and possession of the unique goods on January 1, 2000 or on any other date to Auto Transport Company.

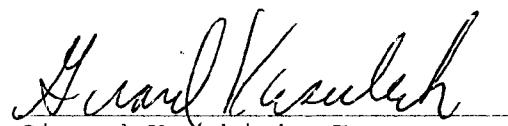
86. Denied. Ruth Jones had full authority to act for Merrill Jones and his business under the oral contract as his agent, business manager, and attorney-in-fact.

87. Denied. It is denied that Plaintiff, Merrill Jones, had not complained or protested about the payments made by Defendant. The Plaintiff attempted to contact Defendant by phone numerous times over the year, but Defendant would rarely respond to messages and when he did he usually did not have money but hoped to send some soon. Defendant refused to claim certified mailing to him sent by Plaintiffs at times also. It is further denied that Ruth Jones had no right on authority to act for Merrill Jones as is set forth in Paragraph 86 of this reply which is incorporated herein by reference thereto.

88. Denied. The replies in Paragraph 84, 85, 86, and 87 are incorporated herein by reference thereto. Furthermore, this is a conclusion of law or fact for which no responsive pleading is required.

89. Denied. This is a conclusion of law or fact for which no responsive pleading is required.

WHEREFORE, Plaintiffs requests your Honorable Court to enter judgment in favor of Plaintiffs and against Defendant for Defendant to pay storage fees of Ten (\$10.00) Dollars per day, plus cost and attorney fees, after which Defendant can obtain the unique goods at his costs in Smoke Run, Pennsylvania.



Girard Kasubick  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs

VERIFICATION

I verify that the statements made in the foregoing Reply to New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

Merrill E Jones  
Merrill Jones

Ruth Jones  
Ruth Jones

MERRILL Jones:

June 30, 1999  
MICHAEL TREJO  
250 W. MAIN ST.  
SANTA PAULA, CALIF.  
93060-3247

Enclosed is (are) checks totaling the amount of \$4,000.00, FOUR-THOUSAND DOLLARS. Which along with the \$36,000. THIRTY-SIX THOUSAND DOLLARS already paid totals the \$ 40,000.00 FORTY-THOUSAND DOLLARS for total payment for purchase of the TUSK-IVORY 1939 chevrolet Slant-Back restored vehicle, Black 1939 chevrolet Slant-Back unrestored vehicle, & the Wells Cargo enclosed auto trailer. Please forward to me all titles pertaining to the two(2) vehicles & the trailer. These vehicles & the trailer have been fully paid for -

Respectfully,  
Michael Trejo

Michael Trejo

DO NOT CASH IF THIS DOCUMENT DOES NOT HAVE A LARGE FAINT IMAGE OF THE CREDIT UNION LOGO OVER A FADING PATTERN OF THE CREDIT UNION NAME.



**County Schools**  
**FEDERAL CREDIT UNION**

4551 Market Street, Ventura, CA 93003

18051 644-4657

WESTERN CORPORATE FEDERAL CU  
SAN DIMAS, CALIFORNIA

90-8086  
3222

CHECK NO.

**274949**

DATE	I.D. NUMBER	AMOUNT
06/30/99	199700	2,800.00

PAY: Two Thousand Eight Hundred and no/100 \*\*\*\*\* DOLLARS

PAY TO  
ORDER OF

MERRILL JONES  
RE:MICHAEL TREJO

VOID AFTER NINETY (90) DAYS

County Schools Federal Credit Union

*Jay Waldrup*

TWO SIGNATURES REQUIRED FOR AMOUNTS OVER \$10,000.00

274949 322808678351800003

THE REVERSE SIDE OF THIS DOCUMENT MUST HAVE AN ARTIFICIAL WATERMARK AND COLORED SAFETY PANTOGRAPH. THIS PAPER IS ALTERATION PROTECTED.



## POSTAL MONEY ORDER

15-800  
000

8356558285 190701 130400 \*7.00\*00

SERIAL NUMBER	YEAR, MONTH, DAY	POST OFFICE	U.S. DOLLARS AND CENT
PAY TO <b>MERRILL JONES</b> ADDRESS <b>P.O. BOX 153</b> <b>SMOKERUN, PA. 16681</b> C.O.D. NO. OR USED FOR	CHECKWRITER IMPRINT AREA	FROM <b>MICHAEL TREJO</b> ADDRESS <b>250 W. MAIN ST.</b> <b>SANTA PAULA, CALIF. 93060</b>	<b>8.00</b>

0000008002

83565589285



## POSTAL MONEY ORDER

15-800  
000

8356558285 190701 130400 \*500\*00

SERIAL NUMBER	YEAR, MONTH, DAY	POST OFFICE	U.S. DOLLARS AND CENTS
PAY TO <b>MERRILL JONES</b> ADDRESS <b>P.O. BOX 153</b> <b>SMOKERUN, PA. 16681</b> C.O.D. NO. OR USED FOR	CHECKWRITER IMPRINT AREA	FROM <b>MICHAEL TREJO</b> ADDRESS <b>250 W. MAIN ST.</b> <b>SANTA PAULA, CALIF. 93060</b>	<b>5.00</b>

0000008002

83565589296

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

MERRILL JONES and RUTH JONES,	:	
his wife, and JONES AUTO	:	No.: 2002-1456-CD
SALVAGE, a/k/a JONES SALVAGE,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
MICHAEL TREJO,	:	
Defendant	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I, Girard Kasubick, Esq., forwarded a copy of the Reply to New Matter and Counterclaim to counsel of record listed below by United States mail, postage prepaid on the 10<sup>th</sup> day of January, 2003, at the following address:

Philip L. Zulli, Esq.  
1501 North Front Street  
Harrisburg, PA 17102

  
\_\_\_\_\_  
Girard Kasubick, Esquire,  
Attorney for Plaintiffs

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13074

JONES, MERRILL & RUTH and JONES AUTO SALVAGE

02-1456-CD

VS.

TREJO, MICHAEL

**COMPLAINT**

**SHERIFF RETURNS**

NOW SEPTEMBER 20, 2002, BOB BROOKS, SHERIFF OF VENTURA COUNTY, CA. WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MICHAEL TREJO, DEFENDANT.

NOW OCTOBER 1, 2002 SERVED THE WITHIN COMPLAINT ON MICHAEL TREJO, DEFENDANT BY DEPUTIZING THE SHERIFF OF VENTURA COUNTY, CA. THE RETURN OF SHERIFF BROOKS IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

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**Return Costs**

Cost	Description
37.71	SHFF. HAWKINS PAID BY: ATTY.
40.00	VENTURA CO., CA. SHFF. PAID BY; ATTY.
10.00	SURCHARGE PAID BY; ATTY.

87.71

**FILED**

JAN 22 2003

9:00  
William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

22<sup>nd</sup> Day Of January 2003

CWA

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

So Answers,

Chester A. Hawkins  
by Marilyn Harr  
Chester A. Hawkins  
Sheriff

Lehman & Kasubick/G. Kasubick  
 611 Brisbin St  
 Houtzdale, PA 16651  
 Telephone: (814) 378-7840  
 Attorney for: IN PROPRIA PERSONA

Court of Common Pleas Clearfield Co. PA

Plaintiff: Merrill Jones, Ruth Jones his wife, & Jo

Proof of Service

Defendant: Michael Trejo

Case No. 20021456CD

Hearing: <No Information>

File No. 2002005731

1. At the time of service I was at least 18 years of age and not a party to this action and I served copies of the:

Notice and Complaint,

2. Party served: Michael Trejo

250 W Main St

Santa Paula, CA 93060

3. I served the party named in item 2

a. by personally delivering the copies

(1) on (date): 10/01/2002

(2) at (time): 1:30 PM

4. Notice to the Person Served (on the Summons) was completed as follows:

5. Remarks:

6. Person Serving:

7. Fee for service: \$30.00

Michelle Lyman

Sheriff's Civil Detail

800 South Victoria Avenue Room 101

Ventura, CA 93009

(805) 654-2391

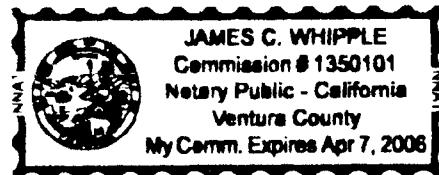
8. I am a California sheriff and I certify that the foregoing is true and correct.

Date: October 2, 2002  
 Jud. Coun. form, rule 982(a)(23)

M. Lyman #2596  
 Sheriff's Authorized Agent  
 Bob Brooks, Sheriff

SUBSCRIBED AND SWORN TO BEFORE ME  
 THIS 4th DAY OF October, 2002  
 BY M. Lyman #2956

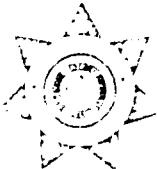
Jan C. Whipple



Court of Common Pleas  
 Clearfield Co. PA  
 Clearfield, PA 16830

Original

18305



# Sheriff's Office Clearfield County

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

CHESTER A. HAWKINS  
SHERIFF

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

Robert Snyder  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

Cynthia Aughenbaugh  
OFFICE MANAGER

PETER F. SMITH  
SOLICITOR

## DEPUTATION

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

MERRILL & RUTH JONES and JONES AUTO SALVAGE al

TERM & NO. 02-1456-CD

VS

MICHAEL TREJO

DOCUMENT TO BE SERVED:

COMPLAINT

**SERVE BY:** ASAP

FILED 9/20/02 Good for 90 days

**MAKE REFUND PAYABLE TO:** LEHMAN & KASUBICK, Attorneys

**SERVE:** MICHAEL TREJO

**ADDRESS:** 250 W. Main St., Santa Paula, CA. 93060

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 VENTURA COUNTY, CA. ~~VENTURA COUNTY~~  
~~PENNSYLVANIA~~ to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 20th Day of September 2002.

Respectfully,

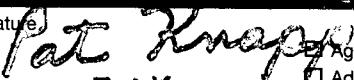
CHESTER A. HAWKINS.  
SHERIFF OF CLEARFIELD COUNTY

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

VENTURA COUNTY SHERIFF  
Attn: Civil Div.  
Room 101  
800 S. Victoria Ave.  
Ventura, CA. 93009

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

Agent

Addressee

**B. Received by (Printed Name)**

Pat Knapp

C. Date of Delivery

**SEP 25 2002****D. Is delivery address different from item 1?  Yes**If YES, enter delivery address below:  No**3. Service Type**

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

**4. Restricted Delivery? (Extra Fee)  Yes****2. Article Number  
(Transfer from service label)****7001 1940 0001 9405 9604**

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

CHESTER A HAWKINS  
Sheriff of Clearfield County  
1 N. 2nd St., Suite 116  
Clearfield, Pa. 16830

13074

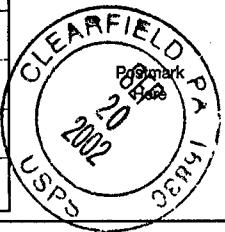
०३

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

4904 4905 4906 4907 4908 4909 4910 4911 4912 4913 4914

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	5.34

2001 1940 0001 0002 0003 0004 0005 0006 0007 0008 0009 0010 0011 0012 0013 0014

*Postmark*  
  
CLEARFIELD PA  
20 2002  
USPS

**Sent To**  
VENTURA COUNTY SHERIFF  
Street, Apt No  
or PO Box No: Civil Division  
Room 101, 800 S. Victoria Ave.  
City, State, ZIP+4  
Ventura, CA. 93009

PS Form 3800, January 2001 See Reverse for Instructions

**IMPORTANT: Save this receipt and present it when making an inquiry.**

For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt Form 3811 to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required. For an additional fee, a Return Receipt may be requested to attach a Return Receipt Form 3811 to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.

For an additional fee, delivery may be requested to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".

For an additional fee, delivery may be requested to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".

For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt Form 3811 to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required. For an additional fee, a Return Receipt may be requested to attach a Return Receipt Form 3811 to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.

NO INSURANCE COVERAGE IS PROVIDED WITH CERTIFIED MAIL. FOR CERTIFIED MAIL IS NOT AVAILABLE FOR ANY CLASS OF INTERNATIONAL MAIL.

CERTIFIED MAIL MAY ONLY BE COMBINED WITH FIRST-CLASS MAIL OR PRIORITY MAIL.

**Important Reminders:**

- A record of delivery kept by the Postal Service for two years
- A signature upon delivery
- A unique identifier for your mailpiece
- A mailing receipt

**Certified Mail Provides:**

4/20/01

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(R 14) 378-7840

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Motion For Sanctions  
: Filed on behalf of:  
vs. : Plaintiffs  
MICHAEL TREJO, : Counsel of Record for  
Defendant : This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

FILED

SEP 03 2003

William A. Shan  
Prothonotary/Clerk of Courts

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: vs. :  
MICHAEL TREJO, :  
Defendant :  
:

**MOTION FOR SANCTIONS**

AND NOW, comes, MERRILL JONES and RUTH JONES, his wife, and Jones Auto Salvage, also known as Jones Salvage, Plaintiffs, by and through their attorney, Girard Kasubick, Esquire, and files the following Motion For Sanctions:

1. The undersigned prepared Written Interrogatories on behalf of the Plaintiffs, a copy of which is attached hereto and marked Exhibit "A".

2. The Written Interrogatories were sent to Defendants attorney by letter dated June 11, 2003, a copy of which is attached hereto and marked Exhibit "B".

3. The Written Interrogatories were mailed to Defendants attorney, Philip L. Zulli, Esq. by Certified

Mail on June 11, 2003, a copy of the Certified Mail Receipt and Return Receipt are attached hereto and marked Exhibit "C".

4. The date of delivery of the Written Interrogatories to attorney Zulli's office on the Return Receipt appears to be June 17, 2003.

5. As of the date of filing this Motion, the Plaintiffs have not received an Objection or Answer to the Written Interrogatories from the Defendant and more than thirty (30) days has lapsed since service of the Interrogatories.

6. Pa. R.C.P. 4006 (a) (2) requires the answering party to file Objections or an Answer within thirty (30) days of service of Written Interrogatories.

7. Plaintiffs hereby requests Sanctions be imposed on the Defendant under PA. R.C.P. 4019 and rule that the Defendant, who is the disobedient party not be permitted to introduce any evidence at trial or hearing on any transport company coming to Pennsylvania or anywhere else to pick up the goods involved in this case and that the witnesses in this case be limited to the Defendant only.

WHEREFORE, Plaintiffs requests your Honorable Court to issue an Order For Sanction against the Defendant that

Defendant cannot introduce any evidence or call witnesses related to attempts to pick-up the goods involved in this case and that his witnesses at trial or hearing be limited to himself.

RESPECTFULLY SUBMITTED:



Girard Kasubick  
Girard Kasubick, Esq.  
Attorney for Plaintiffs

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Written Interrogatories  
vs. : Filed on behalf of:  
MICHAEL TREJO, : Plaintiffs  
Defendant : Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: :  
vs. :  
: :  
MICHAEL TREJO, :  
Defendant :  
:

WRITTEN INTERROGATORIES TO ADVERSE PARTY

TO: MICHAEL TREJO  
250 W. Main Street  
Santa Paula, CA 93060

c/o Philip L. Zulli, Esq.  
1501 North Front Street  
Harrisburg, PA 17102

Pursuant to Pennsylvania Rules of Civil Procedure 4001 et seq., you are requested to answer each of the Interrogatories set forth. You are instructed that:

1. Each interrogatory must be answered separately, fully, in writing and under oath.

2. Answers must be signed by the person making them and must be delivered to the undersigned attorney of record for the Plaintiffs within thirty (30) days after service hereto.

3. Each interrogatory is continuing in nature so as to require supplementary answers if you or your attorney should obtain information that the answer was incorrect when made or becomes no longer true.

4. Unless otherwise indicated, all interrogatories herein relate to those certain events, persons, and periods of time more fully described in the pleadings in this case and damages related to such pleadings.

## INTERROGATORIES

1. What is the name and address of the transport company that was in Smoke Run, Pennsylvania on January 1, 2000 or January 2, 2000?
2. What are the names of the individuals who were the employees or agents of the transport company named in Question 1 who came to Smoke Run, Pennsylvania on January 1, 2000 or January 2, 2000?
3. The Answer of Defendant's in Paragraph 13 states the transport company was in Smoke Run, Pennsylvania on January 1, 2000 or January 2, 2000. What exact date was the transport company in Smoke Run, Pennsylvania or did it remain waiting both days and what time did it arrive in Smoke Run, Pennsylvania on what date?
4. Did any of the employees or agents of the transport company speak in person or by telephone with Merrill Jones on January 1, 2000 or January 2, 2000?

a). If so, state the name of the employee or agent or the transport company that spoke with Merrill Jones, whether the conversation was in person or by telephone and where the conversation took place?

5. Did any of the employees or agents of the transport company speak in person or by telephone with Ruth Jones on January 1, 2000 or January 2, 2000?

a). If so, state the name of the employee or agent or the transport company that spoke with Ruth Jones, whether the conversation was in person or by telephone and where the conversation took place?

6. Did any of the employees or agents of the transport company speak in person or by telephone with Attorney Ronald Archer on January 1, 2000 or January 2, 2000?

a). If so, state the name of the employee or agent or the transport company that spoke with Attorney Ronald Archer, whether the conversation was in person or by telephone and where the conversation took place?

7. Did the transport company, its employees or agents ever go to the residence of Merrill and Ruth Jones in Smoke Run, Pennsylvania on January 1, 2000 or January 2, 2000?
  - a). If so, on what day and at what time and which employee or agent of the transport company was at the Merrill and Ruth Jones residence?
  - b). If so, was Merrill Jones and/or Ruth Jones present at their residence when the employee or agent of the transport company was there?
8. What was the cost to the Defendant for the services performed by the transport company to go to Smoke Run, Pennsylvania on January 1, 2000 and/or January 2, 2000? Please provide a copy of an invoice or bill to the Defendant for the services performed by the transport company?

9. Who are the witnesses you intend to call at trial? Provide their addresses and the nature of their involvement in this case.

LEHMAN & KASUBICK



Girard Kasubick,  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs

Dated: June 11, 2003

VERIFICATION

I, the undersigned, verify that the statements made in the foregoing Answer to Written Interrogatories are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Michael Trejo

LAW OFFICES  
**LEHMAN & KASUBICK**

611 BRISBIN STREET, HOUTZDALE, PA 16651  
Telephone (814) 378-7840  
Facsimile (814) 378-6231

June 11, 2003

Philip L. Zulli, Esq.  
1501 North Front Street  
Harrisburg, PA 17102

Re: Merrill Jones, et al.  
vs. Michael Trejo  
No. 2002-1456-CD

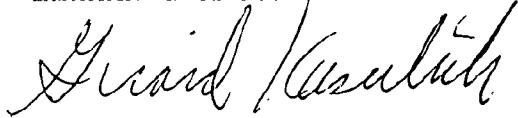
Dear Attorney Zulli:

Enclosed please find three (3) copies of Written Interrogatories I am serving on you for discovery purposes. They are not lengthy and I am sure that you can supply the answers within the required thirty (30) days.

If you wish to discuss anything, please feel free to contact me.

Very truly yours,

LEHMAN & KASUBICK



Girard Kasubick

GK:sp  
Enclosures  
cc: Mr. & Mrs. Merrill Jones  
U.S. CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

**U.S. Postal Service™  
CERTIFIED MAIL™ RECEIPT  
(Domestic Mail Only; No Insurance Coverage Provided)**

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

7002 2030 0000 2452 6236

Postage	\$ 1.29
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	—
Total Postage & Fees	\$ 5.34

**Sent To**  
Philip L. Zulli, Esq.  
Street, Apt. No.,  
or PO Box No. 1501 North Front Street  
City, State, ZIP Code Harrisburg, PA 17102

PS Form 3800, June 2002

See Reverse for Instructions



<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Received by (Please Print Clearly) <input type="text" value="6/27/03"/> B. Date of Delivery <input type="text" value="6/27/03"/></p> <p>C. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p>Philip L. Zulli, Esq. 1501 North Front Street Harrisburg, PA 17102</p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7002 2030 0000 2452 6236</p>		<p>Return Receipt Requested</p>	

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

FILED  
100  
Sep 11 2003  
Atty Kasubick  
EAST  
SEP 03 2003

William A. Shaw  
Prothonotary/Clerk of Courts

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: vs. :  
MICHAEL TREJO, :  
Defendant :  
:

**ORDER**

AND NOW, this 4<sup>th</sup> day of September, 2003,  
a rule is entered to show cause under the Motion for  
Sanctions filed by the Plaintiffs, and a rule is issued  
upon the Defendant to appear and show cause why Sanctions  
should not be granted for failure of Defendant to file  
Objections or Answer to Written Interrogatories.

This Rule is returnable for hearing and/or argument  
on the 26 day of September, 2003, at 9:00  
o'clock A.m. in Courtroom No. 1 of the Clearfield  
County Courthouse, Clearfield, Pennsylvania.

**FILED**

BY THE COURT:

SEP 04 2003  
6/2/2003  
William A. S.  
Prothonotary/Clerk  
2 cent to Attn

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 278-7840

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
:  
vs. :  
:  
MICHAEL TREJO, :  
Defendant :  
:

CERTIFICATE OF SERVICE

I hereby certify that I, Girard Kasubick, Esq., served a copy of the Motion for Sanctions and Order scheduling a Rule Returnable hearing by regular United States mail, postage pre-paid, mailed on September 5, 2003 upon the attorney for the Defendant at the following address:

Philip L. Zulli, Esq.  
1501 North Front Street  
Harrisburg, PA 17102

  
Girard Kasubick, Esquire,  
Attorney for Plaintiffs

FILED

SEP 08 2003

0/1:20/03

William A Shaw

Prothonotary, Clerk of Courts

No 4/C



LEHMAN & KASJUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Praecepice to Withdraw  
vs. : Motion for Sanctions  
Plaintiffs : Filed on behalf of:  
MICHAEL TREJO, : Plaintiffs  
Defendant : Counsel of Record for  
This Party: : Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

FILED

SEP 23 2003

William A Shaw  
Prothonotary/Clerk of Courts

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

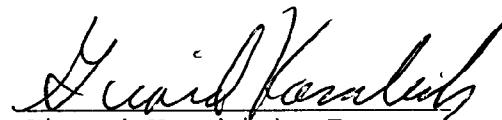
MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
:  
vs. :  
:  
MICHAEL TREJO, :  
Defendant :  
:

**PRAECIPE TO WITHDRAW MOTION FOR SANCTIONS**

TO: William A. Shaw, Prothonotary

Please withdraw the Motion for Sanctions filed on  
behalf of the Plaintiffs.

Date: 9/22/2003

  
Girard Kasubick, Esq.  
Attorney for Plaintiffs  
611 Brisbin Street  
Houtzdale, PA 16651

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOOTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Certificate of  
vs. : Readiness and  
MICHAEL TREJO : Praecepice for  
: Arbitration  
: Filed on behalf of  
: Plaintiffs  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

FILED

NOV 24 2003

William A. Straw  
Prothonotary/Clerk of Courts

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: vs. :  
MICHAEL TREJO, :  
Defendant :  
:

**CERTIFICATE OF READINESS**

TO: William A. Shaw, Prothonotary

DATE PRESENTED: November 24, 2003

CASE NUMBER: 2002-1456-CD

Date Complaint Filed: September 20, 2002

TYPE OF TRIAL REQUESTED:

Jury       Non-Jury       Arbitration

ESTIMATED TRIAL TIME:

1/2 day

PLAINTIFF(S): Merrill Jones and Ruth Jones, his wife, and Jones Auto Salvage, a/k/a Jones Salvage  Check Block if a Minor is a Party to the Case

DEFENDANT(S): Michael Trejo

ADDITIONAL

DEFENDANT(S): None

AMOUNT AT ISSUE: \$11,770.00 plus \$10.00 per day from September 1, 2002 to present.

CONSOLIDATION: ( ) yes (X) no

DATE CONSOLIDATION ORDERED: N/A

**PRAECIPE FOR TRIAL**

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE ARBITRATION LIST.

I certify that all discovery has been completed by Plaintiff and Defendant has indicated that they desire to take Depositions; however, after several months nothing has been scheduled and Plaintiff assumes Defendant is ready for Arbitration or discovery will be completed, all necessary parties and witnesses are available; serious settlement negotiations have been conducted; there are no outstanding motions; the case is ready in all respects for Arbitration, 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:

Girard Kasubick, Esq.  
611 Brisbin Street  
Houtzdale, PA 16651 (814) 378-7840  
\_\_\_\_\_  
FOR THE PLAINTIFFS TELEPHONE NUMBER

Philip L. Zulli, Esq.  
155 Grandview Road  
Hummelstown, PA 17036 (717) 566-8585  
\_\_\_\_\_  
FOR THE DEFENDANT TELEPHONE NUMBER

Respectfully Submitted,

  
\_\_\_\_\_  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: :  
vs. :  
: :  
MICHAEL TREJO, :  
Defendant :  
:

**CERTIFICATE OF SERVICE**

I, Girard Kasubick, Esq., hereby certify that I served a true and correct copy of the Certificate of Readiness and Praecipe for Arbitration by United States First Class Mail, postage prepaid, on November 24, 2003, on the following counsel of record:

Philip L. Zulli, Esq.  
155 Grandview Road  
Hummelstown, PA 17036



Girard Kasubick, Esquire,  
Attorney for Plaintiffs

RECEIVED NOV  
OCT 22 2003 444 pd. 20.00  
NOV 24 2003  
William A. Straw  
Prothonotary Clerk of Courts  
P.R.C.

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

MERRILL JONES and RUTH :  
JONES, his wife, and JONES AUTO :  
SALVAGE, a/k/a JONES SALVAGE :  
vs. : *02-1452-CD*  
: No. ~~02-456-CD~~  
MICHAEL TREJO :  
:

**ORDER**

NOW, this 27 day of January, 2004, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on Tuesday, March 23, 2004 at 1:00 P.M. The following have been appointed as Arbitrators:

Dwight L. Koerber, Jr., Esquire, Chairman

Earle D. Lees, Jr., Esquire

William Lynn Hollen, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

**FILED**

BY THE COURT:

  
FREDRIC J. AMMERMAN

President Judge

William A. Shaw  
Prothonotary

JAN 27 2004

FILED  
0124/04 5CC TO CL  
JAN 27 2004  
SAC

William A. Shaw  
Prothonotary

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

<b>MERRILL JONES and RUTH JONES, his wife, and JONES AUTO SALVAGE a/k/a JONES SALVAGE, Box 153 Smoke Run, Pennsylvania 16681</b>	<b>:</b>	<b>No.: 2002-1456-CD</b>
	<b>:</b>	
	<b>:</b>	
	<b>:</b>	
<b>Plaintiffs</b>	<b>:</b>	<b>CIVIL ACTION – LAW</b>
	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>MAR 19 2004</b>
<b>MICHAEL TREJO 250 West Main Street Santa Paula, California 93060-3247</b>	<b>:</b>	<b>William A. Shaw Prothonotary</b>
<b>Defendant</b>	<b>:</b>	

**EMERGENCY REQUEST FOR CONTINUANCE**

NOW COMES, the Defendant, Michael Trejo, by and through his attorney, Philip L. Zulli, Esq., and requests and emergency continuance for medical reasons and avers as follows:

1. The above captioned matter is scheduled for an arbitration hearing on March 23, 2004, at 1:00 p.m.
2. The arbitrators scheduled to hear the matter are attorneys Koerber, Lees and Hollen.
3. On March 15, 2004, undersigned counsel received a letter from the Defendant, dated March 10, 2004, with an attached letter dated March 2, 2004, from Defendant's attending physician, Michael C. Tushla, M.D., stating that the Defendant is able to travel. A true and correct copy of Defendant's letter is attached as Exhibit A. A true and correct copy of the physician's letter is attached as Exhibit B.
4. The Defendant Michael Trejo resides in Santa Paula, California.

5. The physician states that Mr. Trejo is not able to travel due to the medical conditions specified within the attached letter from the physician. A true and correct copy is attached as Defendant's Exhibit B.
6. The physician states that he hopes the Defendant Trejo will be able to travel within several months.
7. This continuance is not requested merely for the purpose of delay. Defendant has timely filed and served his Pretrial Statement required by Local Rule 1306A.
8. Defendant respectfully requests that Arbitration of this matter be continued until June or July of 2004.

WHEREFORE, the Defendant requests that the Arbitration Hearing be continued and rescheduled for June or July of 2004.

Respectfully submitted:



Philip L. Zulli, Esquire  
Attorney Id. No. 47499

1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

Michael Trejo  
250 W. Main St  
Santa Paula, Ca 93060  
805-901-4568

March 10, 2004

Phillip L. Zulli, Esquire

Attached you will find the original letter I obtained from my doctor. Please let me know if you need anything else.

Respectfully,

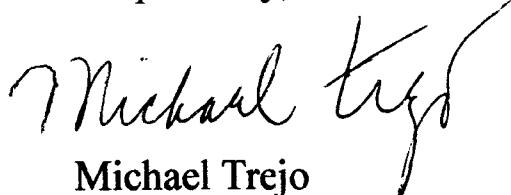
  
Michael Trejo

Exhibit A

## **WESTSIDE FAMILY PRACTICE**

400 E. Santa Barbara St., Suite A  
Santa Paula, California 93060

Richard J. Tushla, M.D., FABFP  
Michael C. Tushla, M.D., FABFP  
Alexander B. Meyer, M.D., FABFP

(805) 525-2121  
Fax (805) 525-3652

March 2, 2004

To Whom It May Concern:

**RE: TREJO, Michael**

Michael Trejo is a patient of mine. He is 49 years old and suffers from numerous chronic health problems. He is under my care for problems relating to neck and low back injuries and is having a great deal of problems with pain and decreased range of motion. I do not feel that he is able to travel at this time to participate in an arbitration.

Please reschedule the matter for a later date. Hopefully he will improve and will be able to travel in the next several months.

Thank you for your consideration.

Sincerely,



Michael C. Tushla, M.D.

MCT:pb

Exhibit B

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

<b>MERRILL JONES and RUTH JONES, his wife, and JONES AUTO SALVAGE a/k/a JONES SALVAGE,</b>	<b>:</b>	<b>No.: 2002-1456-CD</b>
<b>Plaintiffs</b>	<b>:</b>	
<b>v.</b>	<b>:</b>	
<b>MICHAEL TREJO</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I, PHILIP L. ZULLI, Esquire, certify that I have served a copy of the Emergency Request for Continuance this 15<sup>th</sup> day of March, upon the following persons by the method indicated:

by Fax and Federal Express overnight delivery service:

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651

814-378-6231  
Attorney for Plaintiffs

by Fax and United States First Class Mail:

Dwight L. Koerber, Jr., Esq. P.O. Box 1320 Clearfield, PA 16830 814-765-9503	Earle D. Lees, Jr. Esquire 109 North Brady Street, 2 <sup>nd</sup> Floor DuBois, PA 15801 814-375-9525	William Lynn Hollen, Esq. 1633 E. Pleasant Valley Blvd. Altoona, PA 16602 814-942-9837
---	---	---

DATED: March 15, 2004



Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

10000 M\$ ~~10000 M\$~~  
MAR 19 2004  
Jeff

William A. Shaw  
Proprietary

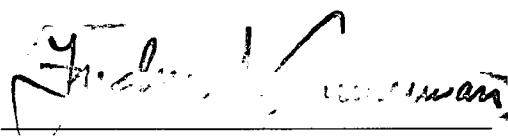
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO :  
SALVAGE, a/k/a JONES SALVAGE :  
: vs. : No. 02-1456-CD  
MICHAEL TREJO :  
:

**O R D E R**

AND NOW, this 16<sup>th</sup> day of March, 2004, upon consideration of Defendant's Emergency Request for Continuance, it is the ORDER of the Court that the Arbitration scheduled for February 23, 2004 at 1:00 P.M. is continued. The Court Administrator is directed to schedule this matter on the next available Arbitration day.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge



MAR 19 2004

William A. Shaw  
Prothonotary

10.0854 1cc after Kasabach  
1cc after Buzzi

MAR 19 2004



William A. Shaw  
Prothonotary

67

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

MERRILL JONES and RUTH :  
JONES, his wife, and JONES AUTO :  
SALVAGE, a/k/a JONES SALVAGE :  
vs. : *1436*  
: No. 02-456-CD  
: :  
MICHAEL TREJO : :

**ORDER**

NOW, this 19th day of April, 2004, it is the ORDER of the  
Court that the above-captioned matter is scheduled for Arbitration on **Monday,**  
**June 14, 2004 at 1:00 P.M.** The following have been appointed as Arbitrators:

Carl A. Belin, Jr., Esquire, Chairman

J. Richard Lhota, Esquire

Michael S. Marshall, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial  
Statement seven (7) days prior to the scheduled Arbitration. **The original should**  
**be forwarded to the Court Administrator's Office and copies to opposing**  
**counsel and each member of the Board of Arbitrators.** For your convenience, a  
Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a  
copy of said Local Rule of Court.

BY THE COURT:

*Fredric J. Ammerman*  
FREDRIC J. AMMERMAN  
President Judge

*Fredric J. Ammerman*  
Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
COMMONWEALTH OF PENNSYLVANIA

**MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE,  
Box 153  
Smoke Run, Pennsylvania 16681** : No.: 2002-1456-CD  
: :  
: :  
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: :  
**Plaintiffs** : CIVIL ACTION - LAW  
: :  
: :  
: :  
: :  
**v.** :  
: :  
: :  
: :  
**MICHAEL TREJO** :  
**250 West Main Street** :  
**Santa Paula, California 93060-3247** :  
: :  
: :  
**Defendant** :  
: :

**FILED**

JUN 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**UNOPPOSED MOTION TO TRANSFER TO NON-JURY TRIAL LIST**

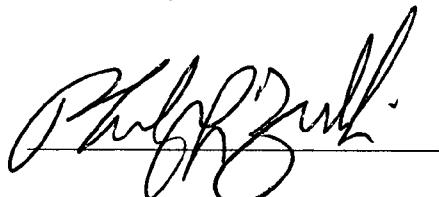
**NOW COMES**, the Defendant, Michael Trejo, by and through his attorney, Philip L. Zulli, Esq., and moves that this matter be transferred from the Arbitration List to the Non-Jury Trial List for the following reasons:

1. Opposing counsel for the Plaintiff does not oppose this motion.
2. The above captioned matter is scheduled for an arbitration hearing on June 14, 2004, at 1:00 p.m.
3. Defendant Trejo in his New Matter requests equitable relief.
4. Actions which require equitable relief are not to be referred to arbitration, because the grant of such relief is beyond the power of arbitrators.
5. Opposing counsel advised undersigned counsel of this and suggested that this matter be transferred to the Non-Jury Trial List.

6. In addition, on March 2, 2004, Defendant's attending physician, Michael C. Tushla, M.D., stated that the Defendant is not able to travel. A true and correct copy of the physician's letter is attached as Exhibit A.
7. The Defendant Michael Trejo resides in Santa Paula, California.
8. The physician states that Mr. Trejo is not able to travel due to the medical conditions specified within the attached letter from the physician. A true and correct copy is attached as Defendant's Exhibit A.
9. Defendant Trejo is still not able to travel.
10. Defendant and Plaintiffs have previously filed and served their Pretrial Statements required by Local Rule 1306A on or about March 18, 2004 and Defendant has resubmitted same today's date.
11. Defendant respectfully requests that this matter be transferred from the Arbitration List to the Non-Jury Trial List.

WHEREFORE, the Defendant respectfully requests that this matter be transferred from the Arbitration List to the Non-Jury Trial List.

Respectfully submitted:



Philip L. Zulli, Esquire  
Attorney Id. No. 47499

155 Grandview Road  
Hummelstown, Pennsylvania 17036  
(717) 566-8585

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

**MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE,** : No.: 2002-1456-CI

## Plaintiffs

v.

MICHAEL TREJO

**Defendant**

## CERTIFICATE OF SERVICE

I, PHILIP L. ZULLI, Esquire, certify that I have served a copy of the Unopposed Motion to Transfer to Non-Jury Trial List this 4<sup>th</sup> day of June, upon the following persons by the method indicated:

by Fax and Federal Express overnight delivery service:

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651  
814-378-6231  
Attorney for Plaintiffs

by Federal Express overnight delivery service:

Carl A. Belin, Jr., Esq.  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

John R. Lhota, Esquire  
Attorney at Law  
110 North Second Street  
Clearfield, PA 16830

Michael S. Marshall, Esq.  
Attorney at Law  
237 Northwood Avenue  
Dubois, PA 15801

DATED: June 4, 2004

Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
155 Grandview Road  
Hummelstown, Pennsylvania 17036  
(717) 566-8585

**FILED**  
3cc  
MAY 10 2004  
JUN 07 2004  
Clerk  
William A. Shaw  
Prothonotary/Clerk of Courts  
*[Handwritten signature]*

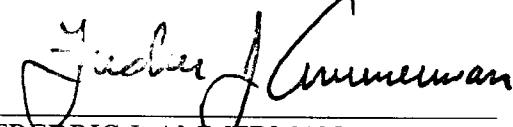
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO SALVAGE, :  
a/k/a JONES SALVAGE :  
: vs. : No. 02-1456-CD  
MICHAEL TREJO :  
:

**ORDER**

AND NOW, this 8th day of June, 2004, upon consideration of Defendant's Unopposed Motion to Transfer to Non-Jury Trial List, it is the ORDER of the Court that Arbitration in the above-captioned matter currently scheduled for Monday, June 14, 2004 is hereby cancelled. Additionally, the Court Administrator is directed to place said case on the Fall 2004 Civil Trial List.

BY THE COURT:

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN  
President Judge

FILED

JUN 09 2004

William A Shaw  
Prothonotary/Clerk of Courts

FILED  
JUN 09 2004  
1cc Amy Kasebick  
1cc Amy Zabel  
William A. Scanlon  
Prothonotary Clerk Jr. Courts  
*ES*

CA

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

MERRILL JONES and RUTH JONES : NO. 02-1456-CD  
his wife, and JONES AUTO SALVAGE :  
a/k/a JONES SALVAGE :  
: V. :  
: :  
MICHAEL TREJO :  
:

**ORDER**

AND NOW, this 18<sup>TH</sup> day of August, 2004, following Pre-Trial Conference, it is  
the ORDER of this Court:

1. Non-Jury Trial in this matter is scheduled for November 10, 2004 at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. The deadline for providing any and all outstanding discovery shall be by and no later than twenty (20) days prior to the commencement of trial.
3. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

FILED

AUG 19 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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William A. Shaw  
Prothonotary Clerk of Courts  
cc: Augs: Kasubick, Zalik

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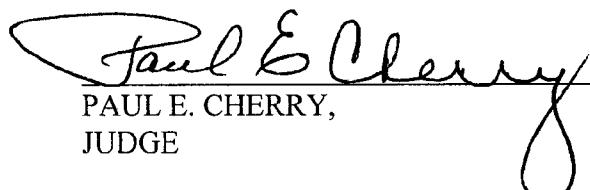
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO SELVAGE, :  
a/k/a JONES SELVAGE :  
: :  
V. : NO. 02-1456-CD  
: :  
MICHAEL TREJO : :  
: :

**ORDER**

AND NOW, this 10<sup>th</sup> day of November, 2004, the Court having been advised by Girard Kasubick, Esquire, attorney for Plaintiff, that the parties have reached an agreement, it is the ORDER of this Court the Non-Jury Trial scheduled for Wednesday, November 10, 2004, be and is hereby CANCELLED. It is the further ORDER of this Court that counsel shall submit to the Court a signed Agreement or a Praecipe to Discontinue Case within no more than fifteen (15) days of this date.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

0314 10/10/2004  
NOV 10 2004

1400

1400

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Settlement Agreement  
: per Order of Court  
: Filed on behalf of:  
vs. : Plaintiffs  
MICHAEL TREJO, : Counsel of Record for  
Defendant : This Party:  
: Gerald Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Bristbin Street  
: Routsdale, PA 16651  
: (814) 378-7840

E6K  
FILED NO CC  
08:57 AM  
DEC 06 2004

William A. Shaw  
Prothonotary/Clerk of Courts

SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 17<sup>th</sup> day of November, 2004, by and between **MERRILL JONES and RUTH JONES**, his wife, **t/d/b/a JONES AUTO SELVAGE and JONES SELVAGE**, of P.O. Box 153, Smokerun, PA 16681, hereinafter called "Jones",

AND

**MICHAEL TREJO**, of 250 West Main Street, Santa Paula, CA 93060, hereinafter called "Trejo".

WITNESSETH:

WHEREAS, Jones has filed a civil action in Clearfield County, PA Court of Common Pleas to file No. 2002-1456-CD claiming damages for storage of 1976 Wells Fargo Trailer, restored 1939 Chevrolet Slant Back motor vehicle, and unrestored 1939 Chevrolet Slant Back motor vehicle purchased by Trejo from Jones, and;

WHEREAS, non-jury trial on the above case was scheduled for November 10, 2004 before Honorable Judge Paul E. Cherry, and;

WHEREAS, Jones and Trejo reached a settlement of the aforesaid case prior to the trial and court has issued a November 10, 2004 Order requiring the Parties to submit a signed Agreement or Praecipe to Discontinue and the parties desire to submit such Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions herein and with the intent to be legally bound hereby, the Parties agree as follows:

1. Trejo shall pay to Jones the sum of Twelve Thousand Five Hundred and 00/100 (\$12,500.00) Dollars by certified, cashiers, or law office account check to be received by Jones on or before November 30, 2004.

2. Upon payment of the monies under paragraph 1. above Jones shall properly execute the titles to the 1976 Wells Fargo Trailer, restored 1939 Chevrolet Slant Back motor vehicle, and unrestored 1939 Chevrolet Slant Back motor vehicle and send them by certified mail to Trejo within three (3) business days of receipt of said monies.

3. Trejo shall remove the 1976 Wells Fargo Trailer, restored 1939 Chevrolet Slant Back motor vehicle, and unrestored 1939 Chevrolet Slant Back motor vehicle from Jones residence in Smokerun, PA personally or by a transport company with appropriate documentation by December 10, 2004. All costs of transporting the motor vehicles shall be assumed by Trejo. If the motor vehicles are not removed by December 10, 2004 additional storage costs of \$10.00 per day shall be due from Trejo until the motor vehicles are removed.

4. An easel-mounted display book for the 1939 Chevrolet Slant Back automobiles shall be shipped separately at Trejo's cost.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have set their hands and seals hereto.

JONES:

Date: 11/17/04

Merrill Jones  
Merrill Jones

Date: 11/17/04

Kathy Jones  
Kathy Jones

Date: 11/17/2004

Gerald Kasubick  
Gerald Kasubick, Esq.  
Attorney for Jones

TREJO:

Date: 11/30/04

Michael Trejo  
Michael Trejo

Date: 11-27-2004

Philip L. Zulli  
Philip L. Zulli, Esq.  
Attorney for Trejo

RECEIVED

AUG 17 2004

**COURT ADMINISTRATOR'S  
OFFICE**

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION**

**MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE,  
Box 153  
Smoke Run, Pennsylvania 16681**

## **PRETRIAL MEMORANDUM**

**NOW COMES**, the Defendant, Michael Trejo, by his attorney, Philip L. Zulli, Esq. and files a Pre-Trial Memorandum, in accordance with J.D.R.C.P. § 212.4 (e).

**1) Statement of the Case:**

Defendant Michael Trejo responded to an advertisement by Plaintiff Merrill Jones (See Defendant's Exhibit 1 attached to Defendant's Answer with New Matter) and the parties made an oral agreement April 1993, whereby Trejo would purchase, and Jones would sell for the total price of \$40,000, two (one restored, and one unrestored) 1939 slant-backed automobiles, plus parts, a trailer, and an easel-mounted display book, as more fully described at paragraph 23, page 6 of Defendant's Answer With New Matter. These items will hereinafter be referred to as "the goods."

According to Mr. Trejo's version of the oral agreement, after receipt of final payment, Merrill Jones would transfer title of the goods to Trejo and deliver them as far west as Colorado. Jones agreed to allow Trejo to make payments over a period of time but that time period was not specified.

The oral contract was made in April 1993. Final payment was tendered June 30, 1999. Not until Trejo had already paid \$36,000, which amount was paid as of March 15, 1999, did Jones complain about storage costs. Consequently, not until Trejo had already paid 90% of the purchase price did Ruth Jones suddenly insist upon payment of storage costs. In fact, it was Plaintiff Ruth Jones and not Merrill Jones, who insisted by letter dated June 11, 1999, that because full payment had not been tendered by June 7, 1999, storage costs of \$10 per day would be charged starting June 7, 1999. Trejo made a final payment of \$4,000 on June 30, 1999, bringing the total paid to \$40,000.

Shortly after October 21, 1999, Trejo received a letter dated October 21, 1999, from Jones' agent, Attorney Ronald Archer, Esq., which letter acknowledged in writing the agreed-upon purchase price of \$40,000; that final payment was made June 30, 1999; and that no storage fees were charged during the six-year period it took Trejo to pay the \$40,000. At that time, Archer informed Trejo the vehicles were ready to be picked up. (See Defendant's Exhibit 4 attached to Defendant's Answer with New Matter.)

By letter dated November 10, 1999, Trejo objected, stating that Jones was suppose to deliver the goods as far west as Colorado, and Trejo disavowed that rental space charges were part of the contract. (See Defendant's Exhibit 5 attached to Defendant's Answer With New Matter).

No real progress in resolving this matter has occurred since that time. Just before Trejo was about to file suit against Jones, Plaintiffs Merrill Jones and Ruth Jones filed suit against Trejo in Clearfield County, Pennsylvania.

Trejo insists that storage costs were not part of the contract and that Jones had to deliver the goods as far west as Colorado; Jones insists that he does not have to deliver the goods nor even

release the goods to Trejo unless storage costs are paid.

**2) Exhibits:**

- 1) Advertisement in the *Generator and Distributor*, volume 32, No. 4, April, 1993, on page 34.
- 2) Check in the amount of \$7,000 dated March 15, 1999.
- 3) June 11, 1999 letter to Defendant by Ruth Jones.
- 4) October 21, 1999, letter of Ronald E. Archer, then-attorney for Merrill Jones, to Defendant.
- 5) November 10, 1999, letter of Defendant to Ronald E. Archer, then-attorney for the Plaintiff, Merrill Jones.
- 6) Letter dated December 22, 1999, from Defendant to Ronald E. Archer, then-attorney for the Plaintiff, Merrill Jones.
- 7) Letter dated December 24, 1999, from Defendant to Bob and Shannon Crislipp of Auto Transport Company.
- 8) Letter dated January 22, 2000, from Defendant's undersigned counsel to Plaintiff's then-attorney Ronald E. Archer.
- 9) Letter dated June 29, 2001, by undersigned counsel to Plaintiff's then-attorney Ronald E. Archer demanding possession of the vehicles.

Defendants reserve the right to use other exhibits as may be necessary to reply to Plaintiffs' defense of defendant's counterclaims.

**3) Witnesses:**

- a.) Michael Trejo, 250 West Main Street, Santa Paula, California, 93060-3247, on Liability and Damages.

**4) Legal Theory:**

Defendant seeks specific performance of the oral contract entered with and ratified in writing by the Plaintiff, Merrill Jones. Plaintiffs' refused to deliver the goods to the Defendant as contracted and also refused to allow Defendant to retrieve the unique goods after he had tendered full payment for the goods. Plaintiffs demanded payment of storage costs and would not release the goods until the demanded storage costs were paid. Storage costs were not part of the bargain and Plaintiffs Merrill and Ruth Jones did not have authority to unilaterally alter the terms of the original contract. Consequently, Defendant was placed in a Catch 22 by the Plaintiffs, and the impasse continues to this day. Defendant will not pay storage costs that were not contracted, and Plaintiffs will not release the unique goods until paid the storage costs.

Defendant submits that the Statute of Frauds in this case is satisfied by the letter dated October 21, 1999, from Merrill Jones' agent, Attorney Ronald Archer (Defendant's Exhibit 4 attached to Defendant's Answer with New Matter). Archer's letter constitutes a memorandum acceptable pursuant to Section 131 of the Restatement of Contracts, Second. Archer, as Jones' agent, was authorized to sign (Section 135 of the Restatement), and the fact that it was rendered after completing of the contract is not a problem(Section 136 of the Restatement).

Furthermore, inasmuch as Jones never complained until Trejo had already paid 90% of the purchase price over a period of six years, the contract must be enforced by virtue of Trejo's actions

in reliance upon the contract as the parties understood it, i.e.: Trejo could make the payments towards the \$40,000 purchase price over a period of time. (Section 139 of the Restatement.)

The terms of a contract are not merely those in writing, but those “implied in fact from other conduct. . . . including course of dealing or usage of trade or course of performance.” See Comment (a) to Section 5 of the Restatement, relating to Terms of Promise, Agreement or Contract. For six years, Merrill Jones accepted payments from Trejo without complaint or any mention of storage costs. Clearly, the parties course of dealing and performance reveal that storage charges were not part of the contract.

Nor did the parties mutually agree to modify the contract as anticipated by Section 89 of the Restatement relating to Modification of Executory Contract. When Jones’ agent, Attorney Ronald Archer by letter dated October 21, 1999, said Trejo had to pick up the goods in Clearfield county and that Trejo owed storage costs, Trejo promptly repudiated this attempt to modify the contract by letter to Attorney Archer, dated November 10, 1999.

Inasmuch as these goods are such unique antique vehicles, only by enforcing of the parties promises can injustice be avoided to Mr. Trejo. See Section 139 of the Restatement. In addition, Jones who initiated this suit for the alleged storage charges, bears the risk of any mistake he made by not including this within the contract at the time and by not setting a more specific time period for Trejo to pay the purchase price. Indeed, six years ensued before Jones mentioned storage costs or having to retrieve the vehicles in Pennsylvania. Thus, Jones should bear the consequence of any mistake though Trejo does not concede that any mistake did occur. See Section 154 of the Restatement.

Moreover, by waiting more than six years and not until Trejo had paid 90% of the purchase price, before requesting storage charges, evinces on the part of the Jones a “failure to act in good faith and in accordance with reasonable standards of fair dealing.” See Section 157 of the Restatement.

Trejo demands specific performance. He wants the unique goods he has paid for in full delivered as far west as Colorado and title transferred to him for the goods Plaintiffs acknowledged that he has purchased. There is no uncertainty as to the terms relating to what the goods are. See Section 362 of the Restatement. That is not even in dispute.

Section 360 of the Restatements provides:

In determining whether the remedy in damages would be adequate, the following circumstances are significant:

- (a) the difficulty of deciding money damages with reasonable certainty;
- (b) the difficulty of procuring a suitable substitute performance by means of money award as damages;
- (c) the likelihood that an award of damages could not be collected.

The goods that are the subject of this contract simply are so unique they cannot be substituted. The only remedy adequate to make Trejo whole is specific performance of the contract.

Finally, Jones has lost his power of avoidance of the contract by his delay of six years in asking for storage costs and being relieved of the duty to deliver the goods as far west as Colorado. Trejo had performed 90% of the contract (paid \$36,000 of \$40,000) before Jones started raising objections. Jones waited way too long to complain about any mistake. See Section 381(2) of the

Restatement relating to Loss of Power of Avcidance by Delay.

**5) Damages:**

Defendant is demanding specific performance of the contract, in other words, he wants the unique goods delivered as far west as Colorado. In addition, if Plaintiffs are unwilling to deliver the goods, Defendant's damages are \$2,500 in extra transportation fees to deliver the unique goods to Santa Paula California. In the event the court denies specific performance, Defendant's damages are the fair market value of the unique goods, which is in excess of \$50,000. Defendant also seeks in equity reimbursement of costs of suit and attorney fees, the amount of which have not yet been finally determined.

**6) Extraordinary Evidence or Unusual Questions of Law:**

Possible request for video or Internet deposition of Michael Trejo in Santa Paula, California, due to Defendant's poor health.

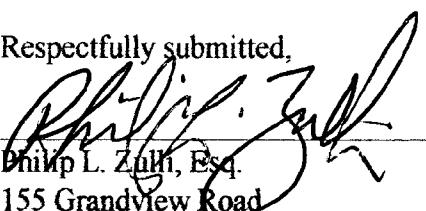
**7) Stipulations**

Defendant will stipulate to Plaintiffs' exhibits identified in Plaintiffs' pre-trial memorandum, dated August 9, 2004, and any other letters exchanged between the parties' attorneys, and Defendant will consider stipulating to other documents or exhibits of the Plaintiffs.

**8. Time for Trial**

One-half to one day.

Respectfully submitted,

  
Philip L. Zulch, Esq.  
155 Grandview Road  
Hummelstown, PA 17036  
(717) 566-8585

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

**CIVIL DIVISION**

**MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE,  
Box 153  
Smoke Run, Pennsylvania 16681**

**CERTIFICATE OF SERVICE**

I, PHILIP L. ZULLI, Esquire, certify that I have served a copy of the Defendant's Pre-Trial Memorandum this 16<sup>th</sup> day of August, upon the following persons by the method indicated:

by Fax and Federal Express overnight delivery service.

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651  
814-378-6231  
Attorney for Plaintiffs

The Hon. Paul Cherry, Judge  
Court of Common Pleas  
Clearfield County Courthouse  
Judges Chambers  
230 East Market Street  
Clearfield, PA 16830

David S. Meholic  
Court Administrator  
Clearfield County Cthse.  
Suite 228  
230 East Market Street  
Clearfield, PA 16830

DATED: August 16, 2004

  
Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
155 Grandview Road  
Hummelstown, Pennsylvania 17036  
(717) 566-8585

LAW OFFICES  
**LEHMAN & KASUBICK**

(2)

611 BRISBIN STREET, HOUTZDALE, PA 16651  
Telephone (814) 378-7840  
Facsimile (814) 378-6231

August 9, 2004

David S. Meholic, Court Administrator  
CLEARFIELD COUNTY COURTHOUSE  
Suite 228, 230 East Market Street  
Clearfield, PA 16830

Re: Merrill Jones, et. al. vs. Michael Trejo  
No. 2002-1456-CD

Dear Dave:

Enclosed please find my Pre-Trial Memorandum on the above matter. This case is scheduled for Pre-Trial Conference before Judge Cherry on August 18, 2004 at 10:00 a.m. I am forwarding a copy to the opposing counsel.

If you have any questions, please feel free to contact me.

Very truly yours,

LEHMAN & KASUBICK



Girard Kasubick

GK:sp  
Enclosure  
cc: Mr. & Mrs. Merrill Jones  
Philip L. Zulli, Esq.

AUG 13 2004

COURT ADMINISTRATOR'S  
OFFICE

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOOTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Pre-Trial Memorandum  
vs. : Filed on behalf of:  
MICHAEL TREJO, : Plaintiffs  
Defendant : Counsel of Record for  
This Party: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brishin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

AUG 16 2002  
COURT ADMIN. OFFICE

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

MERRILL JONES and RUTH JONES, : No.: 2002-1456-CD  
his wife, and JONES AUTO : Type of Case: Civil  
SALVAGE, a/k/a JONES SALVAGE, : Type of Pleading:  
Plaintiffs : Pre-Trial Memorandum  
: Filed on behalf of:  
vs. : Plaintiffs  
MICHAEL TREJO, : Counsel of Record for  
Defendant : This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs :  
: vs. :  
: :  
MICHAEL TREJO, :  
Defendant :  
:

PRE-TRIAL MEMORANDUM

AND NOW, comes Plaintiffs, Merrill Jones and Ruth Jones, his wife, and Jones Auto Salvage, a/k/a Jones Salvage, by their attorney, Girard Kasubick, Esq., and files the following Pre-Trial Memorandum under 46 J.D.R.C.P. §212.4(e):

1. STATEMENT OF THE CASE:

In 1993 the Plaintiff, Merrill Jones t/d/b/a Jones Auto Salvage and Jones Salvage advertised in a publication to sell a 1976 Wells Cargo Trailer and two 1939 Chevrolet Slant Back automobiles. One automobile was restored and one was not restored.

The advertisement stated these items were for sale for \$65,000.00 and would be delivered as far West as Colorado.

In April 1993, Merrill Jones was contacted by Defendant, Michael Trejo, to buy the trailer and two (2) vehicles advertised. The Parties reached an oral agreement that these three (3) items would be sold for \$40,000.00 but there was no delivery requirements by Mr. Jones and that Mr. Trejo would be given some time to pay in full, but no specific time was given. On April 19, 1993 Mr. Trejo paid \$3,500.00, but no other payments were made until March 18, 1997 when another \$4,500.00 was paid. Eventually by July 3, 1999 Mr. Trejo did pay the full \$40,000.00.

Mr. Trejo never contacted the Plaintiffs about picking up the items or titles to the vehicles until late 1999 after Plaintiff's attorney sent a letter to Mr. Trejo. Mr. Trejo alleges from late 1999 and in his pleading that delivery was still to be made to Colorado which Plaintiffs deny.

Plaintiffs request payment of storage fees for the vehicles for failure of Defendant to pick up the vehicles which Defendant has refused to pay. The request for storage fees was made June 11, 1999 at \$10.00 per day for all three (3) vehicles.

Defendant has filed various Counterclaims of Replevin, Breach of Contract, Fraud, False Advertisement, and Intentional Interference.

2. **EXHIBITS:**

- a.) 2-Photos of three (3) vehicles. Attached hereto.
- b.) Page of Generator and Distributor Magazine showing the subject three (3) vehicles in the middle column entitle Package Deal.
- c.) Jones Salvages record of payments by Defendant.
- d.) June 11, 1999 letter to Mr. Trejo by Ruth Jones.
- e.) October 21, 1999 letter of Ronald E. Archer to Defendant.
- f.) November 10, 1999 letter of Defendant to Ronald E. Archer.

Plaintiffs reserve the right to use other exhibits as may be necessary to defend any counterclaims of Defendant.

3. **WITNESSES:**

- a.) Merrill Jones - Liability and Damages  
P.O. Box 153  
Smoke Run, PA 16681

- b.) Ruth Jones - Liability  
P.O. Box 153  
Smoke Run, PA 16681
- c.) Ronald E. Archer - Liability  
P.O. Box 276  
Houtzdale, PA 16651
- d.) Charles J. Ross - Damages  
P.O. Box 247  
Clearfield, PA 16830
- e.) Charles J. Lewis - Liability  
Smoke Run, PA 16681
- f.) Allen F. Harrod, Minister - Liability  
1140 Kingsley Avenue  
Orange Park, FL 32073

4. **LEGAL THEORY:**

Plaintiffs seek recovery for storage costs of items purchased by Defendant from Plaintiffs. The Defendant failed to pick up the unique items he purchased which were stored by Plaintiffs and preserved by Plaintiffs. Plaintiffs seek recovery for storage services performed.

5. **DAMAGES:**

Plaintiffs seek damages of \$10.00 per day for storage from June 11, 1999 through August 18, 2004 which is a total of 1895 days or Eighteen Thousand Nine Hundred Fifty and 00/100 (\$18,950.00) Dollars and for \$10.00 per day thereafter.

6. **EXTRAORDINARY EVIDENCE OR UNUSUAL QUESTIONS OF LAW:**

None are anticipated for Plaintiffs.

7. **STIPULATIONS:**

Plaintiffs are willing to stipulate to Exhibits a, b, and c in 2. above and/or any other letters exchanged between parties attorneys.

Plaintiffs would consider stipulating to other documents or exhibits of Defendant.

8. **TIME FOR TRIAL:**

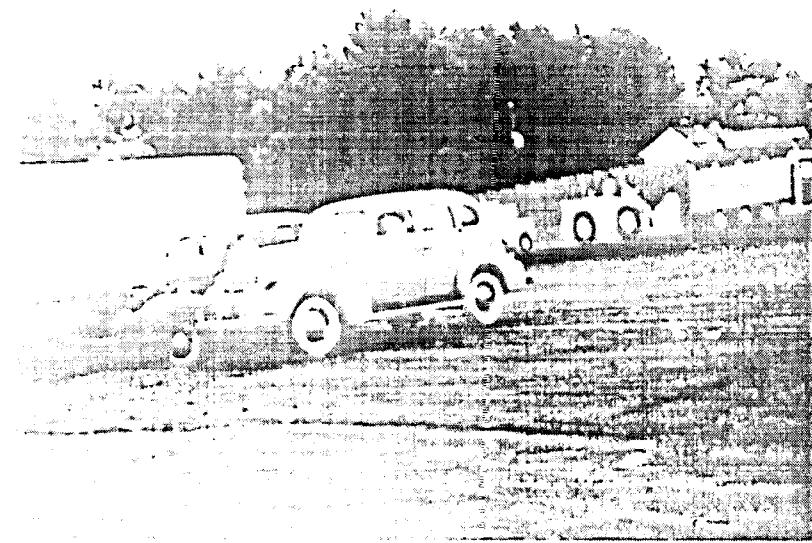
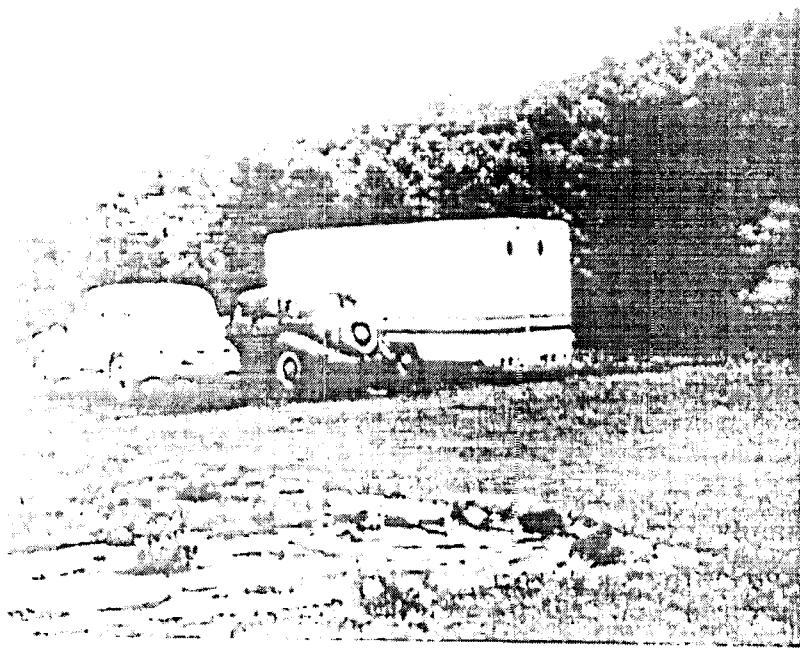
One-half (1/2) to one (1) day.

RESPECTFULLY SUBMITTED,



Girard Kasubick, Esq.  
Attorney for Plaintiffs

Date: 8/9/04



LAW OFFICES

**LEHMAN & KASUBICK**

Ab. 3-23-04 - 10<sup>th</sup> AM.

611 BRISBIN STREET, HOUTZDALE, PA 16651

Telephone (814) 378-7840  
Facsimile (814) 378-6231

**RECEIVED**

March 12, 2004

**MAR 15 2004**

**COURT ADMINISTRATOR'S  
OFFICE**

Office of the Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Suite 228  
Clearfield, PA 16830

Re: Merrill Jones, et al. vs. Michael Trejo  
No. 2002-1456-CD

Dear Dave or Marcy:

Enclosed please find my Pre-Trial Statement filed on behalf of the Plaintiffs on the above Arbitration scheduled, March 23, 2004. I am serving copies on opposing counsel and the Arbitrators by copy of this letter.

If you have any questions, please feel free to contact me.

Very truly yours,

LEHMAN & KASUBICK



Girard Kasubick

GK:sp

Enclosure

cc: Dwight L. Koerber, Jr., Esq.  
Earle D. Lees, Jr., Esq.  
William Lynn Hollen, Esq.  
Philip L. Zulli, Esq.  
Mr. & Mrs. Merrill Jones

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs : **RECEIVED**  
vs. :  
MICHAEL TREJO, :  
Defendant : **MAR 15 2004**  
: **COURT ADMINISTRATOR'S**  
: **OFFICE**

**PLAINTIFF'S PRE-TRIAL STATEMENT**

AND, NOW comes, Merrill Jones and Ruth Jones, his wife, and Jones Auto Salvage a/k/a Jones Salvage, by and through their attorney, Girard Kasubick, Esquire, and files the following Pre-Trial Statement under 46 J.D.R.C.P. 1306(A):

1. **Statement of the Case:**

In 1993 the Plaintiffs, Merrill Jones t/d/b/a Jones Auto Salvage and Jones Salvage advertised in a publication to sell a 1976 Wells Cargo Trailer and two 1939 Chevrolet Slant Back automobiles. One automobile was restored and one was not restored.

The advertisement stated these items were for sale for \$65,000.00 and would be delivered as far West as Colorado.

In April 1993, Merrill Jones was contacted by Mr. Trejo to buy the trailer and two (2) vehicles advertised. The Parties reached an oral agreement that these three (3) items would be sold for \$40,000.00 but there was no delivery requirements by Mr. Jones and that Mr. Trejo would be given some time to pay in full, but no specific time was given. On April 19, 1993 Mr. Trejo paid \$3,500.00, but no other payments were made until March 18, 1997 when another \$4,500.00 was paid. Eventually by July 3, 1999 Mr. Trejo did pay the full \$40,000.00.

Mr. Trejo never contacted the Plaintiffs about picking up the items or titles to the vehicles until late 1999 after Plaintiff's attorney sent a letter to Mr. Trejo. Mr. Trejo alleges from late 1999 and in his pleading that delivery was still to be made to Colorado which Plaintiffs deny.

Plaintiffs request payment of storage fees for the vehicles for failure of Defendant to pick up the vehicles which Defendant has refused to pay. The request for storage fees was made June 11, 1999 at \$10.00 per day for all three (3) vehicles.

Defendant has filed various Counterclaims of  
Replevin, Breach of Contract, Fraud, False Advertisement,  
and Intentional Interference.

2. **Citation of Applicable Cases or Statutes:**

Plaintiffs seek recovery for storage of antique  
vehicles in a heated enclosed building which preserved  
the unique goods which Defendant failed to pick up upon  
payment in full.

Plaintiffs seek recovery for service performed  
to preserve Defendants goods.

What was the terms of the oral contract will be  
at issue under general principles of contract law.

3. **List of Witnesses:**

- a. Merrill Jones  
P.O. Box 153  
Smoke Run, PA 16681
- b. Ruth Jones  
P.O. Box 153  
Smoke Run, PA 16681
- c. Ronald E. Archer  
P.O. Box 276  
Houtzdale, PA 16651
- d. Charles J. Ross  
P.O. Box 247  
Clearfield, PA 16830

4. **Statement of Damages and List of Exhibits:**

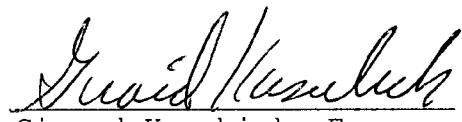
Plaintiffs seeks damages for storage services at \$10.00 per day from June 11, 1999 until March 23, 2004 which is a total of 1747 days or Seventeen Thousand Four Hundred Seventy and 00/100 (\$17,470.00) Dollars.

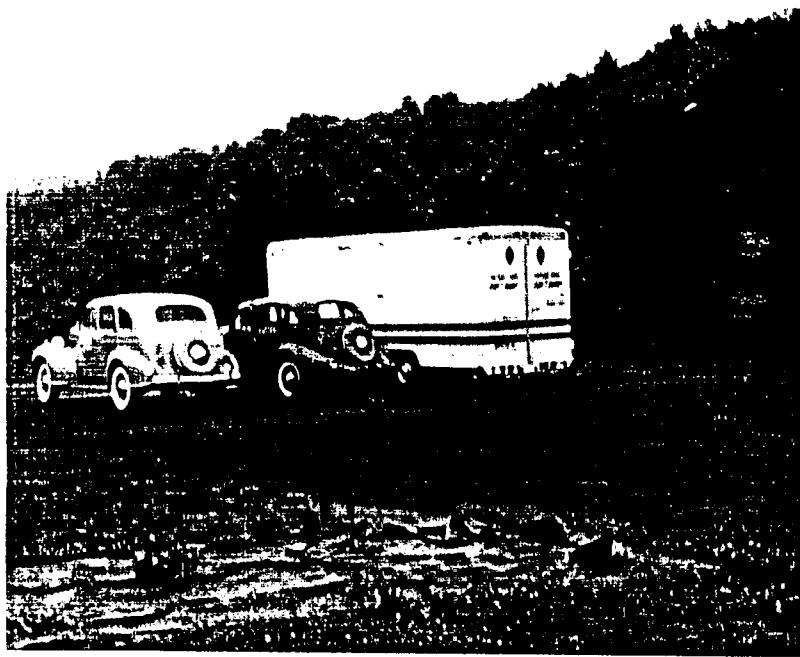
The exhibits to be used at Arbitration are:

- a.) 2-Photos of three (3) vehicles.  
Attached hereto.
- b.) Page of Generator and Distributor Magazine showing the subject three (3) vehicles in the middle column entitle Package Deal. Attached hereto.
- c.) Jones Salvages record of payments by Defendant. Attached hereto.
- d.) June 11, 1999 letter to Mr. Trejo by Ruth Jones. Attached hereto.
- e.) October 21, 1999 letter of Ronald E. Archer to Defendant. Attached hereto.
- f.) November 10, 1999 letter of Defendant to Ronald E. Archer. Attached hereto.

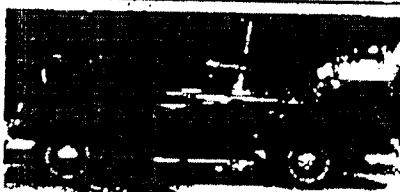
Plaintiffs reserve the right to offer other Exhibits that become relevant at the Arbitration previously provided or known to Defendant.

Respectfully Submitted,

  
Girard Kasubick,  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs



## CARS FOR SALE



1950 Studebaker Deluxe, burgundy, 2,000 miles on rebuilt engine, transmission and clutch. Clean, solid, attractive classic. Sacrifice \$3,300 or best offer/trade? Call Pete (319) 377-1425 Marion, Iowa.



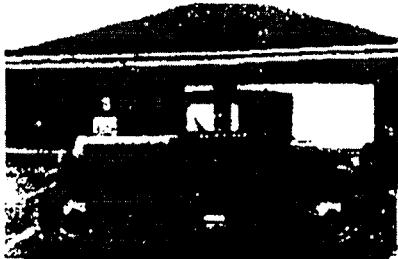
1940 Special Deluxe 4-door. All restored to original condition. Dark gray, Hampton interior, 8-spoke steering wheel. Sacrifice at \$12,500 Joe (319) 782-9883 days.



1967 Corvette 1st place winner at Nashville 1991 30th Anniversary Meet. Featured in Nov-Dec 1991 G&D. 327 cu in engine 300 horsepower, automatic transmission. Tilt, telescopic steering wheel. 39,000 original miles. Excellent in every respect \$29,500; Richard Bartlett (313) 475-3485.



1940 Master 85 Business Coupe restored. VCCA junior, AACA preservation winner. Light green, trailered car. Asking \$7,000; Donald Zimmons, (914) 877-6961 after 6 pm.



1928 3-window Coupe; 4-cylinder, 39,684 miles, green with black fenders and top. Excellent condition to show or drive. New tires, VIN #4866992. Set of pictures available, SASE. \$10,000 or offer. Ken Carson, PO Box 216, Toledo, IA 52342; phone (515) 484-2520 days; (515) 484-3547 evenings..



PACKAGE DEAL: (1) 1939 4-door slant back with tire on rear. Only 68 made. I have body number 8. Restored with all new parts, used only the body shell. Won first place in every show it was entered in.



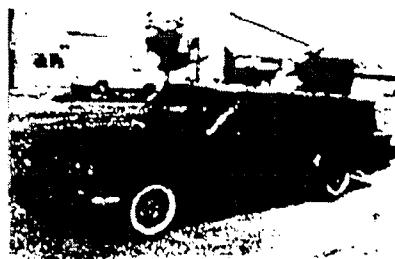
(1) 1939 unrestored 4-door slant back with tire on rear. Body number 3. Have two new rear fenders and a rear bumper, plus other parts.



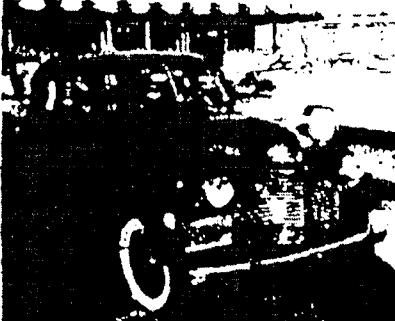
(1) 20 foot Wells Cargo closed trailer. Insulated, carpeted, and paneled, with burglar alarm and two spares. Will deliver as far West as Colorado. May be the last two cars left. \$65,000; (814) 378-5037; Merrill Jones, Box 153, Smoke Run, PA 16681.

1937 1/2-ton Pickup. \$4,000; (918) 529-2305 or write SASE to A. Leon Jr., 38 Rio Vista Ln., Red Bluff, CA 96080.

1985 Chevelle Malibu Super Sport Hardtop No.2 condition-complete restoration of a solid hard to find body style. 283 V8 auto transmission. Roman Red paint. White interior, never any dents or fillers asking \$7,500. May consider "partial" interesting trade. Gene Beban, 24200 Walnut St. (Space 22), Lomita, CA 90717-1246; (310) 530-6879.



1960 Sedan Delivery with factory tri-power 348, 4-speed transmission and heavy duty posi-track rear end. This very unusual muscle car is in showroom fresh, top Concours condition and must be seen to be appreciated. Only \$18,500; Gary Almeida, Turlock, CA 95380; (209) 667-7828 (days) and (209) 632-1239 (evenings).



1940 4-door Special Deluxe Sedan 63,550 original miles, very good unrestored condition, all buttons, knobs, handles and latches are original, no rust broken glass or lights. Front brake cylinder leaks "new brakes". I have a heart condition and am sure someone out there could take care of and enjoy this vehicle. \$5,500; Dewey Luck, 3455 Snowy Butte Lane, Central Point, OR 97502; (503) 664-7713.



1931 5-window Business Coupe. Older restoration. Runs and drives great. Two tone paint, lower color is a gray/green, upper color is Maple Brown. Black fenders and aprons. Pale yellow wheels and pinstriping. \$9,750 obo. David Ahrend, 16200 W. Sycamore Dr., Bakersfield, CA 93312; (805) 589-4883; Please call before 2:00 PM, or on weekends.

1932 Confederate Sedan. Australian Holden body, complete restoration to original Australian specifications. This is an unusual Sedan. Dual sidemounts. White side wall tires. Luggage rack and trunk. All leather trim body red fenders black. Drives very well. Refer photo May 1984 G&D priced at US \$22,500; You pay shipping. Eileen Hall, 180 Andrew Road, Greenbank 4124 Logan City, Qld Australia; Phone 07 2970754.

STATEMENT

M. Michael Tripp 1993  
 500 W Main St Santa Paula Calif 93060

ALL SALES FINAL - NO RETURN OF ANYTHING  
 IN ACCOUNT WITH

JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

March 18, 1997		
	Balance	52000.00
August 18 1998		
# 265980 -	8,000.00	
# 265981 -	8,000.00	
# 266031	5,000.00	
Total	\$ 21,000.00	<u>21000.00</u>
	Balance	11000.00
March 15 - 1999		
# 271994 -	7,000.00	
	Balance	4000.00
July 3 - 1999		
# 274949	2,800.00	
Money Order		
# 83565589285	700.00	
# 83565589296	500.00	
Total	\$ 4,000.00	4,000.00

STATEMENT

M. Michael Tripp 1993  
 250 W Main Street  
 Santa Paula Calif 93060

ALL SALES FINAL - NO RETURN OF ANYTHING  
 IN ACCOUNT WITH

JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

1	39-4 Door <sup>Chvr</sup> Slant Back Restored	
	Serial No. 3JA0431071	
1	39-4 Door <sup>Chvr</sup> Slant Back unrestored Serial No. 14JA121221	
1	Enclosed Well Cargo trailer	
	Serial No. WC 16769	
	All 3 Pieces	410,000.00
	April 19 - 1993 Paid one Check No. # 594991949	
	Amount 3500.00	
	Balance 36,500.	
	March 18 - 1997 Paid Check # 243843	4,500
	Balance	32,000

June 11, 1999

Dear Mike,

This is a follow-up to my last phone call to your Voice Mail on June 7, 1999 at 9:20 P.M. EST. Since you have not replied back in any manner I find it necessary to send you this information.

As of June 7, 1999, since vehicles have not been paid in full, outside storage was begun at  $10.00$  per day, as shown by enclosed photos.

Please be advised that as of June 30, 1999, if vehicles are not paid in full, and removed from our property, the vehicles will be put up for resale and you will forfeit your payments already made.

This will be your final notice on this matter.

Sincerely,

Mrs. Merrill (Ruth) Jones

**STATEMENT**

June 11 1999

Mr. Michael Trejo

250 W. MAIN ST. SANTA PAULA, CA 93060-3247

**ALL SALES FINAL — NO RETURN OF ANYTHING  
IN ACCOUNT WITH**

## JONES' SALVAGE

**PHONE: HOUTZDALE 378-5037      SMOKE RUN, PA.**

1 1939 4 Door Chevy Slant Back  
Restored

1 1939 4 Door Chevy Slant  
Back - unrestored

1 Wells Cargo Trailer

Storage at \*10.00 For All  
three vehicles per Day  
starting June 11, 1999.

RONALD E. ARCHER

ATTORNEY AT LAW

711 HANNAH STREET  
HOOTZDALE, PA. 16851

814 - 378-7641  
FAX 814 - 378-5558

October 21, 1999

Mr. Michael Trejo  
250 West Main Street  
Santa Paula, CA 93060

**Re: Vehicle sale from Merrill Jones**

Dear Mr. Trejo:

I have been contacted by Merrill Jones concerning the sale of one restored 1939 4-door Chevrolet slant-back automobile, one unrestored 1939 4-door Chevrolet slant-back automobile, and one Wells cargo trailer.

Mr. Jones informed me that the sale of the above vehicles was negotiated and agreed upon in about 1993. The agreed upon price was \$40,000.00, and the final payment was made on June 30, 1999. Mr. Jones did not charge any interest on the amount due, nor did he charge any storage fees during that six-year period.

Mr. Jones acknowledges that he has now received the full amount due for the vehicles. The vehicle titles are ready to be transferred to you as soon as you make the arrangements to remove the vehicles from Mr. Jones' property.

I have enclosed copies of the letters from Mr. Jones to you in which he informed you that he has cancelled insurance on the vehicles, and that a daily storage rate of \$10.00 per day began to accrue in June of 1999. I have enclosed a photograph showing that the vehicles are currently being stored outdoors on Mr. Jones' property.

Mr. Jones has placed his real estate up for sale, and negotiations have been ongoing with prospective purchasers of his real estate. I am certain that whoever purchases the property will want the vehicles moved from the property.

I am requesting that within 15 days of receipt of this letter you either make arrangements to have the vehicles delivered to you in California or that you make arrangements to store them at another location in the area. It would appear to be in your best interest to have the vehicles in your possession and to protect your investment in the vehicles from the harsh winter weather we experience in this area of Pennsylvania.

I would appreciate you contacting me upon receipt of this letter so that we may discuss the best way to resolve this matter.

Yours truly,

Ronald E. Archer

REA:ps

Enclosures

cc: Merrill Jones

November 10, 1999

Michael Trejo  
250 W. Main St.  
Santa Paula, Calif 93060  
805-525-1371

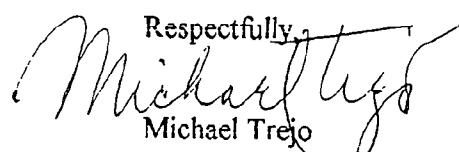
Ronald E. Archer  
Attorney At Law  
711 Hannah St.  
Houtzdale, Pa. 16651

**Re: Purchase of vehicles and trailer from Merril Jones**

Dear Mr. Archer:

I received your letter concerning the purchase of the vehicles and the trailer on October 30, 1999. Mr. Archer, I made every effort on my part to pay these vehicles off as soon as possible. Unfortunately it was beyond my control to get this done sooner. Mr. Jones and I agreed to this deal a few years ago, and Mr. Jones had put these vehicles up for sale when I was not able to complete this deal as quickly as we would have liked. There was no one else interested in making this deal, so he has very patiently waited. The original deal was that Mr. Jones would "deliver" the Wells Cargo trailer with the restored 1939 Chevrolet Slantback inside, to meet me as far west as Colorado, which made the deal all the more enticing. Mr. Jones also stated that the vehicles were in safe keeping and would be in the spot I last saw them. Which was stored inside and out of the weather. In the process Mr. Jones had some health problems and Mrs. Jones has changed the original deal and demanded they be off the property, and is charging for rental space. That was not part of the deal I made with Mr. Jones, we do not feel that there should be a charge for rental space on these items. We would also like to let Ruth and Merrill know that I honestly appreciate the fact that they were very patient with us, and to understand that I tried everything in my power to get this matter resolved, however due to my own health problems which occurred, it was physically and financially unavoidable. We are currently and have been working to get these vehicles and trailer to my premise, obviously it hasn't been as easy a process as some people might think, common sense would dictate that we did not invest the money and efforts to leave the vehicles and trailer in Pennsylvania. We need to resolve the matter of the removal of the rental charges and possibly some help in the transportation fee for the unrestored vehicle as Mr. Jones' health no longer enables him to bring the restored 1939 and the trailer to Colorado, it only makes it harder for us to resolve this matter. We are working on getting enough money together to get these vehicles home.

Please advise us as to how to best resolve this matter.

Respectfully,  
  
Michael Trejo

41b 3-2304-1<sup>00</sup>

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

MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE,  
Box 153  
Smoke Run, Pennsylvania 16681 : No.: 2002-1456-CD  
Plaintiffs : CIVIL ACTION - LAW  
v. :  
MICHAEL TREJO  
250 West Main Street  
Santa Paula, California 93060-3247 :  
Defendant :  
RECEIVED  
MAR 13 2004  
COURT ADMINISTRATOR'S  
OFFICE

## **PRETRIAL STATEMENT**

**NOW COMES**, the Defendant, Michael Trejo, and files his Pre-Trial Statement, in accordance with Local Rule 1306A.

#### A) Statement of the Case

Defendant Michael Trejo responded to an advertisement by Plaintiff Merrill Jones (See Defendant's Exhibit 1 attached to Defendant's Answer with New Matter) and the parties made an oral agreement April 1993, whereby Trejo would purchase, and Jones would sell for the total price of \$40,000, two (one restored, and one unrestored) 1939 slant-backed automobiles, plus parts, a trailer, and an easel-mounted display book, as more fully described at paragraph 23, page 6 of Defendant's Answer With New Matter. These items will hereinafter be referred to as the goods. According to Mr. Trejo's version of the oral agreement, after receipt of final payment, Merrill Jones would transfer title of the goods to Trejo and deliver them as far west as Colorado. Jones agreed to allow Trejo to make payments over a period of time but that time period was not specified.

The oral contract was made in April 1993. Final payment was tendered June 30, 1999. Not until Trejo had already paid \$36,000, which amount was paid as of March 15, 1999, did Jones complain about storage costs. Consequently, not until Trejo had already paid 90% of the purchase price did Ruth Jones suddenly insist upon payment of storage costs. In fact, it was Plaintiff Ruth Jones and not Merrill Jones, who insisted by letter dated June 11, 1999, that because full payment had not been tendered by June 7, 1999, storage costs of \$10 per day would be charged starting June 7, 1999. Trejo made a final payment of \$4,000 on June 30, 1999, bringing the total paid to \$40,000.

Shortly after October 21, 1999, Trejo received a letter dated October 21, 1999, from Jones' agent, Attorney Ronald Archer, Esq., which letter acknowledged in writing the agreed-upon purchase price of \$40,000; that final payment was made June 30, 1999; and that no storage fees were charged during the six-year period it took Trejo to pay the \$40,000. At that time, Archer informed Trejo the vehicles were ready to be picked up. (See Defendant's Exhibit 4 attached to Defendant's Answer with New Matter.)

By letter dated November 10, 1999, Trejo objected, stating that Jones was suppose to deliver the goods as far west as Colorado, and Trejo disavowed that rental space charges were part of the contract. (See Defendant's Exhibit 5 attached to Defendant's Answer With New Matter).

No real progress in resolving this matter has occurred since that time. Just before Trejo was about to file suit against Jones, Plaintiffs Merrill Jones and Ruth Jones filed suit against Trejo in Clearfield County, Pennsylvania.

Trejo insists that storage costs were not part of the contract and that Jones had to deliver the goods as far west as Colorado; Jones insists that he does not have to deliver the goods nor even

release the goods to Trejo unless storage costs are paid.

**B) Citation to Applicable Case or Statutes**

Inasmuch as this case can be resolved from the black-letter Law of Contracts, Defendant is relying upon the *Restatement of Contract, Second*. The specific sections upon which Defendant relies are as follows:

- Section 5: Terms of Promise, Agreement of Contract.
- Section 89: Modification of Executory Contract.
- Section 131: Satisfaction of the Statute of Frauds by a Memorandum.
- Section 135: Who Must Sign.
- Section 136: Time of Memorandum.
- Section 139: Enforcement by Virtue of Action in Reliance.
- Section 154: When A Party Bears the Risk of Mistake.
- Section 157: Effects of Fault of Party Seeking Relief.
- Section 360: Factors Affecting Adequacy of Damages.
- Section 362: Effect of Uncertainty of Terms.
- Section 381: Loss of Power of Avoidance by Delay.

**C) List of Witnesses**

The Defendant's sole witness is himself, Michael Trejo.

**D) Statement of Damages and Copies of those bills which the Party Intends to Offer.**

Defendant maintains that he does not owe Plaintiff any money for storage costs, and Defendant is insisting in his New Matter upon specific performance of the contract due to the uniqueness of the goods and the inability to substitute. Only specific performance will make the Defendant whole. In support of his position, Defendant will seek the admission of all the Exhibits attached to Defendant's Answer with New Matter, Defendant's Exhibits 1 through 10, which have already been filed of record with his Answer with New Matter.

**E) Argument**

Defendant submits that the Statute of Frauds in this case is satisfied by the letter dated October 21, 1999, from Merrill Jones' agent, Attorney Ronald Archer (Defendant's Exhibit 4 attached to Defendant's Answer with New Matter). Archer's letter constitutes a memorandum acceptable pursuant to Section 131 of the Restatement of Contracts, Second. Archer as Jones' agent was authorized to sign (Section 135 of the Restatement), and that it was rendered after completing of the contract is not a problem(Section 136 of the Restatement).

Furthermore, inasmuch as Jones never complained until Trejo had already paid 90% of the purchase price over a period of six years, the contract must be enforced by virtue of Trejo's actions in reliance upon the contract as the parties understood it, i.e.: Trejo could make the payments towards the \$40,000 purchase price over a period of time. (Section 139 of the Restatement.)

The terms of a contract are not merely those in writing, but those "implied in fact from other conduct. . . including course of dealing or usage of trade or course of performance." See Comment (a) to Section 5 of the Restatement, relating to Terms of Promise, Agreement or Contract. For six years, Merrill Jones accepted payments from Trejo without complaint or any mention of storage costs. Clearly, the parties course of dealing and performance reveal that storage charges were not part of the contract.

Nor did the parties mutually agree to modify the contract as anticipated by Section 89 of the Restatement relating to Modification of Executory Contract. When Jones' agent, Attorney Ronald Archer by letter dated October 21, 1999, said Trejo had to pick up the goods in Clearfield county and

that Trejo owed storage costs, Trejo promptly repudiated this attempt to modify the contract by letter to Attorney Archer, dated November 10, 1999.

Inasmuch as these goods are such unique antique vehicles, only by enforcing of the parties promises can injustice be avoided to Mr. Trejo. See Section 139 of the Restatement. In addition, Jones who initiated this suit for the alleged storage charges, bears the risk of any mistake he made by not including this within the contract at the time and by not setting a more specific time period for Trejo to pay the purchase price. Indeed, six years ensued before Jones mentioned storage costs or having to retrieve the vehicles in Pennsylvania. Thus, Jones should bear the consequence of any mistake though Trejo does not concede that any mistake did occur. See Section 154 of the Restatement.

Moreover, by waiting more than six years and not until Trejo had paid 90% of the purchase price, before requesting storage charges, evinces on the part of the Jones a "failure to act in good faith and in accordance with reasonable standards of fair dealing." See Section 157 of the Restatement.

Trejo demands specific performance. He wants the unique goods he has paid for in full delivered as far west as Colorado and title transferred to him for the goods. Plaintiffs acknowledged that he has purchased. There is no uncertainty as to the terms relating to what the goods are. See Section 362 of the Restatement. That is not even in dispute.

Section 360 of the Restatements provides:

In determining whether the remedy in damages would be adequate, the following circumstances are significant:

- (a) the difficulty of deciding money damages with reasonable certainty;

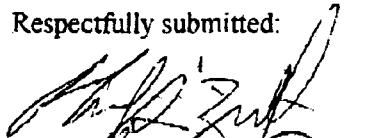
- (b) the difficulty of procuring a suitable substitute performance by means of money award as damages;
- (c) the likelihood that an award of damages could not be collected.

The goods that are the subject of this contract simply are so unique they cannot be substituted. The only remedy adequate to make Trejo whole is specific performance of the contract.

Finally, Jones has lost his power of avoidance of the contract by his delay of six years in asking for storage costs and being relieved of the duty to deliver the goods as far west as Colorado. Trejo had performed 90% of the contract (paid \$36,000 of \$40,000) before Jones started raising objections. Jones waited way too long to complain about any mistake. See Section 381(2) of the Restatement relating to Loss of Power of Avoidance by Delay.

WHEREFORE, Michael Trejo respectfully requests the panel of Arbitrators to deny Plaintiff's demands for storage charges and requests that Defendant's demand for specific performance of the contract be granted.

Respectfully submitted:



Philip L. Zulli, Esquire  
Attorney Id. No. 47499

1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

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

MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE, : No.: 2002-1456-CD  
Plaintiffs :  
v. : CIVIL ACTION - LAW  
MICHAEL TREJO:  
Defendant :  
**CERTIFICATE OF SERVICE**

I, PHILIP L. ZULLI, Esquire, certify that I have served a copy of the Defendant's Pre-Trial Memorandum this 15<sup>th</sup> day of March, upon the following persons by the method indicated:

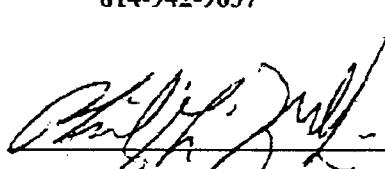
by Fax and Federal Express overnight delivery service:

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651  
814-378-6231  
Attorney for Plaintiffs

by Fax and United States First Class Mail:

Dwight I. Koerber, Jr., Esq. P.O. Box 1320 Clearfield, PA 16830 814-765-9503	Earle D. Lees, Jr. Esquire 109 North Brady Street, 2 <sup>nd</sup> Floor DuBois, PA 15801 814-375-9525	William Lynn Hollen, Esq. 1633 E. Pleasant Valley Blvd. Altoona, PA 16602 814-942-9837
---	---	---

DATED: March 15, 2004

  
Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

Law Offices of Phillip L. Zulli  
Licensed in Ohio and Pennsylvania

Arb

1521 North Front Street  
Marrisburg, Pennsylvania 17102  
Phone (717) 238 - 9004  
Fax (717) 239 - 9310  
X Reply to this address

March 15, 2004

Arb  
1521 N. Front St.  
Marrisburg, PA 17102  
(717) 238-9004  
(717) 239-9310  
Fax (717) 239-9310

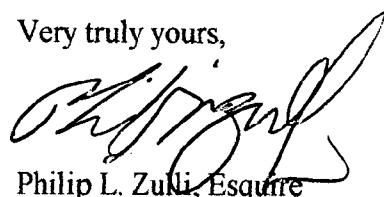
David S. McHolick  
Court Administrator  
Clearfield County Courthouse  
Suite 228, 230 East Market Street  
Clearfield, PA 16830

Re: *Jones v. Trejo*, No. 02-456-CD  
Pre-Trial Statement and Emergency Request for Continuance

Dear Mr. McHolick:

Enclosed please find the original of the Defendant's Pre-Trial Statement, as well as an Original and three copies of an Emergency Request for Continuance due to medical reasons.

Very truly yours,



Philip L. Zulli, Esquire

Enclosures: (2)

cc: Girard Kasubick, Esq., Attorney for Plaintiffs  
Dwight L. Koerber, Esq., Arbitrator  
Earle D. Lees, Jr., Esq., Arbitrator  
Wm. Lynn Hollen, Esq., Arbitrator

RECEIVED

MAR 16 2004

COURT ADMINISTRATOR'S  
OFFICE

1-877-TRULAW 1-877-4-CARLAW  
Zulli@msn.com  
1-877-878-5529 1-877-422-7529

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

<b>MERRILL JONES and RUTH JONES, his wife, and JONES AUTO SALVAGE a/k/a JONES SALVAGE, Box 153 Smoke Run, Pennsylvania 16681</b>	<b>:</b>	<b>No.: 2002-1456-CD</b>
	<b>:</b>	
	<b>:</b>	
	<b>:</b>	<b>CIVIL ACTION – LAW</b>
	<b>:</b>	
<b>Plaintiffs</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>RECEIVED</b>
	<b>:</b>	
<b>MICHAEL TREJO 250 West Main Street Santa Paula, California 93060-3247</b>	<b>:</b>	<b>MAR 16 2004</b>
	<b>:</b>	<b>COURT ADMINISTRATOR'S OFFICE</b>
<b>Defendant</b>	<b>:</b>	

**PRETRIAL STATEMENT**

**NOW COMES**, the Defendant, Michael Trejo, and files his Pre-Trial Statement, in accordance with Local Rule 1306A.

**A) Statement of the Case**

Defendant Michael Trejo responded to an advertisement by Plaintiff Merrill Jones (See Defendant's Exhibit 1 attached to Defendant's Answer with New Matter) and the parties made an oral agreement April 1993, whereby Trejo would purchase, and Jones would sell for the total price of \$40,000, two (one restored, and one unrestored) 1939 slant-backed automobiles, plus parts, a trailer, and an easel-mounted display book, as more fully described at paragraph 23, page 6 of Defendant's Answer With New Matter. These items will hereinafter be referred to as the goods. According to Mr. Trejo's version of the oral agreement, after receipt of final payment, Merrill Jones would transfer title of the goods to Trejo and deliver them as far west as Colorado. Jones agreed to allow Trejo to make payments over a period of time but that time period was not specified.

The oral contract was made in April 1993. Final payment was tendered June 30, 1999. Not until Trejo had already paid \$36,000, which amount was paid as of March 15, 1999, did Jones complain about storage costs. Consequently, not until Trejo had already paid 90% of the purchase price did Ruth Jones suddenly insist upon payment of storage costs. In fact, it was Plaintiff Ruth Jones and not Merrill Jones, who insisted by letter dated June 11, 1999, that because full payment had not been tendered by June 7, 1999, storage costs of \$10 per day would be charged starting June 7, 1999. Trejo made a final payment of \$4,000 on June 30, 1999, bringing the total paid to \$40,000.

Shortly after October 21, 1999, Trejo received a letter dated October 21, 1999, from Jones' agent, Attorney Ronald Archer, Esq., which letter acknowledged in writing the agreed-upon purchase price of \$40,000; that final payment was made June 30, 1999; and that no storage fees were charged during the six-year period it took Trejo to pay the \$40,000. At that time, Archer informed Trejo the vehicles were ready to be picked up. (See Defendant's Exhibit 4 attached to Defendant's Answer with New Matter.)

By letter dated November 10, 1999, Trejo objected, stating that Jones was suppose to deliver the goods as far west as Colorado, and Trejo disavowed that rental space charges were part of the contract. (See Defendant's Exhibit 5 attached to Defendant's Answer With New Matter).

No real progress in resolving this matter has occurred since that time. Just before Trejo was about to file suit against Jones, Plaintiffs Merrill Jones and Ruth Jones filed suit against Trejo in Clearfield County, Pennsylvania.

Trejo insists that storage costs were not part of the contract and that Jones had to deliver the goods as far west as Colorado; Jones insists that he does not have to deliver the goods nor even

release the goods to Trejo unless storage costs are paid.

**B) Citation to Applicable Case or Statutes**

Inasmuch as this case can be resolved from the black-letter Law of Contracts, Defendant is relying upon the *Restatement of Contract, Second*. The specific sections upon which Defendant relies are as follows:

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- Section 135: Who Must Sign.
- Section 136 Time of Memorandum.
- Section 139 Enforcement by Virtue of Action in Reliance.
- Section 154 When A Party Bears the Risk of Mistake.
- Section 157 Effects of Fault of Party Seeking Relief.
- Section 360 Factors Affecting Adequacy of Damages.
- Section 362 Effect of Uncertainty of Terms.
- Section 381 Loss of Power of Avoidance by Delay.

**C) List of Witnesses**

The Defendant's sole witness is himself, Michael Trejo.

**D) Statement of Damages and Copies of those bills which the Party Intends to Offer.**

Defendant maintains that he does not owe Plaintiff any money for storage costs, and Defendant is insisting in his New Matter upon specific performance of the contract due to the uniqueness of the goods and the inability to substitute. Only specific performance will make the Defendant whole. In support of his position, Defendant will seek the admission of all the Exhibits attached to Defendant's Answer with New Matter, Defendant's Exhibits 1 through 10, which have already been filed of record with his Answer with New Matter.

## **E) Argument**

Defendant submits that the Statute of Frauds in this case is satisfied by the letter dated October 21, 1999, from Merrill Jones' agent, Attorney Ronald Archer (Defendant's Exhibit 4 attached to Defendant's Answer with New Matter). Archer's letter constitutes a memorandum acceptable pursuant to Section 131 of the Restatement of Contracts, Second. Archer as Jones' agent was authorized to sign (Section 135 of the Restatement), and that it was rendered after completing of the contract is not a problem(Section 136 of the Restatement).

Furthermore, inasmuch as Jones never complained until Trejo had already paid 90% of the purchase price over a period of six years, the contract must be enforced by virtue of Trejo's actions in reliance upon the contract as the parties understood it, i.e.: Trejo could make the payments towards the \$40,000 purchase price over a period of time. (Section 139 of the Restatement.)

The terms of a contract are not merely those in writing, but those "implied in fact from other conduct . . . including course of dealing or usage of trade or course of performance." See Comment (a) to Section 5 of the Restatement, relating to Terms of Promise, Agreement or Contract. For six years, Merrill Jones accepted payments from Trejo without complaint or any mention of storage costs. Clearly, the parties course of dealing and performance reveal that storage charges were not part of the contract.

Nor did the parties mutually agree to modify the contract as anticipated by Section 89 of the Restatement relating to Modification of Executory Contract. When Jones' agent, Attorney Ronald Archer by letter dated October 21, 1999, said Trejo had to pick up the goods in Clearfield county and

that Trejo owed storage costs, Trejo promptly repudiated this attempt to modify the contract by letter to Attorney Archer, dated November 10, 1999.

Inasmuch as these goods are such unique antique vehicles, only by enforcing of the parties promises can injustice be avoided to Mr. Trejo. See Section 139 of the Restatement. In addition, Jones who initiated this suit for the alleged storage charges, bears the risk of any mistake he made by not including this within the contract at the time and by not setting a more specific time period for Trejo to pay the purchase price. Indeed, six years ensued before Jones mentioned storage costs or having to retrieve the vehicles in Pennsylvania. Thus, Jones should bear the consequence of any mistake though Trejo does not concede that any mistake did occur. See Section 154 of the Restatement.

Moreover, by waiting more than six years and not until Trejo had paid 90% of the purchase price, before requesting storage charges, evinces on the part of the Jones a "failure to act in good faith and in accordance with reasonable standards of fair dealing." See Section 157 of the Restatement.

Trejo demands specific performance. He wants the unique goods he has paid for in full delivered as far west as Colorado and title transferred to him for the goods Plaintiffs acknowledged that he has purchased. There is no uncertainty as to the terms relating to what the goods are. See Section 362 of the Restatement. That is not even in dispute.

Section 360 of the Restatements provides:

In determining whether the remedy in damages would be adequate, the following circumstances are significant:

- (a) the difficulty of deciding money damages with reasonable certainty;

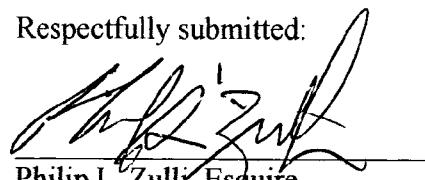
- (b) the difficulty of procuring a suitable substitute performance by means of money award as damages;
- (c) the likelihood that an award of damages could not be collected.

The goods that are the subject of this contract simply are so unique they cannot be substituted. The only remedy adequate to make Trejo whole is specific performance of the contract.

Finally, Jones has lost his power of avoidance of the contract by his delay of six years in asking for storage costs and being relieved of the duty to deliver the goods as far west as Colorado. Trejo had performed 90% of the contract (paid \$36,000 of \$40,000) before Jones started raising objections. Jones waited way too long to complain about any mistake. See Section 381(2) of the Restatement relating to Loss of Power of Avoidance by Delay.

WHEREFORE, Michael Trejo respectfully requests the panel of Arbitrators to deny Plaintiff's demands for storage charges and requests that Defendant's demand for specific performance of the contract be granted.

Respectfully submitted:



Philip L. Zulli, Esquire  
Attorney Id. No. 47499

1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

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

<b>MERRILL JONES and RUTH JONES, his wife, and JONES AUTO SALVAGE a/k/a JONES SALVAGE,</b>	<b>:</b>	<b>No.: 2002-1456-CD</b>
	<b>:</b>	
	<b>:</b>	<b>CIVIL ACTION – LAW</b>
<b>Plaintiffs</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>MICHAEL TREJO:</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I, PHILIP L. ZULLI, Esquire, certify that I have served a copy of the Defendant's Pre-Trial Memorandum this 15<sup>th</sup> day of March, upon the following persons by the method indicated:

by Fax and Federal Express overnight delivery service:

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651  
814-378-6231  
Attorney for Plaintiffs

by Fax and United States First Class Mail:

Dwight L. Koerber, Jr., Esq. P.O. Box 1320 Clearfield, PA 16830 814-765-9503	Earle D. Lees, Jr. Esquire 109 North Brady Street, 2 <sup>nd</sup> Floor DuBois, PA 15801 814-375-9525	William Lynn Hollen, Esq. 1633 E. Pleasant Valley Blvd. Altoona, PA 16602 814-942-9837
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DATED: March 15, 2004



Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

LAW OFFICES  
**LEHMAN & KASUBICK**

Arb 6-14-04

611 BRISBIN STREET, HOUTZDALE, PA 16651

Telephone (814) 378-7840  
Facsimile (814) 378-6231

June 4, 2004

David S. Meholic, Court Administrator  
CLEARFIELD COUNTY COURTHOUSE  
Suite 228, 230 East Market Street  
Clearfield, PA 16830

Re: Merrill Jones, et. al. vs. Michael Trejo  
No. 2002-1456-CD

Dear Dave:

Enclosed please find my Pre-Trial Statement filed on behalf of the Plaintiffs on the above Arbitration scheduled, June 14, 2004. I am serving copies on opposing counsel and the Arbitrators by copy of this letter.

I received from Attorney Zulli a fax today on a motion to transfer to non-jury trial list and I informed him I would not oppose the transfer since he has raised certain equity issues. If an Order is issued on the transfer to the non-jury trial list, please inform me.

If you have any questions, please feel free to contact me.

Very truly yours,

LEHMAN & KASUBICK



Girard Kasubick

GK:lah

Enclosure

cc: Carl A. Belin, Jr., Esq.  
J. Richard Lhota, Esq.  
Michael S. Marshall, Esq.  
Philip L. Zulli, Esq.  
Mr. & Mrs. Merrill Jones

RECEIVED

JUN 07 2004

COURT ADMINISTRATOR'S  
OFFICE

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

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

MERRILL JONES and RUTH JONES, :  
his wife, and JONES AUTO : No.: 2002-1456-CD  
SALVAGE, a/k/a JONES SALVAGE, :  
Plaintiffs : **RECEIVED**  
vs. : :  
MICHAEL TREJO, : : JUN 07 2004  
Defendant : : COURT ADMINISTRATORS  
OFFICE

**PLAINTIFF'S PRE-TRIAL STATEMENT**

AND, NOW comes, Merrill Jones and Ruth Jones, his wife, and Jones Auto Salvage a/k/a Jones Salvage, by and through their attorney, Girard Kasubick, Esquire, and files the following Pre-Trial Statement under 46 J.D.R.C.P. 1306(A):

1. Statement of the Case:

In 1993 the Plaintiffs, Merrill Jones t/d/b/a Jones Auto Salvage and Jones Salvage advertised in a publication to sell a 1976 Wells Cargo Trailer and two 1939 Chevrolet Slant Back automobiles. One automobile was restored and one was not restored.

The advertisement stated these items were for sale for \$65,000.00 and would be delivered as far West as Colorado.

In April 1993, Merrill Jones was contacted by Mr. Trejo to buy the trailer and two (2) vehicles advertised. The Parties reached an oral agreement that these three (3) items would be sold for \$40,000.00 but there was no delivery requirements by Mr. Jones and that Mr. Trejo would be given some time to pay in full, but no specific time was given. On April 19, 1993 Mr. Trejo paid \$3,500.00, but no other payments were made until March 18, 1997 when another \$4,500.00 was paid. Eventually by July 3, 1999 Mr. Trejo did pay the full \$40,000.00.

Mr. Trejo never contacted the Plaintiffs about picking up the items or titles to the vehicles until late 1999 after Plaintiff's attorney sent a letter to Mr. Trejo. Mr. Trejo alleges from late 1999 and in his pleading that delivery was still to be made to Colorado which Plaintiffs deny.

Plaintiffs request payment of storage fees for the vehicles for failure of Defendant to pick up the vehicles which Defendant has refused to pay. The request for storage fees was made June 11, 1999 at \$10.00 per day for all three (3) vehicles.

Defendant has filed various Counterclaims of Replevin, Breach of Contract, Fraud, False Advertisement, and Intentional Interference.

2. **Citation of Applicable Cases or Statutes:**

Plaintiffs seek recovery for storage of antique vehicles in a heated enclosed building which preserved the unique goods which Defendant failed to pick up upon payment in full.

Plaintiffs seek recovery for service performed to preserve Defendants goods.

What was the terms of the oral contract will be at issue under general principles of contract law.

3. **List of Witnesses:**

- a. Merrill Jones  
P.O. Box 153  
Smoke Run, PA 16681
- b. Ruth Jones  
P.O. Box 153  
Smoke Run, PA 16681
- c. Ronald E. Archer  
P.O. Box 276  
Houtzdale, PA 16651
- d. Charles J. Ross  
P.O. Box 247  
Clearfield, PA 16830
- e. Charles J. Lewis  
Smoke Run, PA 16681

4. **Statement of Damages and List of Exhibits:**

Plaintiffs seeks damages for storage services at \$10.00 per day from June 11, 1999 until June 14, 2004 which is a total of 1830 days or Eighteen Thousand Three Hundred and 00/100 (\$18,300.00) Dollars.

The exhibits to be used at Arbitration are:

a.) 2-Photos of three (3) vehicles.

Attached hereto.

b.) Page of Generator and Distributor Magazine showing the subject three (3) vehicles in the middle column entitle Package Deal. Attached hereto.

c.) Jones Salvages record of payments by Defendant. Attached hereto.

d.) June 11, 1999 letter to Mr. Trejo by Ruth Jones. Attached hereto.

e.) October 21, 1999 letter of Ronald E. Archer to Defendant. Attached hereto.

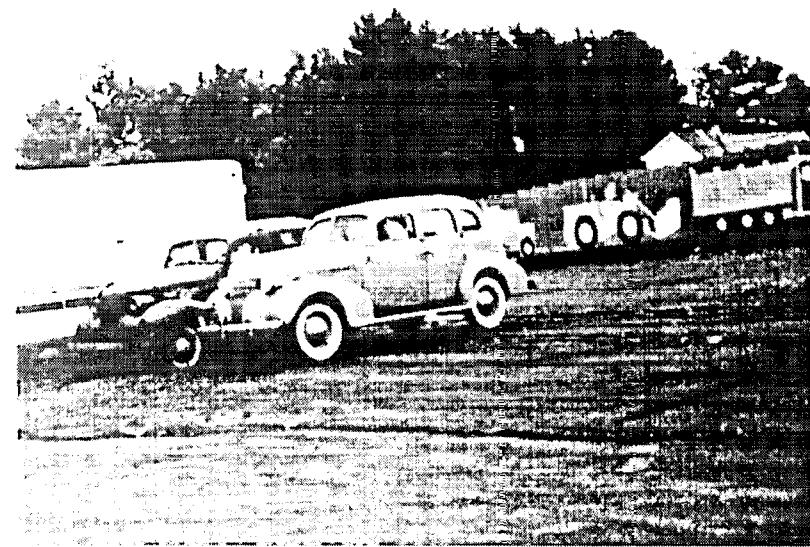
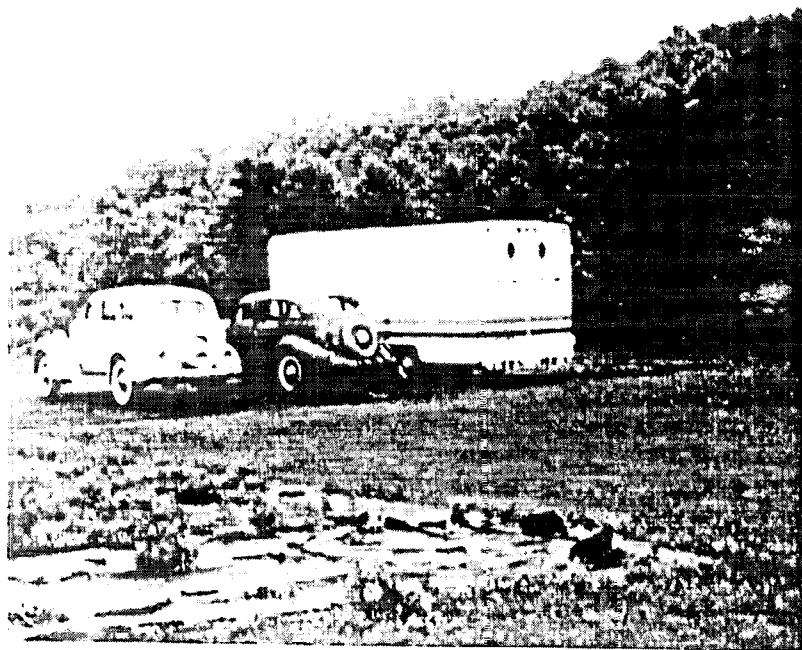
f.) November 10, 1999 letter of Defendant to Ronald E. Archer. Attached hereto.

Plaintiffs reserve the right to offer other Exhibits that become relevant at the Arbitration previously provided or known to Defendant.

Respectfully Submitted,



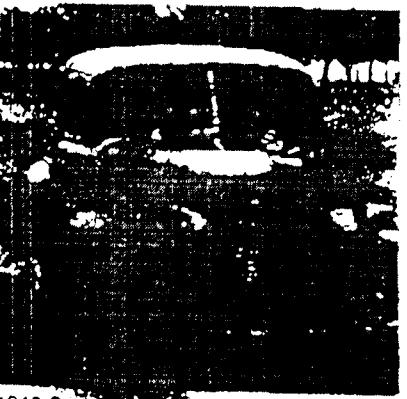
Girard Kasubick,  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs



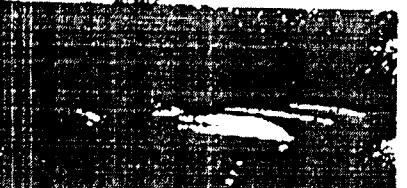
## CARS FOR SALE



1950 Styleline Deluxe, burgundy. 2,000 miles on rebuilt engine, transmission and clutch. Clean, solid, attractive classic. Sacrifice \$3,300 or best offer/trade? Call Pete (319) 377-1425 Marion, Iowa.



1940 Special Deluxe 4-door. All restored to original condition. Dark gray, Hampton interior, spinners, steering wheel. Sacrifice at \$12,500. Joe (319) 782-9883 days.



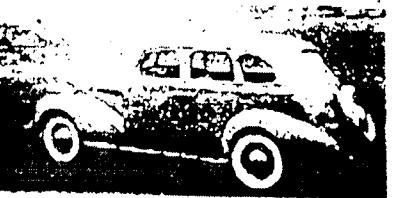
1957 Corvette 1st place winner at Nashville 1991 30th Anniversary Meet. Featured in Nov-Dec 1991 G&D 327 cu in engine 300 horsepower, automatic transmission. Tilt, telescopic steering wheel. 39,000 original miles. Excellent in every respect. \$29,500. Richard Barnett (313) 475-3485



1940 Master 85 Business Coupe restored, VCCA junior, AACA preservation winner. Light green, trailerable car. Asking \$7,000. G. Corado Zimmons, (914) 877-6981 after 6 pm



1928 3-window Coupe; 4-cylinder, 39,684 miles, green with black fenders and top. Excellent condition to show or drive. New tires, VIN #4866992. Set of pictures available. SASE. \$10,000 or offer. Ken Carson, PO Box 216, Toledo, IA 52342; phone (515) 484-2520 days; (515) 484-3547 evenings..



PACKAGE DEAL: (1) 1939 4-door slant back with tire on rear. Only 68 made. I have body number 8. Restored with all new parts, used only the body shell. Won first place in every show it was entered in.



(1) 1939 unrestored 4-door slant back with tire on rear. Body number 3. Have two new rear fenders and a rear bumper, plus other parts.



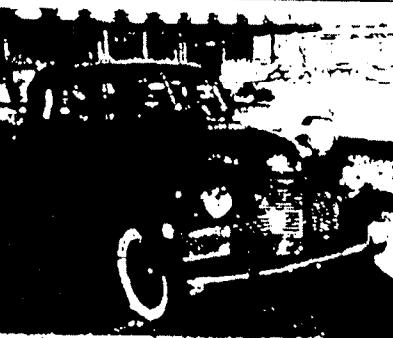
(1) 20 foot Wells Cargo closed trailer. Insulated, carpeted, and paneled, with burglar alarm and two spares. Will deliver as far West as Colorado. May be the last two cars left. \$65,000; (814) 378-3037; Merrill Jones, Box 153, Smoke Run, PA 16881.

1937 1/2-ton Pickup. \$4,000; (916) 529-2305 or write SASE to A. Leon Jr., 38 Pic Vista Ln., Red Bluff, CA 96080.

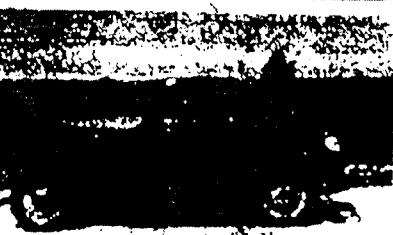
1965 Chevelle Malibu Super Sport Hardtop No. 2 condition-complete restoration of a solid hard to find body style. 283 V8 auto transmission. Roman Red paint. White interior, never any dents or fillers asking \$7,500. May consider "partial" interesting trade. Gene Beban, 24200 Walnut St. (Space 22), Compton, CA 90717-1246; (310) 530-6879



1960 Sedan Delivery with factory Tri-power 348, 4-speed transmission and heavy duty posi-track rear end. This very unusual muscle car is in showroom fresh, top Concours condition and must be seen to be appreciated. Only \$18,500; Gary Almeida, Turlock, CA 95380; (209) 667-7828 (days) and (209) 632-1239 (evenings).



1940 4-door Special Deluxe Sedan 63,550: original miles, very good unrestored, condition, all buttons, knobs, handles and latches are original, no rust broken glass or lights. Front brake cylinder leaks "new brakes", I have a heart condition and am sure someone out there could take care of and enjoy this vehicle. \$5,500; Dewey Luck, 3455 Snowy Butte Lane, Central Point, OR 97502; (503) 664-7713.



1931 5-window Business Coupe. Older restoration. Runs and drives great. Two tone paint, lower color is a gray/green, upper color is Maple Brown. Black fenders and aprons. Pale yellow wheels and piping. \$9,750 obo. David Ahrens, 14200 Westdale Dr., Bakersfield, CA 93312; (805) 589-4883; Please call before 2:00 pm or on weekends.

1932 Confederate Sedan. Australian Holden body, complete restoration to original Australian specifications. This is an unusual Sedan. Dual sidemounts. White side wall tires. Luggage rack and trunk. All leather trim body red fenders black. Drives very well. Refer photo May 1984 G&D priced at US \$23,500; You pay shipping. Eileen Hall, 180 Andrew Road, Greenbank 4124 Logan City, Qld Australia; Phone 07 2970754.

STATEMENT

Michael Tripp 1993  
50 W Main St Santa Paula Calif 93060

ALL SALES FINAL - NO RETURN OF ANYTHING  
 IN ACCOUNT WITH

JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

March 18, 1997	
Balance	32000.00
August 18 1998	
# 265980 -	8,000.00
# 265981 -	8,000.00
# 266031	5,000.00
Total	\$ 21,000.00 - 31000.00
Balance	11000.00
March 15 - 1999	
# 271994 -	7,000.00
Balance	4000.00
July 3 - 1999	
# 274949	2,800.00
Money Order	
# 835655 89285	700.00
# 835655 89296	500.00
Total	\$ 4,000.00 4,000.00

STATEMENT

Michael Tripp April 19, 1993  
250 W Main Street

ALL SALES FINAL - NO RETURN OF ANYTHING  
 IN ACCOUNT WITH Santa Paula Calif 93060

JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

1	39-4000 <sup>Chvr</sup> Slant Back Restored
	Serial No 3JA0431071
1	39-4 <sup>Chvr</sup> Slant Back
	unrestored Serial No 14JA1212213
1	Inclosed with Cargo trailer
	Serial No NC 16 N69
	All 3 Pieces 410,000.00
	April 19 - 1993 Paid one
	Check No # 594991949
	Amount 3500.00
	Balance 36,500.
	March 18 - 1997 Paid
	Check # 243843
	Balance 37,000.

June 11, 1999

Dear Mike,

This is a follow-up to my last phone call to your Voice Mail on June 7, 1999 at 9:20 P.M. EST. Since you have not replied back in any manner I find it necessary to send you this information.

As of June 7, 1999, since vehicles have not been paid in full, outside storage was begun at ~~10.00~~ <sup>\$</sup> per day, as shown by enclosed photos.

Please be advised that as of June 30, 1999, if vehicles are not paid in full, and removed from our property, the vehicles will be put up for resale and you will forfeit your payments already made.

This will be your final notice on this matter.

Sincerely,  
Mrs. Merrill (Ruth) Jones

## **STATEMENT**

Mr. Michael Trejo

250 W. MAIN ST. SANTA PAULA, CA 93060-3247

**ALL SALES FINAL — NO RETURN OF ANYTHING  
IN ACCOUNT WITH**

## JONES' SALVAGE

PHONE: HOUTZDALE 378-5037 SMOKE RUN, PA.

1 1939 4 Door Chevy SLANT BACK  
Restored

1 1939 4 Door Chevy SLANT  
BACK - UNRestored

1 Wells Cargo TRAILER

Storage At \*10.00 For All  
three vehicles per Day  
starting JUNE 11, 1999.

RONALD E. ARCHER  
ATTORNEY AT LAW  
711 HANNAH STREET  
HOUTZDALE, PA. 16051  
814 - 378-7641  
FAX 814 - 378-5558

October 21, 1999

Mr. Michael Trejo  
250 West Main Street  
Santa Paula, CA 93060

**Re: Vehicle sale from Merrill Jones**

Dear Mr. Trejo:

I have been contacted by Merrill Jones concerning the sale of one restored 1939 4-door Chevrolet slant-back automobile, one unrestored 1939 4-door Chevrolet slant-back automobile, and one Wells cargo trailer.

Mr. Jones informed me that the sale of the above vehicles was negotiated and agreed upon in about 1993. The agreed upon price was \$40,000.00, and the final payment was made on June 30, 1999. Mr. Jones did not charge any interest on the amount due, nor did he charge any storage fees during that six-year period.

Mr. Jones acknowledges that he has now received the full amount due for the vehicles. The vehicle titles are ready to be transferred to you as soon as you make the arrangements to remove the vehicles from Mr. Jones' property.

I have enclosed copies of the letters from Mr. Jones to you in which he informed you that he has cancelled insurance on the vehicles, and that a daily storage rate of \$10.00 per day began to accrue in June of 1999. I have enclosed a photograph showing that the vehicles are currently being stored outdoors on Mr. Jones' property.

Mr. Jones has placed his real estate up for sale, and negotiations have been ongoing with prospective purchasers of his real estate. I am certain that whoever purchases the property will want the vehicles moved from the property.

I am requesting that within 15 days of receipt of this letter you either make arrangements to have the vehicles delivered to you in California or that you make arrangements to store them at another location in the area. It would appear to be in your best interest to have the vehicles in your possession and to protect your investment in the vehicles from the harsh winter weather we experience in this area of Pennsylvania.

I would appreciate you contacting me upon receipt of this letter so that we may discuss the best way to resolve this matter.

Yours truly,

Ronald E. Archer

REA:ps  
Enclosures  
cc: Merrill Jones

November 10, 1999

Michael Trejo  
250 W. Main St.  
Santa Paula, Calif 93060  
805-525-1371

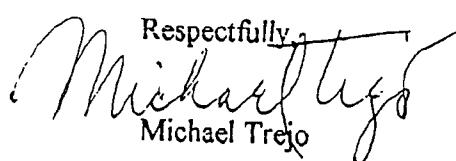
Ronald E. Archer  
Attorney At Law  
711 Hannah St.  
Houtzdale, Pa. 16651

**Re: Purchase of vehicles and trailer from Merril Jones**

Dear Mr. Archer:

I received your letter concerning the purchase of the vehicles and the trailer on October 30, 1999. Mr. Archer, I made every effort on my part to pay these vehicles off as soon as possible. Unfortunately it was beyond my control to get this done sooner. Mr. Jones and I agreed to this deal a few years ago, and Mr. Jones had put these vehicles up for sale when I was not able to complete this deal as quickly as we would have liked. There was no one else interested in making this deal, so he has very patiently waited. The original deal was that Mr. Jones would "deliver" the Wells Cargo trailer with the restored 1939 Chevrolet Slantback inside, to meet me as far west as Colorado, which made the deal all the more enticing. Mr. Jones also stated that the vehicles were in safe keeping and would be in the spot I last saw them. Which was stored inside and out of the weather. In the process Mr. Jones had some health problems and Mrs. Jones has changed the original deal and demanded they be off the property, and is charging for rental space. That was not part of the deal I made with Mr. Jones, we do not feel that there should be a charge for rental space on these items. We would also like to let Ruth and Merrill know that I honestly appreciate the fact that they were very patient with us, and to understand that I tried everything in my power to get this matter resolved, however due to my own health problems which occurred, it was physically and financially unavoidable. We are currently and have been working to get these vehicles and trailer to my premise, obviously it hasn't been as easy a process as some people might think, common sense would dictate that we did not invest the money and efforts to leave the vehicles and trailer in Pennsylvania. We need to resolve the matter of the removal of the rental charges and possibly some help in the transportation fee for the unrestored vehicle as Mr. Jones' health no longer enables him to bring the restored 1939 and the trailer to Colorado, it only makes it harder for us to resolve this matter. We are working on getting enough money together to get these vehicles home.

Please advise us as to how to best resolve this matter.

Respectfully,  
  
Michael Trejo

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
COMMONWEALTH OF PENNSYLVANIA

**MERRILL JONES and RUTH JONES,** : No.: 2002-1456-CD

**his wife, and JONES AUTO SALVAGE** :

**a/k/a JONES SALVAGE,** :

**Box 153** :

**Smoke Run, Pennsylvania 16681** :

**CIVIL ACTION – LAW**

**Plaintiffs** :

**v.** :

**MICHAEL TREJO** :

**250 West Main Street** :

**Santa Paula, California 93060-3247** :

**RECEIVED**

*REC'D JUN 07 2004*

**COURT ADMINISTRATOR'S  
OFFICE**

**Defendant** :

**PRETRIAL STATEMENT**

**NOW COMES**, the Defendant, Michael Trejo, and files his Pre-Trial Statement, in accordance with Local Rule 1306A.

**A) Statement of the Case**

Defendant Michael Trejo responded to an advertisement by Plaintiff Merrill Jones (See Defendant's Exhibit 1 attached to Defendant's Answer with New Matter) and the parties made an oral agreement April 1993, whereby Trejo would purchase, and Jones would sell for the total price of \$40,000, two (one restored, and one unrestored) 1939 slant-backed automobiles, plus parts, a trailer, and an easel-mounted display book, as more fully described at paragraph 23, page 6 of Defendant's Answer With New Matter. These items will hereinafter be referred to as the goods.

According to Mr. Trejo's version of the oral agreement, after receipt of final payment, Merrill Jones would transfer title of the goods to Trejo and deliver them as far west as Colorado. Jones agreed to allow Trejo to make payments over a period of time but that time period was not specified.

The oral contract was made in April 1993. Final payment was tendered June 30, 1999. Not until Trejo had already paid \$36,000, which amount was paid as of March 15, 1999, did Jones complain about storage costs. Consequently, not until Trejo had already paid 90% of the purchase price did Ruth Jones suddenly insist upon payment of storage costs. In fact, it was Plaintiff Ruth Jones and not Merrill Jones, who insisted by letter dated June 11, 1999, that because full payment had not been tendered by June 7, 1999, storage costs of \$10 per day would be charged starting June 7, 1999. Trejo made a final payment of \$4,000 on June 30, 1999, bringing the total paid to \$40,000.

Shortly after October 21, 1999, Trejo received a letter dated October 21, 1999, from Jones' agent, Attorney Ronald Archer, Esq., which letter acknowledged in writing the agreed-upon purchase price of \$40,000; that final payment was made June 30, 1999; and that no storage fees were charged during the six-year period it took Trejo to pay the \$40,000. At that time, Archer informed Trejo the vehicles were ready to be picked up. (See Defendant's Exhibit 4 attached to Defendant's Answer with New Matter.)

By letter dated November 10, 1999, Trejo objected, stating that Jones was suppose to deliver the goods as far west as Colorado, and Trejo disavowed that rental space charges were part of the contract. (See Defendant's Exhibit 5 attached to Defendant's Answer With New Matter).

No real progress in resolving this matter has occurred since that time. Just before Trejo was about to file suit against Jones, Plaintiffs Merrill Jones and Ruth Jones filed suit against Trejo in Clearfield County, Pennsylvania.

Trejo insists that storage costs were not part of the contract and that Jones had to deliver the goods as far west as Colorado; Jones insists that he does not have to deliver the goods nor even

release the goods to Trejo unless storage costs are paid.

**B) Citation to Applicable Case or Statutes**

Inasmuch as this case can be resolved from the black-letter Law of Contracts, Defendant is relying upon the *Restatement of Contract, Second*. The specific sections upon which Defendant relies are as follows:

- Section 5: Terms of Promise, Agreement of Contract.
- Section 89: Modification of Executory Contract.
- Section 131: Satisfaction of the Statute of Frauds by a Memorandum.
- Section 135: Who Must Sign.
- Section 136: Time of Memorandum.
- Section 139: Enforcement by Virtue of Action in Reliance.
- Section 154: When A Party Bears the Risk of Mistake.
- Section 157: Effects of Fault of Party Seeking Relief.
- Section 360: Factors Affecting Adequacy of Damages.
- Section 362: Effect of Uncertainty of Terms.
- Section 381: Loss of Power of Avoidance by Delay.

**C) List of Witnesses**

The Defendant's sole witness is himself, Michael Trejo.

**D) Statement of Damages and Copies of those bills which the Party Intends to Offer.**

Defendant maintains that he does not owe Plaintiff any money for storage costs, and Defendant is insisting in his New Matter upon specific performance of the contract due to the uniqueness of the goods and the inability to substitute. Only specific performance will make the Defendant whole. In support of his position, Defendant will seek the admission of all the Exhibits attached to Defendant's Answer with New Matter, Defendant's Exhibits 1 through 10, which have already been filed of record with his Answer with New Matter.

## **E) Argument**

Defendant submits that the Statute of Frauds in this case is satisfied by the letter dated October 21, 1999, from Merrill Jones' agent, Attorney Ronald Archer (Defendant's Exhibit 4 attached to Defendant's Answer with New Matter). Archer's letter constitutes a memorandum acceptable pursuant to Section 131 of the Restatement of Contracts, Second. Archer as Jones' agent was authorized to sign (Section 135 of the Restatement), and that it was rendered after completing of the contract is not a problem (Section 136 of the Restatement).

Furthermore, inasmuch as Jones never complained until Trejo had already paid 90% of the purchase price over a period of six years, the contract must be enforced by virtue of Trejo's actions in reliance upon the contract as the parties understood it, i.e.: Trejo could make the payments towards the \$40,000 purchase price over a period of time. (Section 139 of the Restatement.)

The terms of a contract are not merely those in writing, but those "implied in fact from other conduct . . . including course of dealing or usage of trade or course of performance." See Comment (a) to Section 5 of the Restatement, relating to Terms of Promise, Agreement or Contract. For six years, Merrill Jones accepted payments from Trejo without complaint or any mention of storage costs. Clearly, the parties course of dealing and performance reveal that storage charges were not part of the contract.

Nor did the parties mutually agree to modify the contract as anticipated by Section 89 of the Restatement relating to Modification of Executory Contract. When Jones' agent, Attorney Ronald Archer by letter dated October 21, 1999, said Trejo had to pick up the goods in Clearfield county and

that Trejo owed storage costs, Trejo promptly repudiated this attempt to modify the contract by letter to Attorney Archer, dated November 10, 1999.

Inasmuch as these goods are such unique antique vehicles, only by enforcing of the parties promises can injustice be avoided to Mr. Trejo. See Section 139 of the Restatement. In addition, Jones who initiated this suit for the alleged storage charges, bears the risk of any mistake he made by not including this within the contract at the time and by not setting a more specific time period for Trejo to pay the purchase price. Indeed, six years ensued before Jones mentioned storage costs or having to retrieve the vehicles in Pennsylvania. Thus, Jones should bear the consequence of any mistake though Trejo does not concede that any mistake did occur. See Section 154 of the Restatement.

Moreover, by waiting more than six years and not until Trejo had paid 90% of the purchase price, before requesting storage charges, evinces on the part of the Jones a "failure to act in good faith and in accordance with reasonable standards of fair dealing." See Section 157 of the Restatement.

Trejo demands specific performance. He wants the unique goods he has paid for in full delivered as far west as Colorado and title transferred to him for the goods Plaintiffs acknowledged that he has purchased. There is no uncertainty as to the terms relating to what the goods are. See Section 362 of the Restatement. That is not even in dispute.

Section 360 of the Restatements provides:

In determining whether the remedy in damages would be adequate, the following circumstances are significant:

- (a) the difficulty of deciding money damages with reasonable certainty;

- (b) the difficulty of procuring a suitable substitute performance by means of money award as damages,
- (c) the likelihood that an award of damages could not be collected.

The goods that are the subject of this contract simply are so unique they cannot be substituted. The only remedy adequate to make Trejo whole is specific performance of the contract.

Finally, Jones has lost his power of avoidance of the contract by his delay of six years in asking for storage costs and being relieved of the duty to deliver the goods as far west as Colorado. Trejo had performed 90% of the contract (paid \$35,000 of \$40,000) before Jones started raising objections. Jones waited way too long to complain about any mistake. See Section 381(2) of the Restatement relating to Loss of Power of Avoidance by Delay.

WHEREFORE, Michael Trejo respectfully requests the panel of Arbitrators to deny Plaintiff's demands for storage charges and requests that Defendant's demand for replevin and specific performance of the contract be granted.

Respectfully submitted:

Philip L. Zulli, Esquire  
Attorney Id. No. 47499

1501 North Front Street  
Harrisburg, Pennsylvania 17102  
(717) 238-9004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
COMMONWEALTH OF PENNSYLVANIA

**MERRILL JONES and RUTH JONES,  
his wife, and JONES AUTO SALVAGE  
a/k/a JONES SALVAGE,** : No.: 2002-1456-CD

**Plaintiffs**

**v.**

**MICHAEL TREJO:**

**Defendant**

:

**CERTIFICATE OF SERVICE**

I, PHILIP L. ZULLI, Esquire, certify that I have served a copy of the Defendant's Pre-Trial Memorandum this 4<sup>th</sup> day of June, upon the following persons by the method indicated:

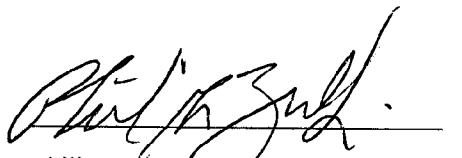
by Fax and Federal Express overnight delivery service:

Girard Kasubick, Esq.  
Lehman & Kasubick  
611 Brisbin Street  
Houtzdale, PA 16651  
814-378-6231  
Attorney for Plaintiffs

by Federal Express overnight delivery service:

Carl A. Belin, Jr., Esq. Belin & Kubista P.O. Box 1 Clearfield, PA 16830	John R. Lhota, Esquire Attorney at Law 110 North Second Street Clearfield, PA 16830	Michael S. Marshall, Esq. Attorney at Law 237 Northwood Avenue Dubois, PA 15801
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DATED: June 4, 2004

  
Philip L. Zulli, Esquire  
Attorney Id. No. 47499  
155 Grandview Road  
Hummelstown, Pennsylvania 17036  
(717) 566-8585