

02-1835-CD

CLEARFIELD BANK & TRUST CO. vs. BRANDI L. CLARK

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-02**

DJ Name: Hon.  
**RICHARD A. IRELAND**  
Address: **650 LEONARD STREET**  
**CLEARFIELD, PA**

Telephone: **(814) 765-5335** **16830**

**CLEARFIELD BANK & TRUST CO**  
**PO BOX 171**  
**CLEARFIELD, PA 16830**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: NAME and ADDRESS  
**CLEARFIELD BANK & TRUST CO**  
**PO BOX 171**  
**CLEARFIELD, PA 16830**

VS.  
DEFENDANT: NAME and ADDRESS  
**CLARK, BRANDI L**  
**PO BOX 11084**  
**SHADY HILLS, FL 34610**

Docket No.: **CV-0000410-02**  
Date Filed: **9/06/02**



*02-1835-CD*

**THIS IS TO NOTIFY YOU THAT:**

Judgment:

**DEFAULT JUDGMENT PLTF**

☒ Judgment was entered for: (Name) **CLEARFIELD BANK & TRUST CO**

☒ Judgment was entered against: (Name) **CLARK, BRANDI L**

in the amount of \$ **3,808.18** on: (Date of Judgment) **10/07/02**

☐ 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>3,743.18</b>
Judgment Costs	\$ <b>65.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 3,808.18</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	<b>\$ _____</b>

Date:	Place:
Time:	

**FILED**  
*0 1:40 Notice to file 10/20/02*  
**NOV 22 2002**

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.

**OCT 08 2002** Date *Richard Ireland*, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
**NOV 13 2002** Date *Richard Ireland*, District Justice

My commission expires first Monday of January,

**2006**

SEAL

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

COPY

CLEARFIELD BANK & TRUST CO

PO BOX 171

CLEARFIELD PA 16830-0171

02-1835

No. CV-0000410-02

VS.

BRANDI L CLARK

PO BOX 11084

SHADY HILLS, FL 34610

Notice is given that a JUDGEMENT in the above captioned matter  
has been entered against you in the amount of \$ 3,808.18  
on November 22, 2002.

William A. Shaw, Prothonotary

By \_\_\_\_\_  
Deputy

02-1836-CD

DAVID JOHNSTON, etal bs. JUSTIN E. UPDYKE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

Plaintiffs,

v.

JUSTIN E. UPDYKE,

Defendant.

**CIVIL DIVISION**

No.: ~~CA~~-1836-CD

Code:

**COMPLAINT**

Filed on behalf of the Plaintiffs

Counsel of Record for this Party:

Stephen P. Drexler, Esquire  
Pa. I.D. #76108

Ainsman & Levine, P.C.  
Firm #975

2201 Grant Building  
Pittsburgh, PA 15219

(412) 338-9030

**JURY TRIAL DEMANDED**

AL050702.1

FILED

NOV 22 2007

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.:

Plaintiffs,

v.

Code:

JUSTIN E. UPDYKE,

Defendant.

**COMPLAINT**

**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 claim or relief requested by plaintiff. You may lose money property or other rights important to you.

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

CLEARFIELD COUNTY COURTHOUSE  
Attn: DAVID S. MEHOLICK, Court Administrator  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641 Ext. 32

**JURY TRIAL DEMANDED**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.:

Plaintiffs,

v.

Code:

JUSTIN E. UPDYKE,

Defendant.

**COMPLAINT**

**COMPLAINT IN CIVIL ACTION**

AND NOW, come the Plaintiffs, David Johnston, and Cheryl Johnston, his wife, and Alex Johnston, a minor, by his parents and natural guardians, David and Cheryl Johnston, by and through their attorneys, Ainsman & Levine, P.C., and Stephen P. Drexler, Esquire, and file the following Complaint in Civil Action, and in support thereof, aver as follows:

1. The Plaintiffs, David Johnston, and Cheryl Johnston, his wife, are adult individuals who reside in Clearfield County at 720 Maple Avenue, Dubois, Pennsylvania 15801.
2. The Plaintiff, Alex Johnston, a minor, resides with his parent and natural guardians at the address specified in Paragraph one (1) herein.
3. The Defendant, Justin E. Updyke, is an adult individual who resides in Clearfield County at 11 Tozier Avenue, Dubois, Pennsylvania 15801.

4. At all times relevant hereto, the Plaintiff, David Johnston, was insured under an automobile insurance policy with full tort coverage, and is therefore entitled, under 75 Pa. Cons. Stat. §1705, to recover for his non-economic as well as economic losses.

5. At all times pertinent hereto, the Plaintiff, David Johnston, acted with all due care and regard for his own safety and well being.

6. The events hereinafter complained of occurred on or about May 19, 2001, at approximately 8:06 p.m. in Clearfield County in the parking lot of the McDonald's Restaurant, Route 255, Dubois, Pennsylvania.

7. At that time and place, the Defendant, Justin E. Updyke, pulled his vehicle into the aforementioned parking lot and parked his vehicle in the parking space adjacent to the parking space where the Plaintiffs' vehicle was parked.

8. At that time and place, the Plaintiffs, David Johnston, Cheryl Johnston, and Alex Johnston, were all seated in their vehicle that was parked in the McDonald's parking lot.

9. At that time and place, the Defendant, Justin E. Updyke, was operating his vehicle, causing it to quickly accelerate and squeal his tires on the aforementioned parking lot surface, while simultaneously throwing trash, which included alcohol containers, from his vehicle in the direction of the Plaintiff's vehicle.

10. Upon witnessing the Defendant litter, the Plaintiff, David Johnston, approached the Defendant's vehicle, identified himself as a Curwensville Police Officer while showing the Defendant his badge of authority, and then requested the Defendant to pick up his trash.

11. Because the Defendant, Justin E. Updyke, refused the Plaintiff's request, the Plaintiff, David Johnston, asked his wife to use his mobile phone to call for on-duty police



assistance.

12. At that time and place, the Defendant, Justin E. Updyke, reversed his vehicle out of the parking space at an excessive rate of speed, and ran over the Plaintiff, David Johnston, and over a concrete planter box and through some bushes before fleeing the scene.

13. The Defendant, Justin E. Updyke, was subsequently apprehended by local authorities and issued citations for the following offenses:

- a. Driving under the influence of alcohol in violation of 75 Pa. C.S. §3731;
- b. Aggravated assault while driving under the influence in violation of 75 Pa. C.S. §3735.1;
- c. Failing to remain at the scene of an accident in violation of 75 Pa. C.S. §3742;
- d. Failing to provide his name, driver's license information, proof of financial responsibility and render reasonable assistance to the Plaintiff in violation of 75 Pa. C.S. §3744;
- e. Reckless driving or driving in a wilful or wanton disregard for the rights and safety of the Plaintiff in violation of 75 Pa. C.S. §3736; and
- f. Failing to provide immediate notice of the accident to the local police department in violation of 75 Pa. C.S. §3746.

14. As a result of this incident, the Plaintiff, David Johnston, sustained the following injuries, some or all of which may be permanent in nature:

- a. Severely displaced comminuted fracture of the left tibia and fibula;
- b. Fracture of the distal phalanx of the left big toe;
- c. Abrasions, scrapes, contusions, and lacerations of the left lower extremity; and
- d. Possible other serious and/or permanent injuries.

15. As a result of this incident, the Plaintiff, Cheryl Johnston, upon witnessing her

husband run over and seriously injured by the Defendant's vehicle, sustained the following injuries, some or all of which may be permanent in nature:

- a. Severe shock to her nervous system;
- b. Post traumatic stress disorder;
- c. Anxiety; and
- d. Possible other serious and/or permanent injuries.

16. As a result of this incident, the Plaintiff, Alex Johnston, upon witnessing his father run over and seriously injured by the Defendant's vehicle, sustained the following injuries, some or all of which may be permanent in nature:

- a. Severe shock to his nervous system;
- b. Post traumatic stress disorder;
- c. Extreme anxiety;
- d. Sleep disorder with associated nightmares; and
- e. Possible other serious and/or permanent injuries.

17. As a result of these injuries, the Plaintiff, David Johnston, sustained the following damages:

- a. He has endured and may continue to endure pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma;
- b. He has been and may continue to be required to expend large sums of money for medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- c. His general health, strength, and vitality have been impaired;
- d. He has suffered from a loss in wages and may, in the future, continue to suffer from a loss of earnings and/or diminished earning capacity; and

- e. He has been and may in the future be unable to enjoy various pleasures of life that he previously enjoyed.

18. As a result of his injuries, the Plaintiff, Cheryl Johnston, sustained the following damages:

- a. She has endured and may continue to endure pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma;
- b. She has been and may continue to be required to expend large sums of money for medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- c. Her general health, strength, and vitality have been impaired; and
- d. He has been and may in the future be unable to enjoy various pleasures of life that he previously enjoyed.

19. As a result of these injuries, the Plaintiff, Alex Johnston, sustained the following damages:

- a. He has endured and may continue to endure pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma;
- b. He has been and may continue to be required to expend large sums of money for medical treatment and care, medical supplies, rehabilitation, medicines, and other attendant services;
- c. His general health, strength, and vitality have been impaired; and
- d. He has been and may in the future be unable to enjoy various pleasures of life that he previously enjoyed.

**COUNT I**  
**David Johnston v. Justin E. Updyke**  
**NEGLIGENCE**

20. Paragraphs one (1) through and including nineteen (19) are hereby incorporated as

if fully set forth herein.

21. The losses, injuries, and damages sustained by the Plaintiff, David Johnston, as detailed above, were caused by the negligence of the Defendant, Justin E. Updyke, in some or all of the following particulars:

- a. In failing to operate and have his vehicle under proper control;
- b. In failing to remain attentive to the traffic around him;
- c. In failing to keep a proper lookout;
- d. In failing to observe with reasonable care the traffic and road conditions, including the location of the Plaintiff;
- e. In failing to stop, slow, or turn his vehicle aside when he knew or, by the exercise of reasonable care, should have known that if the said vehicle were permitted to proceed a collision with the Plaintiff would result;
- f. In failing to exercise due care and in acting without due regard for the rights and safety of others;
- g. In acting with reckless indifference and in wilful, wanton, and in utter disregard for the rights and safety of the Plaintiff;
- h. In failing to use due care and in acting without due regard for the rights and safety of others as is required of Defendant under the law;
- i. In driving under the influence of alcohol in violation of §3731 of the Pennsylvania Motor Vehicle Code;
- j. In the aggravated assault of the Plaintiff while operating his vehicle under the influence of alcohol in violation of §3735.1 of the Pennsylvania Motor Vehicle Code; and
- k. In the reckless operation of his vehicle, i.e., the wilful or wanton disregard for the rights and safety of the Plaintiff in violation of §3736 of the Pennsylvania Motor Vehicle Code.

**WHEREFORE**, the Plaintiff, David Johnston, demands a judgment for compensatory, consequential, and punitive damages against the Defendant, Justin E. Updyke, for an amount in excess of the arbitration limits of this county plus costs and interest.

**COUNT II**  
**David Johnston v. Justin E. Updyke**  
**ASSAULT & BATTERY**

22. Paragraphs one (1) through and including twenty-one (21) are hereby incorporated as if fully set forth herein.

23. The Plaintiff's injuries and damages were caused solely by, and were the direct and proximate result of the assault and battery inflicted by Defendant, Justin E. Updyke, in some or all of the following particulars:

- a. Without warning, and with the intent to harm the Plaintiff, Defendant intentionally drove his automobile directly into and over the Plaintiff's person dragging him under the moving vehicle;
- b. In acting with reckless indifference and in wilful, wanton, and in utter disregard for the rights and safety of the Plaintiff;
- c. In failing to use due care and in acting without due regard for the rights and safety of others as is required of Defendant under the law;
- d. In driving under the influence of alcohol in violation of §3731 of the Pennsylvania Motor Vehicle Code;
- e. In the aggravated assault of the Plaintiff while operating his vehicle under the influence of alcohol in violation of §3735.1 of the Pennsylvania Motor Vehicle Code; and
- f. In the reckless operation of his vehicle, i.e., the wilful or wanton disregard for the rights and safety of the Plaintiff in violation of §3736 of the Pennsylvania Motor Vehicle Code.

**WHEREFORE**, the Plaintiff, David Johnston, demands judgment for compensatory, consequential, and punitive damages against the Defendant, Justin E. Updyke, for an amount in excess of the Arbitration limits of this County plus costs and interest.

**COUNT III**  
**Cheryl Johnston v. Justin E. Updyke**  
**LOSS OF CONSORTIUM**

24. Paragraphs one (1) through and including twenty-three (23) are hereby incorporated as if fully set forth herein.

25. The Plaintiff, Cheryl Johnston, is and, at all times relevant hereto, was married to the Plaintiff, David Johnston, and resides with him in Clearfield County at the address specified in Paragraph one (1) herein.

26. As a result of the Defendant's negligence, or in the alternative, his intentional acts, the Plaintiff, Cheryl Johnston, sustained the following damages:

- a. She has been and may be required to expend money for her husband's medical care, hospitalization, medical supplies, medicines, and attendant services; and
- b. She has been and may in the future be deprived of the services, assistance, and companionship of her husband.

**WHEREFORE**, the Plaintiff, Cheryl Johnston, demands a judgment against the Defendant, Justin E. Updyke, in an amount that exceeds the Arbitration limits of this county plus costs and interest.

**COUNT IV**  
**Cheryl Johnston v. Justin E. Updyke**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

27. Paragraphs one (1) through and including twenty-six (26) are hereby incorporated as if fully set forth herein.

28. The Plaintiff, Cheryl Johnston, is the spouse of and is therefore closely related to the Plaintiff, David Johnston.

29. The Plaintiff, Cheryl Johnston, was present at the scene of the injury and personally observed and/or perceived the injuries inflicted upon her husband and Plaintiff, David Johnston, which resulted from the direct and proximate cause of the negligent and/or willful, wanton, reckless, or other conduct by the Defendant, Justin E. Updyke, the particulars of which are stated in Paragraphs twenty-one (21) and twenty-three (23) herein.

**WHEREFORE**, the Plaintiff, Cheryl Johnston, demands a judgment against the Defendant, Justin E. Updyke, for compensatory, consequential, and punitive damages in an amount that exceeds the Arbitration limits of this county plus costs and interest.

**COUNT IV**  
**Alex Johnston v. Justin E. Updyke**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

30. Paragraphs one (1) through and including twenty-nine (29) are hereby incorporated as if fully set forth herein.

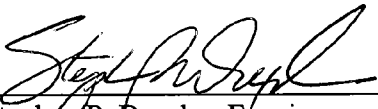
31. The Plaintiff, Alex Johnston, is the son of and is therefore closely related to

the Plaintiff, David Johnston.

32. The Plaintiff, Alex Johnstown, was present at the scene of the injury and personally observed and/or perceived the injuries inflicted upon his father and Plaintiff, David Johnston, which resulted from the direct and proximate cause of the negligent and/or willful, wanton, reckless, or other conduct by the Defendant, Justin E. Updyke, the particulars of which are stated in Paragraphs twenty-one (21) and twenty-three (23) herein.

**WHEREFORE**, the Plaintiff, Alex Johnston, demands a judgment against the Defendant, Justin E. Updyke, for compensatory, consequential, and punitive damages in an amount that exceeds the Arbitration limits of this county plus costs and interest.

Respectfully submitted  
Ainsman & Levine, P.C.

By:   
Stephen P. Drexler, Esquire  
Counsel for Plaintiffs

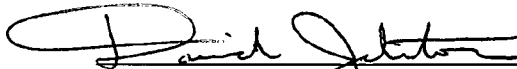
**JURY TRIAL DEMANDED**




### VERIFICATION

I verify that the statements made in the COMPLAINT IN CIVIL ACTION are true and correct; that the attached COMPLAINT IN CIVIL ACTION is based upon information which I have furnished to my counsel and information which has been gathered by my counsel in the preparation of the lawsuit. The language of the COMPLAINT IN CIVIL ACTION is that of counsel and not the plaintiff. I have read the COMPLAINT IN CIVIL ACTION and to the extent that the COMPLAINT IN CIVIL ACTION is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the COMPLAINT IN CIVIL ACTION is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements herein made are subject to the penalties of 18 Pa. Cons. Stat. §4904 relating to the unsworn falsification to authorities.

DATED: 10/10/02

  
\_\_\_\_\_  
DAVID JOHNSTON, individually and  
as parent and natural guardian for  
ALEX JOHNSTON, a minor

DATED: 10/10/02

  
\_\_\_\_\_  
CHERYL JOHNSTON, individually and  
as parent and natural guardian for  
ALEX JOHNSTON, a minor

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DAVID JOHNSTON and CHERYL  
JOHNSTON, his wife, and  
ALEX JOHNSTON, a minor by  
his parents and natural guardians,  
David Johnston and Cheryl Johnston,

Plaintiffs

vs.

No. 02-1836 CD

JUSTIN E. UPDYKE,

Defendant

ENTRY OF APPEARANCE

Please enter my appearance for Defendant, Justin E. Updyke, in the  
above matter. Papers may be served at the address listed below.

DEMAND FOR JURY TRIAL

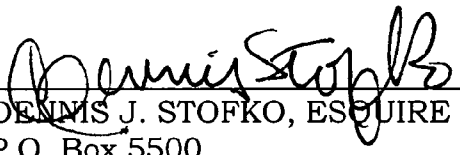
Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as  
amended, a Jury Trial is demanded on all issues raised by the pleadings in this  
action.

I certify this Entry of Appearance and Demand for Jury Trial shall be  
served forthwith by ordinary mail upon all parties.

**FILED**

JAN 07 2003

William A. Shaw  
Prothonotary

  
DENNIS J. STOFKO, ESQUIRE  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

FILED

NO  
CC

11/2:43:24  
JAN 07 2003

200

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DAVID JOHNSTON and CHERYL  
JOHNSTON, his wife, and  
ALEX JOHNSTON, a minor by  
his parents and natural guardians,  
David Johnston and Cheryl Johnston,

Plaintiffs

vs.

No. 02-1836 CD

JUSTIN E. UPDYKE,

Defendant

ANSWER AND NEW MATTER  
Counsel of record for this party:  
Dennis J. Stofko, Esquire  
P.O. Box 5500  
Johnstown, Pa. 15904  
814 262-0064  
ID 27638

TO THE PLAINTIFFS:

You are hereby notified to reply to the  
enclosed New Matter within 20 days of  
service hereof or a default judgment may  
be entered against you.

FILED

JAN 15 2003

William A. Shaw  
Prothonotary

ANSWER

NOW COMES the Defendant, Justin E. Updyke, by and through counsel, Dennis J. Stofko, and files the following Answer.

1. - 3. Admitted.

4. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

5. Denied. Paragraph 5 contains a conclusion of law to which no responsive pleading is required.

6. Admitted.

7. Admitted.

8. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

9. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

10. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

11. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

12. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

13. Denied. Paragraph 13 contains conclusions of law to which no responsive pleading is required.

14. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

15. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

16. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

17. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

18. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

19. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

20. Denied: See previous Answers.

21. Denied. Paragraph 21 contains conclusions of law to which no responsive pleading is required.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

22. Denied. See previous Answers.

23. Denied. Paragraph 23 contains conclusions of law to which no responsive pleading is required.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

24. Denied. See previous Answers.

25. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

26. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

27. Denied. See previous Answers.

28. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

29. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

30. Denied. See previous Answers.

31. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

32. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

NEW MATTER

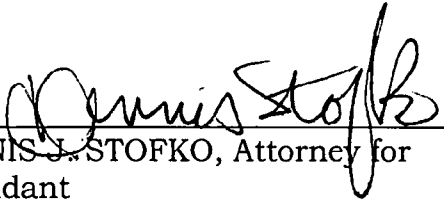
33. The Defendant is informed, believes and therefore avers that the Plaintiff, David Johnston is contributorily negligent and/or comparatively negligent and Plaintiff is thus barred from recovery of any damages under the terms of the Pennsylvania Comparative Negligence Act. Act No. July 9, 1976 Pl. 855 No. 152 and the Act of April 28, 1978, Pl. 202 No. 53 Section 10 (89), 42 Pa. CSA Section 7102A, effective as to the causes of action arising on or after May 19, 2001 as the Plaintiff's causal negligence is greater than the negligence, if any, of the Defendant.

34. In the alternative pursuant to the aforesaid provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. CSA Section 7102A any damage which the Plaintiff, David Johnston may have legally suffered and can prove at trial and date was subsequent to the effective date of the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. CSA Chapter 17.

35. The Defendant pleads the said Motor Vehicle Financial Responsibility Law as a defense to the extent that said law limits and controls Plaintiff's right to recover damages in this action.

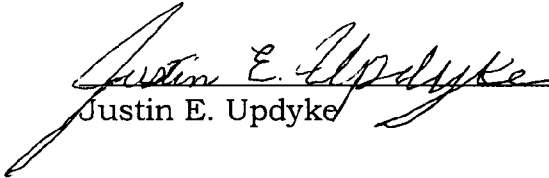


WHEREFORE, Defendant requests judgment on his behalf.

  
\_\_\_\_\_  
DENNIS J. STOFKO, Attorney for  
Defendant

I, Justin E. Updyke, do hereby swear or affirm that the facts set forth in the Answer and New Matter are true and correct to the best of my knowledge, information and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. CSA 4904 relating to unsworn falsification to authorities.

  
Justin E. Updyke

Dated: 1-11-03

FILED

NO  
CC

3/11:47 PM  
JAN 15 2003

100

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

Plaintiffs,

v.

JUSTIN E. UPDYKE,

Defendant.

**CIVIL DIVISION**

No.: 02-1836 CD

**REPLY TO NEW MATTER**

Filed on behalf of the Plaintiffs

Counsel of Record for this Party:

Stephen P. Drexler, Esquire  
Pa. I.D. #76108

Ainsman, Levine & Drexler, LLC  
Firm #975

2201 Grant Building  
Pittsburgh, PA 15219

(412) 338-9030

**JURY TRIAL DEMANDED**

ALJ53332.1

**FILED**

JAN 24 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836 CD

Plaintiffs,

v.

JUSTIN E. UPDYKE,

Defendant.


REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, David Johnston and Cheryl Johnston, his wife, and Alex Johnston, a minor, by his parents and natural guardians, David Johnston and Cheryl Johnston, by and through their attorneys, Ainsman, Levine & Drexler, LLC and Stephen P. Drexler, Esquire, and file the following Reply to New Matter.

1. The averments contained in Paragraphs 33, 34 and 35 of Defendant's New Matter state conclusions of law to which no response is required. Should a response be deemed necessary, these averments are denied and strict proof is demanded.

WHEREFORE, Plaintiffs request this Honorable Court to enter judgment in their favor and against the Defendant, together with costs and interest.


Ainsman, Levine & Drexler, LLC

By:   
Stephen P. Drexler, Esquire  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, does hereby certify that a true and correct copy of the foregoing of  
Plaintiffs' Reply to New Matter has been served via **First Class Mail**, on this 21st day of January, 2003.

AINSMAN, LEVINE & DREXLER, LLC

By:   
Stephen P. Drexler, Esquire  
Attorney for Plaintiffs

**MAILED TO:**

Dennis J. Stofko, Esquire  
Stofko Law Offices  
969 Eisenhower Boulevard, Suite E  
P.O. Box 5500  
Johnstown, PA 15904

FILED  
NO  
cc  
3/12/55  
JAN 24 2003

William A. Shaw  
Prothonotary

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 13351

JOHNSTON, DAVID & CHERYL al

02-1836-CD

VS.

UPDYKE, JUSTIN E.

COMPLAINT & INTERROGATORIES DIRECTED TO DEFENDANT

**SHERIFF RETURNS**

NOW DECEMBER 6, 2002, CARL BROWN, SHERIFF OF SOMERSET COUNTY  
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY  
TO SERVE THE WITHIN COMPLAINT & INTERROGATORIES DIRECTED TO  
DEFENDANT ON JUSTIN E. UPDYKE, DEFENDANT.

NOW DECEMBER 16, 2002 SERVED THE WITHIN COMPLAINT & INTERROGATORIES  
DIRECTED TO DEENDANT ON JUSTIN E. UPDYKE, DEFENDANT BY DEPUTIZING  
THE SHERIFF OF SOMERSET COUNTY. THE RETURN OF SHERIFF BROWN IS  
HERETO ATTACHED AND MADE A PART OF THIS RETURN .

**Return Costs**

Cost	Description
40.18	SHFF. HAWKINS PAID BY: ATTY.
25.00	SHFF. BROWN PAID BY: ATTY.
10.00	SURCHARGE PAID BY; ATTY.

Sworn to Before Me This

30<sup>th</sup> Day Of January 2003  
*William A. Shaw*

So Answers,

*Chester A. Hawkins*  
*My Marilyn Harris*  
Chester A. Hawkins  
Sheriff

**FILED**

JAN  
FEB 30 2003

*William A. Shaw*  
William A. Shaw  
Prothonotary



Docket Number

02-1836-CD

## SHERIFF'S RETURN

Personally appeared before me Lonni Nist a deputy for **CARL W. BROWN**, Sheriff of Somerset County, Pennsylvania, who being duly sworn according to law, deposes and says that on the 16<sup>th</sup> day of December 2002 at 0925 (AM/PM) he served the above named person as follows:

- ☒ Personal Service on person
- ☐ Mailing to person at above address; evidence of mailing attached
- ☐ Adult member of the person's household  
Name \_\_\_\_\_ Relationship \_\_\_\_\_
- ☐ Adult in charge of person's residence  
Name \_\_\_\_\_ Relationship \_\_\_\_\_
- ☐ Agent or person at the time and place in charge of the person's office or usual place of business  
Name \_\_\_\_\_ Relationship \_\_\_\_\_
- ☐ Manager/Clerk at the place of lodging in which person resides - Name \_\_\_\_\_
- ☐ Other Name \_\_\_\_\_ Title \_\_\_\_\_ of corporation \_\_\_\_\_
- ☐ Posted most public part of premise situate at ☐ Residence, ☐ Business, ☐ Employment, ☒ Other, of person to be served, at SCI Somerset  
1590 Walters Mill Rd  
Somerset, PA 15501  
IN Somerset (TWP) BORO and making known to such person the contents thereof.

## PERSON NOT FOUND BECAUSE:

- ☐ Whereabouts Unknown, ☐ No Answer, ☐ Vacant, ☐ Moved left no forwarding address, ☐ Moved - New address
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ Other \_\_\_\_\_

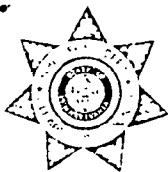
Sworn and subscribed before me this

8<sup>th</sup> day of Jan 2003Lonni Nist  
DEPUTY SHERIFF SOMERSET COUNTY, PAMelissa A. Truscott

Notarial Seal  
Melissa A. Truscott, Notary Public  
Somerset Boro, Somerset County  
My Commission Expires February 24, 2003  
Member, Pennsylvania Association of Notaries

Costs

PD  
1-7-03 Sheriff Brown \$25.00



# 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  
Cynthia Aughenbaugh  
OFFICE MANAGER

MARILYN HAMM  
DEPT. CLERK  
PETER F. SMITH  
SOLICITOR

## DEPUTATION

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

DAVID JOHNSTON & CHERYL JOHNSON a1

VS

JUSTIN E. UPDYKE

TERM & NO. 02-1836-CD

DOCUMENT TO BE SERVED:

COMPLAINT & INTERROGATORIES DIRECTED  
TO DEFENDANT

**SERVE BY:** 12/21/02

**MAKE REFUND PAYABLE TO:** AINSMAN & LEVINE, Attorneys

**SERVE:** JUSTIN E. UPDYKE

**ADDRESS:** SCI SOMERSET, Inmate # FB1821k 1590 Walters Mill Road, Somerset, pa. 15510

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF SOMERSET COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 6th Day of DECEMBER 2002.

Respectfully,

  
CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

68

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

Plaintiffs,

v.

JUSTIN E. UPDYKE,

Defendant.

**CIVIL DIVISION**

No.: 02-1836-CD

Code:

**MOTION TO COMPEL ANSWERS TO  
PLAINTIFFS' DISCOVERY  
REQUESTS DIRECTED TO  
DEFENDANT**

Filed on Behalf of Plaintiff

Counsel of Record for this Party:

Stephen P. Drexler, Esquire  
P.A. I.D. # 76108

Ainsman, Levine, & Drexler, LLC.  
Firm # 975

2201 Grant Building  
Pittsburgh, PA 15219

(412) 338-9030

**FILED**

**FEB 21 2003**

**William A. Shaw  
Prothonotary**

**JURY TRIAL DEMANDED**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836-CD

Plaintiffs,

v.

Code:

JUSTIN E. UPDYKE,

Defendant.

**MOTION TO COMPEL ANSWERS TO PLAINTIFF'S DISCOVERY REQUESTS**

AND NOW come the Plaintiffs, David Johnston, and Cheryl Johnston, his wife, individually and as the parents and natural guardians of Plaintiff, Alex Johnston, a minor, by and through their attorneys, Ainsman, Levine, & Drexler, LLC., and Stephen P. Drexler, Esquire, and files this Motion to Compel Answers to Plaintiff's Discovery Requests Directed to Defendant, Justin E. Updyke, and in support thereof avers the following:

1. The Plaintiffs instituted this lawsuit by filing a Complaint in Civil Action against the Defendant, Justin E. Updyke, with this Court on or about November 22, 2002, for injuries sustained in an incident that occurred on or about occurring on or about May 19, 2001.

2. On or about December 2, 2002, Plaintiff's counsel directed the Clearfield County Sheriff to deputize the Somerset County Sheriff to serve upon the Defendant the Complaint and

also the Interrogatories that are the subject of this Motion. (See Exhibit "A").

3. On or about December 16, 2002, the Defendant was personally served with both the Complaint and the Interrogatories, as evidenced by the Somerset County Sheriff's Return of Service Form attached hereto as Exhibit "B."


4. Counsel for Plaintiffs, Stephen P. Drexler, Esquire, has corresponded with counsel for Defendants, Dennis J. Stofko, Esquire, on January 23, 2003, requesting that the Defendant, Justin E. Updyke, answer Interrogatories pursuant to their Discovery Requests. (See Exhibits "C").

6. To date, the Defendant, Justin E. Updyke, has not yet provided answers to Plaintiffs' Discovery Requests directed to them.

7. The Plaintiffs aver that the requests are neither overly broad nor unduly burdensome and are reasonably calculated to lead to evidence that would be admissible at trial.

**WHEREFORE**, the Plaintiffs respectfully requests that this Court issue an Order compelling Defendant, Justin E. Updyke, to provide full and complete answers to the interrogatories forwarded as part of to the Plaintiffs' Discovery Requests Directed to Defendant.

Respectfully submitted,  
Ainsman, Levine, & Drexler, LLC.

By:   
Stephen P. Drexler, Esquire  
Counsel for Plaintiffs

**JURY TRIAL DEMANDED**

AINSMAN & LEVINE, P.C. 330 Grant Street, Suite 2201, Pittsburgh, PA 15219  
ATTORNEYS AT LAW

TELEPHONE: (412) 338-9030  
FAX NO.: (412) 338-9167

December 2, 2002

Sheriff's Office  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

1-3-03  
IT: Beverly  
Somerset Sheriff  
Dec 16th served  
at Jail

Attention: Marilyn

RE: David Johnston and Cheryl Johnston, his wife, and Alex Johnston,  
a minor, by his parents and natural guardians, David Johnston  
and Cheryl Johnston vs. Justin E. Updyke  
Our File No: 02-3377

Dear Sir or Madam:

Enclosed please find our check made payable to the order of the Somerset County Sheriff  
in the amount of \$100.00. Please deputize the Sheriff of Somerset County and have him serve  
the Defendant with the Complaint and Interrogatories at the following address:

Justin Updyke - Inmate No: FB1821  
State Correctional Institution at Somerset  
1590 Walters Mill Road  
Somerset, PA 15510


Thank you for your cooperation in this matter.

Very truly yours,

  
Stephen P. Drexler

SPDsmh  
Enclosures

AL052135.1



THE LAW FIRM OF  
AINSMAN, LEVINE & DREXLER, LLC

330 Grant Street Suite 2201 • Pittsburgh, PA 15219 • 412.338.9030 fax 412.338.9167

January 23, 2003

Dennis J. Stofko, Esquire  
Stofko Law Offices  
969 Eisenhower Boulevard, Suite E  
P.O. 5500  
Johnstown, PA 15904

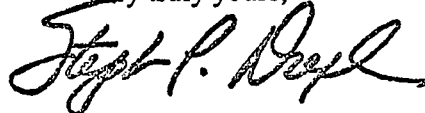
RE: David Johnston and Cheryl Johnston, his wife, and Alex Johnston,  
a minor by his parents and natural guardians, David Johnston and  
Cheryl Johnston vs. Justin E. Updyke  
No. 02-1836 CD, Clearfield County

Dear Mr. Stofko:

As you are probably aware, we served a brief set of Interrogatories on your client at the time that we served him with a copy of the Complaint in this case. Once we receive the answers to those Interrogatories, we may be in a position to accept Nationwide's offer of settlement of the \$15,000.00 policy limits, depending on what information is provided in those Answers to Interrogatories. Based on that, I am going to put the Interrogatories and Request for Production of Documents which you sent me regarding my clients on hold, pending your responses to my discovery requests.

If you have any questions about these matters, please give me a call.

Very truly yours,



Stephen P. Drexler

SPDsmh

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 13351

JOHNSTON, DAVID & CHERYL al

02-1836-CD

VS.

UPDYKE, JUSTIN E.

**COMPLAINT & INTERROGATORIES DIRECTED TO DEFENDANT**

**SHERIFF RETURNS**

NOW DECEMBER 6, 2002, CARL BROWN, SHERIFF OF SOMERSET COUNTY  
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY  
TO SERVE THE WITHIN COMPLAINT & INTERROGATORIES DIRECTED TO  
DEFENDANT ON JUSTIN E. UPDYKE, DEFENDANT.

NOW DECEMBER 16, 2002 SERVED THE WITHIN COMPLAINT & INTERROGATORIES  
DIRECTED TO DEENDANT ON JUSTIN E. UPDYKE, DEFENDANT BY DEPUTIZING  
THE SHERIFF OF SOMERSET COUNTY. THE RETURN OF SHERIFF BROWN IS  
HERETO ATTACHED AND MADE A PART OF THIS RETURN .

**Return Costs**

Cost	Description
40.18	SHFF. HAWKINS PAID BY: ATTY.
25.00	SHFF. BROWN PAID BY: ATTY.
10.00	SURCHARGE PAID BY; ATTY.

Sworn to Before Me This

\_\_\_\_ Day Of \_\_\_\_\_ 2003

So Answers,



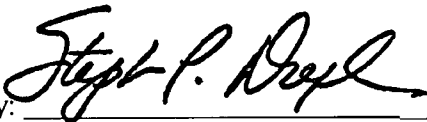
**Chester A. Hawkins**  
Sheriff



CERTIFICATE OF SERVICE

The undersigned, does hereby certify that a true and correct copy of the foregoing of Plaintiffs' Motion to Compel Answers to Discovery Requests has been served via **First Class Mail**, on this 19th day of February, 2003.

AINSMAN, LEVINE & DREXLER, LLC

By:   
Stephen P. Drexler, Esquire  
Attorney for Plaintiffs

**MAILED TO:**

Dennis J. Stofko, Esquire  
Stofko Law Offices  
969 Eisenhower Boulevard, Suite E  
P.O. Box 5500  
Jenkintown, PA 19044

CERT.

FILED

M 11:19 AM  
FEB 21 2003

William A. Shaw  
Prothonotary

NO  
cc  
E  
AEB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836-CD

Plaintiffs,

Code:

v.

JUSTIN E. UPDYKE,

Defendant.

**MOTION TO COMPEL ANSWERS TO  
PLAINTIFFS' DISCOVERY  
REQUESTS DIRECTED TO  
DEFENDANT**

**ORDER OF COURT**

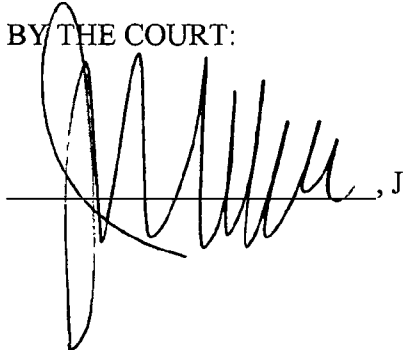
AND NOW, to wit, this 25<sup>th</sup> day of February, 2003, it is hereby ORDERED  
and DECREED that the Defendant, Justin E. Updyke, shall, within twenty (20) days of the date  
of this Order, provide to Plaintiffs' counsel full and complete answers to the Discovery Requests  
Directed To Defendant served upon it, or suffer further sanctions as may be imposed by this  
Court.

**FILED**

**FEB 25 2003**

**William A. Shaw  
Prothonotary**

BY THE COURT:

 , J.



FILED

acc

2/2:30 PM  
FEB 25 2003

Atty Alexander

keys

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID JOHNSTON, and  
CHERYL JOHNSTON, his wife,  
and ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836 CD

Plaintiffs,

v.

JUSTIN E. UPDYKE,

Defendant.

RULE

AND NOW, to wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2003, a Rule is issued  
directed to \_\_\_\_\_, returnable the \_\_\_\_\_ day of  
\_\_\_\_\_, 2003 at \_\_\_\_\_ a.m.

BY THE COURT:

\_\_\_\_\_, J.

LA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836-CD

Plaintiff,

v.

Code:

JUSTIN E. UPDYKE,

Defendant.

**PLAINTIFF'S PETITION FOR  
SETTLEMENT OF CLAIM OF  
A MINOR**

Filed on Behalf of  
Plaintiff

Counsel of Record for This  
Party:

Stephen P. Drexler, Esquire  
Pa. I.D. #76108

Ainsman, Levine, & Drexler LLC  
Firm No. 975

2201 Grant Building  
Pittsburgh, PA 15219  
(412)338-9030

AL016670.1

**FILED**

SEP 17 2003

m/12:20/ was  
William A. Shaw

Prothonotary/Clerk of Courts

1 cent to Attor  
KPS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836-CD

Plaintiff,

v.

Code:

JUSTIN E. UPDYKE,

Defendant.

**PLAINTIFF'S PETITION FOR SETTLEMENT OF CLAIM  
OF A MINOR**

AND NOW, comes Plaintiff, ALEX JOHNSTON, a minor, by his parents and natural guardians DAVID JOHNSTON, and CHERYL JOHNSTON, and files the following Petition for settlement of claim of a minor:

1. David Johnston is the father of Alex Johnston, a minor.
2. Cheryl Johnston is the mother of Alex Johnston, a minor.
3. Alex Johnston was born on April 5, 1992, and will attain the age of majority on April 5, 2010.
4. This case arises out of an incident that occurred on or about May 19, 2001, at approximately 8:06 p.m., wherein Plaintiff, Alex Johnston, witnessed his father run over and seriously injured by Defendant's vehicle.
5. As a result of witnessing this incident, Plaintiff, Alex Johnston, sustained injuries consisting of severe shock to his nervous system, post traumatic stress disorder, extreme anxiety,

sleep disorder with associated nightmares, and possible other serious and/or permanent injuries.

(A true and correct copy of the Medical Records are attached hereto collectively as Exhibit "A").

6. For treatment arising out of the subject accident, Plaintiff, Alex Johnston, sustained damages and medical expenses.

7. Defendant Justin E. Updyke's insurance carrier has offered the sum of \$7,500.00 in order to settle this case in exchange for a General Release.

8. David Johnston and Cheryl Johnston, as parents and natural guardians, believe that it is in the best interest of Alex Johnston to settle the case for the offered amount of \$7,500.00.

9. Plaintiff requests that this Honorable Court approve the settlement in the amount of \$7,500.00, and approve distribution of the proceeds as follows:

- a. Attorney's fees in the amount of \$1,875.00 to Ainsman, Levine, & Drexler LLC; and
- b. Proceeds in the amount of \$5,625.00 to Alex Johnston, in an interest bearing account in the Minor's name, which account will be marked "Not to be Withdrawn until Minor reaches the age of Majority."

10. Plaintiff requests that this Honorable Court approve the settlement in the amount of \$7,500.00, and approve distribution of the proceeds as set forth above.

WHEREFORE, Plaintiff, Alex Johnston, a Minor, by his parents and natural guardians, respectfully requests this Honorable Court to enter an Order approving settlement of this matter in the amount of \$7,500.00 with distribution of the proceeds as set forth above.

Respectfully Submitted,  
Ainsman, Levine, & Drexler LLC

  
\_\_\_\_\_  
Stephen P. Drexler, Esquire  
Attorney for Plaintiff



Specializing in Children, Adolescents, and Families

**Dr. Allen H. Ryen, Ph.D.**

*Licensed Psychologist*

416 KNARR STREET

DUBOIS, PA 15801

(814) 371-5727



- Individual and Family Psychotherapy
- Developmental, Educational and Legal Evaluations
- Psychological Testing • Consultation • Program Evaluation

Alex Johnston

6/11/01

Andy Shiegy - Victim/Witness

765-2641-41270

FdD duty police

- saw ~~the~~ F get run over at party lot -  
saw whole thing
- crying - was fearful of assailants too
- M = Chay! F = Dave

311-4671

*A*

- a. 8 - 3rd

- 120 mape Ave  
DB

Alex Johnston

6-28-01

- large page, a track
- Sep dutifully — very anxious
- very repressed
- at 1st denies any memories what's etc, then slowly volunteers more; more
- thought F had been killed → saw him fly through the air
- saw M hit
- got 2 rocks to throw — still helps them
- "mean" right away — felt scared, threatened
- probal sleep, nightmares, narrows up — worries a lot, can't get to sleep, listening for intruders
- worries about F, worries that F can't protect them any more
- ★ — pizza delivery guy was in 3rd car
- ★ — teens drove by house & yelled "die bitch"
- provocative w/ parents, asks F to do things he can't do, then gets angry

- easy to tears, won't sleep by self
- withdraws
- was sent to relative for several weeks > assault
- 3 assaults in jail → fear retaliation  
"They might kill us"

- 
- safety & security issues
  - p. also stressed & less functional & overwhelmed by his pressures - assault?

- 
- PTSD Acute!
  - intro. RET, imagery & relax. exergo
  - meds? consult Dr. Fabela

C

Phone Consult

A. Johnston

6-29-01

Dr Callahan (Fakula)

371-1510

- may Rx either Imipramine or perhaps SSRI (Paxil) for depts & anxiety symptoms
- CVS - DB Pharmacy
- office will contact family, would prefer to see Alex first



- Dr. Callahan Rx

Paxel 10mg hs - M

constant to start but OK Sept - web

See Dr. Con Fric

Alex Johnston

7-3-01

- Saw perp again - whole fam shot up
- started on Celebra - no energy, excess sleep, unable at all - over whelmed
- more sport: verbal
- worried about bank robber from the 80s
- CPT: 6+ externalizing anger if inst. a/far
- meet - Zank

---

7.17-01

- Seems more relaxed, sport - Alex  
teasing interactions with Andy 7-17-01  
- less teary & upset - Sleeping  
better

- M started meds Sun. night  
- F not adj well  $\rightarrow$  veg irritability, exp.  
- whole family "out of sorts" - M

LTF = 7+

- meet: 1 wk

A

7-24-01

A

Phone Message

Acc. Onkashin

7-24-01

K for today (7-24)

K - wants to reset

- reset to 8-2-01 w/F

- not 24 hrs notice, non-emerg.

R

---

8-2-01

No Show - No Call

(?)

CP



PLEASE RETURN THIS FORM TO THE RECEPTIONIST

SERVICE	TIME/HR	CODE	DIAGNOSIS/ICD#	FEE
AL EVALUATION	1h	90801	308.30	75
INDIVIDUAL THERAPY		90844		
GROUP THERAPY		90847		
COUPLET THERAPY		90844		
FAMILY THERAPY		90847		
PREMARITAL THERAPY		90847		
PRENATAL THERAPY		90847		
POSTNATAL THERAPY		90847		
FEEDBACK THERAPY		90844		
DIAGNOSTIC & REFERRAL		90801		
PERSONALITY EVALUATION		90830		
PHYSIC TECHNIQUE		90830		
PERSONALITY INVENTORY		90830		
INDIVIDUAL MEASUREMENT		90830		
INDIVIDUAL MEASUREMENT WITH ORGANICITY		90830		
P. DIAGNOSTIC PSYCHOLOGICAL EVAL.		90830		
COUNSELING				
PROFESSIONAL LEGAL TESTIMONY				
CHILD CUSTODY MEDIATION				
PATIENT CONSULTATION		90620		
PATIENT THERAPY		90844		

PREVIOUS BALANCE 0 NAME Capt. Allen H. Ryen

Date of Service 6-28-01  
ADDITIONAL INFORMATION

NO Alex Johnston

TOTAL CHARGES

Amt. Due

Amt. Paid

Balance Owed

\$ 70  
\$ 70  
\$ 0

Next Appointment Tues July 3, 500  
Day Month Date Time

IRS# 25-1423326

PS-002757-L

DR. ALLEN H. RYEN, Ph.D.

Licensed Psychologist

416 Knarr Street

DuBois, PA 15801

(814) 371-5727

I 14240

PLEASE RETURN THIS FORM TO THE RECEPTIONIST

SERVICE	TIME/HR	CODE	DIAGNOSIS/ICD#	FEE
AL EVALUATION	1h	90801	309.90	80
INDIVIDUAL THERAPY		90844		
GROUP THERAPY		90847		
COUPLET THERAPY		90844		
FAMILY THERAPY		90847		
PREMARITAL THERAPY		90847		
PRENATAL THERAPY		90847		
POSTNATAL THERAPY		90847		
FEEDBACK THERAPY		90844		
DIAGNOSTIC & REFERRAL		90801		
PERSONALITY EVALUATION		90830		
PHYSIC TECHNIQUE		90830		
PERSONALITY INVENTORY		90830		
INDIVIDUAL MEASUREMENT		90830		
INDIVIDUAL MEASUREMENT WITH ORGANICITY		90830		
P. DIAGNOSTIC PSYCHOLOGICAL EVAL.		90830		
COUNSELING				
PROFESSIONAL LEGAL TESTIMONY				
CHILD CUSTODY MEDIATION				
PATIENT CONSULTATION		90620		
PATIENT THERAPY		90844		

PREVIOUS BALANCE 70 NAME Capt. Allen H. Ryen

Date of Service 7-3-01  
ADDITIONAL INFORMATION

NO Alex Johnston

TOTAL CHARGES

Amt. Due

Amt. Paid

Balance Owed

\$ 70  
\$ 70  
\$ 0  
\$ 140

Next Appointment Tues July 17, 600  
Day Month Date Time

IRS# 25-1423326

PS-002757-L

DR. ALLEN H. RYEN, Ph.D.

Licensed Psychologist

416 Knarr Street

DuBois, PA 15801

(814) 371-5727

I 14241

PLEASE RETURN THIS FORM TO THE RECEPTIONIST

11-1 Johnston Alex  
PREVIOUS BALANCE NAME

SERVICE	TIME/HR	CODE	DIAGNOSIS/ICD#	FEE
INITIAL EVALUATION	1L	90801	309.30	70
INDIVIDUAL THERAPY		90844		
BILLY THERAPY		90847		
Y THERAPY		90844		
RITAL THERAPY		90847		
LATERAL THERAPY		90847		
GROUP THERAPY		90853		
FEEDBACK THERAPY		90844		
VALUATION & REFERRAL		90801		
VELOPMENTAL EVALUATION		90830		
APHIC TECHNIQUE		90830		
PERSONALITY INVENTORY		90830		
INDIVIDUAL MEASUREMENT		90830		
INDIVIDUAL MEASUREMENT WITH ORGANICITY		90830		
MP. DIAGNOSTIC PSYCHOLOGICAL EVAL.		90830		
NSULTATION				
PROFESSIONAL LEGAL TESTIMONY				
ILD CUSTODY MEDIATION				
PATIENT CONSULTATION		90620		
PATIENT THERAPY		90844		

Date of Service 7-17-01  
ADDITIONAL INFORMATION

TOTAL CHARGES \$ 80  
Amt. Due \$ 240  
Amt. Paid \$  
Balance Owed \$ 240

Next Appointment Tues July 24, 6:00  
Day Month Date Time

IRS# 25-1423326 PS-002757-L  
DR. ALLEN H. RYEN, Ph.D.  
Licensed Psychologist  
416 Knarr Street  
DuBois, PA 15801  
(814) 371-5727  
I 14245

PLEASE RETURN THIS FORM TO THE RECEPTIONIST

240 Johnston Alex  
PREVIOUS BALANCE NAME

SERVICE	TIME/HR	CODE	DIAGNOSIS/ICD#	FEE
INITIAL EVALUATION	1L	90801	309.90	70
INDIVIDUAL THERAPY		90844		
BILLY THERAPY		90847		
AY THERAPY		90844		
RITAL THERAPY		90847		
LATERAL THERAPY		90847		
GROUP THERAPY		90853		
FEEDBACK THERAPY		90844		
VALUATION & REFERRAL		90801		
VELOPMENTAL EVALUATION		90830		
APHIC TECHNIQUE		90830		
PERSONALITY INVENTORY		90830		
INDIVIDUAL MEASUREMENT		90830		
INDIVIDUAL MEASUREMENT WITH ORGANICITY		90830		
MP. DIAGNOSTIC PSYCHOLOGICAL EVAL.		90830		
NSULTATION				
PROFESSIONAL LEGAL TESTIMONY				
ILD CUSTODY MEDIATION				
PATIENT CONSULTATION		90620		
PATIENT THERAPY		90844		

Date of Service 7-24-01  
ADDITIONAL INFORMATION

TOTAL CHARGES \$ 70  
Amt. Due \$ 280  
Amt. Paid \$ 280  
Balance Owed \$

Next Appointment Mon Aug 2, 4:00  
Day Month Date Time

IRS# 25-1423326 PS-002757-L  
DR. ALLEN H. RYEN, Ph.D.  
Licensed Psychologist  
416 Knarr Street  
DuBois, PA 15801  
(814) 371-5727  
I 14256

PLEASE RETURN THIS FORM TO THE RECEPTIONIST

280 -	Johnston Alex
PREVIOUS BALANCE	NAME

SERVICE	TIME/HR	CODE	DIAGNOSIS/ICD#	FEE
AL EVALUATION		90801		
VIDUAL THERAPY	1h	90844	309.90	70
LY THERAPY		90847		
THERAPY		90844		
ITAL THERAPY		90847		
ATERAL THERAPY		90847		
JP THERAPY		90853		
FEEDBACK THERAPY		90844		
UATION & REFERRAL		90801		
LOPMENTAL EVALUATION		90830		
PHIC TECHNIQUE		90830		
ONALITY INVENTORY		90830		
IVIDUAL MEASUREMENT		90830		
IVIDUAL MEASUREMENT WITH ORGANICITY		90830		
P. DIAGNOSTIC PSYCHOLOGICAL EVAL.		90830		
SULTATION				
SSIONAL LEGAL TESTIMONY				
D CUSTODY MEDIATION				
IENT CONSULTATION		90620		
IENT THERAPY		90844		

Date of Service 8-2-01  
 ADDITIONAL INFORMATION

TOTAL CHARGES

Amt. Due

Amt. Paid

Balance Owed

\$ 70  
 \$ 350  
 \$ 70  
 \$ 280 -

Next Appointment Dr n ?  
 Day Month Date Time

IRS# 25-1423326

PS-002757-L

DR. ALLEN H. RYEN, Ph.D.

Licensed Psychologist

416 Knarr Street

DuBois, PA 15801

(814) 371-5727

I 14266

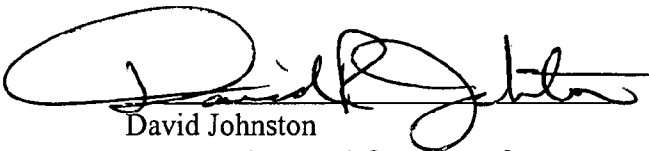
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COMMONWEALTH OF PENNSYLVANIA

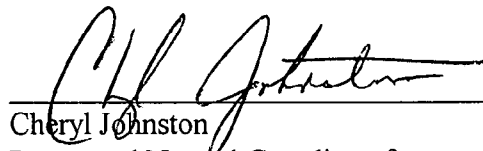
SS:

COUNTY OF CLEARFIELD

Before me, the undersigned authority, a Notary Public in and for the aforesaid County and State, personally appeared David and Cheryl Johnston, Parents and Natural Guardians of Alex Johnston, a Minor, who being duly sworn according to law, deposes and says that the averments set forth in the foregoing **PETITION TO SETTLE MINOR'S CLAIM** are true and correct to the best of their knowledge, information, and belief.

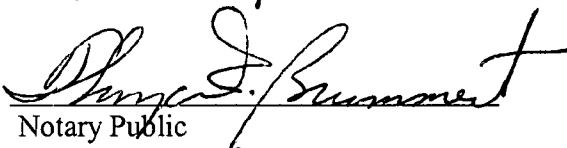
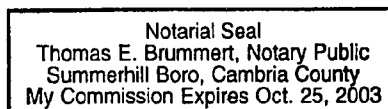


David Johnston  
Parent and Natural Guardian of  
Alex Johnston, a Minor



Cheryl Johnston  
Parent and Natural Guardian of  
Alex Johnston, a Minor

Sworn to and subscribed before me  
this 1st day of September, 2003.

  
Notary Public

Member, Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

**CIVIL DIVISION**

No.: 02-1836-CD

Plaintiff,

v.

Code:

JUSTIN E. UPDYKE,

Defendant.

**ORDER OF COURT**

AND NOW, to-wit, this 22<sup>nd</sup> day of October, 2003, it is hereby

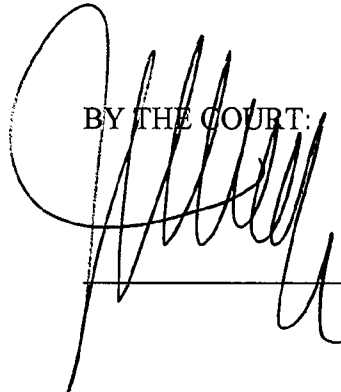
ORDERED, ADJUDGED and DECREED that the settlement of the above captioned matter in the amount of \$7,500.00 is approved with distribution to occur as follows:

- a. Attorney's fees in the amount of \$1,875.00 to Ainsman, Levine, & Drexler LLC; and
- c. Proceeds in the amount of \$5,625.00 to Alex Johnston, in an interest bearing account in the Minor's name, which account will be marked "Not to be Withdrawn until Minor reaches the age of Majority."

**FILED**

OCT 23 2003

BY THE COURT:



J.

**FILED**  
O 10:14 ~~at~~ *secretary*  
OCT 23 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

Plaintiff,

v.

JUSTIN E. UPDYKE,

Defendant.

**CIVIL DIVISION**

No.: 02-1836-CD

Code:

PROOF OF DEPOSIT

Filed on Behalf of  
Plaintiff

Counsel of Record for This  
Party:

Stephen P. Drexler, Esquire  
Pa. I.D. #76108

Ainsman, Levine, & Drexler LLC  
Firm No. 975

2201 Grant Building  
Pittsburgh, PA 15219  
(412)338-9030

FILED

JAN 05 2004

William A. Smith  
Prothonotary Clearfield County

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ALEX JOHNSTON, a minor,  
by his parents and natural guardians  
DAVID JOHNSTON, and  
CHERYL JOHNSTON,

Plaintiff,

v.

**CIVIL DIVISION**

No.: 02-1836-CD

Code:

JUSTIN E. UPDYKE,

Defendant.

**PROOF OF DEPOSIT**

I hereby certify that the proceeds from the settlement proceeds in the above referenced matter have been deposited in a Certificate of Deposit with National City Bank, as per the attached photocopy of the account.

Respectfully Submitted,  
Ainsman, Levine, & Drexler LLC

A handwritten signature in black ink, appearing to read "Stephen P. Drexler", is written over a horizontal line.

Stephen P. Drexler, Esquire  
Attorney for Plaintiff





## Certificate Of Deposit Receipt

Account No. 08620002448

Depositor #1

NOT TO BE WITHDRAWN UNTIL MINOR REACHES AGE OF MAJORITY

ALEX JOHNSTON

Depositor #2

Certificate Type

☒ Retail

☐ Retirement

Rate Type

☒ Fixed Rate

☐ Variable Rate

Date 12/30/2003

Amount \$ 5,625.00

Maturity Date 3/30/2010

Interest Rate 3.15%

Term 75 Months

Annual Percentage Yield 3.20%

Interest Payment Method Remain In Account

**National City Bank of Pennsylvania**

Official Signature

Subject to the terms and conditions of Bank's Time Deposit Account Agreement and Pricing Schedule as in effect from time to time. A penalty will be imposed for early withdrawal.

NON-NEGOTIABLE AND NON-TRANSFERABLE TIME DEPOSIT

Member FDIC

(10/10/02) DA0091PA

FILED

NO  
cc  
JAN 11 4 46 PM '04  
JAN 05 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID JOHNSTON and CHERYL  
JOHNSTON, his wife, and ALEX  
JOHNSTON, a minor by his parents  
And natural guardians, David Johnston  
And Cheryl Johnston,

Plaintiffs

Vs.

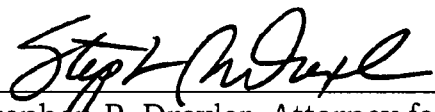
No. 02-1836 CD

JUSTIN E. UPDYKE,

Defendant

PRAECIPE

Please mark the above captioned matter ended, settled and forever  
discontinued.

  
Stephen P. Drexler, Attorney for  
Plaintiffs

  
Dennis J. Stofko, Attorney for  
Defendant

FILED  
JUN 12 2004  
CLEARFIELD COUNTY, PA  
CLERK OF COURT

FILED

No-CC

M/4:00 PM  
JAN 12 2004

Disc. to Atty Stotko  
copy of Disc. to CIA

William A. Shaw

Prothonotary/Clerk of Courts

Eye

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



**CIVIL DIVISION**

**David Johnston  
Cheryl Johnston  
Alex Johnston**

**Vs.  
Justin E. Updyke**

**No. 2002-01836-CD**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on January 12, 2004, marked:

Ended, Settled and Forever Discontinued

Record costs in the sum of \$85.00 have been paid in full by Stephen P. Drexler.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 12th day of January A.D. 2004.

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William A. Shaw, Prothonotary