

02-1504-CD  
BRINK Trans. vs. WINDSOR MOUNT JOY MUTUAL INS. CO.

COURT OF COMMON PLEAS

FROM

JUDICIAL DISTRICT

## DISTRICT JUSTICE JUDGMENT

46th

COMMON PLEAS No. 02-1504-C2

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

Windsor Mount Joy Mutual Ins. Co.

46-3-04

NAME OF APPELLANT

MAG. DIST. NO. OR NAME OF D.J.

21 W. Main Street, PO Box 587

Ephrata

PA

17522-0587

ADDRESS OF APPELLANT

CITY

STATE

ZIP CODE

DATE OF JUDGMENT

IN THE CASE OF (Plaintiff)

(Defendant)

09/05/02

Brink Transportation

vs. McGarvey, Shannon, et al.

CLAIM NO.

SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT

CV 0000099-02

Kevin G. O'Donovan Esq., Palmer Biezup &amp; Henderson - 620 Chestnut St., Ste. 956 Philadelphia, PA 19106

LT

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

## PRAECIPE: To Prothonotary

Enter rule upon McGarvey, Shannon & Brink Transportation, appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. 02-1504-C2) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

X Kevin G. O'Donovan

Signature of appellant or his attorney or agent

**RULE:** To McGarvey, Shannon & Brink Transportation, appellee(s).

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: Sept. 27, 2002

William A. Shaw

Signature of Prothonotary or Deputy

FILED

SEP 27 2002

William A. Shaw  
Prothonotary

## PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF \_\_\_\_\_; SS

**AFFIDAVIT:** I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. \_\_\_\_\_, upon the District Justice designated therein on  
(date of service) \_\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's  
receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on  
\_\_\_\_\_, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.
- ☐ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom  
the Rule was addressed on \_\_\_\_\_, ☐ by personal service ☐ by (certified) (registered)  
mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature of affiant

\_\_\_\_\_  
Signature of official before whom affidavit was made

\_\_\_\_\_  
Title of official

My commission expires on \_\_\_\_\_



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:	<b>46-3-04</b>
DJ Name: Hon.	<b>JAMES L. HAWKINS</b>
Address:	<b>251 SPRING STREET P.O. BOX 362 HOUTZDALE, PA</b>
Telephone:	<b>(814) 378-7160</b>
	<b>16651-0362</b>

**ATTORNEY DEF PRIVATE :**

**MARIA PERRI, ESQ  
620 CHESTNUT ST  
SUITE 956  
PHILADELPHIA, PA 19106**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: **BRINK TRANSPORTATION**  
RR 1, BOX 316H  
HOUTZDALE, PA 16651

VS.

DEFENDANT: **MCGARVEY, SHANNON, ET AL.**  
R.D.  
COALPORT, PA 16627

Docket No.: **CV-0000099-02**  
Date Filed: **6/28/02**



**THIS IS TO NOTIFY YOU THAT:**

Judgment:

**FOR DEFENDANT**

☒ Judgment was entered for: (Name) **MCGARVEY, SHANNON**

☒ Judgment was entered against: (Name) **BRINK TRANSPORTATION**

in the amount of \$                     .00 on: (Date of Judgment) **9/05/02**

☐ Defendants are jointly and severally liable. (Date & Time)                                     

☐ Damages will be assessed on:                                     

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/Act 5 of 1996 \$                                     

☐ Levy is stayed for            days or ☐ generally stayed.

☐ Objection to levy has been filed and hearing will be held:                                     

Amount of Judgment	\$ <u>                    .00</u>
Judgment Costs	\$ <u>                    .00</u>
Interest on Judgment	\$ <u>                    .00</u>
Attorney Fees	\$ <u>                    .00</u>
<b>Total</b>	<b>\$ <u>                    .00</u></b>
Post Judgment Credits	\$ <u>                    </u>
Post Judgment Costs	\$ <u>                    </u>
<b>Certified Judgment Total</b>	<b>\$ <u>                    </u></b>

Date:	Place:
Time:	

**ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.**

**9-5-02** Date *James L. Hawkins*, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
                                     Date                                     , District Justice

My commission expires first Monday of January, **2006** SEAL

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-04**  
DJ Name: Hon.  
**JAMES L. HAWKINS**  
Address: **251 SPRING STREET**  
**P.O. BOX 362**  
**HOUTZDALE, PA**  
Telephone: **(814) 378-7160** **16651-0362**

**ATTORNEY DEF PRIVATE :**

**MARIA PERRI, ESQ**  
**620 CHESTNUT ST**  
**SUITE 956**  
**PHILADELPHIA, PA 19106**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS  
**BRINK TRANSPORTATION**  
**RR 1, BOX 316H**  
**HOUTZDALE, PA 16651**  
  
VS.  
DEFENDANT: NAME and ADDRESS  
**MCGARVEY, SHANNON, ET AL.**  
**R.D.**  
**COALPORT, PA 16627**

Docket No.: **CV-0000099-02**  
Date Filed: **6/28/02**



**THIS IS TO NOTIFY YOU THAT:**

Judgment: **FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **BRINK TRANSPORTATION**

☒ Judgment was entered against: (Name) **WINDSOR MT. JOY MUTUAL INS. CO.**

in the amount of \$ **2,075.00** on: (Date of Judgment) **9/05/02**

☐ Defendants are jointly and severally liable. (Date & Time) \_\_\_\_\_

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ \_\_\_\_\_

☐ Levy is stayed for \_\_\_\_\_ days or ☐ generally stayed.

☐ Objection to levy has been filed and hearing will be held:

Amount of Judgment	\$ <b>1,995.00</b>
Judgment Costs	\$ <b>80.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 2,075.00</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
	=====
<b>Certified Judgment Total</b>	<b>\$ _____</b>

Date:	Place:
Time:	

**ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.**

**9-5-02** Date *James L. Hawkins*, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.	
_____ Date _____	_____, District Justice

My commission expires first Monday of January,

**2006**

SEAL

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

Article Sent To:

DISTRICT COURT (Mag. # 46-3-04)  
HOUTZDALE PA 16651

Postage	\$ 8.37
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 12.42

0114  
02 \* Postmark  
Here

10/01/2002

Name (Please Print Clearly) (to be completed by mailer)

District Court

Street, Apt. No., or PO Box No.

251 Spring St. - PO Box 362

City, State, ZIP+4

Houtzdale, PA 16651-0362

PS Form 3800, July 1999

See Reverse for Instructions

7099 3406 0013 3216 4040  
912E  
E100  
004E  
6602

### **Certified Mail Provides:**

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

### **Important Reminders:**

- Certified Mail may **ONLY** be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- 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 (PS 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 restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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

U.S. Postal Service		
CERTIFIED MAIL RECEIPT		
(Domestic Mail Only; No Insurance Coverage Provided)		
Article Sent To:		
SHANNON MCGARVEY		
Postage	\$ 12.37	0114 02 Postmark Here
Certified Fee	2.30	
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)	0.00	
Total Postage & Fees	\$16.42	10/01/2002
Name (Please Print Clearly) (to be completed by mailer)		
SHANNON MCGARVEY		
Street, Apt. No., or PO Box No.		
PO Box 52		
City, State, ZIP+4		
COALPORT, PA 16627		
PS Form 3800, July 1999 See Reverse for Instructions		

7099 3400 0013 3216 9204 4026



### **Certified Mail Provides:**

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

### **Important Reminders:**

- Certified Mail may **ONLY** be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- 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 (PS 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 restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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

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

Article Sent To:

Brink Transportation, Inc.  
HOUTZDALE PA 16651

Postage	\$ <del>2.30</del> .83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 4.88

0114  
02 Postmark  
Here

10/01/2002

Name (Please Print Clearly) (to be completed by mailer)

BRINK TRANSPORTATION, INC.

Street, Apt. No., or PO Box No.

RR1, Box 316 H

City, State, ZIP+4

HOUTZDALE, PA 16651

PS Form 3800, July 1999

See Reverse for Instructions

### **Certified Mail Provides:**

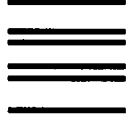
- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

### **Important Reminders:**

- Certified Mail may **ONLY** be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- 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 (PS 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 restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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

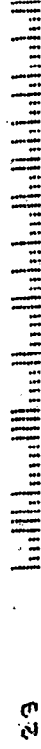
UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-75

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

Maria Perri, Esquire  
PALMER BIEZUP & HENDERSON LLP  
620 Chestnut Street  
Suite 956  
Philadelphia, PA 19106



**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:**

District Court  
251 Spring Street  
PO Box 362  
Houtzdale, PA 16651-0362

**COMPLETE THIS SECTION ON DELIVERY**

**A. Received by (Please Print Clearly)**

**B. Date of Delivery**

**C. Signature**

**X** *James P. Houtzdale* ☐ Agent ☒ Addressee

**D. Is delivery address different from item 1?** ☐ Yes ☒ No

If YES, enter delivery address below:

**3. Service Type**

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

☐ Yes

**2. Article Number (Copy from service label)**

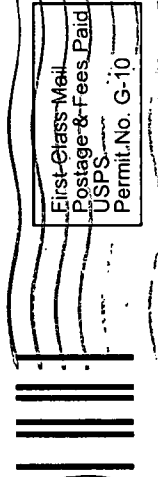
7099 3400 0013 3216 4040

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

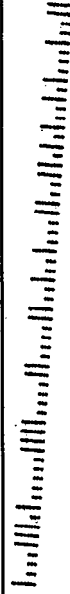
UNITED STATES POSTAL SERVICE



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

MARIA PERAI, Esq.  
PALMER BLEZUP + HENDERSON  
620 Chestnut St  
Ste. 952  
Phila., Pa 19106

29



**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:

Shannon McGarvey  
PO Box 52  
Coatport, PA 16627

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) Patricia McGarvey B. Date of Delivery 10-4-02

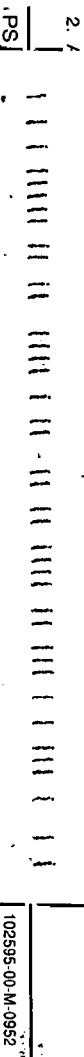
C. Signature *Patricia McGarvey* ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☒ Yes ☐ No  
If YES, enter delivery address below:

3. Service Type

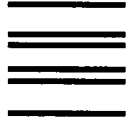
- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes



102595-00-M-0952

UNITED STATES POSTAL SERVICE

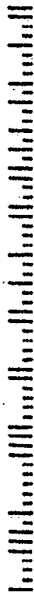


First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

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

Palmer, Biezup and Henderson  
620 Chestnut Street Suite 956  
Philadelphia, PA 19106

Attn: Maria Perri



23



**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:

Brink Transportation, Inc.  
Rt 1, Box 316H  
Houtzdale, PA 16651

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)

B. Date of Delivery

10-7-52

C. Signature

*Charles Brink*

☐ Agent

☐ Addressee

D. Is delivery address different from item 1? If YES, enter delivery address below:

☐ Yes  
☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7099-3400-0013-3216-4064

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

COURT OF COMMON PLEAS

FROM

JUDICIAL DISTRICT

DISTRICT JUSTICE JUDGMENT

46th

COMMON PLEAS No.

02-1504-C2

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

Windsor Mount Joy Mutual Ins. Co.

46-3-04

NAME OF APPELLANT

MAG. DIST. NO. OR NAME OF D.J.

21 W, Main Street, PO Box 587

Ephrata

PA

17522-0587

ADDRESS OF APPELLANT

CITY

STATE

ZIP CODE

DATE OF JUDGMENT

IN THE CASE OF (Plaintiff)

(Defendant)

09/05/02

Brink Transportation

vs. McGarvey, Shannon, et al.

CLAIM NO.

CV

0000099-02

LT

SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT

Kevin G. O'Donovan Esq., Palmer Biezup & Henderson - 620 Chestnut St., Ste. 956 Philadelphia, PA 19106

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon McGarvey, Shannon & Brink Transportation, appellee(s), to file a complaint in this appeal

Name of appellee(s)

(Common Pleas No. 02-1504-C2) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

X Kevin G. O'Donovan

Signature of appellant or his attorney or agent

**RULE:** To McGarvey, Shannon & Brink Transportation, appellee(s).

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: Sept. 27, 2002

William A. Shaw

Signature of Prothonotary or Deputy

**FILED**

91-20  
OCT 10 2002

William A. Shaw  
Prothonotary

COURT FILE

## PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Philadelphia; SS

**AFFIDAVIT:** I hereby swear or affirm that I served

☒ a copy of the Notice of Appeal, Common Pleas No. 02-1504-CD, upon the District Justice designated therein on  
(date of service) October 1, 2002, ☐ by personal service ☒ by (certified) (registered) mail, sender's  
receipt attached hereto, and upon the appellee, (name) BRINK Transportation & Shannon McGarvey, on  
October 1, 2002 ☐ by personal service ☒ by (certified) (registered) mail, sender's receipt attached hereto.  
☒ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom  
the Rule was addressed on October 1, 2002, ☐ by personal service ☒ by (certified) (registered)  
mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

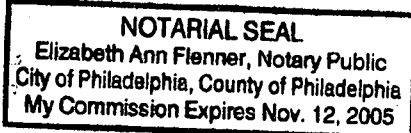
THIS 1<sup>st</sup> DAY OF October, 2002

Elizabeth Ann Flenner  
Signature of official before whom affidavit was made

Notary Public  
Title of official

My commission expires on November 12, 2005

Shannon McGarvey, Esq.  
Signature of affiant



CONTINENTAL STATION  
PHILADELPHIA, Pennsylvania  
191069997

10/01/2002 (215)413-3516 01:40:45 PM

Product Description	Sale Qty	Unit Price	Final Price
COALPORT PA 16627			\$0.37
First-Class			
Return Receipt			\$1.75
Certified			\$2.30
Label Serial #: 70993400001332164026			
Customer Postage			-\$4.42
Subtotal:			\$0.00
HOUTZDALE PA 16651			\$0.37
First-Class			
Return Receipt			\$1.75
Certified			\$2.30
Label Serial #: 70993400001332164040			
Customer Postage			-\$4.42
Subtotal:			\$0.00
HOUTZDALE PA 16651			\$0.37
First-Class			
Return Receipt			\$1.75
Certified			\$2.30
Label Serial #: 70993400001332164064			
Customer Postage			-\$4.42
Subtotal:			\$0.00
Total:			\$0.00

Paid by:

Bill#: 1000200834611  
Clerk: 02

Refunds only per DMM P014  
Thank you for your business  
Customer Copy

# PALMER BIEZUP & HENDERSON LLP

COUNSELORS AT LAW

NEW JERSEY  
200 NORTH FIFTH STREET  
CAMDEN, NEW JERSEY 08102-1204  
856 428 7717  
FAX: 856 338 1008

MARIA G. PERRI  
ATTORNEY AT LAW  
mperri@pbh.com  
DIRECT DIAL: 215-625-7849

956 PUBLIC LEDGER BUILDING  
INDEPENDENCE MALL WEST  
620 CHESTNUT STREET  
PHILADELPHIA, PENNSYLVANIA 19106-3409

215 625 9900  
FAX: 215 625 0185  
pbh1@pbh.com

NEW YORK  
140 BROADWAY, 46TH FLOOR PMB 46030  
NEW YORK, NEW YORK 10005  
212 406 1855  
FAX: 212 858 7651

DELAWARE  
1223 FOULK ROAD  
WILMINGTON, DELAWARE 19803  
302 594 0895  
FAX: 302 478 7625

October 1, 2002

Prothonotary Office  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, Pennsylvania 16830

Re: *Brink Transportation v. Windsor Mount Joy*  
Civil Action No.: CV-0000099-02  
Our File No.: 9465-094

Dear Sir:

Enclosed is the notarized green copy of the Notice of Appeal for the above captioned case, along with the certified mail receipts showing service on both appellees and the District Court.

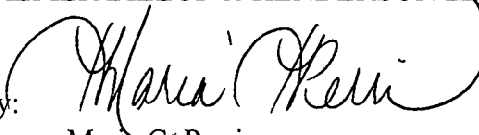
Since there were two appellees in this case, we served the pink copy of the Notice of Appeal on Shannon McGarvey at P.O. Box 52, Coalport, PA 16627 via certified mail. We made a copy of the pink Notice and served that copy on the additional appellee, Brink Transportation at RR1 Box 316H, Houtzdale, PA 16651 via certified mail. Both appellees were served on October 1, 2002.

Please return the included filed copy of these proceedings in the self-addressed stamped envelope provided.

If you have any questions, you can contact me at 215-625-7849. Thanks for your help!

Sincerely,

PALMER BIEZUP & HENDERSON LLP

By:   
Maria G. Perri

Enclosure

**PALMER BIEZUP & HENDERSON**

By: Kevin G. O'Donovan, Esquire

Attorney I.D. No. 41215

By: Maria G. Perri, Esquire

Attorney I.D. No. 86737

620 Chestnut Street, Suite 956

Philadelphia, PA 19106

(215) 625-9900

Attorneys for Appellant, Windsor Mount Joy Mutual Insurance Co.

**FILED** *NO CC*  
m/1:33B  
OCT 25 2002 *EP*

William A. Shaw  
Prothonotary

WINDSOR MOUNT JOY MUTUAL INS. CO., :  
21 West Main St., PO Box 587 :  
Ephrata, Pennsylvania 17522-0587 :

*Appellant,* :

v. :

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

BRINK TRANSPORTATION, INC. :  
RR1, Box 316H :  
Houtzdale, Pennsylvania 16651 :

and :

No. 02-1504-CD

SHANNON MCGARVEY :  
PO Box 52 :  
Coalport, Pennsylvania 16627, :

*Appellees.* :

**PRAECIPE TO FILE RETURN RECEIPT CARDS**

**TO THE PROTHONOTARY:**

Kindly file the three attached return receipt cards for appellant's Notice of Appeal in connection with the above-captioned case.

**PALMER BIEZUP & HENDERSON LLP**

By: 

Maria G. Perri

Attorneys for Appellant Windsor Mount  
Joy Mutual Ins. Co.

Dated: October 23, 2002

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

vs.

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

\*  
\*  
\*  
\*  
\*  
\*  
\*

Docket No. 02-1504-CD

Type of Pleading:  
COMPLAINT

Filed on Behalf of:  
Plaintiff:  
Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,

Counsel of Record for  
This Party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

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

**FILED**

OCT 29 2002

William A. Shaw  
Prothonotary

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

vs.

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

\*

\*

\*

Docket No. 02-1504-CD

\*

\*

\*

\*

**COMPLAINT**

COME NOW, Plaintiffs Brink Transportation Inc. and Samuel D. Brink,  
t/d/b/a/ Brink's Body Shop, by and through their attorney, Dwight L. Koerber,  
Jr., Esquire, to file the within complaint.

1. Plaintiff Brink Transportation Inc. is a Pennsylvania corporation with  
its principal place of business at R.R. 1, Box 316H, Houtzdale, PA 16651.

2. Plaintiff Samuel D. Brink is a proprietor t/d/b/a Brink's Body Shop,  
with the Brink's Body Shop having a mailing address of R.R. 1, Box 317,  
Houtzdale, PA 16651 and a repair shop located in LaJose, PA with all facilities  
being located in Clearfield County, Pennsylvania.



3. Defendant Shannon McGarvey is an individual whose address is R.D., Coalport, PA 16627.

4. Defendant Windsor Mount Joy Mutual Ins. Co. (Windsor) is believed to be a Pennsylvania corporation with its offices at 21 West Madison Street, P.O. Box 587, Ephrata, PA 17522-0587.

5. Plaintiff Brink Transportation is in the transportation business, providing, among other things, specialized towing services for over the road tractor-trailer units.

6. Plaintiff Brink's Body Shop is a proprietorship owned and operated by Samuel D. Brink, with the business of Brink's Body Shop being the repair of motor vehicles, including heavy duty truck tractors, with such repair services being provided at Brink's Body Shop located in LaJose, Pennsylvania.

7. Defendant Shannon McGarvey is the owner of a certain 2002 Kenworth Truck Tractor, bearing serial number 1XKWDB9X021892231, and maintains a property damage/collision insurance policy with Defendant Windsor, covering this truck tractor, with such policy including a provision for the repair of property damage done to the said truck tractor and also providing for the payment of towing services incurred in conjunction with accidents involving the said truck tractor.

8. In May 2002, Defendant McGarvey was operating his truck tractor in the state of New Jersey and had a motor vehicle accident which produced substantial damage to the vehicle and rendered it inoperative.

9. Defendant McGarvey, being from Clearfield County and residing in Coalport, Pennsylvania, chose to have the repair work done on his Kenworth truck tractor at Brink's Body Shop.

10. By having his work done at Brink's Body Shop, Defendant McGarvey was in a position to monitor the work that was being done, and to attempt to expedite the work so that his truck could be repaired and he could resume his business as a truck operator.

11. Defendant McGarvey requested Brink Transportation to provide the towing service, transporting the 2002 Kenworth to Brink's Body Shop in LaJose, PA.

12. While the repair work was being done in Brink's Body Shop, it was necessary to ascertain whether or not there was any need for straightening of the frame of the vehicle. In order to provide the frame straightening services, Defendant McGarvey, through his insurance representative, directed that the truck be taken to New Bethlehem, Pennsylvania where the services for the alignment would be examined and inspected.

13. After the truck tractor owned by McGarvey was taken to Brink's Body Shop, the vehicle was held in storage pending approval for work to begin,

and then after the work was done, there was a delay in making payment, thereby producing storage charges for the said vehicle.

14. It is Plaintiff's policy when it has provided towing services that a vehicle not be released until full payment has been made for those services. Notwithstanding that, Plaintiff released the vehicle after having incurred twenty days of storage, as an accommodation to Defendant McGarvey, so that he could resume his work as a truck trailer operator.

15. Upon conclusion of the repair work performed on the said motor vehicle, Plaintiff Brink Transportation presented a statement to Defendant McGarvey, who in turn presented it to his insurance company, showing that the following charges were due and owing:

a.	From:	New Jersey to LaJose, PA	
		10 hrs./\$120 per hr.	\$1200.00
b.	From:	LaJose PA to New Berhlehem, PA	
		6 hrs./\$120 per hr.	\$ 720.00
c.	Storage:	20 days/\$25 per day	<u>\$ 500.00</u>
	Total Amount Due:		\$2,420.00

16. Defendant McGarvey and his insurance company, presented payment of \$425.00, which plaintiffs accepted as a partial payment against the towing and storage charges, whereby leaving a balance of \$1,995.00 that was due and owing.

17. After the vehicle owned by McGarvey was returned to operation and removed from Brink's Body Shop, the body shop reviewed its records and determined that there was a mistake in the charges for the services rendered, and that there were items that had not been assessed. Attached hereto as Exhibit A is a copy of the corrected invoice showing that an additional charge of \$293.85 was due and owing.

18. Plaintiff presented his charge of \$293.85 to Defendant and to his insurance company, and they failed and refused to make payment.

19. The total unpaid balance to Plaintiffs, as set forth in paragraph 16 above and in Appendix A is \$2,288.85.

20. Plaintiffs have made demand upon Defendant McGarvey and his insurance company to make payment, but they have failed and refused to do so.

21. The payment which Plaintiffs seek covering the unpaid wrecking services, storage services and corrected repair invoice, are charges that are computed according to the customary procedures and charges of Plaintiffs.

22. In addition to these being the customary and agreed upon price that would be paid, Plaintiff states that these are reasonable and fair charges for the services rendered, and seeks payment for that reason as well as for the reason that they were the contractually agreed price.

WHEREFORE, Plaintiff prays that judgment be entered in their favor and against Shannon McGarvey in the amount of \$2,288.85 plus cost of suit and interest.

**COUNT II**  
**COMPLAINT AGAINST WINDSOR**

23. Paragraphs 1 through 22 of the Complaint are incorporated by reference as those set forth in full.

24. From the outset of the accident involving Defendant McGarvey's truck, Defendant McGarvey notified Defendant Windsor of the nature of his damages and his desire to have the repair work done in his home county, which is Clearfield County, Pennsylvania.

25. Defendant McGarvey informed Brink Transportation that he had authorization from his insurance carrier, Defendant Windsor, and with the consent of its insurance agent, named Ray Williams, who was familiar with collision insurance policies, approved having Plaintiff Brink Transportation provide a wrecker towing service from New Jersey to LaJose, Pennsylvania.

26. From the time that the truck was first picked up by Plaintiff Brink Transportation through the time that the repair services were made by Brink Towing, Defendant Windsor directly oversaw and directed the nature and type of repair services to be provided.

27. Windsor through its agent specifically required that the frame straightening be accomplished in New Bethlehem, Pennsylvania, which can only be done if a towing service was provided. Plaintiff Brink Transportation provided that towing service in direct reliance upon Defendant Windsor's directive that the frame straightening services be provided in New Bethlehem, Pennsylvania, thereby mandating the use of a towage service.

28. In conjunction with overseeing the repair service and the towing service, Defendant Windsor produced a delay in starting and completing work thereby incurring additional storage expenses at Brink's Body Shop, in LaJose, Pennsylvania. A total of twenty days of storage were incurred that would not otherwise have been incurred if Defendant Windsor and its claims representative had acted with dispatch and diligence so as to oversee and pay the repair services that were being provided.

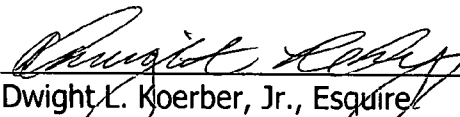
29. By exercising control over the repair services that were made, and overseeing the furnishing of towing services, Defendant Windsor entered into an implied contract with Plaintiff Brink Transportation and Plaintiff Brink's Body Shop, to pay their reasonable and customary charges for the services rendered.

30. The unpaid balance which Defendant McGarvey owes to Plaintiffs, as summarized in Count I of this Complaint amounting to \$2,288.85, are the fair and reasonable charges and are the customary charges that Plaintiffs charge for their towing, storage and repair services, as pertinent.

31. Defendant Windsor has failed and refused to make payment for the services that it has impliedly contracted to pay for to the Plaintiffs, and for that reason is contractually obligated to now pay them.

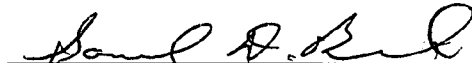
WHEREFORE, Plaintiffs pray that judgment be entered in their favor in the amount of \$2,288.85 against Defendant Windsor Mount Joy Mutual Ins. Co., together with costs and interest.

Respectfully Submitted:

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Plaintiffs:  
Brink Transportation Inc. and Samuel D.  
Brink t/d/b/a Brink's Body Shop

### VERIFICATION

I certify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
Samuel D. Brink

Date: 10-28-02



## BRINK'S BODY SHOP

**To:**

Judd W. Leonard

**Invoice No.**

**YINSHI FENG 12.500000**

*Thank You!*

# APPENDIX "A"

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

\*

\*

\*

vs.

Docket No. 02-1504-CD

\*

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

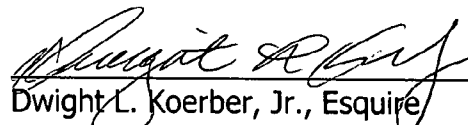
\*

\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 24<sup>th</sup> day of October, 2002, the  
undersigned served via U.S. First Class Mail a true and correct copy of the  
foregoing Complaint in the above-captioned matter upon the following:

Kevin G. O'Donovan, Esquire  
PALMER, BIEZUP & HENDERSON  
620 Chestnut St., Ste. 956  
Philadelphia, PA 19106

  
Dwight L. Koerber, Jr., Esquire  
Attorney for Plaintiffs:  
Brink Transportation Inc. and Samuel D.  
Brink t/d/b/a Brink's Body Shop

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO. 02-1504-CD

Brink Transportation, Inc. and  
Samuel D. Brink,  
t/d/b/a Brink's Body Shop

vs.

Shannon McGarvey, an individual  
and Windsor Mount Joy Ins. Co.,  
a corporation

COMPLAINT

**FILED**

*01/3:41e*  
OCT 29 2002

William A. Shaw  
Prothonotary

LAW OFFICE  
DWIGHT KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. BOX 1320  
CLEARFIELD, PENNSYLVANIA 16830

*3cc*  
*AWK*  
*WKS*

**PALMER BIEZUP & HENDERSON LLP**

By: Kevin G. O'Donovan, Esquire  
Pa. Attorney I.D. No.: 41215  
By: Maria G. Perri, Esquire  
Pa. Attorney I.D. No.: 86737  
620 Chestnut Street, Suite 956  
Philadelphia, Pennsylvania 19106  
(215)625-7849

Attorneys for Windsor Mount Joy Mutual Ins. Co.

**NOTICE TO DEFEND**

To Plaintiffs and Defendant  
You are hereby notified to plead  
to the enclosed New Matter and  
New Matter pursuant to Rule  
2252(d) within twenty (20) days  
of service hereof or judgment  
may be entered against you

*Kevin G. O'Donovan*

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a/ Brink's Body Shop,

*Plaintiffs,*

vs.

Docket No.: 02-1504-CD

Shannon McGarvey,  
and individual and Windsor  
Mount Joy Mutual Ins. Co.  
a corporation,

*Defendants.*

**DEFENDANT WINDSOR MOUNT JOY MUTUAL INSURANCE COMPANY'S  
ANSWER TO PLAINTIFFS' COMPLAINT WITH NEW MATTER AND NEW  
MATTER PURSUANT TO PA R.C.P. 2252(d)**

Windsor Mount Joy Mutual Insurance Company (hereafter "Windsor"), by and through  
its attorneys, PALMER BIEZUP & HENDERSON, answers plaintiffs' Complaint as follows:

**FILED**

NOV 18 2002

1. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph one and, therefore, denies same and demands strict proof thereof.

2. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph two and, therefore, denies same and demands strict proof thereof.

3. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph three and, therefore, denies same and demands strict proof thereof.

4. Admitted.

5. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph five and, therefore, denies same and demands strict proof thereof.

6. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph six and, therefore, denies same and demands strict proof thereof.

7. Denied as stated. There is no vehicle bearing serial number 1XKWDB9X021892231 listed on any policy Shannon McGarvey holds with Windsor. Windsor denies the remaining averments of paragraph seven concerning the terms of Windsor's policy as the policy is a document, the terms of which speak for itself.

8. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph eight and, therefore, denies same and demands strict proof thereof.

9. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph nine and, therefore, denies same and demands strict proof thereof.

10. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph ten and, therefore, denies same and demands strict proof thereof.

11. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph eleven and, therefore, denies same and demands strict proof thereof.

12. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph twelve and, therefore, denies same and demands strict proof thereof. Windsor denies that it directed or agreed to towing of McGarvey's vehicle to New Bethlehem, Pennsylvania.

13. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph thirteen and, therefore, denies same and demands strict proof thereof.

14. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph fourteen and, therefore, denies same and demands strict proof thereof.

15. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph fifteen and, therefore, denies same and demands strict proof thereof.

16. Admitted in part, denied in part. It is admitted that Windsor tendered \$425 to their insured, defendant Shannon McGarvey, in satisfaction of Windsor's obligations under its policy with McGarvey. Windsor is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph sixteen and, therefore, denies same and demands strict proof thereof.

17. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph seventeen and, therefore, denies same and demands strict proof thereof.

18. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph eighteen and, therefore, denies same and demands strict proof thereof. Windsor denies that Brink Presented any additional invoice to Windsor.

19. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph nineteen and, therefore, denies same and demands strict proof thereof.

20. Denied as stated. Windsor has paid their insured, Shannon McGarvey \$425 for towing charges in accordance with the terms and conditions of his policy. Any demands for payment beyond that payment are not within the coverage of defendant Shannon McGarvey's policy.

21. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph twenty-one and, therefore, denies same and demands strict proof thereof.

22. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph twenty-two and, therefore, denies same and demands strict proof thereof.

**WHEREFORE**, Windsor demands judgment in its favor together with interest, costs and all other relief the Court deems proper under the circumstances.

## **COUNT II**

23. Windsor incorporates herein by reference its responses to the preceding paragraphs as though fully set forth herein.

24. Denied. Defendant Shannon McGarvey did not advise Windsor as to the nature of damages and his desire to have repair work done in his home county of Clearfield Pennsylvania, nor did Windsor agree to the foregoing. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph twenty-four concerning discussions between McGarvey and Brink, and, therefore, denies same and demands strict proof thereof.

25. Denied. Defendant Shannon McGarvey's insurance agent, Ray Williams, is an insurance broker, not an agent of Windsor and has no authority whatsoever to bind Windsor to any agreement with Shannon McGarvey, plaintiffs' or any other persons or entities.

26. Denied. Windsor did not directly oversee repair or towing services nor the nature or type of the repair services to be provided by plaintiff.



27. Denied. No agent of Windsor ever advised Brink or McGarvey that frame straightening was required or that the truck had to be towed to New Bethlehem for frame straightening.

28. Denied. Windsor did not produce a delay in starting and completing the work in question.

29. Denied. The averments of paragraph twenty-nine of the plaintiffs' Complaint are denied as conclusions of law to which no response is required. It is specifically denied that Windsor has entered into any implied contract with plaintiffs.

30. Windsor is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph thirty and, therefore, denies same and demands strict proof thereof.

31. Denied. The averments of paragraph thirty-one of the plaintiffs' Complaint are denied as conclusions of law to which no response is required. It is specifically denied that Windsor has entered into any implied contract with plaintiffs.

**WHEREFORE**, Windsor demands judgment in its favor against plaintiffs, together with costs and such further relief as this Honorable Court deems appropriate under the circumstances.

#### **NEW MATTER**

#### **FIRST SEPARATE DEFENSE**

32. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

#### **SECOND SEPARATE DEFENSE**

33. Windsor fulfilled all their obligations under any alleged contract or warranty.

### **THIRD SEPARATE DEFENSE**

34. Plaintiffs' rights and claims are barred by the doctrine of unclean hands.

### **FOURTH SEPARATE DEFENSE**

35. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

### **FIFTH SEPARATE DEFENSE**

36. Plaintiffs are not in privity of contract with Windsor with respect to any policy(ies) of insurance, including, but not limited to, any policy(ies) issued to defendant Shannon McGarvey and, therefore, plaintiffs' Complaint is barred and must be dismissed.

### **SIXTH SEPARATE DEFENSE**

37. Plaintiffs' claims are barred under the terms and conditions of Windsor's policy as the maximum insurance allowance for towing has been exhausted and paid in full by Windsor.

### **SEVENTH SEPARATE DEFENSE**

38. Plaintiffs' claims are barred due to co-defendant Shannon McGarvey's failure to comply with the provisions and requirements set forth in the terms and conditions of Windsor's policy.

### **EIGHTH SEPARATE DEFENSE**

39. Plaintiffs' claims are barred by the doctrines of waiver or estoppel.

**WHEREFORE**, answering defendant, Windsor Mount Joy Mutual Insurance Company, demands that plaintiffs' Complaint be dismissed with prejudice, and that judgment be rendered in Windsor's favor and against plaintiff, together with costs, fees, and such other and further relief as this Court deems appropriate under the circumstances.

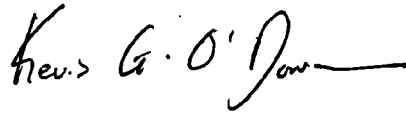
**NEW MATTER PURSUANT TO PA R.C.P. §2252(d)**

Windsor denies all liability to plaintiffs, or any other party to this action. However, if the allegations contained in plaintiff's Complaint are true and proven, such allegations being denied as they relate to Windsor, then plaintiffs' alleged damages were caused by the carelessness, negligence, recklessness, breach of duty imposed by law, breach of contract or breach of warranty of Shannon McGarvey. Windsor avers that Shannon McGarvey alone is liable to plaintiffs, and/or is jointly and/or severally liable to plaintiffs with Windsor, and/or is liable over to Windsor on the basis of contribution and/or indemnity.

**WHEREFORE**, Windsor demands judgment in its favor together with costs, attorneys fees and all other relief the Court deems proper under the circumstances.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP



By:

Kevin G. O'Donovan  
Maria G. Perri  
620 Chestnut Street  
Suite 956  
Philadelphia, Pennsylvania 19106  
(215)625-9900

Attorneys for defendant Windsor  
Mount Joy Mutual Ins. Co.

Dated: 11/15/02

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a/ Brink's Body Shop,

*Plaintiffs,*

vs.

Docket No.: 02-1504-CD

Shannon McGarvey,  
and individual and Windsor  
Mount Joy Mutual Ins. Co.  
a corporation,

*Defendants.*

**CERTIFICATE OF SERVICE**

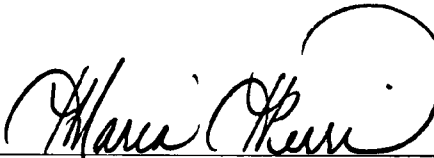
The undersigned hereby certifies that a true and correct copy of the foregoing Answer of Defendant Windsor Mount Joy Mutual Insurance Company to plaintiff's Complaint with New Matter and New Matter pursuant to PA R.C.P. 2252(d) was served on counsel of record via federal express to:

Dwight L. Koerber, Jr. Esquire  
Law Offices of Dwight L. Koerber, Jr.  
Attorneys at Law  
110 North Second Street  
Clearfield, PA 16830

and on the following individual via first-class, postage prepaid, U.S. mail:

Shannon McGarvey  
P.O. Box 52  
Coalport, Pennsylvania 16627

Please note that first-class U.S. mail, postage pre-paid envelopes have been provided to the Prothonotary who will send certified copies of the Answer directly from the Prothonotary's office to the above named parties.

  
\_\_\_\_\_  
Maria G. Perri

Dated: 11/15/02

FILED

NOV 18 2002

William A. Shaw  
Prothonotary

per atty. Pen  
request - 1 cc Atty Koeber

~~2 cc~~ 1 cc Shannon McCarney  
~~2 cc~~ 2 cc Atty Pen

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

vs.

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

\*

\*

\*

\*

\*

\*

\*

Docket No. 02-1504-CD

Type of Pleading:  
REPLY TO NEW MATTER

Filed on Behalf of:  
Plaintiffs:  
Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,

Counsel of Record for  
This Party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

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

**FILED**

DEC 19 2002

William A. Shaw  
Prothonotary

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

vs.

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

\*

\*

\*

\*

\*

\*

\*

Docket No. 02-1504-CD

**REPLY TO NEW MATTER**

COME NOW, Plaintiffs Brink Transportation Inc. and Samuel D. Brink, by  
and through their attorney, Dwight L. Koerber, Jr., Esquire, to file the within  
Reply to New Matter filed herein by Defendant Windsor Mount Joy Mutual  
Insurance Co.

32. Denied, legal conclusion. No answer required. Moreover, if a  
Complaint for legal insufficiency of a Pleading is asserted, it should properly be  
asserted under PA R.C.P. 1028.

33. Denied, legal conclusion.

34. Denied, legal conclusion. Moreover, no facts have been asserted to  
support that legal defense.



35. Denied, legal conclusion. Moreover, no facts have been asserted to support that legal defense.

36. Denied, legal conclusion.

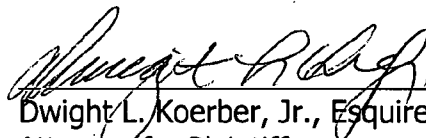
37. Denied, legal conclusion.

38. Denied, legal conclusion.

39. Denied, legal conclusion. Moreover, no facts have been asserted to support that legal defense.

WHEREFORE, Plaintiff prays that Defendant Windsor Mount Joy Mutual Insurance Company's New Matter be denied and that judgment be entered in Plaintiff's favor.

Respectfully Submitted:

A handwritten signature in cursive script, appearing to read "Dwight L. Koerber, Jr.", is written over a horizontal line.

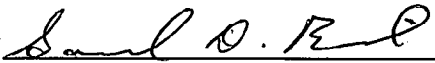
Dwight L. Koerber, Jr., Esquire  
Attorney for Plaintiffs:

Brink Transportation Inc. and Samuel D.  
Brink t/d/b/a Brink's Body Shop

VERIFICATION

I certify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

BRINK TRANSPORTATION, INC.

By:   
Samuel D. Brink, President

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

BRINK TRANSPORTATION, INC.  
and SAMUEL D. BRINK, t/d/b/a  
BRINK'S BODY SHOP,  
Plaintiffs

\*

\*

\*

-VS-

Docket No. 02-1504-CD

\*

SHANNON McGARVEY, an individual  
and WINDSOR MOUNT JOY MUTUAL  
INS. CO., a corporation,  
Defendants

\*

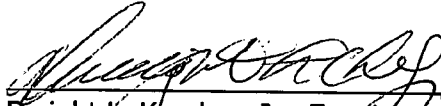
\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 19th day of December, 2002, the undersigned served a certified copy of REPLY TO NEW MATTER in the above captioned matter upon counsel for Defendant Windsor Mount Joy Mutual Ins. Co. and upon Defendant Shannon McGarvey. Such documents were served via United States First Class Mail upon the following:

Kevin G. O'Donovan, Esquire  
PALMER BIEZUP & HENDERSON, LLP  
620 Chestnut Street, Suite 956  
Philadelphia, PA 19106

Shannon McGarvey  
P. O. Box 52  
Coalport, PA 16627

  
Dwight L. Koerber, Jr., Esquire  
Attorney for PLAINTIFF:  
Brink Transportation, Inc.

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

BRINK TRANSPORTATION, INC. and  
SAMUEL D. BRINK, t/d/b/a  
BRINK'S BODY SHOP,  
Plaintiffs

-vs-

SHANNON MCGARVEY, an individual  
and WINDSOR MOUNT JOY MUTUAL  
INS. CO., a corporation,  
Defendants

REPLY TO NEW MATTER  
Docket No. 02-1504-CD

**FILED**

4 cc

Any losses

DEC 19 2002

William A. Shaw  
Prothonotary

*Law Office*

DWIGHT L. KOERBER, JR.

ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

vs.

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

\*

\*

\*

\*

\*

\*

\*

Docket No. 02-1504-CD

Type of Pleading:  
PRAECIPE TO DISCONTINUE

Filed on Behalf of:  
Plaintiffs:  
Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,

Counsel of Record for  
This Party:

Dwight L. Koerber, Jr.,  
Esquire  
PA I.D. No. 16332

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

**FILED**

APR 22 2003

William A. Shaw  
Prothonotary

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

Brink Transportation Inc.  
and Samuel D. Brink,  
t/d/b/a Brink's Body Shop,  
Plaintiffs,

\*

\*

\*

vs.

Docket No. 02-1504-CD

\*

Shannon McGarvey,  
an individual and Windsor  
Mount Joy Mutual Ins. Co.,  
a corporation,  
Defendant

\*

\*

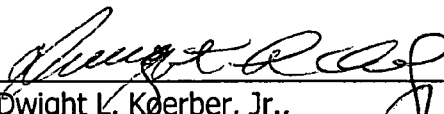
\*

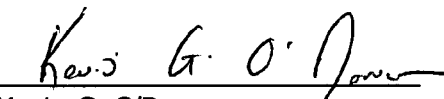
**PRAECIPE TO DISCONTINUE**

TO: WILLIAM A. SHAW, PROTHONOTARY  
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
1 North Second Street  
Clearfield, PA 16830

Please mark the docket in this proceeding as discontinued and settled with  
prejudice.

Respectfully submitted,

By:   
Dwight L. Koerber, Jr.,  
Attorney for Brink Transportation, Inc.

By:   
Kevin G. O'Donovan  
Attorney for Mount Joy Mutual Ins. Co.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO. 02-1504-CD

Brink Transportation, Inc. and  
Samuel D. Brink, t/d/b/a Brink's  
Body Shop

vs.

Shannon McGarvey, an individual  
and Windsor Mount Joy Mutual, Ins.  
Co., a corporation

PRAECIPE TO DISCONTINUE

**FILED**

APR 21 2003

William A. Shaw  
Prothonetary

*Law Office*

DWIGHT L. KOERBER, JR.

ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

3CC & Certificates  
Atty Koerber  
Cert. to C/A

WAS

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

**Brink Transportation**

**Vs.**

**No. 2002-01504-CD**

**Windsor Mount Joy Mutual Ins. Co.  
Shannon McGarvey**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 22, 2003, marked:

Discontinued and Settled with Prejudice

Record costs in the sum of \$80.00 have been paid in full by Kevin G. O'Donovan, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 22nd day of April A.D. 2003.

---

William A. Shaw, Prothonotary