

03-74-CD
WILLIAM E. ESSER vs. BIGLER BOYS

1

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNA.
46th JUDICIAL DISTRICT

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No.

03-74-CD

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.

NAME OF APPELLANT Bigler Boyz		MAG. DIST. NO. OR NAME OF D.J. 46-3-03	
ADDRESS OF APPELLANT Box 381	CITY Bigler	STATE PA	ZIP CODE 16825
DATE OF JUDGMENT 12-20-02	IN THE CASE OF (Plaintiff) William E. Esser		(Defendant) Bigler Boyz
CLAIM NO. CV 0000302-02 LT	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT J. Caty Beh III		

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 William E. Esser, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 2003-74-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

J. Caty Beh III
Signature of appellant or his attorney or agent

RULE: To William E. Esser, appellee(s).
Name of appellee(s)

03-74-CD

(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: Jan. 17, 2003

FILED

JAN 17 2003

William A. Shaw
Prothonotary

Signature of Prothonotary or Deputy

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 _____

Didn't get
notice of service
1/22/88
fill

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-03

DJ Name: Hon.

MICHAEL A. RUDELLA

Address: **131 ROLLING STONE ROAD**

P.O. BOX 210

KYLERTOWN, PA

Telephone: **(814) 345-6789**

16847-0444

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

NAME and ADDRESS

ESSER, WILLIAM E
9643 ALLEGHENY AVE
LAKE CITY, PA 16423

DEFENDANT:

VS.

NAME and ADDRESS

BIGLER BOYZ
BOX 381
BIGLER, PA 16825

BIGLER BOYZ

BOX 381

BIGLER, PA 16825

Docket No.: **CV-0000302-02**

Date Filed: **10/17/02**



THIS IS TO NOTIFY YOU THAT:

Judgment:

DEFAULT JUDGMENT PLTF

☒ Judgment was entered for: (Name) **ESSER, WILLIAM E**

☒ Judgment was entered against: (Name) **BIGLER BOYZ**

in the amount of \$ **1,303.13** on: (Date of Judgment) **12/20/02**

☐ 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	\$ 1,192.13
Judgment Costs	\$ 111.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 1,303.13
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

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.

_____ Date **MA Rudella**, 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

FILED

~~11:23 AM~~ 85.00
JAN 17/2003 NOC

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNA.
46th JUDICIAL DISTRICT

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No.

03-74-CD

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.

NAME OF APPELLANT Bigler Boyz		MAG. DIST. NO. OR NAME OF D.J. 46-3-03	
ADDRESS OF APPELLANT Box 381	CITY Bigler	STATE PA	ZIP CODE 16825
DATE OF JUDGMENT 12-20-02	IN THE CASE OF (Plaintiff) William E. Esser		(Defendant) Bigler Boyz
CLAIM NO. CV 0000302-02 LT	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT F. Caty Beh III		

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 10088.

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 William E. Esser, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 2003-74-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

F. Caty Beh III

Signature of appellant or his attorney or agent

RULE: To William E. Esser, appellee(s).
Name of appellee(s)

03-74-CD

(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: JAN 17, 2003

[Signature]

Signature of Prothonotary or Deputy

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JAN 17 2003

Attest.

[Signature]
Prothonotary/
Clerk of Courts

COURT FILE

FILED

JAN 28 2003

m/11:10/
William A. Shaw
Prothonotary/Clerk of Courts

Ex

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 CLEARFIELD; SS

AFFIDAVIT: I hereby swear or affirm that I served

- ☒ a copy of the Notice of Appeal, Common Pleas No. 03-74-CD, upon the District Justice designated therein on
(date of service) January 22, 2003, ☐ by personal service ☒ by (certified) (registered) mail, sender's
receipt attached hereto, and upon the appellee, (name) William E. Esser, on
January 22, 2003 ☐ 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 January 22, 2003, ☐ by personal service ☒ by (certified) (registered)
mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS 27th DAY OF January, 2003

Nancy M. Smeal

Signature of official before whom affidavit was made

NOTARIAL SEAL

NANCY M. SMEAL, Notary Public
Graham Township, Clearfield Co., PA
My Commission Expires, May 4, 2008

Title of official

My commission expires on _____

F. C. B. III

Signature of affiant

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

FILED

FEB 28 2003

William A. Shaw
Prothonotary

COMPLAINT

Plaintiffs, William E. Esser and Karen Esser, his wife, by and through their attorneys, MacDonald Illig Jones & Britton, LLP, file this Complaint against Bigler Boyz Street & Off Road Toyz and state as follows:

1. Plaintiffs William E. Esser and Karen Esser ("Bill Esser"; "Karen Esser"; and collectively "plaintiffs") are Pennsylvania residents residing at 9643 Allegheny Avenue, Lake City, Pennsylvania 16423.

2. Defendant, Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz, (hereinafter "Bigler Boyz") is located at 2330 North 7th Avenue, Bigler, Pennsylvania 16825 with a mailing address of P.O. Box 381, Bigler, Pennsylvania 16825.

3. On information and belief, defendant Bigler Boyz is in the business of repairing automobiles and other vehicles.

4. On July 12, 2002, plaintiff Bill Esser encountered car trouble.

5. Defendant Bigler Boyz towed plaintiffs' Ford Taurus from the Clearfield, Pennsylvania Wal-Mart parking lot to its repair shop.

6. Defendant Bigler Boyz represented to plaintiff Bill Esser that they were able to replace a cracked aluminum head, as well as other damage sustained by plaintiffs' Taurus.

7. Defendant Bigler Boyz represented to plaintiff Bill Esser that the necessary repairs had been completed, and Bill Esser retrieved his vehicle July 19, 2002. A copy of the invoice is attached to this Complaint as Exhibit "A" and is incorporated herein by reference.

8. Despite the representation that defendant Bigler Boyz had replaced the "Head" and completed the other necessary repairs to plaintiffs' Taurus, on July 28, 2002, plaintiff Bill Esser again experienced the same car trouble as on July 12, 2002.

9. On information and belief, defendant Bigler Boyz failed to maintain a written record documenting plaintiffs' oral authorization for specific repairs.

10. Plaintiffs accordingly sought the advice of Fairview Service Center, Inc., which found that the "valve cover" was "broken," that the "EGR tube" was "broken" and the "spark plugs" were only "finger tight." A copy of the invoice is attached to this Complaint as Exhibit "B" and is incorporated herein by reference.

11. Following repeated attempts to reach defendant Bigler Boyz by telephone, plaintiff Bill Esser sent a letter via Certified Mail on August 8, 2002 to defendant Bigler Boyz at P.O. Box 381, Bigler, PA 16825, the address indicated on the invoice for repairs attached as Exhibit "A." A copy of the letter is attached to this Complaint as Exhibit "C" and is incorporated herein by reference.

12. Despite acknowledging receipt of the aforementioned certified letter, Bigler Boyz refused to open the correspondence. A Copy of the unopened envelop containing the aforementioned letter is attached to this Complaint as Exhibit "D" and is incorporated herein by reference.

COUNT I:
BREACH OF CONTRACT

13. Plaintiff Bill Esser and Karen Esser hereby incorporate Paragraphs 1-11 of the Complaint as if set forth at length.

14. Defendant Bigler Boyz breached the oral and/or written contract to replace the damaged "Head" and complete other necessary repairs by failing to replace the "Head" in a competent and workmanlike manner and/or failing to complete the repairs as indicated in the invoice attached as Exhibit "A."

15. As a proximate and direct result of the aforementioned breach, plaintiffs Bill Esser and Karen Esser have suffered damages in the amount of \$1192.13 plus applicable costs.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz in the amount of \$1192.13, together with interest at the legal rate from August 8, 2002 along with all other relief available by law.

COUNT II: NEGLIGENCE

16. Plaintiffs Bill Esser and Karen Esser hereby incorporate Paragraphs 1-13 of the Complaint as if set forth at length.

17. Defendant Bigler Boyz had a duty to plaintiffs to replace the "Head" in a competent and workmanlike manner and to complete other necessary repairs.

18. Defendant Bigler Boyz breached the foregoing duty by failing to replace the "Head" and/or complete other necessary repairs in a competent and workmanlike manner in compliance with the standard of a similarly situated mechanic under the circumstances then and there present.

19. All of the damages suffered by plaintiffs Bill Esser and Karen Esser were proximately and directly caused by the negligence and/or carelessness of defendant Bigler Boyz.

20. As a proximate and direct result of the negligence and/or carelessness of defendant Bigler Boyz, plaintiffs Bill Esser and Karen Esser have suffered damages in the amount of \$1192.13 plus applicable costs.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz in the amount of \$1192.13, together with interest at the legal rate from August 8, 2002 along with all other relief available by law.

COUNT III: UNFAIR TRADE PRACTICES

21. Plaintiffs Bill Esser and Karen Esser hereby incorporate Paragraphs 1-20 of the Complaint as if set forth at length.

22. On information and belief, defendant Bigler Boyz violated the provisions contained within 37 Pa. Code Section 301.5 by failing to maintain a written record documenting plaintiffs' oral authorization for specific repairs.

23. Defendant Bigler Boyz violated the provisions contained within 73 P.S. 201-2(4)(xvii) by misrepresenting the quality and/or nature of the repairs purportedly performed on plaintiffs' vehicle, both orally and in writing.

24. As a proximate and direct result of the aforementioned violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law by defendant Bigler Boyz, plaintiffs Bill Esser and Karen Esser have suffered actual damages in the amount of \$1192.13 plus applicable costs.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz in the amount of \$3,576.39 and attorney fees, together with interest at the legal rate from August 8, 2002 along with all other relief available by law.

Respectfully submitted,



Gabriel J. Oros
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7636

Attorneys for Plaintiffs
William E. Esser and Karen Esser

GJO/738499

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

VERIFICATION

AND NOW, this 25th day of February, 2003, Gabriel J. Oros, the undersigned, states that he is the attorney for William and Karen Esser, and that he is authorized to make this Verification, that the facts set forth in the foregoing Complaint are true and correct, not of his own knowledge, but from information supplied to him, all subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



Gabriel J. Oros

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

TO: Richard D. Heberling, t/d/b/a
Bigler Boyz Street & Off Road Toyz
P.O. Box 381
Bigler, PA 16825

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

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

David S. Maholick, Court Administrator
Clearfield County Court House
230 East Market Street
Clearfield, PA 16830
(814) 765-2641/Extension 5982



Gabriel J. Oros
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7636

Attorneys for Plaintiffs William E. Esser
and Karen Esser

FILED

NO
ce

710/16/03
FEB 28 2003

322

William A. Shaw
Prothonotary

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

FILED

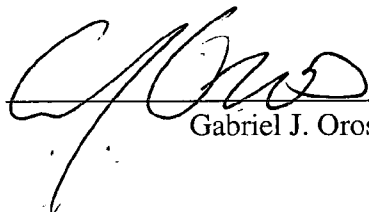
FEB 28 2003

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I hereby certify that the Complaint in the above-captioned matter was served upon counsel of record for the defendant via United States first-class mail, postage pre-paid on February 25th, 2003 as follows:

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830



Gabriel J. Oros

FILED

NO
FEB 28 2003

cc
K23

William A. Shaw
Prothonotary

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,

Plaintiffs

vs.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendants

: No. 2003-74-CD

:

:

:

: Type of Case: Civil

:

: Type of Pleading:

:

Answer and New Matter to

:

Plaintiffs' Complaint

:

:

: Filed on Behalf of:

:

Richard D. Heberling, t/d/b/a Bigler Boyz

:

Street & Off Road Toyz

:

: Counsel of Record for this Party:

:

F. Cortez Bell, III, Esquire

:

I.D. #30183

:

:

Bell, Silberblatt & Wood

:

318 East Locust Street

:

P.O. Box 670

:

Clearfield, PA 16830

:

Telephone: (814)765-5537

:

:

FILED

MAY 05 2003

0/3:30/1m

William A. Shaw
Prothonetary

4 sent to ATTY

[Signature]

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,

Plaintiffs

vs.

No. 2003-74-CD

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendant

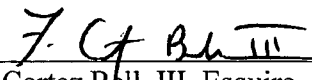
NOTICE TO PLEAD

TO THE WITHIN PLAINTIFFS, WILLIAM E. ESSER and KAREN ESSER:

You are hereby notified to file a written response to the enclosed Answer and New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

BELL, SILBERBLATT & WOOD

By,


F. Cortez Bell, III, Esquire
Attorney for Defendant

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

WILLIAM E. ESSER and KAREN	:	
ESSER, his wife,	:	
Plaintiffs	:	
	:	
vs.	:	No. 2003-74-CD
	:	
RICHARD D. HEBERLING, t/d/b/a	:	
BIGLER BOYZ STREET & OFF ROAD	:	
TOYZ,	:	
Defendant	:	

DEFENDANT'S ANSWER AND NEW
MATTER TO PLAINTIFFS' COMPLAINT

NOW comes the Defendant, RICHARD D. HEBERLING, t/d/b/a BIGLER BOYZ STREET & OFF ROAD TOYZ, by and through his attorney, F. Cortez Bell, III, Esquire, who, for the Defendant's Answer and New Matter to Plaintiffs' Complaint, respectfully sets forth and avers as follows:

COMPLAINT

1. Paragraph 1 of Plaintiffs' Complaint is admitted.
2. Paragraph 2 of Plaintiffs' Complaint is admitted.
3. Paragraph 3 of Plaintiffs' Complaint is admitted to the extent stated. It would averred that Bigler Boyz additionally provides other services to the auto industry including the sales of various parts and supplies for street and off road vehicles.
4. Paragraph 4 of Plaintiffs' Complaint is admitted to the extent stated. It would be averred that the records of the Defendant and AAA indicate that when the Plaintiff originally placed

the call seeking towing that the Plaintiff had diagnosed the problem as a blown head gasket.

5. Paragraph 5 of Plaintiffs' Complaint is admitted.

6. Paragraph 6 of Plaintiffs' Complaint would be admitted to the extent stated. It would be averred that the Plaintiff had originally indicated that his vehicle suffered from a blown head gasket and the Defendants did represent that they were able to effect the repair of the allegedly blown head gasket or such other mechanical problems which came to light once the vehicle was examined by representatives of the Defendant.

7. Paragraph 7 of Plaintiffs' Complaint is admitted.

8. Paragraph 8 of Plaintiffs' Complaint can neither be admitted nor denied. The Defendants after reasonable investigation are without sufficient information or knowledge to be able to respond to the averments set forth within Paragraph 8 of the Plaintiffs' Complaint. Strict proof of said averment would be demanded at time of trial or hearing in this matter.

9. Paragraph 9 of Plaintiffs' Complaint is denied. It would be specifically denied that the Defendants did not maintain written records as to their conversations with the Plaintiff whereby the Plaintiff indicated the type and nature of repair work that the Plaintiff requested. Strict proof of the denied averments of Paragraph 9 of Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

10. Paragraph 10 of Plaintiffs' Complaint can neither be admitted nor denied. The Defendants after reasonable investigation are without sufficient information or knowledge to be able to respond to the averments set forth within Paragraph 10 of the Plaintiffs' Complaint. Strict proof of said averment would be demanded at time of trial or hearing in this matter.

11. Paragraph 11 of Plaintiffs' Complaint is can neither be admitted nor denied. The

Defendants after reasonable investigation are without sufficient information or knowledge to be able to respond to the averments set forth within Paragraph 11 of the Plaintiffs' Complaint. Strict proof of said averment would be demanded at time of trial or hearing in this matter.

12. Paragraph 12 of Plaintiffs' Complaint is denied. It is specifically denied that the Defendants, Bigler Boyz, ever received the certified letter purportedly sent by the Plaintiff and referred to in Paragraph 11 of the Plaintiffs' Complaint. A review of Exhibit D clearly establishes that any certified mail represented by said Exhibit was returned to the sender as having been unclaimed. Strict proof of the denied averments of Paragraph 12 of the Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

COUNT 1: BREACH OF CONTRACT

13. Paragraph 13 of Plaintiffs' Complaint is simply an incorporating paragraph to which no specific response would be required. To the extent that the Court may require a response, the Defendants would deny the averments set forth within Paragraph 13 of the Plaintiffs' Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

14. Paragraph 14 of Plaintiffs' Complaint is denied. It is specifically denied that the Defendants breached any oral or written contract to perform repair work on the Plaintiffs' vehicle and it would be specifically denied that any of the repair work was either not properly completed pursuant to the invoice supplied or that any such work was not performed in a competent and workmanlike manner. Strict Proof of the denied averments of Paragraph 14 of the Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

15. Paragraph 15 of Plaintiffs' Complaint is denied. It is specifically denied that the

Defendants were in any fashion the result of any breach allegedly suffered by the Plaintiffs as well as it would be specifically denied that the Defendants in any fashion were the proximate and/or direct result of any alleged breach. It would be specifically denied that the Plaintiffs have suffered damages in the amount of \$1,192.13 plus applicable costs. Strict proof of the denied averments of Paragraph 15 would be demanded at time of trial or hearing in this matter.

WHEREFORE, the Defendant would respectfully request that your Honorable Court deny judgment on behalf of the Plaintiffs as against the Defendant as well as that your Honorable Court dismiss with prejudice the Complaint filed by the Plaintiffs against the Defendant.

COUNT 2: NEGLIGENCE

16. Paragraph 16 of Plaintiffs' Complaint is simply an incorporating paragraph to which no specific response would be required. To the extent that the Court may require a response, the Defendants would deny the averments set forth within Paragraph 16 of the Plaintiffs' Complaint and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

17. Paragraph 17 of Plaintiffs' Complaint is admitted in part and denied in part. It would be admitted that the Defendant upon commencing repair work on any vehicle has a duty to complete said repair work in a competent and workmanlike manner. It would be denied that the Defendant in any fashion did not complete the repair work on the Plaintiffs' vehicle in such a competent and workmanlike manner. Strict proof of the denied averments of Paragraph 17 would be demanded at time of trial or hearing in this matter.

18. Paragraph 18 of Plaintiffs' Complaint is denied. It would be specifically denied that the Defendant in any fashion breached any duty owed to the Plaintiff in completing repair work

as to the Plaintiffs' vehicle. It would be averred that all work was done in a competent and workmanlike manner. Strict proof of the denied averments of Paragraph 18 would be demanded at time of trial or hearing in this matter.

19. Paragraph 19 of Plaintiffs' Complaint is denied. It would be specifically denied that the Plaintiff suffered any damage whatsoever which was allegedly proximately and/or directly caused by conduct of the Defendant in effecting the repair of the Plaintiffs' vehicle. Strict proof of the denied averments of Paragraph 19 of the Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

20. Paragraph 20 of Plaintiffs' Complaint is denied. It would be specifically denied that the Plaintiffs have suffered any damage in any amount as a result of any action of the Defendants in effecting the repair of the Plaintiffs' vehicle. It would be specifically denied that the Defendant was in any fashion the proximate or direct result of any damages suffered by the Plaintiffs either by any alleged negligence or alleged carelessness by the Defendant. Strict proof of the denied averments of Paragraph 20 of the Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, the Defendant would respectfully request that your Honorable Court deny judgment on behalf of the Plaintiffs as against the Defendant as well as that your Honorable Court dismiss with prejudice the Complaint filed by the Plaintiffs against the Defendant.

COUNT III: UNFAIR TRADE PRACTICES

21. Paragraph 21 of Plaintiffs' Complaint is simply an incorporating paragraph to which no specific response would be required. To the extent that the Court may require a response, the Defendants would deny the averments set forth within Paragraph 21 of the Plaintiffs' Complaint

and strict proof of the denied averments would be demanded at time of trial or hearing in this matter.

22. Paragraph 22 of the Plaintiffs' Complaint would be denied. It would be specifically denied that the Defendant in any fashion violated the provisions of 37 Pa Code §301.5 by failing to maintain a written record documenting Plaintiffs' oral authorization for specific repairs. Strict proof of the denied averments of Paragraph 22 of Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

23. Paragraph 23 of the Plaintiffs' Complaint would be denied. It would be specifically denied that the Defendant in any fashion violated the provisions of 73 P.S. §201-2(4)(xvii). It would be specifically denied that the Defendant at no time misrepresented the quality or the nature of the repairs performed on the Plaintiffs' vehicle. Strict proof of the denied averments of Paragraph 23 of the Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

24. Paragraph 24 of the Plaintiffs' Complaint would be denied. It would be specifically denied that the Defendant caused any damages to the Plaintiffs and specifically that the Defendant was not the proximate and/or direct result of any damages alleged by the Plaintiffs as having arisen under the Unfair Trade Practices and Consumer Protection Law. Strict proof of the denied averments of Paragraph 24 of the Plaintiffs' Complaint would be demanded at time of trial or hearing in this matter.

WHEREFORE, the Defendant would respectfully request that your Honorable Court deny judgment on behalf of the Plaintiffs as against the Defendant as well as that your Honorable Court dismiss with prejudice the Complaint filed by the Plaintiffs against the Defendant. It is further respectfully requested that your Honorable Court deny any counsel fees to the Plaintiff in regard to

the above captioned matter.

NEW MATTER

NOW comes the Defendant, RICHARD D. HEBERLING, t/d/b/a BIGLER BOYZ STREET & OFF ROAD TOYZ, by and through his attorney, F. Cortez Bell, III, Esquire, who, for the Defendant's New Matter to Plaintiffs' Complaint, respectfully sets forth and avers as follows:

25. The Defendant, Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz, hereby incorporates Paragraphs 1 through 24 of the Defendant's Answer to the Plaintiffs' Complaint as if the same were set forth herein at length at this point.

26. That the Plaintiff, William E. Esser, at the time of placing the telephone call for towing to AAA indicated that he had diagnosed his problem as being a blown head gasket.

27. That the Defendant advised the Plaintiff, William E. Esser, that it would have been best to repair his vehicle by placing a used engine therein as there was no way to know what all was wrong with the current engine in light of the condition which was discovered upon the Defendant commencing a review and work thereon.

28. That the Plaintiff, William E. Esser, in response to the indication set forth in Paragraph 27 above specifically indicated "just patch it up".

29. That the Defendant upon commencing the repair work discovered that the cooling system was full of stop leak to the extent that the fluid traveling through the cooling system was of a gummy nature and consistency.

30. That the EGR tube which was cracked at the time the Defendant removed the same was TIG welded and reinstalled in compliance with the Plaintiff William E. Esser's specific

instruction that he just wanted the vehicle patched and he wanted as economical a job as possible.

31. That the Defendant at the time of disassembly of the valve cover discovered that the same was held on with an assortment of various size bolts evidencing that the cover had been removed and replaced on at least one (1) previous occasion at a time period unknown to the Defendant.

32. That the Defendant at the time of commencing work on the vehicle discovered that some of the spark plugs were loose in the heads but did not report the same to the Plaintiff because such is not uncommon to be found in an engine which has been the subject of overheating.

33. That the Defendant properly coupled the fuel lines at the time of the repair as if the same were not coupled properly there would have been a fuel leak and no fuel would flow to the fuel injectors and the engine simply would not run.

34. That the Defendant did not use teflon tape on the head bolts but instead used permatex teflon thread sealant which is the standard item to be used where liquids have a chance of leaking past the threads.

35. That the Plaintiff upon returning to the Defendant's facility to pick up the car test drove the vehicle himself from Bigler, Pennsylvania to State College, Pennsylvania and then returned to Bigler, Pennsylvania before he formally accepted the repair and indicated his satisfaction.

36. That the Plaintiff, William E. Esser, when he experienced problems with his vehicle on July 28, 2002 in the area of Silvercreek, New York, continued to drive his vehicle rather than have it towed to the repair facility noted in his Complaint on Exhibit B in Fairview, Pennsylvania thereby potentially causing further damage to any original condition which the Plaintiff alleged to have existed at the time he noticed problems, if any existed, on July 28, 2002.

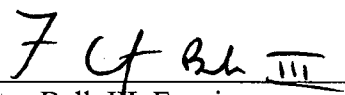
37. That the Plaintiffs drove the vehicle from the date that it was received from the Defendant, July 12, 2002 through July 28, 2002.

38. That the Plaintiff within his Complaint as Exhibit B provides a copy of the repair order from Fairview Service Center, Inc. which appears to have added thereon in the handwriting of the Plaintiff certain information alleged or implied to have been placed thereon by the garage all of which was done in an attempt to mislead counsel and the Court as to the authenticity as to the information contained on said Exhibit.

WHEREFORE, it is respectfully requested that your Honorable Court deny judgment to the Plaintiffs as against the Defendant and that your Honorable Court dismiss the Plaintiffs' Complaint with prejudice.

Respectfully submitted,
BELL, SILBERBLATT & WOOD

By,



F. Cortez Bell, III, Esquire
Attorney for Defendant

VERIFICATION

I, Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toys, verify that the statements made within the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Date: 5-2-2003

Richard D Heberling
Richard D. Heberling

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,

Plaintiffs

vs.

No. 2003-74-CD

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Answer and New
Matter upon the following persons by delivering such copy via United States Postal Service, First
Class Mail, to:

Gabriel J. Oros, Esquire
MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1498

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

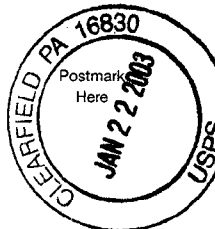
Date: 5-5-2003

7001 2510 0003 0263 703A

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

OFFICIAL USE

Postage	\$.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42



Sent To
William E. Esser
Street, Apt. No.,
or PO Box No. 9643 Allegheny Avenue
City, State, ZIP+4
Lake City PA 16423

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.

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:

Mr. William E. Esser
9643 Allegheny Ave.
Lake City, PA
16423

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

WILLIAM ESSER

B. Date of Delivery

C. Signature

William Esser

☐ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

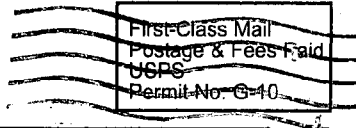
4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7001 2510 0003 0263 7038

UNITED STATES POSTAL SERVICE



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

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
P.O. Box 670
318 East Locust Street
Clearfield, PA 16830

04



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U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
OFFICIAL USE	
Postage	\$.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42

PA 16830

JAN 2 2003

Postmark Here

USPS

Sent To	
District Justice Michael Rudella	
Street, Apt. No.; 131 Rolling Stone Road	
or PO Box No. P.O. Box 210	
City, State, ZIP+4	
Kylertown, PA 16847-0444	

PS Form 3800, January 2002 PSN 7530-01-000-9000

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- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

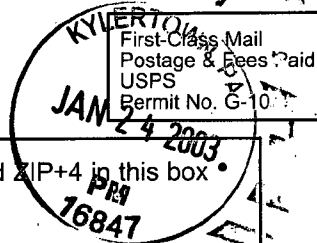
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- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please 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.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ 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. 		<p>A. Received by (Please Print Clearly) B. Date of Delivery</p> <p>1/23/07</p>	
<p>1. Article Addressed to:</p> <p>District Justice Michael Redella 131 Rolling Stone Road P.O. Box 210 Kylertown, PA 16847-0744</p>		<p>C. Signature</p> <p>X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Copy from service label)</p>		<p>7001 2510 0003 0263 7021</p>	

UNITED STATES POSTAL SERVICE



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

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
P.O. Box 670
318 East Locust Street
Clearfield, PA 16830

05



**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 2003-74-CD**

WILLIAM E. ESSER and KAREN
ESSER, his wife,
Plaintiffs

vs.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendants

ANSWER AND NEW MATTER TO PLAINTIFFS'
COMPLAINT

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

William A. Shaw
Proprietary

MAY 05 2003

FILED

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

FILED

MAY 27 2003

William A. Shaw
Prothonotary

REPLY TO NEW MATTER

Plaintiffs, William E. Esser and Karen Esser, his wife, by and through their attorneys, MacDonald, Illig, Jones & Britton LLP, file this Reply to New Matter against Bigler Boyz Street & Off Road Toyz and state as follows:

25. The averments incorporated into Paragraph 25 of defendant's New Matter are disputed as set forth in plaintiffs' Complaint.

26. Denied. Plaintiff did not, "... at the time of placing the telephone call for towing to AAA indicate[] that he had diagnosed his problem as being a blown head gasket," as averred in Paragraph 26 of defendant's New Matter. To the contrary, personnel at the Quick Change Lube indicated to plaintiff that the "problem" was a possible blown head gasket.

27. Denied. It is denied, "[t]hat the Defendant advised the Plaintiff, William E. Esser, that it would have been best to repair his vehicle by placing a used engine therein as there was no way to know what all was wrong with the current engine in light of the condition which was discovered upon the Defendant commencing a review and work thereon." To the contrary, defendant

never advised plaintiff "that it would have been best to repair his vehicle by placing a used engine therein."

28. Denied. It is denied, "[t]hat the Plaintiff, William E. Esser, in response to the indication set forth in Paragraph 27 above specifically indicated 'just patch it up'." To the contrary, plaintiff never told defendant "just patch it up" and fully expected defendant to repair the vehicle in a competent manner consistent with the standard expected of professional mechanics.

29. Denied. It is denied, "... that the cooling system was full of stop leak to the extent that the fluid traveling through the cooling system was of a gummy nature and consistency." To the contrary, the cooling system in plaintiff's vehicle was not "full of stop leak to the extent that the fluid traveling through the cooling system was of a gummy nature and consistency."

30. Denied. It is denied, "[t]hat the EGR tube which was cracked at the time the Defendant removed the same was TIG welded and reinstalled in compliance with the Plaintiff William E. Esser's specific instruction that he just wanted the vehicle patched and he wanted as economical a job as possible." To the contrary, plaintiff denies, "[t]hat the EGR tube [] was cracked at the time the Defendant removed the same. ..." Further, plaintiff denies that he represented to the defendant either that he "wanted the vehicle patched" or that he "wanted as economical a job as possible."

31. Denied. It is denied, "[t]hat the Defendant at the time of disassembly of the valve cover discovered that the same was held on with an assortment of various size bolts evidencing that the cover had been removed and replaced on at least one (1) previous occasion at a time period unknown to the Defendant." To the contrary, the valve cover was never "removed and replaced" prior to the defendant removing the valve cover.

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

FILED

MAY 27 2003

William A. Shaw
Prothonotary

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27. Denied. It is denied, "[t]hat the Defendant advised the Plaintiff, William E. Esser, that it would have been best to repair his vehicle by placing a used engine therein as there was no way to know what all was wrong with the current engine in light of the condition which was discovered upon the Defendant commencing a review and work thereon." To the contrary, defendant

never advised plaintiff "that it would have been best to repair his vehicle by placing a used engine therein."

28. Denied. It is denied, "[t]hat the Plaintiff, William E. Esser, in response to the indication set forth in Paragraph 27 above specifically indicated 'just patch it up'." To the contrary, plaintiff never told defendant "just patch it up" and fully expected defendant to repair the vehicle in a competent manner consistent with the standard expected of professional mechanics.

29. Denied. It is denied, "... that the cooling system was full of stop leak to the extent that the fluid traveling through the cooling system was of a gummy nature and consistency." To the contrary, the cooling system in plaintiff's vehicle was not "full of stop leak to the extent that the fluid traveling through the cooling system was of a gummy nature and consistency."

30. Denied. It is denied, "[t]hat the EGR tube which was cracked at the time the Defendant removed the same was TIG welded and reinstalled in compliance with the Plaintiff William E. Esser's specific instruction that he just wanted the vehicle patched and he wanted as economical a job as possible." To the contrary, plaintiff denies, "[t]hat the EGR tube [] was cracked at the time the Defendant removed the same. ..." Further, plaintiff denies that he represented to the defendant either that he "wanted the vehicle patched" or that he "wanted as economical a job as possible."

31. Denied. It is denied, "[t]hat the Defendant at the time of disassembly of the valve cover discovered that the same was held on with an assortment of various size bolts evidencing that the cover had been removed and replaced on at least one (1) previous occasion at a time period unknown to the Defendant." To the contrary, the valve cover was never "removed and replaced" prior to the defendant removing the valve cover.

32. Denied. Plaintiff is without information sufficient to form a belief as to the truth of the averments contained within Paragraph 32 of defendant's New Matter and, as such, the averments contained within Paragraph 32 of defendant's New Matter are therefore deemed denied.

33. Denied. It is denied, "[t]hat the Defendant properly coupled the fuel lines at the time of repair." To the contrary, the fuel lines were not properly coupled, causing fuel to leak from the fuel lines.

34. Denied. It is denied "[t]hat the Defendant did not use teflon tape on the head bolts but instead used permatex teflon thread sealant which is the standard item to be used where liquids have a chance of leaking past the threads." To the contrary, upon information and belief defendant did use teflon tape on the head bolts.

35. Denied as stated. It is denied, "[t]hat the Plaintiff upon returning to the Defendant's facility to pick up the car test drove the vehicle himself from Bigler, Pennsylvania to State College, Pennsylvania and then returned to Bigler, Pennsylvania before he formally accepted the repair and indicated his satisfaction." To the contrary, defendant requested that plaintiff return to defendant's facility after traveling to State College, Pennsylvania so that defendants could "look at it."

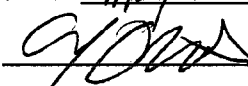
36. Admitted in part, denied in part. It is admitted "[t]hat the Plaintiff, William E. Esser, when he experienced problems with his vehicle on July 28, 2002 in the area of Silvercreek, New York, continued to drive his vehicle rather than have it towed to the repair facility noted in his Complaint on Exhibit B in Fairview, Pennsylvania." However, it is denied that plaintiff caused further damage to any "original condition" as the vehicle was "driveable" at the time he drove the vehicle to the repair facility.

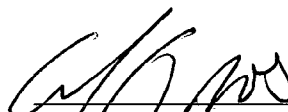
37. Admitted.

38. Admitted in part, denied in part. It is admitted that plaintiff attached a copy of the repair order from Fairview Service Center, Inc. to his complaint as Exhibit B. It is denied that the plaintiff "added thereon in the handwriting of the Plaintiff certain information alleged or implied to have been placed thereon by the garage all of which was done in an attempt to mislead counsel and the Court as to the authenticity as to the information contained on said Exhibit." To the contrary, plaintiff added no information to the repair order from Fairview Service Center, Inc., attached to plaintiffs' Complaint as Exhibit B.

WHEREFORE, plaintiffs William E. Esser and Karen Esser, respectfully request judgment against defendant Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz as set forth more fully in the Complaint.

Respectfully submitted,

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on <u>May 23</u>, 2003.</p> <p></p>
--


Gabriel J. Oros
Pa. Bar I.D. No. 88084
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7636

Attorneys for Plaintiffs
William E. Esser and Karen Esser

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION - LAW
)
)
) No. 2003-74-CD

VERIFICATION

I, William E. Esser, hereby depose and state that I am a plaintiff herein and that the averments set forth in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.


William E. Esser

FILED

MAY 27 2003

NO
cc

William A. Shaw
Prothonotary

~~cc~~

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

FILED

JUL 09 2003

WILLIAM E. ESSER and,
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

CIVIL ACTION - LAW

No. 2003-74-CD

William A. Shaw
Prothonotary

PRAECIPE FOR REFERENCE TO BOARD OF ARBITRATORS

To the Prothonotary:

Please nominate a board of potential arbitrators in the above-captioned case.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by U.S. Mail sent on July 7, 2003.



Gabriel J. Oros
Pennsylvania Supreme Court ID #88084
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7636

Attorneys for Plaintiff
William and Karen Esser

FILED No CC

M11:50884 Aug 09s pd.20.00
JUL 09 2003

Copy to C/A

William A. Shaw
Prothonotary
K24

CA

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,

Plaintiffs

vs.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendants

: No. 2003-74-CD
:
:
:
: Type of Case: Civil
:
: Type of Pleading:
: Defendant's Pre-Trial Statement
:
: Filed on Behalf of:
: Richard D. Heberling, t/d/b/a Bigler Boyz
: Street & Off Road Toyz
:
: Counsel of Record for this Party:
: F. Cortez Bell, III, Esquire
: I.D. #30183
:
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: Telephone: (814)765-5537
:
:
:

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OCT 29 2003

**COURT ADMINISTRATORS
OFFICE**

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

WILLIAM E. ESSER and KAREN	:	
ESSER, his wife,	:	
Plaintiffs	:	
	:	
vs.	:	No. 2003-74-CD
	:	
RICHARD D. HEBERLING, t/d/b/a	:	
BIGLER BOYZ STREET & OFF ROAD	:	
TOYZ,	:	
Defendant	:	

DEFENDANT'S PRE-TRIAL STATEMENT

NOW comes the Defendant, Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz, by and through his attorney, F. Cortez Bell, III, Esquire, who respectfully sets forth the Defendant's Pre-Trial Statement as follows:

STATEMENT OF THE CASE

The Defendant became involved in the instant matter as a result of a telephone call received on July 12, 2002 at which time the Plaintiff, William E. Esser, apparently had experienced car problems and was located in the Walmart parking lot in Clearfield. The Defendant operates both a repair garage for motor vehicles as well as a AAA approved towing service. Mr. Esser, at the time of placing the telephone call for towing to AAA indicated that he had diagnosed the problem as being a blown head gasket. The vehicle was a Ford Taurus. The Plaintiff was advised by the Defendant that it would be best to repair his vehicle by placing a used engine therein as there was no way to determine what all was wrong with the current engine and what may have occurred as a result of the blown head gasket. The Plaintiff, Mr. Esser, in response to the recommendation of the

Defendant responded "just patch it up". The Defendant commenced working on the vehicle and discovered that the cooling system of the vehicle was full of stop leak to the extent that the fluid traveling through the cooling system was of a gummy nature and consistency. It was discovered by the Defendant that the EGR tube was cracked and the same was welded and reinstalled in compliance with the Plaintiff's specific indication that he wanted as economical a job as possible. The Defendant at the time of disassembly of the valve cover discovered that it was held on with an assortment of various sized bolts evidencing that the cover had been removed and replaced on at least one (1) previous occasion at a time period unknown to the Defendant. Some of the spark plugs of the vehicle were discovered to be loose but such is not uncommon in an engine which has been subject to overheating. The Defendant at the time the head bolts were replaced used Permatex Teflon Thread Sealant to assure that there would be no leaking around the head bolts. The Plaintiff, William Esser, obtained his vehicle from the Defendant's repair facility on July 19, 2002 and prior to accepting delivery drove the vehicle from Bigler, Pennsylvania to State College, Pennsylvania returning to Bigler and accepting the repair and indicating his satisfaction. Apparently the Plaintiff, William Esser, experienced additional car problems on July 28, 2002 in Silvercreek, New York, and continued to drive his vehicle from the Silvercreek area to Fairview, Pennsylvania at which point he had the vehicle serviced. It is the Plaintiff's claim that the repair work done by the Defendant was not completed in a competent and workmanlike manner and/or that they failed to complete the repairs. The Plaintiff is asserting a claim based upon breach of contract; negligence and unfair trade practices. The Defendant is asserting that all repair work was done properly and efficiently and in a workmanlike manner.

CASE LAW

There are no specific case or statute references as this matter does not draw into question any unusual circumstances to which reliance upon the same would be required. This matter is simply a suit based upon breach of contract; negligence and unfair trade practices. The unfair trade practices statute can be found at 73 P.S. §201-1, et. seq.

WITNESSES

A. Richard D. Heberling, P.O. Box 381, Bigler, PA 16825. Owner/operator of Bigler Boyz.

B. Richard M. Heberling, P.O. Box 381, Bigler, PA 16825. Employee of Bigler Boyz.

C. Ed Gouker, Automotive Services/Traffic Safety Manager, AAA Southern Pennsylvania, 2840 Eastern Boulevard, York, Pennsylvania 17402.

D. The Defendant reserves the right to call any witnesses listed in the Plaintiff's Pretrial Statement as if on cross.

E. The Defendant reserves the right to supplement this list of witnesses if additional witnesses become available prior to the date of the arbitration hearing. The counsel for the Defendant will immediately notify counsel for the Plaintiff should any such witnesses arise.

DAMAGES

The Plaintiff is asserting damages in the amount of \$1,192.13 plus costs and counsel fees.

EXHIBITS

At this point, exhibits to be introduced on behalf of the Defendant are as follows:

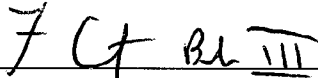
- A. Invoice of Bigler Boyz dated July 12, 2002.
- B. AAA Southern PA call detail report, July 12, 2002.
- C. Letter of Ed Gouker dated August 26, 2002.

The Defendant reserves the right to supplement this list of exhibits if additional exhibits become available prior to the date of the arbitration hearing. Should any such exhibits be discovered the same will be immediately provided to counsel for the Plaintiff.

Respectfully submitted,

BELL, SILBERBLATT & WOOD

By,



F. Cortez Bell, III, Esquire
Attorney for Defendant

INVOICE

BIGLER BOYZ
BOX 381
BIGLER, PA 16825
(814) 857-7871

399421

SOLD TO <i>Wm Steve</i>		SHIP TO <i>397-9205</i>	
ADDRESS		ADDRESS '97 BLUE TOWN	
CITY, STATE, ZIP		CITY, STATE, ZIP	
CUSTOMER ORDER NO. <i>B 52939</i>		SOLD BY	
TERMS		F.O.B.	
ORDERED	SHIPPED	DESCRIPTION	PRICE
		<i>Richard Head Forest</i>	
		<i>4 EPID INC/FAT</i>	<i>365-</i>
		<i>ASKST SET-15000</i>	<i>77-</i>
		<i>OUT GRAVE W/FUTURE</i>	<i>19 95</i>
		<i>REAR, ETC</i>	<i>19 -</i>
		<i>Ship 16 @ 35.00</i>	<i>560 -</i>
		<i>104095</i>	<i>104095</i>
		<i>6244</i>	<i>6244</i>
		<i>1645</i>	<i>1645</i>
		<i>111986</i>	<i>111986</i>

AUG-28-02 WED 10:12 AM AAA Southern PA-ERS Dept FAX NO. 7177647067

P. 4

D / 2000 CALL DETAIL REPORT

*Call #52939 07/12/2002 238 (Archive call)

D/2000 user: TUE Club [238]
Printed: 08/26/2002 16:47

Membership: 215-17980443 Plus: B Expires: 06/30/2003 MbrSince:
Membership Status: :
Contact Name: ESSER, WILLIAM
Member Name: ESSER WILLIAM
Address: 9643 ALLEGHENY AVENUE

City: LAKE CITY
Phone: (814) 774-x-

State: PA Zip:16423

Trouble Code(s): 06 Tow /
Priority Code:
Policy: TI Tagged & Inspected

breakdown Location: PL - RT 879/I80//
andmark/Diraction: WAL MART//AT THE TOP OF THE HILL, AT THE TIRE AND
City: CLEARFIELD, PA
Phone: (814) 397-9905x- Type:
Callback: Callback Minutes:
Call Type:
Vehicle: BLUE 97 FORD TAURUS #Pass: Tag: -
Tow Dest: BLOWN HEAD GASKET---NOT SURE WHERE HE WANTS VEH TOWED, SOMEHW
: HERE LOCAL---FRONT WHEEL DRIVE

Wait Time: 40 PTA: 2002-07-12 17:55
Call Features:

Status Detail

2002-07-12 17:15:31 RE-2K	LMH(CR)
2002-07-12 17:15:31 SP-XU	LMH(CR) 327
2002-07-12 17:26:22 SP-BT	CBD(DI) 384
2002-07-12 17:30:09 DI-	CBD(DI) 384/A
2002-07-12 17:44:39 CL-	CBD(DI) 384/A
2002-07-12 17:45:27 AP-	CBD(DI) 384/A
2002-07-12 17:45:27 CL-CL	CBD(DI) 384/A

All Comments:

102-07-12 17:14:16
102-07-12 17:13:59
102-07-12 17:15:31

LMH:xx ADV RT-OM
LMH:xx MWV/CI
AUDIT_SRV:xx This foreign member was verified via CDX
to have status [A] and expiration date [06/30/2003]. Plus indicator=[B]. ERS-Ab
user indicator=[N]. Bad-check indicator=[N].

D Information:

Miles Start: 0
Miles On Location: 0

Continued On Next Page...



Club Headquarters: 2840 Eastern Boulevard
York, PA 17402
717-600-8900

Automobile Club
Travel Agency
Insurance Agency
717-600-8700 or 800-222-1469

August 26, 2002

Frank Dudas
AAA East/Central
5900 Baum Blvd.
Pittsburgh, Pa. 15206

Re: Bill Esser damage complaint

Dear Frank,

I would like to take this opportunity to respond to Mr. Esser's letter to your club. First I would like to tell you that Bigler Boyz is an ERS contractor for our club, but they are not an AAR facility.

As you can see in the call detail Mr. Esser diagnosed the problem as a blown head gasket and did not know where he wanted the car towed. Our club did not recommend Bigler Boyz. The driver told Mr. Esser that his shop could do the repairs and Mr. Esser elected to have the car towed to Bigler Boyz.

Bigler Boyz found a cracked head, which was replaced. Both head gaskets were replaced. The EGR tube was cracked when Bigler Boyz removed it and since Mr. Esser was looking for an economical job the tube was TIG welded and reinstalled. When the engine was disassembled the valve cover was found to be cracked and held on with an assortment of various size bolts. Since the valve cover did not leak it was reused. Teflon tape was not used on the head bolts. Permatex teflon thread sealant was used on the head bolts. Bigler Boyz shop uses this sealant on all head bolts and bolts where liquids have a chance of leaking past the threads. The only exception is where the application specifically calls for dry head bolt installation. In fact, any liquid applied to the threads of a bolt would result in slightly higher torque since the liquid would act as lubricant on the threads. Bigler Boyz also found some spark plugs loose in the heads but did not report this to Mr. Esser because it is not uncommon to find loose spark plugs in an engine that was overheated. I'm not sure about the statement about the fuel lines not being coupled properly. Being a Ford factory trained technician myself, I know that if the fuel lines were not coupled properly no fuel would flow to the fuel injectors and the engine would not run. I see on the invoice from Fairview Service Center not just the new head but both heads were resurfaced. This is not uncommon after an engine has overheated. I also see that Fairview Service Center replaced the thermostat.

It seems that this engine has been apart before Bigler Boyz repaired it. It may have a history of overheating due to the fact that Bigler Boyz found the cooling system full of

Stop By One Of Our Branch Offices Or Visit Our Web Site at: www.aaasp.com

BEDFORD
317 S. Richard St.
Bedford, PA 15522

CHAMBERSBURG
230 Lincoln Way East
Chambersburg, PA 17201

HANOVER
Clearview Shopping Center
Hanover, PA 17331

JOHNSTOWN
Galleria Mall
Johnstown, PA 15904

LOCK HAVEN
12 Oriole Road
Lock Haven, PA 17745

STATE COLLEGE
200 Shiloh Road
State College, PA 16801

WAYNESBORO
2021 E. Main St.
Waynesboro, PA 17268

stop leak. My guess is that the real problem has not yet been found and corrected. I believe that there is a good chance that the problem will reoccur.

Please understand that the details I have given you are from the management and staff at Bigler Boyz, there is no evidence to substantiate their story. Bigler Boyz service order is not detailed enough, but does show 16 hours of labor. Bigler Boyz story is that the 16 hours includes the time to weld the EGR tube, flush the stop leak from the cooling system, and so on.

If I can be of any further assistance please don't hesitate to contact me.

Sincerely,

Ed Gouker
Automotive Services / Traffic Safety Manager
ASE Certified Master Auto Technician

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,

Plaintiffs

vs.

No. 2003-74-CD

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendant

CERTIFICATE OF SERVICE

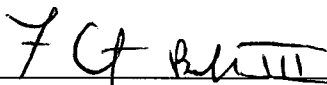
I hereby certify that I am this day serving a copy of the foregoing Defendant's Pre-Trial Statement upon the following persons by mailing such copy first class mail, postage prepaid to:

Mr. Gabriel J. Oros, Esquire
MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1459

Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
P.O. Box 131
Clearfield, PA 16830

Mr. David P. King, Esquire
P.O. Box 1016
DuBois, PA 15801

Mr. Theron Noble, Esquire
301 E. Pine Street
Clearfield, PA 16830


F. Cortez Bell, III, Esquire
Attorney for Defendant

Date: October 29, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 03-74-CD

WILLIAM E. ESSER and KAREN ESSER,
his wife,

Plaintiffs

vs.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,

Defendants

DEFENDANT'S PRE-TRIAL STATEMENT

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P. O. BOX 670
CLEARFIELD, PA. 16830

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

WILLIAM E. ESSER and
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,
Defendants

) No. 2003-74-CD
)
) Type of Case: Civil
)
) Type of Pleading:
) Plaintiffs' Pre-Trial Statement
)
) Filed on Behalf of:
) William E. Esser and Karen Esser,
) his wife
)
) Counsel of Record for This Party:
) Gabriel J. Oros, Esquire
) Pa. Supreme Court No.: 88084
) MacDonald, Illig, Jones & Britton LLP
) 100 State Street, Suite 700
) Erie, Pennsylvania 16507
) (814) 870-7636

RECEIVED

NOV 05 2003

**COURT ADMINISTRATOR'S
OFFICE**

WILLIAM E. ESSER and
KAREN ESSER, his wife,
Plaintiffs

v.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,
Defendants

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
) CIVIL ACTION -LAW
)
)
)
) No. 2003-74-CD

PLAINTIFFS' PRE-TRIAL STATEMENT

Plaintiffs, William E. Esser and Karen Esser, his wife, by and through their attorneys, MacDonald, Illig, Jones & Britton, LLP, file this Plaintiffs' Pre-Trial Statement and state as follows:

I. Statement of the Case

Plaintiffs William E. Esser and Karen Esser ("Bill Esser"; "Karen Esser"; and collectively "plaintiffs") are Pennsylvania residents residing at 9643 Allegheny Avenue, Lake City, Pennsylvania 16423. Defendant, Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz, (hereinafter "Bigler Boyz") is located at 2330 North 7th Avenue, Bigler, Pennsylvania 16825, with a mailing address of P.O. Box 381, Bigler, Pennsylvania 16825. Defendant Bigler Boyz is in the business of repairing automobiles and other vehicles.

On July 12, 2002, plaintiff Bill Esser encountered car trouble. Defendant Bigler Boyz towed plaintiffs' Ford Taurus from the Clearfield, Pennsylvania Wal-Mart parking lot to its repair shop. Defendant Bigler Boyz represented to plaintiff Bill Esser that they were able to

replace a cracked aluminum head, as well as other damage sustained by plaintiffs' Taurus, and Bill Esser retrieved his vehicle July 19, 2002.

Despite the representation that defendant Bigler Boyz had replaced the "Head" and completed the other necessary repairs to plaintiffs' Taurus, on July 28, 2002, plaintiff Bill Esser again experienced the same car trouble as on July 12, 2002. Upon information and belief, defendant Bigler Boyz failed to maintain a written record documenting plaintiffs' oral authorization for specific repairs. Plaintiffs accordingly sought the advice of Fairview Service Center, Inc., which found that the "valve cover" was "broken," that the "EGR tube" was "broken" and the "spark plugs" were only "finger tight." Following repeated attempts to reach defendant Bigler Boyz by telephone, plaintiff Bill Esser sent a letter via Certified Mail on August 8, 2002 to defendant Bigler Boyz at P.O. Box 381, Bigler, PA 16825, the address indicated on the invoice for repairs. Despite acknowledging receipt of the aforementioned certified letter, Bigler Boyz refused to open the correspondence.

II. Statement of Liability

This action involves claims based on negligence, breach of contract and unfair trade practices.

Defendant Bigler Boyz breached the oral and/or written contract to replace the damaged "Head" and complete other necessary repairs by failing to replace the "Head" in a competent and workmanlike manner and/or failing to complete the repairs. As a proximate and direct result of the aforementioned breach, plaintiffs Bill Esser and Karen Esser have suffered damages in the amount of \$1,192.13 plus applicable costs.

Defendant Bigler Boyz also had a duty to plaintiffs to replace the "Head" in a competent and workmanlike manner and to complete other necessary repairs. Defendant Bigler Boyz breached the foregoing duty by failing to replace the "Head" and/or complete other necessary repairs in a competent and workmanlike manner in compliance with the standard of a similarly situated mechanic under the circumstances then and there present. All of the damages suffered by plaintiffs Bill Esser and Karen Esser were proximately and directly caused by the negligence and/or carelessness of defendant Bigler Boyz. As a proximate and direct result of the negligence and/or carelessness of defendant Bigler Boyz, plaintiffs Bill Esser and Karen Esser have suffered damages in the amount of \$1,192.13 plus applicable costs.

Moreover, upon information and belief, defendant Bigler Boyz violated the provision contained within 37 Pa. Code § 301.5 by failing to maintain a written record documenting plaintiffs' oral authorization for specific repairs. In addition, defendant Bigler Boyz violated the provisions contained within 73 P.S. 201-2(4)(xvii) by misrepresenting the quality and/or nature of the repairs purportedly performed on plaintiffs' vehicle, both orally and in writing. As a proximate and direct result of the aforementioned violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law by defendant Bigler Boyz, plaintiffs Bill Esser and Karen Esser have suffered actual damages in the amount of \$1,192.13 plus applicable costs.

III. Witnesses

The defendants may call some or all of the following witnesses at time of trial.

	<u>Liability</u>	<u>Damages</u>
1. William E. Esser 9643 Allegheny Avenue Lake City, Pennsylvania 16423	X	X
2. Michael Platz Fairview Service Center, Inc. 7751 West Ridge Road Fairview, PA 16415	X	X

IV. Exhibits

Defendants may introduce some or all of the following exhibits, or enlargements of same, at time of arbitration:

1. Documents disclosed pursuant to Rule 1305 of the Pennsylvania Rules of Civil Procedure (see attached);
2. Any and all pleadings filed by the plaintiffs and/or defendants. Plaintiffs reserve the right to introduce or otherwise use any of the exhibits listed on Defendant's Pre-Trial Statement or supplements thereto.


V. Unusual Legal Issues

None.

VI. Damages

Plaintiffs have suffered damages in the amount of \$1,192.13 plus costs and counsel fees.

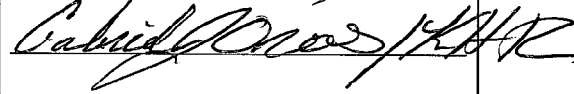
Respectfully submitted,


Gabriel J. Oros

Pennsylvania Supreme Court No. 88084
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7636

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document
was served upon all other parties appearing
of record by First-Class United States Mail
sent on November 3, 2003.



Attorneys for Plaintiffs

William E. Esser and Karen Esser, his wife

Check one for each type of inspection.

ANNUAL

SEMI-ANNUAL

Pa. Slicker No.

Inspection No.

CAR OWNER:

The state requires us to check items below to show you exactly work done to put your car in shape for safe driving.

Registration Verified Yes ☐ No ☐

Insurance Co. Name

Expiration Date

Policy #

Odometer Read. on Old Insp. Slicker

Present Odometer Reading

✓ R A

Tires, Wheels

Suspension, Steering

Exhaust System

Fuel System

Glazing & Mirrors

Lights, Wiring and Switches

Body, Doors and Latches

Brake System

Left Front

Left Rear

Right Front

Right Rear

Other

Slicker Issued

Road Test

Yes ☐ No ☐

ATTN: Although the following items currently pass state inspection we believe they may become dangerous prior to the next inspection period.

PRESENT REPAIRS

Qty.	Part No.	Article	Price
1	HS 9885 PT-2	Head Set	115.13
1	ES 72136	Head Bolts	54.74
6	AP 764	Spark Plugs	18.00
1	13359	Thermostat	8.60
2		Anti-Freeze	16.00
1	FT02-90477-00	Tube	57.08
1	FB02-6582-EC	Valve Cover	85.00

100

CK \$375 8/7/02

TOTAL 354.67

ORIGINAL ESTIMATE
Customer's Acceptance
Initial Here
DATE
TIME
BY

AUTHORIZED ADDITIONS
\$
\$
\$

I AUTHORIZE YOU TO COMPLETE REPAIRS WITHOUT AN ESTIMATE
I AUTHORIZE REPAIRS NOT IN EXCESS OF \$
I ACCEPT THE ESTIMATE AND AUTHORIZE THOSE REPAIRS

I hereby authorize the above repair work to be done along with the necessary material, and hereby grant you and/or your employees permission to operate the car or truck hereafter on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs thereto.

X

FAIRVIEW SERVICE CENTER, INC.
7751 West Ridge Road
Fairview, PA 16415
(814) 474-2473

38598

Name Bill Essen Date 7-29-02
Address
License No. and State EGJ-9487
Year and Make 97 Ford
Type of Body TAXI
Mileage 92623
Order Written By JM
Description of Work
State Inspection ☐ Lubricate ☐ Change Oil ☐ Flush Tran. & Diff. ☐ Wash ☐
Labor Charge
Overhauled - ✓
just had head gasket Rechecked
Check cooling system found head gasket blown. R&R cylinder heads, and have 450.00
9.0 then resurfaced. Replace gaskets and thermostat. Refill with new coolant and change oil and filter LDF 24.95
FOUND VALVE COVER BROKEN WHEN TOOK APART. FOUND EGR TUBE BROKEN FOUND FUEL LINES NOT COUPLED RIGHT SPARK PLUGS WERE FINGER TIGHT
Not Responsible For Loss Or Damage To Cars Or Articles Left In Cars In Case Of Fire, Theft Or Any Other Cause Beyond Our Control.
Gals. Gas @
Qts. Oil @
Lbs. Grease @
Total
Tax
Grand Total
Inspection Fee
Slicker Fee
Total Labor 474.95
Total Parts 354.67
Gas, Oil, Grease
Accessories
Outside Repairs 175.00
Total 1004.62
Tax 60.27
Grand Total 1064.89

FAIRVIEW SERVICE CENTER, INC.

7751 West Ridge Road
Fairview, PA 16415
(814) 474-2473

Inspection we believe they may become dangerous prior to the next inspection period.

ANNUAL	
SEMI-ANNUAL	
Pa. Slicker No.	
Inspection No.	

3.0

Qty.	Part No.	Article	Price
8		50x10x45 5996	5020
1		Wire Set 5020	5020
PRESENT REPAIRS			
		Plugs 96659	96
		Wires	5020
		Wires	7659
		Wires	7846

CAR OWNER:

The state requires us to check items below to show you exactly what work was done to put your car in shape for safe driving.

Registration Verified Yes ☐ No ☐

Insurance Co. Name

Expiration Date

City #

Idometer Read. on

Id Insp. Slicker

resent Odometer

reading

VEHICLE

Wheels

uspension, Steering

xhaust System

Jet System

lazing & Mirrors

ghts, Wiring and

itches

dy, Doors and

itches

ake System

Front

Rear

Front

Rear

Front

Rear

Front

Rear

Front

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Front

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Front

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Front

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Front

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Front

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Front

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Front

Rear

Front

Rear

Name	Adam Esser	Address	
Licence No. and State	PA 4487	Serial No.	
Year and Make	1997 Ford	Type of Body	Truck
Oper. No.		Description of Work	
State Inspection	<input type="checkbox"/>	Lubricate	<input type="checkbox"/>
Charge Oil	<input type="checkbox"/>	Flush Trans. & Diff.	<input type="checkbox"/>
Wash	<input type="checkbox"/>	Labor Charge	
Date	11-26-01	Promised A.M.	
Phone H.	774-2904	Order Written By	DE
Mileage	82731		

35529

Not Responsible For Loss Or Damage To Cars Or Articles Left In Cars In Case Of Fire, Theft Or Any Other Cause Beyond Our Control.

INITIAL YOUR CHOICE

I AUTHORIZE YOU TO COMPLETE REPAIRS WITHOUT AN ESTIMATE

I AUTHORIZE REPAIRS NOT IN EXCESS OF \$

I ACCEPT THE ESTIMATE AND AUTHORIZE THOSE REPAIRS

In the event that you, the customer, authorize commencement but do not authorize completion of a repair or service, a charge will be imposed for disassembly, reassembly, or partially completed work. Such charge will be directly related to the actual amount of labor or parts involved in the inspection, repair or service.

REPLACED PARTS WILL BE RETURNED UNLESS SPECIFIED OTHERWISE. RETURN PARTS DISCARD PARTS

Yes ☐ No ☐

11. 11. 11

7751 West Ridge Road • Fairview, PA 16415

(814) 474-2473

NAME	Adam Essen		DATE	8-24-01
ADDRESS				
CITY		PHONE		
MAKE	97 Ford	MODEL	Mustang	
		LICENSE	BMF55AS	
MILEAGE	78334			

[illegible]

Signature constitutes acceptance of above service performed as being satisfactory and that equipment has been left in good condition.

Adam Esser

SIGNATURE

FAIRVIEW SERVICE CENTER, INC.

7751 West Ridge Road
Fairview, PA 16415
(814) 474-2473

33263

ATTN: Although the following items currently pass state inspection we believe they may become dangerous prior to the next inspection period.

Check one for each type of inspection.

☐ ANNUAL
☐ SEMI-ANNUAL

Pa. Sticker No.

Inspection No.

CAR OWNER:

The state requires us to check items below to show you exactly what we found on your car in preparation for sale driving.

Registration
Insured Yes ☐ No ☐
Insurance Co. Name

Expiration Date

Chassis #
Mileage Read, on
Mileage Sticker
Present Odometer
Reading

✓ R A

Tires, Wheels
Suspension, Steering
Exhaust System
Fuel System
Lubricating & Mirrors
Lights, Wiring and
Wipers
Body, Doors and
Hatches
Brake System
Left Front
Left Rear
Right Front
Right Rear
Other

Brake Lining
Remaining of
Pulled
Road Test
Sticker Issued
Yes ☐ No ☐

Name Adam Essler Date 6-19-01
Address _____
License No. and State PA 55-85 Serial No. _____
Year and Make 97 Ford Type of Body Truck Mileage 75252 Order Written By [Signature]
Oper. No. _____ Description of Work _____
State Inspection ☐ Lubrication ☐ Change Oil ☐ Wash ☐ Flush Tran. & Diff. ☐ Labor Charge _____
57 Engine Oil Change & Filter
22.50

Not Responsible For Loss
Or Damage To Cars Or
Articles Left In Cars In
Case Of Fire, Theft Or
Any Other Cause Beyond
Our Control.

INITIAL
YOUR
CHOICE
I AUTHORIZE YOU TO COMPLETE REPAIRS WITHOUT AN ESTIMATE
I AUTHORIZE REPAIRS NOT IN EXCESS OF \$ _____
I ACCEPT THE ESTIMATE AND AUTHORIZE THOSE REPAIRS

In the event that you, the customer, authorize commencement but do not authorize completion of a repair, a charge will be imposed for the labor involved in the inspection, repair or service. Such charge will be directly related to the actual amount of labor or parts involved in the inspection, repair or service.

REPLACED PARTS WILL BE RETURNED UNLESS SPECIFIED OTHERWISE. RETURN PARTS DISCARD PARTS

ORIGINAL ESTIMATE Customer's Acceptance Initial Here
\$ _____ DATE _____ TIME _____ BY _____
AUTHORIZED ADDITIONS \$ _____
TOTAL 28.33

Inspection Fee
Sticker Fee
Total Labor 22.50
Total Parts 28.33
Gas, Oil, Grease
Accessories
Outside Repairs
Total 47.33
Tax 2.03
Grand Total 50.16

**7751 West Ridge Road
Fairview, PA 16415
(814) 474-2473**

wait.

32442

<input type="checkbox"/> Inspection. <input type="checkbox"/> Inspection we believe they may become dangerous prior to the next inspection period.		ANNUAL SEMI-ANNUAL		Pa. Slicker No.	Inspection No.	CAR OWNER: The state requires us to check items below to show you exactly what we did to put your car in shape for safe driving.	Registered <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>	Insurance Co. Name	Expiration Date	Policy #	Odometer Read, on d Insp. Slicker	Present Odometer Reading	✓ R A	Tires, Wheels Suspension, Steering Exhaust System Fuel System Lamps & Mirrors Lights, Wiring and Switches Body, Doors and Latches Brake System 1 ft Front 8B 1 ft Rear 4R 1 ft Front 8B 1 ft Rear 4R	Fraction of Brake Lining Remaining Pulled	Slicker Issued Road Test Yes <input type="checkbox"/> No <input type="checkbox"/>
--	--	-----------------------	--	-----------------	----------------	---	--	--------------------	-----------------	----------	--------------------------------------	-----------------------------	-------	---	--	---

specimen.

with

607432431

Name				Address				Date			
WILLIAM E. ESSER & KAREN S. ESSER				9643 ALLEGHENY AVE LAKE CITY PA. 16423				7-19-00			
9643 ALLEGHENY AVE LAKE CITY PA. 16423				Serial No.				Phone			
BM6-5585 PA				IFALP5204V6284498				H. W.			
Year and Make				Type of Body				Order Written			
97 FORD				SEDAN				By J.M.			
Oper. No.				Description of Work				Labor Charge			
State Inspection				Lubricate				Change Oil			
Flush				Wash							
1.0 Replace front brake pads				42.00							
.5 Replace fuel filter				21.00							
TOTAL				62.16							
ORIGINAL ESTIMATE				CUSTOMER'S ACCEPTANCE				AUTHORIZED ADDITIONS			
\$				Initial Here				\$			
DATE				DATE				DATE			
TIME				TIME				TIME			
BY				BY				BY			
I hereby authorize the above repair work to be done along with the necessary material, and hereby grant you and/or your employees permission to operate the car or truck herein described on streets, highways or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above car or truck to secure the amount of repairs therein.				I authorize you to complete repairs without an estimate				I authorize repairs not in excess of \$			
I accept the estimate and authorize those repairs				INITIAL YOUR CHOICE				Not Responsible For Loss Or Damage To Cars Or Articles Left In Cars In Case Of Fire, Theft Or Any Other Cause Beyond Our Control.			
In the event that you, the customer, authorize commencement but do not authorize completion of a repair or service, a charge will be imposed for disassembly, reassembly, or partially completed work. Such charge will be directly related to the actual amount of labor or parts involved in the inspection, repair or service.				Gals. Gas @				Gas, Oil, Grease			
REPLACED PARTS WILL BE RETURNED UNLESS SPECIFIED OTHERWISE. RETURN PARTS DISCARD PARTS				Qts. Oil @				Accessories			
				Lbs. Grease @				Outside Repairs			
				Total				Total			
				Tax				Tax			
				Grand Total				Grand Total			

INVOICE

BIGLER BOYZ
BOX 381
BIGLER, PA 16825
(814) 857-7871

399421

SOLD TO <i>MAA- 11/11/99</i>		SHIP TO	
ADDRESS		ADDRESS <i>'97 BLUE TOWN</i>	
CITY, STATE, ZIP		CITY, STATE, ZIP	
CUSTOMER ORDER NO. <i>B 52939</i>	TERMS	DATE	
		<i>7/12/02</i>	
ORDERED	SHIPPED	DESCRIPTION	PRICE
		<i>Brown Bear Gasket</i>	
		<i>4 LEAD INC/FGT</i>	<i>365-</i>
		<i>GASKET SET - FELDRO</i>	<i>77-</i>
		<i>OIL CHANGE W/FILTER</i>	<i>19 95</i>
		<i>REPAIR, ETC</i>	<i>19 -</i>
		<i>Sher 16 @ 35.00</i>	<i>560 -</i>
			<i>1040.95</i>
			<i>TAX 62.46</i>
			<i>1103.41</i>
			<i>16.45</i>
			<i>1119.86</i>

Bill Esser
9643 Allegheny Ave.
Lake City, Pa. 16423

Dear Sir,

It is with great regret that I have to write this letter concerning the work I had done on my automobile by Bigler Boyz Auto Center. Bigler Boyz towed my car on July 12, 2002 from the parking lot of the Wal-Mart in Clearfield Pa.; the car was taken to your shop Bigler Boyz Auto Center in Bigler Pa. The car was looked at and it was determined the aluminum head on my V-6 engine was cracked and had to be replaced. The work was completed the following week and I picked up the car on July 19. The car seemed to be fine until the 28 of July when, on the way home from Silvercreek, N.Y. I experienced basically the same car problem as I did when Bigler Boyz towed my car the first time.

The car was taken to the service station that I normally use and the technician told me, after running a few preliminary tests, that I had carbon monoxide in my coolant, which meant a cracked head, or blown head gasket. Upon further investigation, he found that the EGR tube was put back broken the valve covers had some bolts missing and a few of them were the wrong bolts resulting in a cracked valve cover. Also some of the spark plugs were loose, the fuel lines were not coupled properly and that Teflon tape had been used on the head bolts, resulting in improper torque readings. He theorized that because of the use of Teflon tape that the head bolts were not secure enough and worked there way loose, resulting in a blown head gasket, also because of the build up in heat the new head warped approximately .003 to .005 thousandths and had to be machined to ensure a proper seal between the head and new head gasket.

I am forwarding to you, the bill and all the other information that was provided to me by Fairview Service Center. I would like for you to review it so that you can make a decision on how to rectify this situation. If you wish to speak with Fairview Service Center the phone # is (814) 474-2473 ask for Mike, he is the owner. If you wish to talk with me personally my phone # is (work: 814-878-4736) or (home: 814-774-2914). I hope we can come to some kind of agreement without bringing a third party (The Better Business Bureau) into this situation.

Sincerely,

Bill Esser

LETTER
SENT TO
Bigler Boyz

heny Ave
Pa. 16423

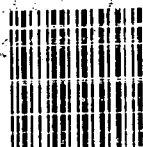
8/29



7001 1940 0001 5906 2588



0000



16825

U.S. POSTAGE
PAID
16506
AUG 28 2002
AMOUNT

\$4.42

00059620-04

RETURN RECEIPT
REQUESTED

Bigler BOYZ
Box 381
Bigler, I



☐ INSUFFICIENT ADDRESS
☐ ATTEMPTED NOT KNOWN
☐ NO SUCH NUMBER/ STREET
☐ NOT DELIVERABLE AS ADDRESSED
☒ OTHER
UNABLE TO FORWARD

A
C
S

140059620 02

7001 1940 0001 5906 2588

CERTIFIED MAIL RECEIPT

(Domestic Mail Only, No Insurance Coverage Provided)

BIGLER PA 16825

Postage	\$0.37
Certified Mail	\$2.30
Return Receipt Fee (Subscription Receipts)	\$1.75
Registered Delivery and Certification Fee	\$0.00
Total Postage & Fees	\$4.42

0002
04



Sent to **Bigler BOYZ**
Street, Apt. No.,
or P.O. Box No. **Box 381**
City, State, ZIP+4 **Bigler, PA 16825**

Bill Esser
9643 Allegheny Ave.
Lake City, Pa. 16423

Dave,

It is with great regret that I have to write this letter concerning the work I had done on my automobile by Bigler Boyz Auto Center. Bigler Boyz's towed my car on July 12, 2002 from the parking lot of the Wal-Mart in Clearfield Pa.; the car was taken to your shop Bigler Boyz Auto Center in Bigler Pa. The car was looked at and it was determined the aluminum head on my V-6 engine was cracked and had to be replaced. The work was completed the following week and I picked up the car on July 19. The car seemed to be fine until the 28 of July when, on the way home from Silvercreek, N.Y. I experienced basically the same car problem as I did when Bigler Boyz's towed my car the first time.

The car was taken to the service station that I normally use and the technician told me, after running a few preliminary tests, that I had carbon monoxide in my coolant, which meant a cracked head, or blown head gasket. Upon further investigation he found that the EGR tube was put back broken the valve covers had some bolts missing and a few of them were the wrong bolts resulting in a cracked valve cover. Also some of the spark plugs were loose, the fuel lines were not coupled properly and that Teflon tape had been used on the head bolts, resulting in improper torque readings. He theorized that because of the use of Teflon tape that the head bolts were not secure enough and worked their way loose, resulting in a blown head gasket, also because of the build up in heat the new head warped approximately .003 to .005 thousandths and had to be machined to ensure a proper seal between the head and new head gasket.

I am forwarding to you, the bill and all the other information that was provided to me by Fairview Service Center. I would like for you to review this information, seeing it was AAA that had the car towed to this facility and recommended their service. If you wish to speak with Fairview Service Center the phone # is (814) 474-2473 ask for Mike, he is the owner. If you wish to talk with me personally my phone # is (work: 814-878-4736) or (home: 814-774-2914).

Sincerely,

Bill Esser

LETTER
SENT TO
AAA

**Southern Pennsylvania**

Club Headquarters:
2840 Eastern Boulevard
York, PA 17402
717-600-8900

Automobile Club
Travel Agency
Insurance Agency
717-600-8700 or 800-222-1469

August 26, 2002

Frank Dudas
AAA East/Central
5900 Baum Blvd.
Pittsburgh, Pa. 15206

Re: Bill Esser damage complaint

Dear Frank,

I would like to take this opportunity to respond to Mr. Esser's letter to your club. First I would like to tell you that Bigler Boyz is an ERS contractor for our club, but they are not an AAR facility.

As you can see in the call detail Mr. Esser diagnosed the problem as a blown head gasket and did not know where he wanted the car towed. Our club did not recommend Bigler Boyz. The driver told Mr. Esser that his shop could do the repairs and Mr. Esser elected to have the car towed to Bigler Boyz.

Bigler Boyz found a cracked head, which was replaced. Both head gaskets were replaced. The EGR tube was cracked when Bigler Boyz removed it and since Mr. Esser was looking for an economical job the tube was TIG welded and reinstalled. When the engine was disassembled the valve cover was found to be cracked and held on with an assortment of various size bolts. Since the valve cover did not leak it was reused. Teflon tape was not used on the head bolts. Permatex teflon thread sealant was used on the head bolts. Bigler Boyz shop uses this sealant on all head bolts and bolts where liquids have a chance of leaking past the threads. The only exception is where the application specifically calls for dry head bolt installation. In fact, any liquid applied to the threads of a bolt would result in slightly higher torque since the liquid would act as lubricant on the threads. Bigler Boyz also found some spark plugs loose in the heads but did not report this to Mr. Esser because it is not uncommon to find loose spark plugs in an engine that was overheated. I'm not sure about the statement about the fuel lines not being coupled properly. Being a Ford factory trained technician myself, I know that if the fuel lines were not coupled properly no fuel would flow to the fuel injectors and the engine would not run. I see on the invoice from Fairview Service Center not just the new head but both heads were resurfaced. This is not uncommon after an engine has overheated. I also see that Fairview Service Center replaced the thermostat.

It seems that this engine has been apart before Bigler Boyz repaired it. It may have a history of overheating due to the fact that Bigler Boyz found the cooling system full of

Stop By One Of Our Branch Offices Or Visit Our Web Site at: www.aaasp.com

BEDFORD
317 S. Richard St.
Bedford, PA 15522

CHAMBERSBURG
230 Lincoln Way East
Chambersburg, PA 17201

HANOVER
Clearview Shopping Center
Hanover, PA 17331

JOHNSTOWN
Galleria Mall
Johnstown, PA 15904

LOCK HAVEN
12 Oriole Road
Lock Haven, PA 17745

STATE COLLEGE
200 Shiloh Road
State College, PA 16801

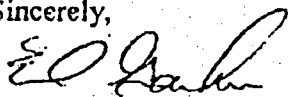
WAYNESBORO
2021 E. Main St.
Waynesboro, PA 17268

stop leak. My guess is that the real problem has not yet been found and corrected. I believe that there is a good chance that the problem will reoccur.

Please understand that the details I have given you are from the management and staff at Bigler Boyz, there is no evidence to substantiate their story. Bigler Boyz service order is not detailed enough, but does show 16 hours of labor. Bigler Boyz story is that the 16 hours includes the time to weld the EGR tube, flush the stop leak from the cooling system, and so on.

If I can be of any further assistance please don't hesitate to contact me.

Sincerely,



Ed Gouker

Automotive Services / Traffic Safety Manager
ASE Certified Master Auto Technician

October 1, 2002

To Whom It May Concern:

This is a letter in response to the one submitted through the AAA Automotive Services / Traffic Safety Manager by Bigler Boyz Auto Center.

Fairview Service Center has serviced Mr. Esser's vehicle since he purchased the vehicle in November of 1997. I am submitting copies of the service records so that you can see our familiarity with this vehicle and the work that has been done on this vehicle.

In the letter submitted by the AAA Automotive Service Manager it states that the owners of Bigler Boyz claim that the automobile must have been apart previous to the time that they worked on it and that all of the damaged parts were on the car before they started working on it. The fact of the matter is that Fairview Service Center had worked on the vehicle as recently as 06/28/02 and I can say without a doubt that the vehicle had never been apart in the manner in which they implied and that the parts which they claim were damaged previous to Bigler Boyz's working on it were in fact in full working condition.

I have supplied Mr. Esser with all the parts that had to be replaced so that he could see for himself what I had documented on our service invoice. I also told him, for example, if he were to examine the bolts that were taken off the damaged valve covers that he would see that 1) they were the wrong bolt head configuration and 2) that the bolts were brand new and showed very little if any road wear what so ever, therefore almost totally eliminating the chance that these bolts were on the vehicle for any length of time at all.

In closing I would like to state, if there are any question concerning the maintenance on this vehicle or it's condition prior to July 12th 2002, that I would be more than happy to answer them in letter or if need be in person to finalize this situation.

Sincerely

Michael Platz



Owner:

Fairview Service Center

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

William E. Esser

vs.

Bigler Boyz

No. 2003-00074-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 13th day of November, 2003, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Joseph Colavecchi, Esquire

David P. King, Esquire

Theron G. Noble, Esquire

Chairman

Sworn to and subscribed before me this

November 13, 2003

Prothonotary

FILED

NOV 13 2003

William A. Shaw

Prothonotary/Clerk of Courts

Notice to
Atty's Bell,
ORDS

AWARD OF ARBITRATORS

Now, this 13 day of November, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

Judgment for Plaintiff in the amount
\$1192.13 plus interest from September 1, st 2002
calculated at the rate of 6% plus Recured costs.

Chairman

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 14th day of November, 2003, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

Prothonotary

By

William A. Shaw

COPY

William E. Esser

:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

Vs.

:

No. 2003-00074-CD

Bigler Boyz

:

NOTICE OF AWARD

TO: F. CORTEZ BELL III

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on November 13, 2003 and have docketed the award on November 14, 2003:

Judgment for Plaintiff in the amount of \$1,192.13 plus interest from September 1, 2002, calculated at the rate of 6% plus record costs.

William A. Shaw

Prothonotary

By

November 13, 2003

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

COPY

William E. Esser

:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

Vs.

:

No. 2003-00074-CD

Bigler Boyz

:

NOTICE OF AWARD

TO: GABRIEL J. OROS

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on November 13, 2003 and have docketed the award on November 14, 2003:

Judgment for Plaintiff in the amount of \$1,192.13 plus interest from September 1, 2002, calculated at the rate of 6% plus record costs.

William A. Shaw

Prothonotary

By

November 13, 2003

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,
Plaintiff

V.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,
Defendants

: No. 2003-74-CD
:
:
: Type of Case: Civil
:
:
: Type of Pleading:
: Affidavit pursuant to Local
: Rule 1308(a) (1)
:
: Filed on Behalf of:
: Richard D. Heberling, t/d/b/a
: Bigler Boyz Street & Off Road
: Toyz
:
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
:
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P. O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:
:

FILED

DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM E. ESSER and KAREN :
ESSER, his wife, :
Plaintiffs :

vs. :

No. 2003-74-CD

RICHARD D. HEBERLING, t/d/b/a :
BIGLER BOYZ STREET & OFF ROAD :
TOYZ, :
Defendant :

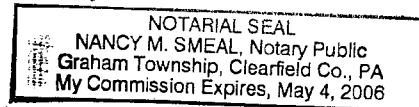
Affidavit pursuant to Local Rule 1308(a)(1)

I, F. Cortez Bell, III, Esquire, attorney for the Defendant, Richard D. Heberling, t/d/b/a Bigler Boyz Street & Off Road Toyz, do hereby certify, swear and affirm that the Appeal from the Award of the Board of Arbitration to the Court of Common Pleas of Clearfield County is not taken for the purpose of delay but rather is taken as it is believed and therefore averred that the Board of Arbitration erred by granting an award in favor of the Plaintiff in the amount of \$1,192.13.

F. Cortez Bell, III
F. Cortez Bell, III, Esquire

Sworn to and subscribed before
me this 15th day of December,
2003.

Nancy M. Smeal



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

WILLIAM E. ESSER and KAREN :
ESSER, his wife, :
Plaintiffs :

vs. :

No. 2003-74-CD

RICHARD D. HEBERLING, t/d/b/a :
BIGLER BOYZ STREET & OFF ROAD :
TOYZ, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing Affidavit pursuant to Local Rule 1308(a)(1) upon the following persons by mailing such copy first class mail, postage prepaid to:

Gabriel J. Oros, Esquire
MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1498

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

Date: December 15, 2003

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 03-74-CD

WILLIAM E. ESSER and KAREN
ESSER, his wife,
Plaintiff

VS.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,
Defendant

AFFIDAVIT PURSUANT TO LOCAL RULE
1308(a)(1)

William A Shaw
Prothonotary, Clerk of Court

FILED
of 11:21 AM
DEC 15 2003
Att'y Bell

BELL, SILBERBLATT & WOOD
ATTORNEYS AT LAW
318 EAST LOCUST STREET
P.O. BOX 670
CLEARFIELD, PA. 16830

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

WILLIAM E. ESSER and KAREN
ESSER, his wife,
Plaintiff

V.

RICHARD D. HEBERLING, t/d/b/a
BIGLER BOYZ STREET & OFF ROAD
TOYZ,
Defendants

: No. 2003-74-CD
:
:
: Type of Case: Civil
:
:
: Type of Pleading:
: Notice of Appeal
:
: Filed on Behalf of:
: Richard D. Heberling, t/d/b/a
: Bigler Boyz Street & Off Road
: Toyz
:
: Counsel of Record for This
: Party:
: F. Cortez Bell, III, Esq.
: I.D. #30183
:
: BELL, SILBERBLATT & WOOD
: 318 East Locust Street
: P. O. Box 670
: Clearfield, PA 16830
: Telephone: (814) 765-5537
:
:
:

FILED

DEC 15 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

WILLIAM E. ESSER and KAREN :
ESSER, his wife, :
Plaintiffs :
vs. : No. 2003-74-CD
RICHARD D. HEBERLING, t/d/b/a :
BIGLER BOYZ STREET & OFF ROAD :
TOYZ, :
Defendant :

NOTICE OF APPEAL

TO THE PROTHONOTARY:

Notice is given that RICHARD D. HEBERLING, t/d/b/a BIGLER BOYS STREET & OFF ROAD TOYZ, Defendant, appeals from the award of the Board of Arbitrators entered in this case on November 13, 2003. Attached hereto and incorporated by reference is a copy of said award.

A jury trial is demanded ☒

I hereby certify that:

(1) the compensation of the arbitrators has been paid.

Respectfully submitted,
BELL, SILBERBLATT & WOOD
By,

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

RECEIVED NOV 17 2003

96-31-C

1

William E. Esser

Vs.

Bigler Boyz

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY
No. 2003-00074-CD

NOTICE OF AWARD

TO: F. CORTEZ BELL III

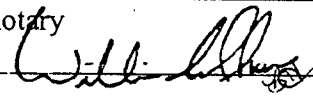
You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on November 13, 2003 and have docketed the award on November 14, 2003:

Judgment for Plaintiff in the amount of \$1,192.13 plus interest from September 1, 2002, calculated at the rate of 6% plus record costs.

William A. Shaw

Prothonotary

By



November 13, 2003

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

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

WILLIAM E. ESSER and KAREN :
ESSER, his wife, :
Plaintiffs :
vs. : No. 2003-74-CD
RICHARD D. HEBERLING, t/d/b/a :
BIGLER BOYZ STREET & OFF ROAD :
TOYZ, :
Defendant :

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the
foregoing Notice of Appeal upon the following persons by mailing
such copy first class mail, postage prepaid to:

Gabriel J. Oros, Esquire
MacDonald, Illig, Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1498

F. Cortez Bell, III
F. Cortez Bell, III, Esquire
Attorney for Defendant

Date: December 15, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA CIVIL DIVISION No. 03-74-CD	
WILLIAM E. ESSER and KAREN ESSER, his wife, Plaintiff	vs.
RICHARD D. HEBERLING, t/a/b/a BIGLER BOYZ STREET & OFF ROAD TOYZ, Defendant	
NOTICE OF APPEAL	
<div>FILED 5 cc. Atty Bell 01/11/2004 DEC 15 2003 Atty pd. 300.00 copy to JA</div> <div>William A. Shaw Prothonotary/Clerk of Courts</div>	
BELL, SILBERBLATT & WOOD ATTORNEYS AT LAW 318 EAST LOCUST STREET P. O. BOX 670 CLEARFIELD, PA. 16830	

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

WILLIAM E. ESSER and
KAREN ESSER, his wife
Plaintiff

v.

RICHARD D. HEBERLING, t/d/b/a BIGLER
BOYZ STREET & OFF ROAD TOYZ,
Defendant

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

) CIVIL ACTION - LAW

) FILE NO. 2003-74-CD
)

FILED

MAR 29 2004

William A. Shaw
Prothonotary

PRAECIPE AND POWER OF ATTORNEY FOR SATISFACTION AND/OR TERMINATION

TO THE PROTHONOTARY/CLERK OF SAID COURT:

You are hereby authorized, empowered, and directed to enter, as indicated, the following on the records thereof:

- A. 1. _____ The within suit is Settled, Discontinued, Ended and costs paid.
2. XX The within suit is Settled, Discontinued, Ended WITH Prejudice and costs paid.
3. _____ The within suit is Settled, Discontinued, Ended WITHOUT Prejudice and costs paid.

* * * * *

- B. 1. _____ Satisfaction of the Award in the within suit is acknowledged.
2. _____ Satisfaction of Judgment, with interest and costs, in the within matter is acknowledged.

* * * * *

C. _____ Other:

DATE: March 25, 2004

WITNESS (if signer is other than a registered attorney):

Signature of authorizing party

Gabriel J. Oros, Esquire
Attorney or Notary

Type or print name of above signer

COST PAYMENT VERIFICATION

I UNDERSTAND THAT THE ABOVE ACTION CANNOT BE FILED AND DOCKETED UNTIL ALL COSTS HAVE BEEN PAID, INCLUDING SHERIFF'S COSTS; AND HEREBY VERIFY THAT ALL COSTS HAVE BEEN PAID. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE MADE SUBJECT TO THE PENALTIES OF 18 PA.C.S. SEC. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

(Rev. 4/92) Signature

FILED

*in 1:35 PM sent to every room.
copy to CA*

MAR 29 2004

ES

William A. Shaw
Prothonotary

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

CIVIL DIVISION

William E. Esser

Vs.

No. 2003-00074-CD

Bigler Boyz

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 March 29, 2004, marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$405.00 have been paid in full by Attorneys.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 29th day of March A.D. 2004.

William A. Shaw, Prothonotary



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

September 2, 2003

Gabriel J. Oros, Esquire
MacDonald, Illig, Jones & Britton, LLP
100 State Street, Suite 700
Erie, PA 16507-1459

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
Post Office Box 670
Clearfield, PA 16830

RE: WILLIAM E. ESSER, al
vs.
RICHARD D. HEBERLING, al
No. 03-74-CD

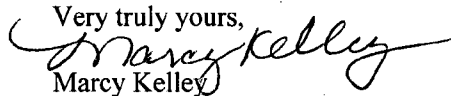
Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held **Thursday, November 13, 2003.** The following have been appointed to the Board of Arbitrators:

Joseph Colavecchi, Esquire
David P. King, Esquire
Theron G. Noble, Esquire
Warren B. Mikesell, II, Esquire
Brian K. Marshall, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration Hearing.

Very truly yours,

Marcy Kelley
Deputy Court Administrator



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

September 12, 2003

Gabriel J. Oros, Esquire
MacDonald, Illig, Jones & Britton, LLP
100 State Street, Suite 700
Erie, PA 16507-1459

F. Cortez Bell, III, Esquire
Bell, Silberblatt & Wood
Post Office Box 670
Clearfield, PA 16830

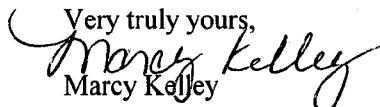
RE: WILLIAM E. ESSER, al
vs.
RICHARD D. HEBERLING, al
No. 03-74-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held **Thursday, November 13, 2003 at 1:30 P.M.** The following have been appointed as Arbitrators:

Joseph Colavecchi, Esquire
David P. King, Esquire
Theron G. Noble, Esquire

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

Very truly yours,

Marcy Kelley
Deputy Court Administrator

cc: Joseph Colavecchi, Esquire
David P. King, Esquire
Theron G. Noble, Esquire