

U3-129-CD
ERMA MORRIS et al -vs- DONALD B. LUZIER

Date: 09/29/2005

Time: 09:03 AM

Page 1 of 3

Clearfield County Court of Common Pleas

User: LBENDER

ROA Report

Case: 2003-00129-CD

Current Judge: Fredric Joseph Ammerman

Elma Morris, Sandy Jones, Richard E. Hugar vs. Donald B. Luzier

Civil Other

Date	Judge	
01/30/2003	X Filing: Civil Complaint Paid by: Colavecchi, Joseph (attorney for Morris, Elma) Receipt number: 1854797 Dated: 01/30/2003 Amount: \$85.00 (Check) Three CC Attorney Colavecchi	No Judge
02/05/2003	X Praeclipe For Entry Of Appearance on Behalf of Defendant, DONALD B. LUZIER. filed by s/James M. Horne, Esquire Certificate of Service no cc	No Judge
02/24/2003	X Defendant Donald B. Luzier's Preliminary Objections To Plaintiffs' Complaint. filed by s/James M. Horne, Esq. Certificate of Service no cc	No Judge
03/05/2003	X Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
03/27/2003	X Certificate of Service, filed by Atty. Oliver no Cert. Copies. Served copy of Notice of Intent to Serve Subpoenas Directed to Clearfield EMS.	No Judge
04/03/2003	X Certificate of Service, Subpoena Duces Tecum Directed to Clearfield Hospital upon JOSEPH COLAVECCHI, ESQ. s/Katherine V. Oliver, Esquire no cc X Certificate of Service, Subpoena Duces Tecum Directed to Clearfield EMS UPON JOSEPH COLAVECCHI, ESQ. s/Katherine V. Oliver, Esq. no cc	John K. Reilly Jr.
	X Certificate of Service, Subpoena Duces Tecum Directed to Lawrence Township Fire Company No. 1 upon JOSEPH COLAVECCHI, ESQ. s/Katherine V. Oliver, Esq. no cc	John K. Reilly Jr.
	X Certificate Prerequisite To Service Of Subpoenas Pursuant To Rule 4009.22. filed by s/Katherine V. Oliver, Esquire no cc	John K. Reilly Jr.
04/29/2003	X First Amended Complaint. filed by s/Joseph Colavecchi, Esq. Verification s/Elma Morris s/Sandy Jones 2 cc Atty Colavecchi	John K. Reilly Jr.
06/13/2003	X Defendant Donald B. Luzier's Preliminary Objections to Plaintiffs' Amended Complaint, filed by s/Katherine V. Oliver, Esq. No CC	John K. Reilly Jr.
07/11/2003	X Second Amended Complaint. filed by s/Joseph Colavecchi, Esquire Verification s/Elma Morris s/Sandy Jones 2 cc Atty Colavecchi	John K. Reilly Jr.
08/20/2003	X Defendant Donald B. Luzier's Answer with New Matter to Plaintiffs' Second Amended Complaint. No CC.	John K. Reilly Jr.
08/26/2003	X Reply to New Matter filed by Atty. Colavecchi. 3 CC to Atty.	John K. Reilly Jr.
08/28/2003	X Certificate of Service, Defendant's Second Request For Production of Documents and Tangible Things Directed to Plaintiffs upon: Joseph Colavecchi, Esq. filed by s/Katherine V. Oliver, Esq. no cc X Certificate of Service, Defendant's Interrogatories and Request for Production of Documents Directed to Plaintiff (Set One) upon: Joseph Colavecchi, Esq. filed by s/Katherine V. Oliver, Esq. no cc	John K. Reilly Jr.
12/10/2003	X Certificate of Service of Notice of Intent to Serve Subpoena Directed to Donald E. Conrad, D.O. upon: JOSEPH COLAVECCHI, ESQ. filed by, s/Katherine V. Oliver, Esq. no cc	John K. Reilly Jr.
12/15/2003	X Certificate of Service Filed by Atty. Oliver Served copy of Subpoena Duces Tecum directed to Donald E. Conrad, D.O., to Atty. Colavecchi	John K. Reilly Jr.

Date: 09/29/2005

Time: 09:03 AM

Page 2 of 3

Clearfield County Court of Common Pleas

ROA Report

Case: 2003-00129-CD

User: LBENDER

Current Judge: Fredric Joseph Ammerman

Elma Morris, Sandy Jones, Richard E. Hugar vs. Donald B. Luzier

Civil Other

Date		Judge
12/15/2003	✓ Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22, filed by Atty. Oliver	John K. Reilly Jr.
01/22/2004	✓ Certificate of Service, Defendant's Notices of Taking Plaintiffs' Deposition upon Joseph Colavecchi, Esq. filed by, s/Katherine V. Oliver, Esquire no cc	John K. Reilly Jr.
02/04/2004	✓ Certificate of Service, Defendant's Notices of Rescheduled Depositions of Plaintiffs upon Joseph Colavecchi, Esquire filed by, s/Katherine V. Oliver, Esquire no cc	John K. Reilly Jr.
06/17/2004	✓ Notice of Videotape Deposition of Donald E. Conrad, D.O., filed by s/Joseph Colavecchi, Esq. No CC	John K. Reilly Jr.
06/21/2004	✓ Certificate of Service, Defendant's Notice of Intent to Serve Subpoenas for John K. Reilly Jr. ✓ Production of Documents and Things upon Joseph Colavecchi, Esq., filed by s/Katherine V. Oliver, Esq. No CC	John K. Reilly Jr.
06/23/2004	✓ Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.21, filed by Atty. Oliver ✓ Certificate of Service, filed by Atty. Oliver Served Subpoenas Directed to Blair Medical Associates, Mark E. Lipitz. no cert. copies.	John K. Reilly Jr.
07/02/2004	✓ Certificate of Service, Defendant Donald B Luzier's requests for Admission with Corresponding Interrogatories and Request for Productoin of Documents for Answer by Plaintiff, mailed by US 1st Class Mail, postage prepaid, upon Joseph Colavecchi, Colavecchi & Colavecchi, filed by Katherine V Oliver, Attys for Defendant Donald B Luzier. No CC	John K. Reilly Jr.
07/22/2004	✓ Defendant Donald B. Luzier's Requests for Admission with Corresponding Interrogatories and Request for Production of Documents for Answer by Plaintiff, filed by Atty. Oliver As to Answers: s/Joseph Colavecchi, Esq.	John K. Reilly Jr.
02/09/2005	✓ Order, AND NOW, this 9th day of Feb., 2005, it is the ORDER of the Court Fredric Joseph Ammerman that a status conference has been scheduled for Wednesday, March 2, 2005 at 9:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. CC to Sughrue, Oliver, & J. Colavecchi	
03/03/2005	✓ Order, NOW, this 2nd day of Feb., 2005, following status conference among the Court and counsel it is the ORDER of this Court as follows: (see original). BY THE COURT: /s/ Fredric J. Ammerman, Judge. CC to Atty Colavecchi & Atty Horne	Fredric Joseph Ammerman
03/04/2005	✓ Amended Order, NOW, this 2nd day of March, 2005, following status conference among the court and counsel, it is the ORDER of this Court as follows: (see original). BY THE COURT, /s/ Fredric J. Ammerman, President Judge. 1CC Atty: J. Colavecchi, J. Horne	Fredric Joseph Ammerman
05/03/2005	✓ Motion to Extend Time for Taking of Medical Deposition and Related Matters, filed by s/John Sughrue, Esq. Four CC Attorney Sughrue	Fredric Joseph Ammerman
05/04/2005	✓ Rule, AND NOW, this 4th day of May, 2005, upon consideration of the Plaintiffs' foregoing Motion to Extend Time, a Rule is issued upon Defendant to Show Cause why the Motion should not be granted. Rule Returnable the 24th day of May, 2005, for written response. BY THE COURT: /s/ Fredric J. Ammerman, Judge. 2CC to Atty Sughrue	Fredric Joseph Ammerman

Civil Other

Date	Judge
05/17/2005	✓ Order, AND NOW, this 16th day of May, 2005, upon Motion of Plaintiffs to Fredric Joseph Ammerman extend the pre-trial period in the above-captioned matter and with agreement of Defense Counsel, it is Ordered as follows (see original). BY THE COURT: /Fredric J. Ammerman, President Judge. 2CC Atty Sughrue, Oliver.
08/26/2005	✓ Defendant's Motion for Summary Judgment, filed by Atty. Oliver no cert. Fredric Joseph Ammerman copies. (filing approx. 1" thick and not bound or stapled.)
08/29/2005	✓ ORDER FILED. 2 Cert. w/memo & letter to Atty. Fredric Joseph Ammerman NOW, this 29th day of Aug., 2005, Re: Defendant's Motion on Summary Judgment, Hearing to be helded on Sept. 20th, 2005.
08/31/2005	✓ Affidavit of Service filed. That a true and correct copy of the Court Order dated August 29, 2005, in the above-captioned case was served upon John Sughrue Esq., filed by s/ Katherine V. Oliver Esq. No CC.
09/07/2005	✓ Motion For Continuance, filed by s/ Joseph Colavecchi, Esquire. No CC Fredric Joseph Ammerman ✓ Order, NOW, this 6th day of Sept., 2005, upon consideration of Motion for Continuance, the Argument on the motion for Summary Judgment is scheduled to be held on the 3rd day of October, 2005, at 9:00 a.m. at the Clfd. Co. Courthouse. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC atty. J. Colavecchi
09/09/2005	✓ Defendant's Response to Plaintiffs' Motion for Continuance, filed by s/ Katherine V. Oliver Esq. No CC. Fredric Joseph Ammerman
09/21/2005	✓ Defendant's Motion In Limine Re Testimony of Donald Conrad, M.D., filed by s/ Katherine V. Oliver, Esquire. No CC Fredric Joseph Ammerman ✓ Praeclipe For Briefing Schedule, filed by s/ Katherine V. Oliver, Esquire. Fredric Joseph Ammerman no cc
09/22/2005	✓ Answer to Defendant's Motion for Summary Judgment, filed by s/ Joseph Colavecchi Esq. No CC. Fredric Joseph Ammerman ✓ Certificate of Service, filed. That on the 21st day of September 2005, a true and correct copy of an Answer to Defendant's Motion for Summary Judgment in the above matter was served on Katherine V. Oliver Esq. No CC. Fredric Joseph Ammerman ✓ Order AND NOW, this 21st day of September, 2005, upon consideration of the foregoing motion, it is hereby ORDERED that: (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested: (2) the respondent shall file an answer to the motion within 10 days of this date; (3) the motion shall be decided under Pa.R.C.P. 206.7; (4) argument shall be held on October 3, 2005, in Courtroom No. 1 of the Clearfield County @ 9:00 a.m. Courthouse; and (5) notice of the entry of this order shall be provided to all parties by the moving party. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 4CC atty Oliver. Fredric Joseph Ammerman
09/26/2005	✓ Certificate of Service, filed. That a true and correct copy of the Order of Court dated September 21, 2005 regarding Defendant's Motion in Limine re Testimony of Donald Conrad, M.D. in the above-referenced matter was mailed to Joseph Colavecchi Esq., and John Sughrue Esq., on September 23, 2005, filed by s/ Katherine V. Oliver Esq. No CC. Fredric Joseph Ammerman

Date: 12/09/2005

Time: 10:59 AM

Page 1 of 1

Clearfield County Court of Common Pleas

ROA Report

Case: 2003-00129-CD

User: LBENDER

Current Judge: Fredric Joseph Ammerman

Elma Morris, Sandy Jones, Richard E. Hugar vs. Donald B. Luzier

Civil Other

Date	Selected Items	Judge
10/03/2005	✓ Plaintiff's Motion For Extension of Time to File Answer to Defendant's Motion in Limine, filed by s/ John Sughrue, Esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman
10/04/2005	✓ Order AND NOW, this 4th day of October, 2005, upon consideration of Plaintiff's Motion to Extend Time Within Which to File Answer to Motion in Limine, it is ORDERED that the time for filing such answer shall be and is hereby extended to twenty days following the date on which the Court Adjudicates Defendant's outstanding Motion for Summary Judgment. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty Sughrue.	Fredric Joseph Ammerman
10/05/2005	✓ Order NOW, this 3rd day of October, 2005, following argument on the Defendant's Motion for Summary Judgement and in regard to the Defendant's Motion in Limine, it is the ORDER of this Court as follows: The Plaintiff shall have no more than twenty (20) days from this date in which to file and Answer to the Defendant's Motion In Limine; The Court will not rule upon or hear further argument relative the Motion in Limine until such time as the Court issues a decision on the Motion for Summary Judgment; In the event the Court does not grant the Motion for Summary Judgment, counsel shall thereafter request the Court to Schedule argument on the Motion in Limine and any other motions which may been filed in the interim: and Counsel for the Plaintiff shall have no more than ten (10) days from this date in which to file and affidavit with the record relative any testimony of Eunice Fetter. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: J. Colavecchi and J. Horne.	Fredric Joseph Ammerman
10/10/2005	✓ Affidavit, filed by s/ Joseph Colavecchi Esq. No CC.	Fredric Joseph Ammerman
10/21/2005	✓ Plaintiffs' Answer to Defendant's Motion in Limine Re Testimony of Donald Conrad, M.D. filed by s/ Joseph Colavecchi Esq. NO CC.	Fredric Joseph Ammerman
10/25/2005	✓ Certificate of Service, filed. Hereby certify that a true and correct copy of Defendant's Supplemental Brief in Support of Motion for Summary Judgment in the above-captioned matter was mailed to John Sughrue Esq and Joseph Colavecchi Esq. on October 24, 2005, filed by s/ Katherine V. Oliver Esq. No CC.	Fredric Joseph Ammerman
11/09/2005	✓ Order NOW, THIS 8th day of November 2005, upon consideration of the Defendant's Motion for Summary Judgment, the oral argument presented by counsel, the parties' briefs and the documents produced as part of the record in determining the propriety of summary judgment, it is the ORDER of this Court as follows: see oringnal for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: J. Colavecchi and Horne	Fredric Joseph Ammerman

Date: 12/07/2005

Clearfield County Court of Common Pleas

User: LBENDER

Time: 11:19 AM

Hearings by Judge

Page 13 of 19

CT COMMON PLEAS,

All Case Types

From 12/12/2005 08:00 AM to 12/16/2005 05:00 PM

Fredric Joseph Ammerman

Begin Date and Time End Date and Time

Jones, Ruth

Days to Speedy Trial:

Speedy Trial Date:

Dobish, Norman G.

Days to Speedy Trial:

Speedy Trial Date:

Vereshack, Joseph P.

Days to Speedy Trial:

Speedy Trial Date:

Vereshack, Amy L.

Days to Speedy Trial:

Speedy Trial Date:

McLain, Richard S.

Days to Speedy Trial:

Speedy Trial Date:

McLain, Elizabeth

Days to Speedy Trial:

Speedy Trial Date:

Fyock, Robert

Days to Speedy Trial:

Speedy Trial Date:

Fyock, Kim M.

Days to Speedy Trial:

Speedy Trial Date:

Kopilchak, Walter M.

Days to Speedy Trial:

Speedy Trial Date:

Kopilchak, Eleanor

Days to Speedy Trial:

Speedy Trial Date:

Evcic, Edward P.

Days to Speedy Trial:

Speedy Trial Date:

Neals, Donna P.

Days to Speedy Trial:

Speedy Trial Date:

Alias: Donna Richardson (1 of 1)

Dipko, Gerald J.

Days to Speedy Trial:

Speedy Trial Date:

Bartek, Katerina

Days to Speedy Trial:

Speedy Trial Date:

Maines, Jered W.

Days to Speedy Trial:

Speedy Trial Date:

Maines, Brandy M.

Days to Speedy Trial:

Speedy Trial Date:

Sahlaney, John J.

Days to Speedy Trial:

Speedy Trial Date:

Sahlaney, Elizabeth Ann

Days to Speedy Trial:

Speedy Trial Date:

Cox, James

Days to Speedy Trial:

Speedy Trial Date:

Cox, Beth

Days to Speedy Trial:

Speedy Trial Date:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE
OF RICHARD E. HUGAR, Deceased,
Plaintiffs

CIVIL DIVISION

No. 01-03-129 - CD

Vs.

DONALD B. LUZIER,
Defendant

COMPLAINT

Filed on Behalf of:

Plaintiffs, ELMA MORRIS and
SANDY JONES

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

11/10/03
W. J. Shaw
- attorney

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
:
Vs. :
:
DONALD B. LUZIER, :
Defendant :
:

NOTICE

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

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

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
:
Vs. :
:
DONALD B. LUZIER, :
Defendant :
:

COMPLAINT

1. Plaintiffs are Elma Morris and Sandy Jones, Co-Executrices under the Will of Richard E. Hugar, deceased, having addresses as follows:

a. Elma Morris, 317 Daisy Street, Clearfield, Pennsylvania 16830;

b. Sandy Jones, General Delivery, Woodland, Pennsylvania 16881.

c. Richard E. Hugar formerly resided at R.R. #1, Box 316, Clearfield, Pennsylvania 16830. Richard E. Hugar passed away on January 10, 2003. Subsequently Elma Morris and Sandy Jones were appointed Co-Executrices under the Last Will of Richard E. Hugar, deceased, by Order of the Office of the Register of Wills for Clearfield County, Pennsylvania, said Order dated January 13, 2003.

2. Defendant is Donald B. Luzier residing at R.R. #1, Box 298, Mann Road, Clearfield, Pennsylvania 16830.

3. On November 20, 2002, at approximately 5:40 a.m. Donald B. Luzier was operating a 1997 motor vehicle in Lawrence Township, Clearfield County, Pennsylvania, traveling north along the Martin Street Extension, S.R. 1003.

4. Defendant lost control of his motor vehicle causing him to swerve left and run off the highway and up onto the land owned by Richard E. Hugar and smashed into his house moving it from its foundation. Richard E. Hugar was occupying the house at that time and it is alleged on information and belief that it threw him to the floor and caused shock to him.

5. The injuries and damages hereinafter set forth were caused solely by and were the direct and proximate result of the negligence of Defendant in any or all of the following respects:

- a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;
- b. In failing to have the vehicle under proper control;
- c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the surrounding traffic conditions;
- d. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid hitting the home;
- e. In failing to properly inspect the vehicle to determine any mechanical defects;

f. In failing to have reasonably sufficient traction devices on the wheels of the vehicle to permit the vehicle to stop in time;

g. In crossing the divider line which marked the center of the highway; and,

h. In running completely off the roadway and smashing into the home of Richard E. Hugar.

6. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff sustained various injuries to his bones, muscles, tissues and ligaments, including internal injuries, shock and injury to his nerves and nervous system and other severe and serious injuries.

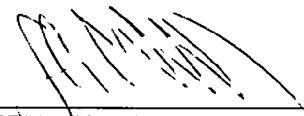
7. As a result of the injuries as aforesaid, Plaintiff has sustained the following damages:

a. Said Plaintiff has been required to expend monies for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;

b. Said Plaintiff has suffered great pain, suffering, inconvenience, embarrassment and mental anguish; and,

c. Said Plaintiff's general health, strength and vitality were impaired.

WHEREFORE, Plaintiffs bring this action against Defendant to recovery damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand Dollars (\$20,000.00).



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

Elma Morris

ELMA MORRIS, Co-Executrix
under the Last Will of Richard
E. Hugar, Deceased

Sandy Jones

SANDY JONES, Co-Executrix
under the Last Will of Richard
E. Hugar, Deceased

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, : TYPE OF PLEADING:
: **PRAECIPE FOR ENTRY**
: **OF APPEARANCE**
:
v. :
:
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
: **DEFENDANT**
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

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

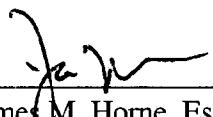
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
:
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of our Praeclipe for Entry of Appearance on behalf the Defendant, in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 4th day of February, 2003, to the attorney of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
(814) 765-1566

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

C-1

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, : TYPE OF PLEADING:
: *Defendant Donald B. Luzier's*
: *Preliminary Objections to Plaintiffs'*
: *Complaint*
: v. :
: DONALD B. LUZIER, : TYPE OF CASE: CIVIL
: Defendant. : FILED ON BEHALF OF:
: : DEFENDANT
: :
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
: FAX#(814) 238-9624

FILED

FEB 24 2003

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :

DEFENDANT DONALD B. LUZIER'S PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT

AND NOW COMES Defendant Donald B. Luzier, by and thorough his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the following Preliminary Objections to Plaintiffs' Complaint.

1. Plaintiffs in the above-captioned motor vehicle negligence action are Elma Morris and Sandy Jones, Co-Executrices of the Estate of Richard E. Hugar, Deceased.
2. The action sounds in motor vehicle negligence, based upon a one vehicle accident that occurred on November 20, 2002.
3. Plaintiffs allege that on that date, Defendant lost control of his motor vehicle on Martin Street in Lawrence Township, Clearfield County, Pennsylvania, and smashed into the home of the late Richard E. Hugar, moving the home from its foundation. (See Compl. ¶¶ 3-4).
4. Defendant believes, and therefore avers, that Mr. Hugar was approximately 92 years old at the time of the accident.

5. Plaintiffs' Complaint states that Mr. Hugar died on January 10, 2003. (Id. at 1(c)). The cause of Mr. Hugar's death is not specified in the Complaint.

6. Plaintiffs allege that Mr. Hugar was thrown to the floor at the time of the accident, and thereby caused "shock." (Id. ¶4).

7. Plaintiffs allege various other injuries to the late Mr. Hugar in vague and ambiguous terms, stating as follows:

"...Plaintiff sustained various injuries to his bones, muscles, tissues, and ligaments, including internal injuries, shock, and injury to his nerves and nervous system and other severe and serious injuries."

(Id. ¶6).

8. Plaintiffs fail to identify with any specificity the injuries they claim their decedent suffered in the November 20, 2002 accident, or even to identify which "bones, muscles, tissues, and ligaments" were affected, or what "internal injuries" Plaintiff's decedent suffered.

9. Plaintiffs further allege that "Plaintiff" has been required to expend monies for surgical and medical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services," that "Plaintiff" has suffered pain, suffering, inconvenience, embarrassment and mental anguish, and that "Plaintiff's" general health, strength, and vitality were impaired. (Id. ¶ 7).

10. Defendant assumes that the reference to "Plaintiff" in the Complaint is intended to refer to Plaintiffs' decedent, Richard E. Hugar. However, Defendant cannot definitively ascertain Plaintiffs' intent in this regard from the Complaint.

11. Moreover, Defendant cannot decipher from Plaintiffs' Complaint whether Plaintiffs claim that the death of Richard E. Hugar was somehow related to the motor vehicle accident at issue, or whether Plaintiffs concede that his death was brought about by other, unrelated causes.

12. Nor can Defendant determine from the Complaint under what authority Plaintiffs bring their action, whether by virtue of the Survivor Act (42 Pa. C.S.A. §8302), or the Wrongful Death Act (42 Pa.C.S. §8301), or both.

13. To plead and prove a prima facie case of negligence, a plaintiff must allege: (1) duty; (2) breach; (3) causation; and (4) injury.

14. Thus, the injuries claimed by Plaintiffs, including whether Plaintiffs claim the death of their decedent as an item of injury, are facts material to their cause of action for motor vehicle negligence.

15. Under Pennsylvania Rule of Civil Procedure 1019(a), a plaintiff is required to set forth the material facts on which a cause of action is based in concise and summary form. See Pa.R.C.P. 1019(a).

16. Plaintiffs' failure to set forth with any specificity the injuries claimed, and their failure to even identify whether they claim the death of Mr. Hugar was caused by or otherwise related to the motor vehicle accident at issue, violates Pa.R.C.P. 1019(a).

17. Plaintiffs' failure to comply with Pa.R.C.P. 1019(a) under the facts and circumstances presented is extremely prejudicial to Defendant, in that Defendant is not even apprised of the scope or magnitude of the injuries

claimed, and Defendant believes, and therefore avers, that this failure would not be easily or readily remedied in the discovery process.

18. Additionally, if, in fact, Plaintiffs claim that the death of Mr. Hugar was related to the accident, and their action is brought pursuant to the wrongful death statute, Plaintiffs are required to plead the facts set forth in Pa.R.C.P. 2204, including Plaintiffs' relationship to the decedent, their right to bring the action, the names and last known addresses of all persons entitled by law to recover damages, their relationship to the decedent, and that the action was brought on their behalf.

19. Thus, if Plaintiffs do contend that Richard Hugar's death is somehow related to the motor vehicle accident, and do purport to bring a wrongful death action, Plaintiffs' Complaint fails to conform to Pa. R.C.P. 2204.

20. In sum, Plaintiffs' Complaint fails to conform with applicable law to the severe prejudice of Defendant, and Defendant therefore requests that Plaintiffs be required to amend their Complaint to set forth a more specific statement of the injuries claimed, including whether Plaintiffs claim that the death of Mr. Hugar was caused by the accident, to specifically identify the statutory authority under which they bring this action, and to comply with Pa.R.C.P. 2204, if appropriate.

WHEREFORE, Defendant respectfully requests that his Preliminary Objections to Plaintiffs' Complaint be granted, and that Plaintiffs be required to file a more specific statement of their claim with respect to the injuries

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

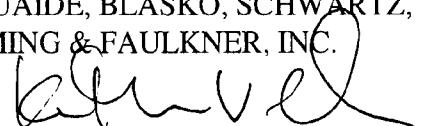
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
:
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Donald B. Luzier's Preliminary Objections to Plaintiffs' Complaint in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 21st day of February, 2003, to the attorney of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
(814) 765-1566

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

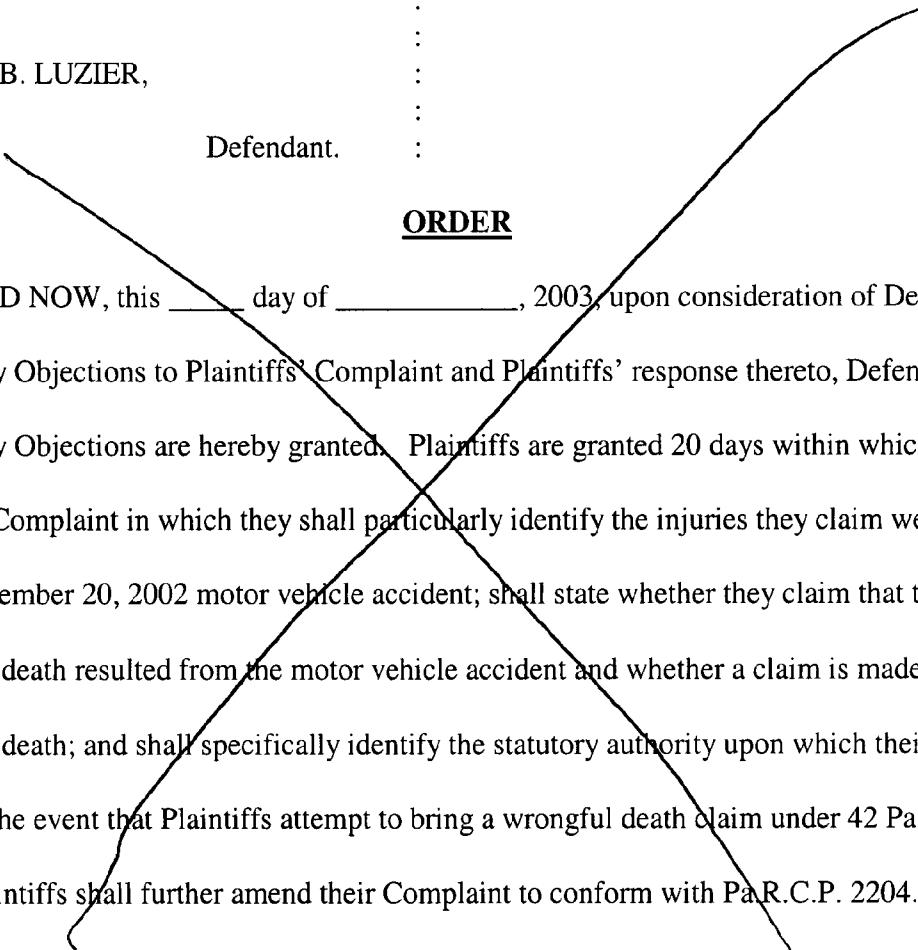
FILED

NC
CC

1854784
FEB 24 2003

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :
: 

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Defendant's Preliminary Objections to Plaintiffs' Complaint and Plaintiffs' response thereto, Defendant's Preliminary Objections are hereby granted. Plaintiffs are granted 20 days within which to file an Amended Complaint in which they shall particularly identify the injuries they claim were caused by the November 20, 2002 motor vehicle accident; shall state whether they claim that their decedent's death resulted from the motor vehicle accident and whether a claim is made for decedent's death; and shall specifically identify the statutory authority upon which their claim is based. In the event that Plaintiffs attempt to bring a wrongful death claim under 42 Pa.C.S. §8302, Plaintiffs shall further amend their Complaint to conform with Pa.R.C.P. 2204.

BY THE COURT:

J.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13616

MORRIS, ELMA & SANDY JONES

03-129-CD

VS.

LUZIER, DONALD B.

COMPLAINT

SHERIFF RETURNS

**NOW FEBRUARY 3, 2003 AT 1:38 PM EST SERVED THE WITHIN COMPLAINT ON
DONALD B. LUZIER, DEFENDANT, AT RESIDENCE, RR 1, BOX 298, MANN RD.,
MT. ZION EXIT, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING
TO DONALD B. LUZIER A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.**

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
20.37	SHFF. HAWKINS PD. BY: ATTY.
10.00	SURCHARGE PD. BY: ATTY.

Sworn to Before Me This

5 Day Of January 2003


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

So Answers,


Chester A. Hawkins
Sheriff

FILED

MAR 04 2003

*E
KED*

**William A. Shaw
Prothonotary**

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Intent to Serve Subpoenas

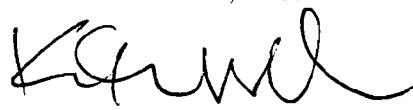
Directed to Clearfield EMS, Lawrence Township Fire Company No. 1, and Clearfield

Hospital in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this
26th day of March, 2003, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____



Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAR 27 2003

William A. Shaw
Prothonotary

FILED

11:09 AM
MAR 27 2003

William A. Shaw
Prothonotary

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

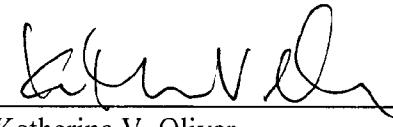
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to Clearfield Hospital in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 2d day of April, 2003 to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver

ATTORNEYS FOR DEFENDANT

DONALD B. LUZIER

811 University Drive
State College, PA 16801
(814) 238-4926

Fax: (814) 238-9624

FILED

APR 03 2003

William A. Shaw
Prothonotary

FILED

NO
CC

10:40-03
APR 03 2003

608

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
Clearfield EMS in the above-captioned matter was mailed by regular mail, postage prepaid, at the
Post Office, State College, Pennsylvania, on this 2d day of April, 2003 to the
attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Katherine V. Oliver

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

APR 03 2003

William A. Shaw
Prothonotary

FILED
MC
MAY 4 2003
E
APR 03 2003
FBI

William A. Shaw
FBI - Boston

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
Lawrence Township Fire Company No. 1 in the above-captioned matter was mailed by regular
mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 26 day of
April, 2003 to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Katherine V. Oliver

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

APR 03 2003

William A. Shaw
Prothonotary

FILED
APR 10 2003
APR 13 2003
60

William A. Shaw
Prothonotary

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

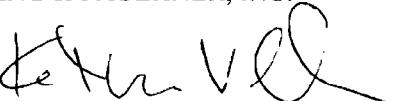
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of RICHARD : No. 03-129-C.D.
E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
: Defendant. :
:

**CERTIFICATE PREREQUISITE TO SERVICE
OF SUBPOENAS PURSUANT TO RULE 4009.22**

As a prerequisite to service of subpoenas for documents and things pursuant to Rule 4009.22, Defendant certifies that:

- (1) a Notice of Intent to Serve Subpoenas with copies of the subpoenas attached thereto was mailed or delivered to each party at least 20 days prior to the date on which the subpoena is sought to be served;
- (2) a copy of the Notice of Intent, including the proposed subpoenas, are attached to this Certificate;
- (3) Plaintiff's attorney has waived the 20 day notice period; and,
- (4) the subpoenas which will be served are identical to the subpoenas which are attached to the Notice of Intent to Serve the Subpoena.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver

I.D. No. 77069

ATTORNEYS FOR DEFENDANT

DONALD B. LUZIER

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

FILED

APR 03 2003

Date: 3-4-2-03

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Elma Morris and Sandy Jones, Co-Executrices
of the Estate of Richard E. Hugar, Deceased
Plaintiff(s)

Vs.

Donald B. Luzier
Defendant(s)

*

*

No. 2003-00129-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: CLEARFIELD EMS

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things: SEE ATTACHED.
811 UNIVERSITY DRIVE, STATE COLLEGE PA 16801

(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

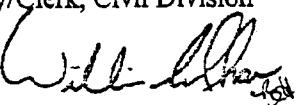
NAME: KATHERINE V. OLIVER, ESQUIRE
ADDRESS: 811 UNIVERSITY DRIVE
STATE COLLEGE PA 16801
TELEPHONE: (814) 238-4926
SUPREME COURT ID #77069
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, March 13, 2003
Seal of the Court



Deputy

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

Clearfield EMS

DOCUMENTS TO BE PRODUCED

Any and all documents/medical records for as long as you retain same and regardless of source on Richard E. Hugar, (SS# 205-05-7236; DOB: 08/01/1911), including but not limited to, treatment invoices and/or payment ledgers, treatment notes, reports, history/physical examination, progress notes, laboratory reports, x-ray/CT scan/MRI reports, consultation reports, physical/occupational/rehabilitation therapy progress notes (inpatient and outpatient), prognosis for future care and treatment, prescription records, any and all correspondence pertaining to Richard Hugar's health status (regardless of source), etc., with respect to an automobile accident involving a motor vehicle collision with a residence located at RR 1, Box 316, Martin Street, Clearfield, PA 16830 on November 20, 2002 at approximately 5:40 a.m.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Elma Morris and Sandy Jones, Co-Executrices
of the Estate of Richard E. Hugar, Deceased
Plaintiff(s)

Vs.

Donald B. Luzier
Defendant(s)

*

*

No. 2003-00129-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: LAWRENCE TOWNSHIP FIRE COMPANY NO. 1
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things: SEE ATTACHED.
811 UNIVERSITY DRIVE, STATE COLLEGE, PA 16801

(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: KATHERINE V. OLIVER, ESQUIRE
ADDRESS: 811 UNIVERSITY DRIVE
STATE COLLEGE PA 16801
TELEPHONE: (814) 238-4926
SUPREME COURT ID # 77069
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, March 13, 2003
Seal of the Court

Deputy


WILLIAM A. SHAW

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

Lawrence Township Fire Company No. 1

DOCUMENTS TO BE PRODUCED

Any and all documents/medical records for as long as you retain same and regardless of source on Richard E. Hugar, (SS# 205-05-7236; DOB: 08/01/1911), including but not limited to, treatment invoices and/or payment ledgers, treatment notes, reports, history/physical examination, progress notes, laboratory reports, x-ray/CT scan/MRI reports, consultation reports, physical/occupational/rehabilitation therapy progress notes (inpatient and outpatient), prognosis for future care and treatment, prescription records, any and all correspondence pertaining to Richard Hugar's health status (regardless of source), etc., with respect to an automobile accident involving a motor vehicle collision with a residence located at RR 1, Box 316, Martin Street, Clearfield, PA 16830 on November 20, 2002 at approximately 5:40 a.m.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Elma Morris and Sandy Jones, Co-Executrices
of the Estate of Richard E. Hugar, Deceased
Plaintiff(s)

Vs.

Donald B. Luzier
Defendant(s)

*

*

No. 2003-00129-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: CLEARFIELD HOSPITAL

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things: SEE ATTACHED.
811 UNIVERSITY DRIVE, STATE COLLEGE, PA 16801

(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: KATHERINE V. OLIVER, ESQUIRE
ADDRESS: 811 UNIVERSITY DRIVE
STATE COLLEGE PA 16801
TELEPHONE: (814) 238-4926
SUPREME COURT ID # 77069
ATTORNEY FOR: DEFENDANT

BY THE COURT:

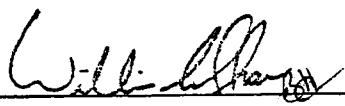
William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, March 13, 2003
Seal of the Court

Deputy

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



Clearfield Hospital

DOCUMENTS TO BE PRODUCED

Any and all medical records for as long as you retain same and regardless of treating physician on Richard E. Hugar, (SS# 205-05-7236; DOB: 08/01/1911), including but not limited to, treatment invoices and/or payment ledgers, treatment notes, reports, history/physical examination, progress notes, laboratory reports, x-ray/CT scan/MRI reports, consultation reports, physical/occupational/rehabilitation therapy progress notes (inpatient and outpatient), prognosis for future care and treatment, prescription records, any and all correspondence pertaining to Richard Hugar.

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

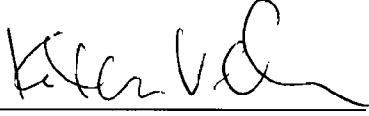
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Certificate Prerequisite to Service of
Subpoenas Directed to Clearfield EMS, Lawrence Township Fire Company No. 1, and
Clearfield Hospital in the above-referenced matter was mailed by U.S. First Class Mail, postage
paid, this 2d day of April, 2003, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED
APR 10 2003
APR 03 2003
KEL
William A. Shaw
Farrington
notary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE
OF RICHARD E. HUGAR, Deceased,
Plaintiffs

Vs.

DONALD B. LUZIER,
Defendant

CIVIL DIVISION

No. 03 - 129 - CD

FIRST AMENDED COMPLAINT

Filed on Behalf of:

Plaintiffs, ELMA MORRIS and
SANDY JONES

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA

APR 29 2003

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
:
Vs. :
:
DONALD B. LUZIER, :
Defendant :

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this First Amended 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 First Amended 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.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the Estate of : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
: vs. :
DONALD B. LUZIER, :
Defendant :
:

FIRST AMENDED COMPLAINT

1. Plaintiffs are Elma Morris and Sandy Jones, Co-Executrices under the Last Will of Richard E. Hugar, deceased, having addresses as follows:

a. Elma Morris, 317 Daisy Street, Clearfield, Pennsylvania, 16830;

b. Sandy Jones, General Delivery, Woodland, Pennsylvania, 16881.

c. Richard E. Hugar formerly resided at R.R. #1, Box 316, Clearfield, Pennsylvania, 16830. Richard E. Hugar passed away on January 10, 2003. Subsequently, Elma Morris and Sandy Jones were appointed Co-Executrices under the Last Will of Richard E. Hugar, deceased, by Order of the Office of the Register of Wills for Clearfield County, Pennsylvania, said Order dated January 13, 2003.

2. Defendant is Donald B. Luzier residing at R.R. #1, Box 298, Mann Road, Clearfield, Pennsylvania, 16830.

3. On November 20, 2002, at approximately 5:40 a.m., Donald B. Luzier was operating a 1997 motor vehicle in Lawrence Township, Clearfield County, Pennsylvania, traveling north along the Martin Street Extension, S.R. 1003.

4. Defendant lost control of his motor vehicle causing him to swerve left and run off the highway and up onto the land owned by Richard E. Hugar and smashed into his house moving it from its foundation. Richard E. Hugar was occupying the house at that time and it is alleged on information and belief that it threw him to the floor and caused shock to him.

5. The injuries and damages hereinafter set forth were caused solely by and were the direct and proximate result of the negligence of Defendant in any or all of the following respects:

- a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;
- b. In failing to have the vehicle under proper control;
- c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the surrounding traffic conditions;
- d. In failing to operate the brakes in such manner so that the vehicle could be stopped in time to avoid hitting the home;
- e. In failing to properly inspect the vehicle to determine any mechanical defects;

f. In failing to have reasonably sufficient traction devices on the wheels of the vehicle to permit the vehicle to stop in time;

g. In crossing the divider line which marked the center of the highway; and

h. In running completely off the roadway and smashing into the home of Richard E. Hugar.

COUNT I

SURVIVAL ACTION

Paragraphs 1 through 5 of the First Amended Complaint are incorporated by reference as if set forth at length.

6. Plaintiffs bring this survival action under 20 Pa.C.S. 3373 and 42 Pa.C.S. 8302.

7. As a direct and proximate result of the aforesaid acts of negligence, decedent suffered and Defendant is liable to Plaintiffs for the following damages:

a. Decedent's pain and suffering between the time of his injuries and the time of death;

b. Decedent's loss of retirement and social security income; and

c. Decedent's loss of enjoyment of life.

WHEREFORE, Plaintiffs demand judgment against Defendant for a sum in excess of Twenty-five Thousand (\$25,000) Dollars, plus interest and costs.

Respectfully submitted:



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

Elma M. Morris
ELMA MORRIS

Sandy Jones
SANDY JONES

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, :
Plaintiffs, : TYPE OF PLEADING:
v. : *Defendant Donald B. Luzier's
Preliminary Objections to Plaintiffs'
Amended Complaint*
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
: **DEFENDANT**
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
:

FILED

JUN 13 2003

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :

DEFENDANT DONALD B. LUZIER'S PRELIMINARY OBJECTIONS TO
PLAINTIFFS' AMENDED COMPLAINT

AND NOW COMES Defendant, Donald B. Luzier, by and thorough his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the following Preliminary Objections to Plaintiffs' Amended Complaint.

1. Plaintiffs in the above-captioned motor vehicle negligence action are Elma Morris and Sandy Jones, Co-Executrices of the Estate of Richard E. Hugar, deceased.
2. The action sounds in motor vehicle negligence, based upon a one vehicle accident that occurred on November 20, 2002.
3. Plaintiffs allege that on that date, Defendant lost control of his motor vehicle on Martin Street in Lawrence Township, Clearfield County, Pennsylvania, and smashed into the home of the late Richard E. Hugar, moving the home from its foundation. (See Amended Compl. ¶ 4).
4. Richard E. Hugar died approximately one and one-half months after the accident, on January 10, 2003. (Id. at 1(c)).

5. Plaintiffs' original Complaint was filed on January 30, 2003. Defendant filed Preliminary Objections to Plaintiffs' original Complaint because Plaintiffs had failed to set forth the injuries allegedly suffered by Mr. Hugar with any specificity, and this failure was extremely prejudicial to Defendant. Defendant also objected on the basis that Plaintiffs had failed to identify their claims as sounding in wrongful death or survival. (See Def. P.O.'s to Pls' Compl., filed on February 21, 2003).

6. An Amended Complaint was thereafter filed by Plaintiffs.

7. In the Amended Complaint, Plaintiffs did specify that the claim was brought pursuant to Pennsylvania's survival statute only, (see Amended Compl. ¶¶ 6-7), but again failed to identify the injuries they claim their decedent suffered in the November 20, 2002 accident.

8. In fact, the Amended Complaint is even less specific than the original Complaint with regard to the injuries claimed.

9. In the original Complaint, Plaintiffs set forth vague injury allegations as follows:

“...Plaintiff sustained various injuries to his bones, muscles, tissues, and ligaments, including internal injuries, shock, and injury to his nerves and nervous system and other severe and serious injuries.”

(Pls' original Compl. ¶6). In their Amended Complaint, Plaintiffs delete even this vague allegation, and completely fail to identify the injuries they contend Mr. Hugar suffered in the accident. (See Amended Compl. generally).

10. In their Amended Complaint, Plaintiffs fail to even identify the part or parts of their decedent's body allegedly injured in the accident, any condition or conditions suffered as a result, or to otherwise give Defendant fair notice of the injury claims asserted.

11. Moreover, Defendant cannot decipher from Plaintiffs' Amended Complaint whether Plaintiffs claim that the death of Richard E. Hugar was somehow related to the motor vehicle accident at issue, or whether Plaintiffs concede that his death was brought about by other, unrelated, causes.

12. To plead and prove a prima facie case of negligence, a plaintiff must allege: (1) duty; (2) breach; (3) causation; and (4) injury.

13. Thus, the injuries allegedly sustained by Plaintiffs' decedent in the accident are material to their cause of action for motor vehicle negligence.

14. Under Pennsylvania Rule of Civil Procedure 1019(a), a plaintiff is required to set forth the material facts on which a cause of action is based in concise and summary form. See Pa.R.C.P. 1019(a).

15. Plaintiffs' failure to set forth a statement of the injuries allegedly suffered by their decedent violates Pa.R.C.P. 1019(a).

16. Plaintiffs' failure to comply with Pa.R.C.P. 1019(a) under the facts and circumstances presented is extremely prejudicial to Defendant, in that Defendant is not even apprised of the scope or magnitude of the injuries claimed, and Defendant believes, and therefore avers, that this failure would not be easily or readily remedied in the discovery process.

17. In sum, Plaintiffs' Amended Complaint fails to conform with applicable law to the severe prejudice of Defendant, and Defendant therefore requests that Plaintiffs be required to amend their pleading to set forth a more specific statement of the injuries allegedly suffered by their decedent, including a statement as to the body part(s) injured and any resulting symptoms, disability, and/or condition.

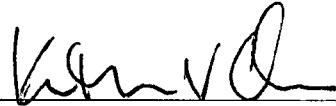
WHEREFORE, Defendant respectfully requests that his Preliminary Objections to Plaintiffs' Amended Complaint be granted, and that Plaintiffs be required to file a more specific statement of the injuries claimed in this action.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: June 12, 2003

By: _____


James M. Horne, Esquire
I.D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

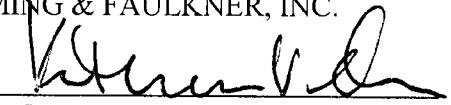
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
:
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Donald B. Luzier's Preliminary Objections to Plaintiffs' Amended Complaint in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 27th day of June, 2003, to the attorney of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
(814) 765-1566

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

FILED
MAY 13 2003
CC
JUN 13 2003
FBI - BOSTON
William A. Sharrow
FBI - BOSTON

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE
OF RICHARD E. HUGAR, Deceased,
Plaintiffs

Vs.

DONALD B. LUZIER,
Defendant

CIVIL DIVISION

No. 03 - 129 - CD

SECOND AMENDED COMPLAINT

Filed on Behalf of:

Plaintiffs, ELMA MORRIS and
SANDY JONES

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

JUL 1 1983

William A. Shaw
Notary Public

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
:
Vs. :
:
DONALD B. LUZIER, :
Defendant :
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Second Amended 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 Second Amended 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.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
: :
Vs. :
: :
DONALD B. LUZIER, :
Defendant :

SECOND AMENDED COMPLAINT

1. Plaintiffs are Elma Morris and Sandy Jones, Co-Executrices under the Will of Richard E. Hugar, deceased, having addresses as follows:

a. Elma Morris, 317 Daisy Street, Clearfield, Pennsylvania 16830;

b. Sandy Jones, General Delivery, Woodland, Pennsylvania 16881.

c. Richard E. Hugar formerly resided at R.R. #1, Box 316, Clearfield, Pennsylvania 16830. Richard E. Hugar passed away on January 10, 2003. Subsequently, Elma Morris and Sandy Jones were appointed Co-Executrices under the Last Will of Richard E. Hugar, deceased, by Order of the Office of the Register of Wills for Clearfield County, Pennsylvania, said Order dated January 13, 2003.

2. Defendant is Donald B. Luzier residing at R.R. #1, Box 298, Mann Road, Clearfield, Pennsylvania 16830.

3. On November 20, 2002, at approximately 5:40 a.m. Donald B. Luzier was operating a 1997 motor vehicle in Lawrence Township, Clearfield County, Pennsylvania, traveling north along the Martin Street Extension, S.R. 1003.

4. Defendant lost control of his motor vehicle causing him to swerve left and run off the highway and up onto the land owned by Richard E. Hugar and smashed into his house moving it from its foundation. Richard E. Hugar was occupying the house at that time and it is alleged on information and belief that it threw him to the floor and caused shock to him.

5. The injuries and damages hereinafter set forth were caused solely by and were the direct and proximate result of the negligence of Defendant in any or all of the following respects:

a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;

b. In failing to have the vehicle under proper control;

c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the surrounding traffic conditions;

d. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid hitting the home;

e. In failing to properly inspect the vehicle to determine any mechanical defects;

f. In failing to have reasonably sufficient traction devices on the wheels of the vehicle to permit the vehicle to stop in time;

g. In crossing the divider line which marked the center of the highway; and,

h. In running completely off the roadway and smashing into the home of Richard E. Hugar.

COUNT I
SURVIVAL ACTION

Paragraphs 1 through 5 of the Second Amended Complaint are incorporated herein by reference as if set forth at length.

6. Plaintiffs bring this survival action under 20 Pa.C.S. 3373 and 42 Pa.C.S. 8302.

7. As a direct and proximate result of the aforesaid acts of negligence, decedent suffered and Defendant is liable to Plaintiffs for the following:

a. After the car crashed into his home, the violence of the crash and the incident happening in the middle of the night while he was in bed, shook up Richard Hugar tremendously.

b. The accident became part of Richard Hugar and became his whole being. It was all he wanted to talked about.

c. The overall health of Richard E. Hugar deteriorated after the accident. His mental status and outlook were adversely affected.

d. The injuries and shock of the accident led to an inability for him to deal with his illness in a positive manner. The damage to his home and the resultant cleanup of the mess caused a serious mental disturbance to Richard E. Hugar.

e. Prior to the accident, Richard E. Hugar was leading a normal life for a man his age. He would get up in the morning, get his own breakfast and then go outside and work in the yard.

f. Immediately after the accident, he was in a daze and wandered around the house with his hands behind his back and did not appear to be aware of what was happening around him.

g. After the accident, Richard E. Hugar became very quiet. It was like he was a different person and looked lost.

h. Immediately after the accident and continuing beyond that, Richard E. Hugar appeared to be bewildered and shaky from shock.

i. After the accident, Richard E. Hugar started using a cane in the house and complained that his head was splitting and his back was killing him and that he could hardly move. He kept complaining of pain, holding his head and complaining that his head was hurting.

j. Immediately after the accident Richard E. Hugar stated that his lips appeared to be numb and that his head was coming off.

k. Richard E. Hugar after the accident was staggering. He did not want to go outside. He did not want to move. He just wanted to sit. This was not his routine prior to the accident since prior to that, he would go outside, pull dandelions out of the ground, putter around his property and would rake the yard.

l. Immediately after the accident, Richard E. Hugar complained that there was a lump or bulge in his back and that he had a pain over and down his back which continued to get worse. His daughters observed that he appeared to have a bulge in his back after the accident that was not there prior to the accident.

m. After the accident, Richard E. Hugar would take Ibuprofen and Tylenol for pain but it did not appear to touch the pain.

n. After the accident, Richard E. Hugar would forget what day it was and could not keep track of the time. He seemed to become more and more disoriented and confused.

o. After the accident, Richard E. Hugar in addition to being confused, was staggering so badly that his daughters had to be on both sides of him to help him to the car when he went to the doctor or went out.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA

p. After the accident, Richard E. Hugar indicated he did not feel he could make it upstairs to go to bed, although he did not have this problem prior to the accident.

q. The pain that arose in Richard E. Hugar after the accident was so bad that he kept talking about going to a nursing home and stating that he will just die. He appeared to be consumed by the pain so badly that he did not care anymore.

r. When Richard E. Hugar went to the doctor, his condition was so bad that the doctor told him that he should be taken to the Emergency Room.

s. After his daughters took him to the hospital, Richard E. Hugar was admitted and never came home. He was in the hospital until he died on January 10, 2003.

t. Richard E. Hugar was in the hospital over Christmas and stated he did not feel he could go home. This was in December 2002.

u. All the above described symptoms caused Richard E. Hugar to suffer a loss of enjoyment of life and to have pain and suffering that he did not have prior to the accident. He suffered up to the time of his death.

WHEREFORE, Plaintiffs demand judgment against Defendant for a sum in excess of Twenty-five Thousand Dollars (\$25,000.00), plus interest and costs.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

Elma M. Morris est

ELMA MORRIS, Co-Executrix
under the Last Will of Richard
E. Hugar, Deceased

Sandy Jones est

SANDY JONES, Co-Executrix
under the Last Will of Richard
E. Hugar, Deceased

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, : TYPE OF PLEADING:
v. : *Defendant Donald B. Luzier's*
: *Answer With New Matter*
: *to Plaintiffs' Second Amended Complaint*
:
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
: **DEFENDANT**
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926
:
:

FILED

AUG 20 2003

William A. Scaw
Prothonotary Clerk of Courts

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

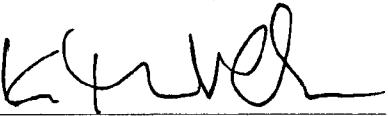
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :
:

NOTICE TO PLEAD

TO: ELMA MORRIS and SANDY JONES
c/o Joseph Colavecchi, Esquire

YOU ARE HEREBY notified to file a written response to the enclosed Answer
and New Matter within twenty (20) days from the date of service hereof or a judgment may be
entered against you.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :

DEFENDANT DONALD B. LUZIER'S ANSWER WITH NEW MATTER
TO PLAINTIFFS' SECOND AMENDED COMPLAINT

AND NOW COMES Defendant, Donald B. Luzier, by and thorough his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and files the following response to Plaintiffs' Second Amended Complaint.

1.(a)-(c) Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averments of 1. (a)-(c). The same are therefore denied and strict proof thereof demanded.

2. Admitted.

3. Admitted.

4. Admitted in part and denied in part. Defendant admits that he hit a patch of black ice on the road, causing the vehicle to swerve left and run off of the highway and into Richard E. Hugar's house. Defendant further responds that Mr. Hugar did not appear to be injured immediately following the incident, and thus denies all allegations of injury to Mr. Hugar. After reasonable investigation, Defendant is without knowledge or information sufficient

to form a belief as to the remainder of the averments of paragraph 4. The same are therefore denied and strict proof thereof demanded. 5. (a)-(h) Denied. The allegations of paragraph 5 (a)-(h) are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). All allegations of negligence are denied. With respect to the claims of injuries and damages, the same are denied as further set forth in response to paragraph 7 (a)-(u).

COUNT I - SURVIVAL ACTION

Paragraphs 1-5 of this Answer with New Matter are incorporated herein by reference as if set forth at length.

6. The averment of paragraph 6 is a legal conclusion to which no response is required.

7.(a)-(u). Denied. All allegations of negligence are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). With respect to the allegations of injuries and/or damages, after reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the same. These allegations are therefore denied and strict proof thereof demanded. By way of further response, please see response to paragraph 4.

WHEREFORE, Defendant respectfully requests that Plaintiffs' Complaint be dismissed with prejudice and costs of suit.

NEW MATTER

8. Paragraphs 1-7 of this Answer with New Matter are incorporated herein by reference as if set forth at length.

9. To the extent that Plaintiffs' decedent selected and/or was insured under a policy of insurance bearing a limited tort option, Plaintiffs' claims herein are barred or reduced accordingly.

10. To the extent Plaintiffs' decedent's medical expenses were paid or were payable under a policy or policies of insurance, the same may not be pled, proven or recovered in the instant action.

11. Defendants hereby raise and assert all those defenses and/or limitations of damages available to them by reason of the terms and provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

12. Plaintiffs' claims must be barred or reduced to the extent Plaintiffs and/or Plaintiffs' decedent failed to mitigate any and all claimed losses and damages.

13. On information and belief, Defendant avers that Plaintiffs' ostensible injuries were pre-existing and not caused by any actions or inactions of Defendant herein.

WHEREFORE, Defendant respectfully requests that Plaintiffs' Complaint against him be dismissed, with prejudice.

Respectfully submitted,

McQUAJDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

Dated: August 19 2003

By: 

James M. Horne, Esquire

I.D. No. 26908

Katherine V. Oliver, Esquire

I.D. No. 77069

811 University Drive

State College, PA 16801

(814) 238-4926

Attorneys for Defendant

Morris v. Luzier

VERIFICATION

The undersigned verifies that he is authorized to make this verification on his own behalf; and that the statements made in the foregoing **ANSWER WITH NEW MATTER** are true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa.C.S.A. §4904, related to unsworn falsification to authority.



DONALD B. LUZIER

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

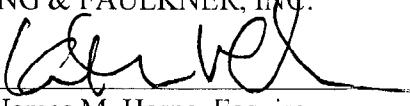
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
:
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Donald B. Luzier's Answer with New Matter to Plaintiffs' Second Amended Complaint in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 19th day of July, 2003, to the attorney of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
(814) 765-1566

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

James M. Horne, Esquire
I. D. No. 26908
Katherine V. Oliver, Esquire
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

100-110284 NO
AUG 20 2003 CC

William A. Shaw
Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE
OF RICHARD E. HUGAR, Deceased,
Plaintiffs

CIVIL DIVISION

No. 03 - 129 - CD

Vs.

REPLY TO NEW MATTER

DONALD B. LUZIER,
Defendant

Filed on Behalf of:

Plaintiffs, ELMA MORRIS and
SANDY JONES

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

AUG 26 2003

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE OF : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiff :
: :
Vs. :
: :
DONALD B. LUZIER, :
Defendant :

REPLY TO NEW MATTER

NOW COMES, Elma Morris and Sandy Jones, Co-Executrices of the Estate of Richard E Hugar, Deceased, who, through their attorney, Joseph Colavecchi, Esquire, file their Reply to the New Matter of the Defendant and respectfully aver as follows:

8. This does not require a reply.
9. Denied. This would not be relevant as to a car crashing into your home.
10. Denied. This would not be relevant as to a car crashing into your home.
11. This is a statement of the law and does not require a reply.
12. This is a statement of the law and does not require a reply.

13. Denied for reasons as set forth in the Complaint.

WHEREFORE, Plaintiffs, ask that the Answer and New Matter of the Defendant be dismissed and that judgment be entered in favor of Plaintiffs, together with interest and costs.

Respectfully submitted,



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

Elma Morris Est.
ELMA MORRIS

Sandy Jones est.
SANDY JONES

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

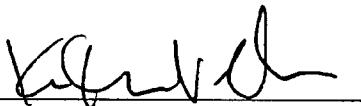
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Defendant's Second Request For Production of Documents and Tangible Things Directed to Plaintiffs** in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 27th day of August, 2003, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

AUG 28 2003

William A. Shaw
Prothonotary, Clerk of Courts

111-13-51
AUG 28 2003
W
Kep

William A. Shaw
Prothonotary/Clerk of Courts

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

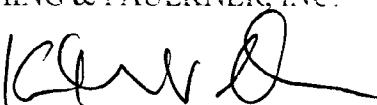
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Interrogatories and
Request for Production of Documents Directed to Plaintiff (Set One) in the above-captioned
matter was mailed by regular mail, postage prepaid, at the Post Office, State College,
Pennsylvania, on this 27th day of August, 2003 to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926 FILED

AUG 28 2003

William A. Shaw
Prothonotary Clerk of Courts

11-1381
AUG 28 2003
SAC

William A. Brown
Prothonotary Clerk of Courts

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased. : TYPE OF PLEADING:
:
Plaintiffs. : *Defendant Donald B. Luzier's*
: *Certificate of Service of Notice of*
: *Intent to Serve Subpoena Directed to*
v. : *Donald E. Conrad, D.O.*
:
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
Defendant. : **DEFENDANT**
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

DEC 10 2003

RECEIVED
CLEARFIELD COUNTY CLERK'S OFFICE

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
: Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Intent to Serve Subpoenas
Directed to Donald E. Conrad, D.O. in the above-referenced matter was mailed by U.S. First
Class Mail, postage paid, this 9/1 day of December 2003, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: Katherine V. Oliver

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

ELMA MORRIS and SANDY JONES. :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :
;

Fax
No CC
11.15.03
DEC 15 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Subpoena Duces Tecum Directed to
Donald E. Conrad, D.O. in the above-captioned matter was mailed by regular mail, postage
prepaid, at the Post Office, State College, Pennsylvania, on this 12th day of December
2003 to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

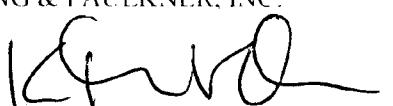
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of RICHARD : No. 03-129-C.D.
E. HUGAR, Deceased, :
Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :
*File
11/15/03
CC
EFC 11/15/2003*

**CERTIFICATE PREREQUISITE TO SERVICE
OF A SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22,
Defendant certifies that:

- (1) a Notice of Intent to Serve A Subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least 20 days prior to the date on which the subpoena is sought to be served;
- (2) a copy of the Notice of Intent, including the proposed subpoena, are attached to this Certificate;
- (3) Plaintiff's attorney has waived the 20 day notice period; and,
- (4) the subpoena which will be served is identical to the subpoena which is attached to the Notice of Intent to Serve A Subpoena.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Date: 12-12-03

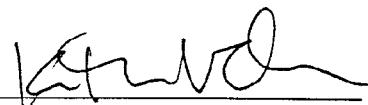
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

ELMA MORRIS and SANDY JONES. :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased. :
: Plaintiffs. :
v. :
: DONALD B. LUZIER. :
: Defendant. :

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT
TO RULE 4009.21**

Defendant intends to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned any objection to the subpoena. If no objection is made, the subpoena may be served.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Elma Morris and Sandy Jones, Co-Exectrices
of the Estate of Richard E. Hugar, Deceased
Plaintiff(s)

*

Vs.
Donald B. Luzier
Defendant(s)

*

No. 2003-00129-CD

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: DONALD E. CONRAD, D.O.

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things: SEE ATTACHED, TO THE OFFICES OF MCQUAIDE BLASKO, 811 UNIVERSITY DRIVE, STATE COLLEGE, PA 16801.

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: KATHERINE V. OLIVER, ESQUIRE
ADDRESS: 811 UNIVERSITY DRIVE
STATE COLLEGE PA 16801
TELEPHONE (814) 238-4926
SUPREME COURT ID # 77069
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, March 13, 2003
Seal of the Court

Deputy



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

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

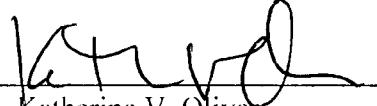
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, : Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Certificate Prerequisite to Service of Subpoena Directed to Donald E. Conrad, D.O. in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 17 day of December, 2003, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi, Ryan & C Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver

ATTORNEYS FOR DEFENDANT

DONALD B. LUZIER

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,
Plaintiffs,
v.
DONALD B. LUZIER,
Defendant.

TYPE OF PLEADING:
Certificate of Service

TYPE OF CASE: CIVIL
FILED ON BEHALF OF:
DEFENDANT

COUNSEL OF RECORD FOR
FOR THIS PARTY:
JAMES M. HORNE, ESQ.
I.D. NO. 26908
KATHERINE V. OLIVER, ESQ.
I.D. NO. 77069
McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
PH# (814) 238-4926

FILED

JAN 22 2004

William A. Shaw
Prothonotary, Clerk of Courts

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

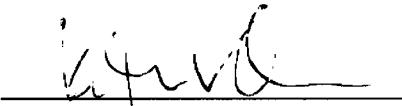
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notices of Taking Plaintiffs' Depositions in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 21st day of January, 2004, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

FILED NO CC
M 110:4364
JAN 22 2004
FBI
William A. Straw
Prothonotary Clerk of Courts

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

FILED

FEB 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

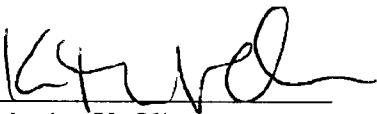
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Defendant's Notices of Rescheduled Depositions of Plaintiffs** in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 3rd day of February, 2004, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
(814) 765-1566

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
Katherine V. Oliver
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

FILED NO 10
M/J:SGR RC
FEB 04 2004
FEB

William A. Straw
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

Vs.

**DONALD B. LUZIER,
Defendant**

CIVIL DIVISION

No. 03 - 129 - CD

NOTICE OF VIDEOTAPE DEPOSITION

Filed on Behalf of:

Plaintiff, ELMA MORRIS and SANDY JONES, Co-Executrices of the ESTATE of RICHARD E. HUGAR, DECEASED

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

JUN 17 2004

William A. Shaw
Prothonotary, Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE :
of RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

NOTICE OF VIDEOTAPE DEPOSITION

TO: **DONALD E. CONRAD, D.O.**
502 Park Avenue
Clearfield, PA 16830

KATHERINE V. OLIVER, ESQUIRE
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-6699

JOHN SUGHRUE, ESQUIRE
23 North Second Street
Clearfield, PA 16830

SARGENTS'S COURT REPORTING SERVICE, INC.
210 Main Street
Johnstown, PA 15901

Please take notice that on August 19, 2004 at 1:00 o'clock p.m., at the office of Joseph Colavecchi, Esquire, 221 East Market Street, Clearfield, Pennsylvania, the Videotape Deposition of **DONALD E. CONRAD, D.O.** will be taken on behalf of the Plaintiffs in the above-captioned action.

This Deposition will be taken on videotape and said videotape will be taken by Sargent's Court Reporting Service, Inc. of 210 Main Street, Johnstown, Pennsylvania.

At the time this deposition is being taken on videotape, it will be simultaneously recorded by stenographic means.

This Videotape Deposition is being taken as authorized under R.C.P. 4017.1.

The scope of the Deposition will encompass the witness's knowledge of the facts as set forth in the Complaint filed by Plaintiffs against Donald B. Luzier, which is the subject of this legal action. The purpose is to aid in the preparation of this action for trial by the Plaintiffs. This witness will also be interrogated as to his knowledge of the identities and whereabouts of any other witnesses having information relevant to this action.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

6/16/84

Date

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE :
of RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

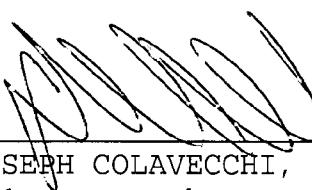
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 16, 2004, a true and correct copy of a Notice of Videotape Deposition in the above matter was served on the following by depositing said copy in the United States Mail, first class, postage prepaid and addressed as follows:

KATHERINE V. OLIVER, ESQUIRE
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-6699

JOHN SUGHRUE, ESQUIRE
23 North Second Street
Clearfield, PA 16830

DATE: 6/16/04

BY: 
JOSEPH COLAVECCHI, ESQUIRE
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE OF
RICHARD E. HUGAR, DECEASED,
Plaintiffs

DONALD B. LUZIER, - - -

NOTICE OF VIDEOTAPE DEPOSITION

FILED
JUN 3 2004
cc

卷之四

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices of the ESTATE of :
RICHARD E. HUGAR, Deceased, : TYPE OF PLEADING:
Plaintiffs, : **CERTIFICATE OF SERVICE**
: :
v. :
: :
DONALD B. LJZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
: **DEFENDANT**
: :
: : COUNSEL OF RECORD FOR
: : FOR THIS PARTY:
: : JAMES M. HORNE, ESQ.
: : I.D. NO. 26908
: : KATHERINE V. OLIVER, ESQ.
: : I.D. NO. 77069
: : McQUAIDE, BLASKO, SCHWARTZ,
: : FLEMING & FAULKNER, INC.
: : 811 University Drive
: : State College, PA 16801
: : PH# (814) 238-4926

RECEIVED
JUN 21 2004
PENNSYLVANIA
COURT RECORDS
SYSTEM

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

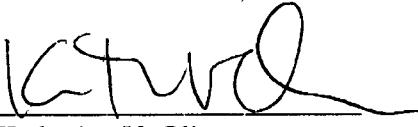
ELMA MORRIS and SANDY JONES,	:	
Co-Executrices, of the ESTATE of	:	No. 03-129-C.D.
RICHARD E. HUGAR, Deceased,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
DONALD B. LUZIER,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notice of Intent to Serve Subpoenas for Production of Documents and Things in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 18th day of June, 2004, to the attorneys/parties of record:

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: June 18, 2004

11:29 AM NO
212004

SCOTT
JULY 21 2004
SARAH ANN STRAW
Prothonotary, Clerk of Courts

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, : TYPE OF PLEADING:
Plaintiffs, : **CERTIFICATE PREREQUISITE**
: :
v. :
: :
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
: **DEFENDANT**
: :
: : COUNSEL OF RECORD FOR
: : FOR THIS PARTY:
: : JAMES M. HORNE, ESQ.
: : I.D. NO. 26908
: : KATHERINE V. OLIVER, ESQ.
: : I.D. NO. 77069
: : McQUAIDE, BLASKO, SCHWARTZ,
: : FLEMING & FAULKNER, INC.
: : 811 University Drive
: : State College, PA 16801
: : PH# (814) 238-4926

FILED *[Signature]*

JUN 23 2004

William A. Shaw
Prothonotary Clerk of Courts

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

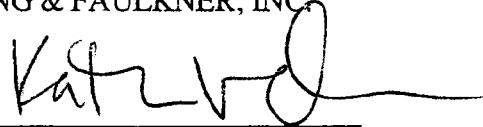
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :

Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendant intends to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned any objection to the subpoena. If no objection is made, the subpoena may be served.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: June 18, 2004

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Elma Morris and Sandy Jones, Co-Executrices
of the Estate of Richard E. Hugar, Deceased
Plaintiff(s)

*

Vs.

*

No. 2003-00129-CD

Donald B. Luzier
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: BLAIR MEDICAL ASSOCIATES / MARK E. LIPITZ, D.O.
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

811 University Drive, State College, PA 16801

(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

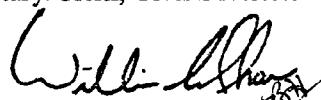
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Katherine V. Oliver
ADDRESS: 811 University Drive
State College, PA 16801
TELEPHONE: (814) 238-4926
SUPREME COURT ID # 77069
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



Deputy

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

DATE: Thursday, March 13, 2003
Seal of the Court

DOCUMENTS TO BE PRODUCED

Any and all records for as long as you retain same and regardless of treating physician on Richard E. Hugar, (SS# 205-05-7236; DOB: 08/01/1911), including but not limited to, treatment invoices and/or payment ledgers, treatment notes, reports, history/physical examination, progress notes, laboratory reports, x-ray/CT scan/MRI reports, consultation reports, physical/occupational/rehabilitation therapy progress notes (inpatient and outpatient), prescription records, any and all correspondence pertaining to Richard E. Hugar's health status (regardless of source), etc.

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, : Defendant. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Certificate Prerequisite to Service of Subpoena Directed to Blair Medical Associates, Mark E. Lipitz, D.O., in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 22nd day of June, 2004, to the attorney of record:

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: June 22, 2004

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, : TYPE OF PLEADING:
Plaintiffs, : **CERTIFICATE OF SERVICE**
v. :
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
 : **DEFENDANT**
 :
 : COUNSEL OF RECORD FOR
 : FOR THIS PARTY:
 : JAMES M. HORNE, ESQ.
 : I.D. NO. 26908
 : KATHERINE V. OLIVER, ESQ.
 : I.D. NO. 77069
 : McQUAIDE, BLASKO, SCHWARTZ,
 : FLEMING & FAULKNER, INC.
 : 811 University Drive
 : State College, PA 16801
 : PH# (814) 238-4926

FILED
JUN 23 2004

John A. Shaw
Prothonotary Clerk of Courts

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,

Plaintiffs,

v.

DONALD B. LUZIER,

Defendant.

: No. 03-129-C.D.

:
: TYPE OF PLEADING:
CERTIFICATE OF SERVICE

:

:

:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
DEFENDANT

:

:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO, SCHWARTZ,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

8/11/3861 NO
JUL 02 2004 CC

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Donald B. Luzier's Requests for Admission with Corresponding Interrogatories and Request for Production of Documents for Answer by Plaintiff, in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 1st day of July, 2004, to the attorney of record:

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 
Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: July 1, 2004

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: *Sub*
Plaintiffs, :
v. :
: *JUL 3 10 AM
2004*
DONALD B. LUZIER, :
: *No
CC*
Defendant. :
:

**DEFENDANT DONALD B. LUZIER'S REQUESTS FOR ADMISSION WITH
CORRESPONDING INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS FOR ANSWER BY PLAINTIFF**

TO: Elma Morris and Sandy Jones
c/o Joseph Colavecchi

AND NOW, comes Defendant, Donald B. Luzier, by and through his counsel, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc., and serves the within Requests for Admissions with corresponding Interrogatories and Requests for Production of Documents upon Plaintiff pursuant to Pa. R.C.P. 4005, 4006, 4009 and 4014.

If your answer to any of the Requests for Admission is anything other than a complete admission, please state all facts upon which you rely to support your denial or qualified admission. Each matter set forth herein shall be deemed admitted unless you serve an answer or objection upon counsel for Defendant, within thirty (30) days of the date of service thereof.

The interrogatories and document requests shall be deemed to be continuing interrogatories and document requests, pursuant to Pa. R.C.P. 4005, 4006, and 4009. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your answers, you shall promptly furnish said

information to the undersigned by supplemental answers or supplemental production of documents.

DEFINITIONS

A. "You" and/or "your" means Plaintiffs, and their decedent, Richard Hugar, their agents and employees and others acting on her behalf with regard to asserting the cause of action to be set forth in Plaintiffs' Complaint in the above-captioned case.

B. "Document" shall mean any writing (whether handwritten, typed, printed or otherwise made), drawing, graph, chart, photograph, phonograph record, or electronic or mechanical matter (including microfilm of any kind or nature, tape or recording), or other data compilations from which information can be obtained (translated, if necessary, by Plaintiff, through detection devices into reasonably usable form), and shall include, without limiting the generality of the foregoing, all records, correspondence, telegrams, teletypes, agreements, studies, reports, drafts, memoranda, and computer print outs.

C. As used herein "identify," when used in reference to an individual, means his/her full name and present or last known residence and business address, his/her present or last known position or title and business affiliation, and his/her position at the time in question.

D. "Health care provider" means a person, corporation, facility, institution or other entity licensed or approved by the Commonwealth to provide health care or professional services as a physician, including a medical doctor and a doctor of osteopathy and a doctor of podiatry; hospital; nursing home; health maintenance organization; or an officer, employee or agent of any of them acting in the course and scope of his employment.

Where the Interrogatories request that documents be identified, an identification of it should include at least the following: author, addressee, type of document, date, subject matter, and the name and address of the person or party presently having custody of the document and any known copies of it.

INSTRUCTIONS FOR ANSWERING INTERROGATORIES

1. In accordance with Pa. R.C.P. 4005 and 4006, the original of these written Interrogatories have been served upon you to be answered by the party served or, if the party served is a public or private corporation or similar entity or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party.
2. Written answers shall be inserted in the spaces provided in the Interrogatories. If there is insufficient space to answer an Interrogatory, the remainder of the answer shall follow on a supplemental sheet.
3. In accordance Pa. R.C.P. 4006(b), a sufficient answer to such an Interrogatory shall be to specify the records from which the answer may be derived or ascertained.
4. Please file and serve answers to these Interrogatories in accordance with the Pennsylvania Rules of Civil Procedure.

INSTRUCTIONS FOR RESPONDING TO
REQUEST FOR PRODUCTION OF DOCUMENTS

1. With respect to each of the following requests, you shall identify and/or produce all documents which are known to you or which can be located or discovered by you through diligent effort on the part of you, your employees, representatives, attorneys or accountants, including but not limited to, all documents which are in the business or personal files of your employees, in the possession of your representatives, attorneys or accountants, or accessible to you, your employees, or your representatives, attorneys or accountants.

2. The following requests shall be deemed to be continuing so as to require further and supplemental production of documents by you in accordance with Pa. R.C.P. 4009.

3. If any documents requested herein have been lost or destroyed, you shall provide in lieu of a true and correct copy thereof, a list of each document so lost or destroyed, together with the following information: (1) the date of origin; (2) a brief description of such document; (3) the author of such document; (4) the date upon which the document was lost or destroyed; and (5) a brief statement of the manner in which the document was lost or destroyed.

4. In the event you refuse to produce any document requested on the grounds of any claimed privilege from discovery, please state each ground for such claimed privilege, describe the document withheld by date, author, recipients (including all persons who were shown or received a copy), and give a general description of the subject matter of the document.

5. In the event that more than one copy of a document exists, the original shall be produced, as well as every copy on which appears any notation or marking of any sort not appearing on the original.

6. For any documents which are stored or maintained in files in the normal course of business, such documents shall be produced in such files, or in such a manner as to preserve and indicate the file from which such documents were taken.

INSTRUCTIONS FOR RESPONDING TO REQUESTS FOR ADMISSIONS

1. In the event your response is an unqualified admission, indicate that fact by typing "Admitted" in the space provided.
2. If your response is anything other than an unqualified admission, indicate the nature of your response in the space provided and proceed with your response to the corresponding interrogatories and requests for production of documents.

**REQUESTS FOR ADMISSION WITH CORRESPONDING
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Pa. R.C.P. 4014, Plaintiff is hereby requested to admit the following, for purposes of the pending action only, and where required, to answer interrogatories and produce documents:

1. Admit that you have not incurred any medical expenses as a result of the November 20, 2002 accident.

RESPONSE:

Denied. On the contrary, after the accident, Richard Hugar went to the Emergency Room and went to his family physician, Dr. Donald Conrad, and then was admitted to Clearfield Hospital where he was treated until his death on January 10, 2003. During this time, he incurred substantial*

- (a) Interrogatory No. 1: If the response to Request for Admission No. 1 is anything other than an unqualified admission, set forth: (1) every fact which tends to support your contention that the above statement cannot be admitted as true; (2) the names of witnesses who have personal knowledge concerning same; and (3) the specific identity of documents upon which you base your contention that the above statement cannot be admitted as true.

ANSWER:

Whether the medical expenses were covered by insurance or otherwise, has nothing to do with the injuries to Richard Hugar. It will be established through testimony of Elma Morris, Sandy Jones, Eunice Fetter and also his physician, Dr. Donald Conrad that the crashing into the home caused injuries to Richard Hugar. The documents utilized will be the medical bills and testimony about his treatment.

- (b) Request for Production of Documents No. 1: If your answer to the above Request for Admission No. 1 is anything other than an unqualified admission, identify and produce a true and correct copy of each and every document you directly or indirectly rely upon in your response.

ANSWER:

Copies of the medical bills will be submitted at a later date.

In Re: Morris, et al vs. Luzier

1. *medical expenses most, if not all, of which were covered by Medicare as far as the insurance coverage is concerned.

2. Admit that any medical expenses you incurred as a result of the November 20, 2002 accident have been paid and/or satisfied under a policy of insurance.

RESPONSE:

It would appear at this point that most of the medical expenses have been covered by Medicare, although it takes months before all of the bills clear.

- (a) Interrogatory No. 2: If the response to Request for Admission No. 2 is anything other than an unqualified admission, set forth: (1) every fact which tends to support your contention that the above statement cannot be admitted as true; (2) the names of witnesses who have personal knowledge concerning same; and (3) the specific identity of documents upon which you base your contention that the above statement cannot be admitted as true.

ANSWER:

The medical bills and medical records will be submitted separately.

- (b) Request for Production of Documents No. 2: If your answer to the above Request for Admission No. 2 is anything other than an unqualified admission, identify and produce a true and correct copy of each and every document you directly or indirectly rely upon in your response.

ANSWER:

The medical bills and medical records will be submitted separately.

3. Admit that you have not incurred any loss of income as a result of the November 20, 2002 accident.

RESPONSE:

Richard Hugar was not employed at the time of injuries to him and for this reason, there would not be any loss of income.

(a) Interrogatory No. 3: If the response to Request for Admission No. 3 is anything other than an unqualified admission, set forth: (1) every fact which tends to support your contention that the above statement cannot be admitted as true; (2) the names of witnesses who have personal knowledge concerning same; and (3) the specific identity of documents upon which you base your contention that the above statement cannot be admitted as true.

ANSWER:

N/A

(b) Request for Production of Documents No. 3: If your answer to the above Request for Admission No. 3 is anything other than an unqualified admission, identify and produce a true and correct copy of each and every document you directly or indirectly rely upon in your response.

ANSWER:

N/A

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: 

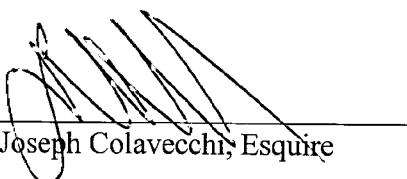
Katherine V. Oliver
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: July 1, 2004

AS TO ANSWERS:

Dated: July 20, 2004

Attorney for Plaintiffs

By: 

Joseph Colavecchi, Esquire

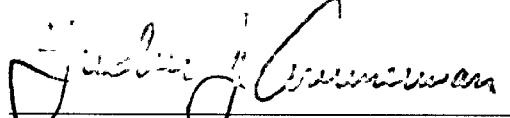
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

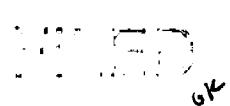
ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE OF :
RICHARD E. HUGAR, deceased :
:
vs. : No. 03-129-CD
:
DONALD B. LUZIER :
:

O R D E R

AND NOW, this 9th day of February, 2005, it is the ORDER of the Court that a status conference in the above-captioned matter has been scheduled for Wednesday, March 2, 2005 at 9:00 A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge


FEB 09 2005
09:30 AM
William A. Shaver
Prothonotary/Clerk of Courts
CENS TO SUE ANN
OLIVER
J. CERAVELLO

14

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,
Plaintiffs,

vs.

DONALD B. LUZIER,
Defendant

* NO. 03-129-CD

MAR 03 2005

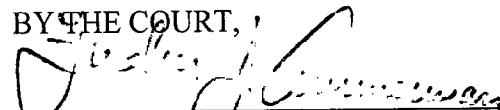
ORDER

William A. Shaw
Prothonotary
Court to Attorney
ATTN HORNIG

NOW, this 2nd day of February, 2005 following status conference among the

Court and counsel it is the ORDER of this Court as follows:

1. Plaintiff shall have no more than sixty (60) days from this date in which to complete the deposition of Dr. Donald Conrad;
2. Any additional or supplemental expert report from Dr. Conrad shall be provided to Defense counsel in no less than ten (10) days prior to the deposition as set forth in paragraph #1 above;
3. In no more than one hundred and five (105) days from this date Defense shall file any Motion for Summary Judgement along with the Defense brief relating thereto. Plaintiffs' brief shall be received no less than five (5) before the date that the Court schedules for oral argument on the Motion for Summary Judgement;
4. The Court Administrator is directed to list the case for Jury Trial on the Fall, 2005 Trial List.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

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

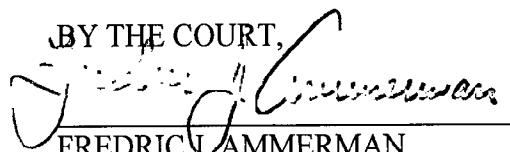
ELMA MORRIS and SANDY JONES, *
Co-Executrices, of the ESTATE of *
RICHARD E. HUGAR, Deceased, *
Plaintiffs *
vs. * NO. 03-129-CD
DONALD B. LUZIER, *
Defendant *

1CC
Attns:
014:00 AM 04/04/2005
J. Colavocchi
J. Horne

AMENDED ORDER

NOW, this 2nd day of March, 2005, following status conference among the Court and counsel it is the ORDER of this Court as follows:

1. Plaintiff shall have no more than sixty (60) days from this date in which to complete the deposition of Dr. Donald Conrad;
2. Any additional or supplemental expert report from Dr. Conrad shall be provided to Defense counsel in no less than ten (10) days prior to the deposition as set forth in paragraph # 1 above;
3. In no more than one hundred and five (105) days from this date Defense shall file any Motion for Summary Judgment along with the Defense brief relating thereto. Plaintiffs' brief shall be received no less than five (5) days before the date that the Court schedules for oral argument on the Motion for Summary Judgment;
4. The Court Administrator is directed to list the case for Jury Trial on the Fall, 2005 Trial List.

BY THE COURT,

FREDRIC L. HAMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MCRRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,

Plaintiffs

Vs.

DONALD B. LUZIER,

Defendant

CIVIL DIVISION

No. 03 - 129 - CD

**MOTION TO EXTEND TIME FOR
TAKING OF MEDICAL DEPOSITION
AND RELATED MATTERS**

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

JOHN SUGHRUE, ESQUIRE
PA I.D.

23 North Second Street
Clearfield, PA 16830
814/765-1704

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

140
1/25/01 40c
MAY 03 2005 Atty Sughrue
P.O. Box 131 aw
Prothonotary, Court of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

MOTION TO EXTEND TIME FOR TAKING OF
MEDICAL DEPOSITION AND RELATED MATTERS

TO: THE HONORABLE FREDRIC J. AMMERMAN,
PRESIDENT JUDGE

AND NOW COMES, Plaintiffs, by their Attorneys, Joseph Colavecchi, Esquire and John Sughrue, Esquire, and move the court to extend certain time limits and in support thereof, represent the following:

1. Following a Status Conference in this case on March 2, 2005, this court entered an Order setting a time schedule for certain events. A copy of said Order of March 2, 2005 (mistakenly typed as February 2, 2005), docketed March 3, 2005, is attached hereto as Exhibit "1".

2. Said Order requires Plaintiffs to complete Dr. Donald Conrad's deposition on or before May 2, 2005.

3. On April 8, 2005, Plaintiffs' Counsel telephoned and wrote to Dr. Donald Conrad for available dates. On April 20, 2005, Plaintiffs' Counsel again followed up on the request by telephone and letter. Copies of the two letters are attached hereto as Exhibit "2" and Exhibit "3".

4. Late on April 22, 2005, Dr. Donald Conrad's office advised that he was only available on Thursdays and had no dates available in May. He has provided June 2, 9, 16, and 30 as available dates for the taking of a videotape deposition to be used at trial.

5. On April 25, 2005, those dates were forwarded to defense Counsel to arrange a mutually convenient date.

6. On April 29, 2005, Counsel conferred on this matter and agreed that Dr. Conrad's deposition would be convenient to defense counsel's schedule on June 9, 2005 which was agreeable to Plaintiff's Counsel. A condition of defense counsel's consent is that other deadlines set forth in the prior Order be extended appropriately and in particular that the case be moved from the Fall Trial List to the Winter Trial List. Said move will insure that Counsel will have sufficient time within which to file Pre-Trial Motions, including Summary Judgment, and the Court will have

appropriate time to consider such Motions. This paragraph is intended to set forth the position of defense counsel as indicated in her letter of April 29, 2005, a copy of which is attached as Exhibit "4".

7. Counsel have been conferring and expect to provide the court with a proposed Consent Order.

8. No prior requests have been made by either Counsel to extend, continue or postpone this matter previously.

9. Plaintiffs believe and therefore aver that:

a. Extending the time for development of this key deposition will not prejudice the Defendant;

b. The matter can still be tried during the winter trial term of 2005-2006;

c. Both parties would benefit from additional time to secure a transcript of medical testimony and additional time within which to determine and prepare Pre-Trial Motions; and

d. Such extension would assure the Court appropriate time to consider Pre-Trial Motions in due course.

10. Plaintiffs believe and therefore aver that the period of time in which the defense may file Pre-Trial Motions should be expanded to a period of ninety (90) days from the date the expedited medical transcript is received by defense counsel.

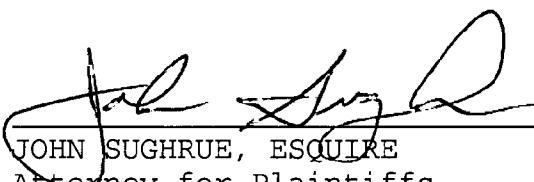
11. That the parties have tentatively set June 9, 2005 as the date for said deposition, subject to this court's decisions.

WHEREFORE, Plaintiffs respectfully move your Honorable Court to amend the Order docketed March 3, 2005, dated February 2, 2005, to provide the following:

- a. Grant Plaintiffs leave to take the videotape deposition of Dr. Donald Conrad for use at trial on or before June 30, 2005;
- b. That Plaintiffs shall order the transcript of said deposition on an expedited basis;
- c. Defense Counsel shall have ninety (90) days from the date the defense receives said transcript within which to file Pre-Trial Motions or Motion for Summary Judgment relating to Dr. Conrad as a witness and his proposed trial testimony;
- d. That this case shall be transferred from the Civil Trial List closing on July 1, 2005 to the Civil Trial List closing on December 2, 2005.

Further, to forthwith issue a Rule directed to defendant to show cause, if any, why the Prayer of this Motion should not be granted.

Respectfully submitted:

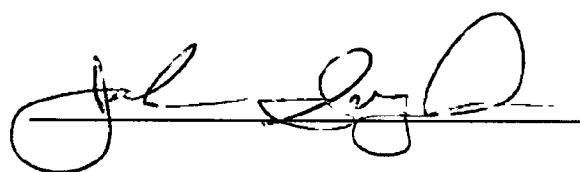


JOHN SUGHRUE, ESQUIRE
Attorney for Plaintiffs
23 North Second Street
Clearfield, PA 16830

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

I verify that the statements made in this Motion to Extend Time for Taking of Medical Depositions and Related Matters are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "John Colavecchi", is written over a horizontal line.

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,
Plaintiffs,

vs.

DONALD B. LUZIER,
Defendant

*
*
*
*
*
*
*
*
*
*
*
*
*

NO. 03-129-CD

ORDER

NOW, this 2nd day of February, 2005 following status conference among the Court and counsel it is the ORDER of this Court as follows:

1. Plaintiff shall have no more than sixty (60) days from this date in which to complete the deposition of Dr. Donald Conrad;
2. Any additional or supplemental expert report from Dr. Conrad shall be provided to Defense counsel in no less than ten (10) days prior to the deposition as set forth in paragraph #1 above;
3. In no more than one hundred and five (105) days from this date Defense shall file any Motion for Summary Judgement along with the Defense brief relating thereto. Plaintiffs' brief shall be received no less than five (5) before the date that the Court schedules for oral argument on the Motion for Summary Judgement;
4. The Court Administrator is directed to list the case for Jury Trial on the Fall, 2005 Trial List.

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

MAR 03 2005

BY THE COURT,
/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

Attest.

Frederick J. Ammerman
Court of Common Pleas
Court of Courts

BY:
MAR 7 2005

EXHIBIT "1"

JOHN SUGHRUE
Attorney at Law

Phone (814) 765-1704

23 North Second Street
Clearfield, PA 16830

Fax (814) 765-6959

356 PM
✓
April 8, 2005

VIA FACSIMILE 765-0173 &
FIRST CLASS MAIL

Dr. Donald Conrad
502 Park Avenue
Clearfield, PA 16830

RE: Request for Deposition Dates
Your Patient: Richard E. Hugar, deceased

Dear Dr. Conrad,

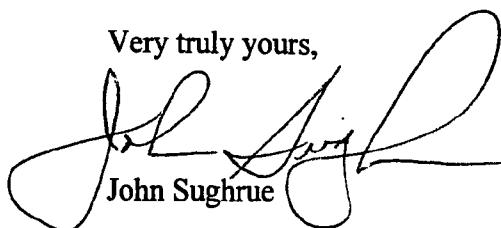
You will recall that you were previously scheduled for a deposition in the above matter by Attorney Colavecchi and myself who are working together on this case. It was canceled by me.

We would now like to take your deposition for use at trial. Could your office please provide me with some dates and times that you would be available during the rest of April and May. I expect the deposition would take one and one-half to two hours at the most.

We would also like to meet with you prior to the deposition so that it will go more smoothly. As always, we are willing to compensate you for your time and preparation. If you will advise me of your financial requirements, we will remit promptly.

A member of your staff should feel free to call my secretary and give the dates to her. Thank you.

Very truly yours,



John Sughrue

JS/kg

cc: Joseph Colavecchi, Esq.

JOHN SUGHRUE
Attorney at Law

Phone (814) 765-1704

23 North Second Street
Clearfield, PA 16830

Fax (814) 765-6959

April 20, 2005

VIA FACSIMILE 765-0173 &
FIRST CLASS MAIL

Dr. Donald E. Conrad
502 Park Avenue
Clearfield, PA 16830

Att: Shannon

RE: Request for Deposition Dates
Your Patient: Richard E. Hugar, deceased

Dear Dr. Conrad/Shannon,

Just a reminder. A couple weeks ago I called and wrote asking for some dates to set up a deposition. It is with respect to treatment of Mr. Luzier.

If I could have two or three possible dates, I need to clear them with the attorney for the insurance company who also has to be present and have the opportunity to ask questions.

Please remember, we can set up dates and if an emergency arises at that time that is unforeseen, it can always be rescheduled. I suggest that you give me at least two or three dates. I will immediately clear them with the other lawyer and get back to you within 24 hours.

Thank you for your consideration of this matter.

Very truly yours,

John Sughrue

JS/kg

cc: Joseph Colavecchi, Esq.
Katherine Oliver, Esq.

MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926

FAX (814) 234-5620
www.mqblaw.com

April 29, 2005

VIA FACSIMILE & REGULAR MAIL

John Sughrue, Esquire
 23 North Second Street
 Clearfield, PA 16830

In Re: Morris, et al v. Luzier, No. 03-129-C.D.

Dear Mr. Sughrue:

Please accept this letter in response to your correspondence of April 25, 2005, and in follow-up to our telephone conversation of today.

Given the concerns noted in my letter to you of April 12, 2005, I cannot agree, in general terms, to extend the deadline for Plaintiffs' experts previously set by the Court. Nonetheless, if we can reach agreement on a schedule that keeps this case on track without prejudice to my client, I will not object to your seeking an extension of the expert deadline so as to conduct Dr. Conrad's deposition on one of the several dates in June noted in your April 25, 2005 correspondence. In anticipation that you will be seeking an Order of Court to extend the deadline, I also wanted to advise you that of the dates presented, I can rearrange my schedule for June 9, 2005 for the deposition.

Per our telephone conversation, I believe extending Dr. Conrad's deposition until June makes things tight from the standpoint of summary judgment consideration of the case, and for trial preparation following that if the defense motion is not successful. If we can agree to have the case listed on the winter 2005/2006 trial term, and extend the summary judgment deadlines previously set by the Court, I believe that would alleviate this concern and still keep the case moving forward toward resolution one way or the other. It is my understanding that you will agree to waive any delay damages for this period. If we can reach agreement in this regard, and if the Court approves of the agreement, I will not object to your request for extension, and you may represent the same to the Court.

MCQUAIDE, BLASKO, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko, II, Mark Fenkleer, David M. Heinel, Steven S. Harvitz, James M. Horne, Wendell V. Combs, Darryl R. Sizak, Mark Righter, Daniel P. Bright, Paul J. Tomczak, Janice C. Glynnord, John A. Snyder, April C. Simpson, Alice P. Neely, Pamela A. Rucci, Katherine V. Oliver, Katherine M. Alles, Wayne L. Mowery, Jr., Cheva L. Glenn-Ham, Linda N. Jones, Debra R. Long, Matthew T. Rogers, Frederick R. Bruggis, Anthony A. Stron, Russell A. Venzor
 Hershey Office: Grace H. Fleming, Maureen A. Gallagher, Michael J. Mohr, Jonathan B. Stepanian, Brian D. Russell
 Hollidaysburg Office: Thomas M. Rose, J. Benjamin Yeager

John G. Lare (1801-1965) Roy Wilkinson, Jr. (1918-1995) Delton J. McQuaide (1936-1997)

EXHIBIT "4"

MCQUAIDE BLASKO

ATTORNEYS AT LAW

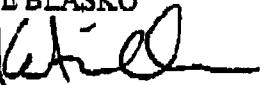
John Sughrue, Esquire
April 29, 2005
Page 2

Please do not hesitate to contact me if you would like to discuss the above further.

Very truly yours,

McQUAIDE BLASKO

By:



Katherine V. Oliver

KVO/nlc

cc: Joseph Colavecchi, Esquire
Sheila Walters (Claim No. 38-K068-185)

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE :
of RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

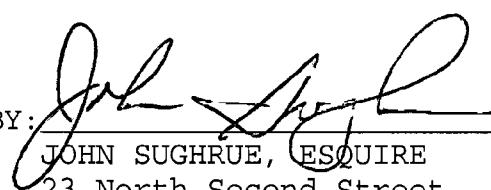
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of
May, 2005, a true and correct copy of a MOTION TO
EXTEND TIME FOR TAKING OF MEDICAL DEPOSITION AND RELATED MATTERS
in the above matter was served on the following by depositing said
copy in the United States Mail, first class, postage prepaid and
addressed as follows:

KATHERINE V. OLIVER, ESQUIRE
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-6699

DATE: May 3, 2005

BY:


JOHN SUGHRUE, ESQUIRE
23 North Second Street
Clearfield, PA 16830
(814) 765-1740

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

Vs.

**DONALD B. LUZIER,
Defendant**

CIVIL DIVISION

No. 03 - 129 - CD

RULE

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

JOHN SUGHRUE, ESQUIRE
PA I.D.

23 North Second Street
Clearfield, PA 16830
814/765-1704

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

62
92-3461 21C
MAY 04 2005 Atty Sughrue
PROBATE, Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

AND NOW, this 4th day of MAY, 2005, upon consideration
of the Plaintiffs' foregoing Motion to Extend Time, a Rule is hereby issued upon
Defendant to Show Cause why the Motion should not be granted.

Rule Returnable the 24th day of May, 2005, for written
response.

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND
AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY ENTERING A WRITTEN
APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR
DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT
IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE
ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY
THE PLAINTIFF. YOU MAY LOSE 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.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
SECOND AND MARKET STREETS
CLEARFIELD, PENNSYLVANIA 16830
814/765-2641 EXT. 5982

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

BY THE COURT:


JUDGE

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

ELMA MORRIS and SANDY JONES, *
Co-Executrices, of the ESTATE OF *
RICHARD E. HUGAR, Deceased, *
Plaintiffs *
*
vs. * No. 03-129-CD

DONALD B. LUZIER, *
Defendants *

* Type of Pleading: **ORDER**

* Filed on Behalf of: **Plaintiffs**

* **Counsel of Record for this Party:**

* Joseph Colavecchi, Esq.
* P.A. I.D. #06810
* COLAVECCHI & COLAVECCHI
* 221 E. Market St.
* PO Box 131
* Clearfield, PA 16830
* Phone: (814) 765-1566

* John Sughrue, Esq.
* P.A. I.D. #01037
* 23 North Second Street
* Clearfield, PA 16830
* Phone: (814) 765-1704
* Fax: (814) 765-6959

2cc
019-5824 Atty Sughrue
MAY 17 2005 (W) Oliver
John A. Shaw
Prothonotary, Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF :
RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03-129-CD
:
DONALD B. LUZIER, :
Defendants :
:

ORDER

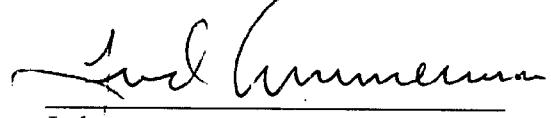
AND NOW, this 16th day of May, 2005, upon Motion of Plaintiffs to extend the pre-trial period in the above-captioned matter and with agreement of Defense Counsel, it is Ordered as follows:

1. The period within which to take the deposition of Dr. Donald Conrad is hereby extended to June 30, 2005 with the understanding by the Court that the date of June 9, 2005 has been committed by Dr. Conrad and a deposition is being set up for that date;
2. That the Court Administrator is directed to move said case from the Fall 2005 Trial List to the Winter 2005-2006 term of court;
3. That the transcript of Dr. Conrad's deposition shall be ordered by Plaintiffs' Counsel on an expedited basis;
4. That Defense Counsel shall have ninety (90) days from the date the defense receives a transcript of Dr. Conrad's deposition to file any pre-trial motion that defense may choose with respect to said witness and his proposed testimony, including a Motion for Summary Judgment;

5. Plaintiffs shall provide to Defense Counsel, at least ten (10) days prior to said deposition, all medical records of Richard E. Hugar, deceased, to which it intends to refer and reports of Dr. Donald Conrad as provided in prior Order of this Court;

6. That no delay damages shall be claimed nor attributable to the period of time covered by the granting of this extension of time or the transfer of this case from the fall term to the winter term of this Court.

By the Court:



Judge

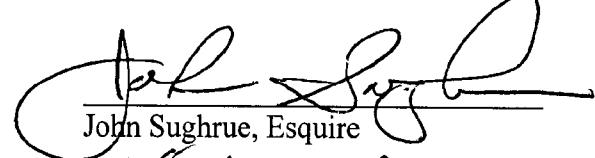
Counsel for the parties hereby agree to the entry of the foregoing Order.

5-13-05

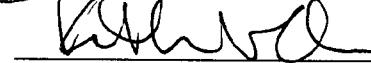
Date

5-11-05

Date



John Sughrue, Esquire



Katherine V. Oliver, Esquire

MAY 17 2005

FROM A SONG
PROFOUND, COLORFUL

BY:

EGEIVI

CA

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, : TYPE OF PLEADING:
Plaintiffs, : **DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**
v. :
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
 : **DEFENDANT**
 :
 : COUNSEL OF RECORD FOR
 : FOR THIS PARTY:
 : JAMES M. HORNE, ESQ.
 : I.D. NO. 26908
 : KATHERINE V. OLIVER, ESQ.
 : I.D. NO. 77069
 : McQUAIDE, BLASKO,
 : FLEMING & FAULKNER, INC.
 : 811 University Drive
 : State College, PA 16801
 : PH# (814) 238-4926

Fwd

AUG 26 2005

m/ 11:00 (m)

William A. Shaw

Prothonotary/Clerk of Courts

No CERT

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, :
Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :

ORDER

AND NOW, this _____ day of _____, upon consideration of Defendant's Motion for Summary Judgment and Plaintiffs' Response thereto, it is hereby ORDERED that Defendant's Motion is granted, and this case is hereby dismissed.

J.

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :
:

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

AND NOW COMES Defendant, Donald B. Luzier, by and thorough his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and files the following Motion for Summary Judgment.

PROCEDURAL BACKGROUND and NATURE OF CLAIMS

1. This personal injury action arises from an automobile accident of November 20, 2002 that occurred when Defendant's vehicle struck a house owned by Richard Hugar, now deceased.
2. The action was filed via Complaint on or about January 30, 2003 by Plaintiffs Elma Morris and Sandy Jones, Co-Executrices of the Estate of Richard E. Hugar, deceased.
3. Defendant filed preliminary objections on February 21, 2003, seeking greater specificity as to Plaintiffs' damages claims. This led to the filing of an Amended Complaint, preliminary objections thereto, and ultimately a second Amended Complaint on July 11, 2003.

4. In the Second Amended Complaint, Plaintiffs seek damages for physical and emotional injuries allegedly sustained by Mr. Hugar when Defendant's vehicle hit his house. (Second Amended Compl., Exhibit A hereto, at ¶ 7 a-u).

5. Defendant filed an Answer with New Matter to the Second Amended Complaint, and Plaintiffs filed a Reply thereto. The pleadings are thus closed.

6. The parties have exchanged written discovery, and depositions of all parties were taken on March 15, 2004

7. The deposition of Dr. Donald Conrad, Richard Hugar's primary care physician, was initially scheduled for August 10, 2004, but was cancelled by Plaintiffs' counsel on the afternoon of August 9, 2004.

8. At the request of Defendant's counsel, a Status Conference was held on March 2, 2005. One of the issues discussed at the conference was Defendant's intent to file a motion for summary judgment.

9. Scheduling issues were discussed at the Conference, and the court entered an Order on March 2, 2005 setting various deadlines, including a deadline for the video-taped deposition of Dr. Conrad for trial.

10. The parties thereafter agreed to a revised scheduling Order, which was approved by the Court on May 16, 2005. Pursuant to the Order, Dr. Conrad's deposition was to be taken by no later than June 30, 2005. The Order also set a deadline for Defendant's motion for summary judgment to be filed within 90 days of receipt of the transcript of Dr. Conrad's testimony.

11. Dr. Conrad's deposition for use at trial was taken on June 9, 2005, and the transcript was received on or about June 27, 2005. (See Exhibit B hereto, Conrad Deposition).

12. As further discussed below, discovery in this case demonstrates that Plaintiffs cannot present sufficient evidence at trial from which a jury could find that Mr. Hugar suffered any physical injury in the November 20, 2002 accident, or that he was in the zone of danger and actually feared injury.

13. Consequently, Plaintiffs cannot meet their burden of proving recoverable damages in this personal injury case, and Defendant files the within motion for summary judgment, seeking that judgment be entered in his favor as a matter of law.

APPLICABLE LAW

14. Summary judgment is warranted when the party with the burden of proof on an issue cannot come forward with sufficient admissible evidence from which a jury could find in favor of that party. See Pa. R.C.P. 1035.2(2).

15. Plaintiffs herein bear the burden of proving the injuries and damages claimed by a preponderance of the evidence. See, e.g., Gordon v. Travato, 234 Pa. Super. 279, 338 A.2d 653, 654 (1975).

16. Damages and injuries must be proven with reasonable certainty, and not by “evidence” amounting to speculation and conjecture. Id.

17. When expert testimony is offered in support of an issue or claim, the expert’s testimony must be based on facts of record. Collins v. Hand, 431 Pa. 378, 246 A.2d 398 (1968). Significantly, “the opinion of the expert does not constitute proof of the existence of the facts necessary to support the opinion.” 431 Pa. at 390, 246 A.2d at 404; Baez v. Temple Univ. Hosp., 2004 WL 226116 (Phila. Co. Jan. 16, 2001).

18. With limited exception not applicable herein, Pennsylvania law only permits recovery for emotional/psychological injury in cases where there has been a demonstrable

physical impact to the plaintiff, or where the plaintiff was in the zone of danger at the time of the accident and feared for his own safety.¹ See e.g., Hough v. Meyer, 55 Pa. D&C 4th 473, 479-87 (Fayette Co. March 26, 2002) (sustaining preliminary objection to emotional distress claim where it was alleged that defendant tractor-trailer crashed into plaintiffs' home causing substantial damage, but not specifically alleged that plaintiff-occupants suffered a physical impact or were in actual fear of impact).

FACTUAL BACKGROUND

19. The case at bar involves a single-vehicle accident that occurred on November 20, 2002 when Defendant Donald Luzier lost control of his truck after hitting a patch of black ice on State Route 1003 in Lawrence Township and collided with the residence of Richard E. Hugar, deceased.

20. Richard Hugar, who was 91 years old at the time of the accident, died from unrelated medical conditions on January 10, 2003. (See Exh. B, at 154-55).

21. There is no dispute in this case that Defendant's vehicle struck the residence of Richard Hugar, and that the accident resulted in substantial property damage.

22. As set forth further below, however, Plaintiffs cannot come forward with any competent, admissible evidence that Mr. Hugar sustained any physical impact or injury when Defendant's truck struck his home, and the record is clear that Mr. Hugar was not even aware that his house had been hit until he came to the door after the occurrence was over.

¹ A third theory of recovery for emotional injuries exists in "bystander" cases, where a plaintiff witnesses physical injury to a relative and experiences a direct emotional impact from the sensory and contemporaneous observance of the same. See, e.g., Sinn v. Burd, 486 Pa. 146, 404 A.2d 672 (1979). This theory is not even arguably raised by the case at bar.

23. Mr. Hugar was sleeping when Defendant's vehicle struck his house, and the vehicle did not enter the portion of the residence where Mr. Hugar slept. (See e.g., Elma Morris Depo., pertinent portions attached hereto as Exhibit "C," at 35; and Sandra Jones Depo., pertinent portions attached hereto as Exhibit "D," at 50, 55-56, 94).

24. The evidence demonstrates that, at the time of the accident, Mr. Hugar was not even aware that his residence had been struck, let alone in fear for his own safety. (See, e.g., Exh. C, at 41-42; Exh. D, at 44-45, 55-56).

25. When Mr. Hugar came to the door of his house after the accident, he told Defendant that he thought the commotion he heard had been caused by blasting in the area. (See Luzier Depo., pertinent portions attached hereto as Exhibit E, at 25-26). Mr. Hugar also informed Plaintiff Sandra Jones that he thought the commotion was from blasting by a coal company, a common occurrence in the area. (See Exh. D, at 44-45, 55-56).

26. There is no admissible evidence that, before his death, Mr. Hugar himself claimed to have been physically injured or to have suffered any impact during the accident.²

27. Various individuals responded to the scene just after the accident, including investigating police officers from Lawrence Township Police Department, repairmen who were called to address the property damage, and Plaintiffs Elma Morris and Sandra Jones. (Exh. C, at 31-33; Exh. D, at 56-59).

² Plaintiffs apparently intend to introduce hearsay testimony from one of their sisters, Eunice Fetter, that Richard Hugar called her on the night of November 20, 2002, many hours after the accident occurred and after everyone else had gone home, and told her that he was thrown from his bed during the accident causing him to hit a table. (See Exh. D, at 64-67; and correspondence from Attorney Colavecchi dated March 17, 2004, attached hereto as Exhibit "F"). This alleged statement is inadmissible hearsay, and is inconsistent with statements Mr. Huger made to Plaintiffs on the day of the incident and to medical personnel five days later. (See Exh. C, at 42-45; Exh. D, at 64; Exh. B, at 74-78, 156-57, and Def. Exh's. 1-2a thereto).

28. No injury was reported on the day of the accident. (See Exh. C, at 43-44; Exh. B, at 73-74).

29. Plaintiffs, who were present immediately after the accident and remained at the Hugar residence throughout the remainder of the day and into the evening, testified that Mr. Hugar did not appear to be injured on the day of the accident. (Exh. C, at 38-44; Exh. D, at 59).

30. Mr. Hugar sat down to breakfast in his own home on the day of the incident, and remained there alone after Plaintiffs left that evening for their own homes. (Exh. D, at 56-57; Exh. C, at 39-41).

31. Plaintiffs testified in their depositions that Mr. Hugar did not know what had occurred when his house was struck by Defendant's truck because the accident happened so quickly and he was sleeping, (see Exh. D, at 67, 94), and that Mr. Hugar did not tell Plaintiffs that he had suffered any kind of physical injury or impact when his house was struck. (Exh. C, at 41-45; Exh. D, at 55, 64, 94).

32. Mr. Hugar was not taken to the doctor or for any medical treatment on the day of the accident.

33. Plaintiffs allege that Mr. Hugar began to have complaints some days after the accident. (See Exh. C, at 45-47).

34. Five days after Defendant's truck struck his house, Mr. Hugar went to Clearfield Hospital emergency room with complaints of pain behind his ear and left-sided low back pain. (See Exh B., at 24-25, 77-85 and Def. Exh's. 2 and 2a thereto).

35. Plaintiffs claim that there was a lump on Mr. Hugar's back at that time, which they claim came from the accident because they had not observed the lump when they viewed Mr. Hugar's back many weeks before. (Exh. C, at 47-48; Exh. D at 68-70).

36. Records from Clearfield Hospital emergency room do not substantiate Plaintiffs' claim that any lump or other deformity existed. (Exh. B, at 79, and Def. Exh's. 2 and 2a thereto).

37. Records from the emergency room show that Mr. Hugar was released in stable condition after a complete examination, including x-rays. (Id. at 77-84, and Def. Exh's. 2 and 2a thereto). No signs of physical injury from the November 20, 2002 accident were documented. (Id.).

38. On December 4, 2002, Mr. Hugar reported for a regularly scheduled visit with Dr. Donald Conrad, his primary care physician. (Id. at 85-86). At that time, almost two weeks after the accident, Mr. Hugar had complaints of shoulder and neck pain. (Id. at 23-24).

39. Medical records and testimony establish that Mr. Hugar had presented to Dr. Conrad over many years with these same kinds of complaints attributable to severe arthritis, as well as for many other medical conditions. (See, e.g., Exh. B, at 85-99, 107-108 and Def. Exh's. 3-19 thereto).

40. Mr. Hugar's pre-existing medical conditions included chronic disequilibrium, or balance problems. (See, e.g., Exh. B, 89-90, 99-129, and Def. Exh's. 5-19 thereto).

41. Dr. Conrad's records do not reflect that Mr. Hugar reported having sustained any bodily impact or injury when Defendant's truck hit his house. (Exh. B, at 74-76).

42. In fact, Dr. Conrad testified that Mr. Hugar did not know whether he had experienced any kind of bodily impact. (Id. at 74-78).

43. X-rays taken at the time of the December 4, 2002 visit showed pre-existing arthritis changes, but no injuries attributable to the November 20, 2002 accident. (Id. at 41-43, 144-47).

44. Dr. Conrad prescribed Ultram for Mr. Hugar, as he had done on other occasions for relief of arthritis, and sent him home. (Id. at 31-32, 144-45, 100).

45. Mr. Hugar subsequently returned to Dr. Conrad on December 16, 2002 with various symptoms of physical illness. Dr. Conrad had no explanation for these symptoms, (id. at 50-51), and Mr. Hugar was sent to the Clearfield Hospital emergency room, where he was diagnosed with pneumonia. (Id. at 41-45, 50-51).

46. Following Mr. Hugar's hospital admission for pneumonia, he developed various other physical impairments and complications, including heart fluttering, blood clots, and bleeding. (Id. at 50-55).

47. Mr. Hugar died on January 10, 2003. The causes of death were bilateral leg deep vein thrombophlebitis, recent pneumonia with sepsis, heart disease, bladder cancer, irregular heartbeat, and gross hematuria. (Id. at 154-55).

48. Despite the absence of any evidence that Mr. Hugar actually sustained a bodily impact of any sort during the accident, Dr. Conrad testified in his deposition for use at trial that he had no reason to believe that the shoulder and neck complaints Mr. Hugar reported at his December 4th visit two weeks after the accident were not the result of a strain caused when Mr. Hugar jumped from bed when the truck hit his home, and that it "could very well" explain the complaints. (Id. at 35-41).

49. Furthermore, although he conceded that the accident did not cause Mr. Hugar's death, Dr. Conrad offered an opinion that the accident of November 20, 2002 resulted in emotional/psychological injury to Mr. Hugar, despite the fact that Dr. Conrad never treated Mr. Hugar for this ostensible injury. (Id. at 55-62, 138-144). Specifically, Dr. Conrad testified to his opinion that the occurrence of the accident lead to increased anxiety in Mr. Hugar, and that Mr.

Hugar “lost his will to live” as a result, which contributed to Mr. Hugar’s overall decline. (Id. at 55-62).

50. Evidence adduced in discovery reveals that Dr. Conrad’s opinions noted above are not supported by facts of record or admissible evidence, are lacking in adequate foundation, and are not competent to support Plaintiffs’ claims of physical and/or emotional injury to Mr. Hugar.³

MOTION

51. As set forth above, Plaintiffs bear the burden of proving any damages claimed under a cognizable legal theory. See *supra*

52. Plaintiffs cannot come forward with admissible evidence to prove that Richard Hugar sustained a physical injury or impact as a result of Defendant’s vehicle hitting his house such as would warrant submission of the physical injury claim to the jury.

53. Consequently, Plaintiffs are also precluded from submitting a claim for psychological or emotional distress to the jury, as established by the authorities cited above.

54. Although Plaintiffs will likely attempt to rely on Dr. Conrad’s testimony to prove that physical impact occurred, any such reliance would clearly run afoul of the principle established in Collins, supra., that the opinion of an expert cannot serve as proof of the existence of the facts necessary to support the opinion.

55. Furthermore, given that Mr. Hugar was sleeping in a room that was not struck by Defendant’s vehicle, and that he was not even aware that his house had been struck until he was told what happened afterward, Plaintiffs clearly cannot demonstrate that Mr. Hugar was in the

³ Defendant objected to Dr. Conrad’s testimony on these bases, among others, at the time of the deposition.

“zone of danger” created by Defendant’s ostensible negligence such that he was in fear for his own safety when the accident occurred.

56. In sum, Plaintiffs cannot come forward with sufficient evidence from which a jury could find that Mr. Hugar suffered a physical injury or impact, or was in fear of the same, and are therefore precluded, as a matter of law, from proceeding with their claim that Mr. Hugar suffered an emotional or psychological injury in the accident of November 20, 2002.

57. Consequently, Plaintiffs cannot come forward with sufficient competent evidence to support their personal injury damages claims, and Defendant is entitled to summary judgment in his favor.

WHEREFORE, Defendant respectfully requests that summary judgment be entered in his favor, and that the above-captioned action be dismissed.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: August 25, 2005

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

ELMA MORRIS and SANDY JONES,	:	
Co-Executrices, of the ESTATE of	:	No. 03-129-C.D.
RICHARD E. HUGAR, Deceased,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
DONALD B. LUZIER,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Donald B. Luzier's Motion for Summary Judgment, in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 25th day of August, 2005, to the attorney of record:

John Sughrue, Esquire
23 North Second Street
Clearfield, PA 16830

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____



Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: August 25, 2005

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE
OF RICHARD E. HUGAR, Deceased,
Plaintiffs

Vs.

DONALD B. LUZIER,
Defendant

CIVIL DIVISION

No. 03 - 129 - CD

SECOND AMENDED COMPLAINT

Filed on Behalf of:

Plaintiffs, ELMA MORRIS and
SANDY JONES

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

JUL 11 2003

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
: Vs. :
: :
DONALD B. LUZIER, :
Defendant :
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Second Amended 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 Second Amended 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.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF : No. 03 - 129 - CD
RICHARD E. HUGAR, Deceased, :
Plaintiffs: JURY TRIAL DEMANDED
Vs. :
DONALD B. LUZIER, :
Defendant :

SECOND AMENDED COMPLAINT

1. Plaintiffs are Elma Morris and Sandy Jones, Co-Executrices under the Will of Richard E. Hugar, deceased, having addresses as follows:

a. Elma Morris, 317 Daisy Street, Clearfield, Pennsylvania 16830;

b. Sandy Jones, General Delivery, Woodland, Pennsylvania 16881.

c. Richard E. Hugar formerly resided at R.R. #1, Box 316, Clearfield, Pennsylvania 16830. Richard E. Hugar passed away on January 10, 2003. Subsequently, Elma Morris and Sandy Jones were appointed Co-Executrices under the Last Will of Richard E. Hugar, deceased, by Order of the Office of the Register of Wills for Clearfield County, Pennsylvania, said Order dated January 13, 2003.

2. Defendant is Donald B. Luzier residing at R.R. #1, Box 298, Mann Road, Clearfield, Pennsylvania 16830.

3. On November 20, 2002, at approximately 5:40 a.m. Donald B. Luzier was operating a 1997 motor vehicle in Lawrence Township, Clearfield County, Pennsylvania, traveling north along the Martin Street Extension, S.R. 1003.

4. Defendant lost control of his motor vehicle causing him to swerve left and run off the highway and up onto the land owned by Richard E. Hugar and smashed into his house moving it from its foundation. Richard E. Hugar was occupying the house at that time and it is alleged on information and belief that it threw him to the floor and caused shock to him.

5. The injuries and damages hereinafter set forth were caused solely by and were the direct and proximate result of the negligence of Defendant in any or all of the following respects.

a. In operating the vehicle at a high, dangerous and reckless speed under the circumstances;

b. In failing to have the vehicle under proper control;

c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the surrounding traffic conditions;

d. In failing to operate the brakes in such a manner so that the vehicle could be stopped in time to avoid hitting the home;

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

e. In failing to properly inspect the vehicle to determine any mechanical defects;

f. In failing to have reasonably sufficient traction devices on the wheels of the vehicle to permit the vehicle to stop in time;

g. In crossing the divider line which marked the center of the highway; and,

h. In running completely off the roadway and smashing into the home of Richard E. Hugar.

COUNT I
SURVIVAL ACTION

Paragraphs 1 through 5 of the Second Amended Complaint are incorporated herein by reference as if set forth at length.

6. Plaintiffs bring this survival action under 20 Pa.C.S. 3373 and 42 Pa.C.S. 8302.

7. As a direct and proximate result of the aforesaid acts of negligence, decedent suffered and Defendant is liable to Plaintiffs for the following:

a. After the car crashed into his home, the violence of the crash and the incident happening in the middle of the night while he was in bed, shook up Richard Hugar tremendously.

b. The accident became part of Richard Hugar and became his whole being. It was all he wanted to talked about.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

c. The overall health of Richard E. Hugar deteriorated after the accident. His mental status and outlook were adversely affected.

d. The injuries and shock of the accident led to an inability for him to deal with his illness in a positive manner. The damage to his home and the resultant cleanup of the mess caused a serious mental disturbance to Richard E. Hugar.

e. Prior to the accident, Richard E. Hugar was leading a normal life for a man his age. He would get up in the morning, get his own breakfast and then go outside and work in the yard.

f. Immediately after the accident, he was in a daze and wandered around the house with his hands behind his back and did not appear to be aware of what was happening around him.

g. After the accident, Richard E. Hugar became very quiet. It was like he was a different person and looked lost.

h. Immediately after the accident and continuing beyond that, Richard E. Hugar appeared to be bewildered and shaky from shock.

i. After the accident, Richard E. Hugar started using a cane in the house and complained that his head was splitting and his back was killing him and that he could hardly move. He kept complaining of pain, holding his head and complaining that his head was hurting.

j. Immediately after the accident Richard E. Hugar stated that his lips appeared to be numb and that his head was coming off.

k. Richard E. Hugar after the accident was staggering. He did not want to go outside. He did not want to move. He just wanted to sit. This was not his routine prior to the accident since prior to that, he would go outside, pull dandelions out of the ground, putter around his property and would rake the yard.

l. Immediately after the accident, Richard E. Hugar complained that there was a lump or bulge in his back and that he had a pain over and down his back which continued to get worse. His daughters observed that he appeared to have a bulge in his back after the accident that was not there prior to the accident.

m. After the accident, Richard E. Hugar would take Ibuprofen and Tylenol for pain but it did not appear to touch the pain.

n. After the accident, Richard E. Hugar would forget what day it was and could not keep track of the time. He seemed to become more and more disoriented and confused.

o. After the accident, Richard E. Hugar in addition to being confused, was staggering so badly that his daughters had to be on both sides of him to help him to the car when he went to the doctor or went out.

p. After the accident, Richard E. Hugar indicated he did not feel he could make it upstairs to go to bed, although he did not have this problem prior to the accident.

q. The pain that arose in Richard E. Hugar after the accident was so bad that he kept talking about going to a nursing home and stating that he will just die. He appeared to be consumed by the pain so badly that he did not care anymore.

r. When Richard E. Hugar went to the doctor, his condition was so bad that the doctor told him that he should be taken to the Emergency Room.

s. After his daughters took him to the hospital, Richard E. Hugar was admitted and never came home. He was in the hospital until he died on January 10, 2003.

t. Richard E. Hugar was in the hospital over Christmas and stated he did not feel he could go home. This was in December 2002.

u. All the above described symptoms caused Richard E. Hugar to suffer a loss of enjoyment of life and to have pain and suffering that he did not have prior to the accident. He suffered up to the time of his death.

WHEREFORE, Plaintiffs demand judgment against Defendant for a sum in excess of Twenty-five Thousand Dollars (\$25,000.00), plus interest and costs.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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

Elma M. Morris att.
ELMA MORRIS, Co-Executrix
under the Last Will of Richard
E. Hugar, Deceased

Sandy Jones est
SANDY JONES, Co-Executrix
under the Last Will of Richard
E. Hugar, Deceased

EXHIBIT B

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

* * * * *

*

ELMA MORRIS and *
SANDY JONES, * Case No.
CC-EXECUTRICES of * 03-129-CD
the ESTATE of *
RICHARD E. HUGAR, *
Deceased, *
Plaintiffs *
vs. *
DONALD B. LUZIER, * COPY
Defendant *

*

* * * * *

VIDEOTAPED DEPOSITION OF

DONALD E. CONRAD, D.O.

June 9, 2005

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

1 VIDEOTAPED DEPOSITION
2 OF
3 DONALD E. CONRAD, D.O., taken on behalf
4 of the Plaintiffs herein, pursuant to
5 the Rules of Civil Procedure, taken
6 before me, the undersigned, Lacey C.
7 Gray, a Court Reporter and Notary
8 Public in and for the Commonwealth of
9 Pennsylvania, at the law offices of
10 Colavecchi & Colavecchi, 221 East
11 Market Street, Clearfield,
12 Pennsylvania, on Thursday, June 9, 2005
13 beginning at 4:08 p.m.

1 A P P E A R A N C E S
23 JOHN SUGHRUE, ESQUIRE
4 23 North Second Street
5 Clearfield, PA 168306 COUNSEL FOR PLAINTIFFS
78 JOSEPH COLAVECCHI, ESQUIRE
9 Colavecchi & Colavecchi
10 221 East Market Street
11 Clearfield, PA 1683012 CO-COUNSEL FOR PLAINTIFFS
1314 KATHERINE V. OLIVER, ESQUIRE
15 McQuaide Blasko, Attorneys at Law
16 811 University Drive
17 State College, PA 16801-669918 COUNSEL FOR DEFENDANT
19
20
21
22
23
24
25

1 I N D E X

2

3 | WITNESS: DONALD E. CONRAD, D.O.

4 EXAMINATION ON QUALIFICATIONS

5 by Attorney Sughrue 9 - 15

6 EXAMINATION ON QUALIFICATIONS

7 by Attorney Oliver 16 - 17

8 DIRECT EXAMINATION

9 by Attorney Sughrue 17 - 63

10 | CROSS EXAMINATION

11 by Attorney Oliver 68 - 158

12 | REDIRECT EXAMINATION

13 by Attorney Sughrue 158 - 170

DISCUSSION AMONG PARTIES 170 - 175

15 | CERTIFICATE

16 | Page

17

18

10

20

20

1

23

		<u>EXHIBIT PAGE</u>	
			<u>PAGE</u>
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	A	Office Notes 8/27/02	159
6	2A	Clearfield Hospital	
7		Record 11/25/02	17
8	1	Office Notes 2/4/02	--
9	2	Clearfield Hospital	
10		Record 11/25/02	17
11	3	Office Notes 12/19/01	93
12	4	Office Notes	96
13	5	Office Notes 4/20/01	95
14	6	Blair Medical	
15		Associates 3/24/99	102
16	7	Blair Medical	
17		Associates 1/17/00	103
18	8	Office Notes 2/18/00	106
19	*9	Office Notes	
20		3/6/00 and 4/18/00	--
21	10	Office Notes	
22		12/18/99 and 2/25/00	113
23	11	Office Notes 10/12/99	115
24			
25			

1

EXHIBIT PAGE

2

3

PAGE

4

NUMBER DESCRIPTION IDENTIFIED

5

12 Blair Medical Associates

6

Letter dated 9/27/99

117

7

13 Office Notes 8/30/99

118

8

14 Office Notes 12/6/99

121

9

15 Office Notes

121

10

16 Office Notes 1/19/99

123

11

17 Office Notes

12

10/31/97 and 5/7/98

126

13

18 Office Notes

127

14

19 Office Notes

128

15

20 Office Notes two-page

130

16

21 Clearfield Hospital

17

Letter dated 5/28/91

132

18

22 Letter From Dr. Conrad to

19

Doctor Piasio 8/14/91

134

20

23 Clearfield Hospital

21

Imaging Department

136

22

24 Office Notes 12/16/02

147

23

29 Clearfield Hospital

24

Discharge Summary

154

25

* not attached

OBJECTION PAGE

3	<u>ATTORNEY</u>	<u>PAGE</u>
4	OLIVER:	23, 38, 39, 40, 48, 58,
5		63, 64, 65, 170, 171

7 SUGHRUE: 69, 108, 108, 109

1 P R O C E E D I N G S

2 -----

3 VIDEOGRAPHER:

4 The date today is June
5 9th, 2005. The time is 4:08
6 p.m. This deposition is being
7 taken at 221 East Market Street,
8 Clearfield, Pennsylvania. The
9 caption of this case, In The
10 Court Of Common Pleas Of
11 Clearfield County, Pennsylvania,
12 Elma Morris and Sandy Jones,
13 co-executrices of the Estate of
14 Richard Hugar, deceased, versus
15 Donald B. Luzier. The case
16 number is 03-129-CD. The name
17 of the witness is Donald E.
18 Conrad, D.O. Would the
19 attorneys present state their
20 names and the parties they
21 represent?

22 ATTORNEY SUGHRUE:

23 My name is John Sughrue,
24 and I, along with Joseph
25 Colavecchi, are Co-Counsel for

1 the Plaintiffs.

2 ATTORNEY OLIVER:

3 My name is Katherine
4 Oliver and I represent the
5 Defendant, Donald Luzier.

6 VIDEOGRAPHER:

7 The Court Reporter will
8 now swear in the witness.

9 -----
10 DONALD E. CONRAD, D.O., HAVING FIRST
11 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
12 -----

13 EXAMINATION ON QUALIFICATIONS

14 BY ATTORNEY SUGHRUE:

15 Q. Thank you. Doctor Conrad, would
16 you state your full name, please?

17 A. Donald Edward Conrad.

18 Q. And you are engaged in what
19 profession?

20 A. A Family Practice physician.

21 Q. And I'll ask you as I ask you
22 these questions, try to project your
23 voice just a little bit so that it's
24 clear for everybody to understand and
25 to be recorded, will you, please?

1 A. Sure.

2 Q. Now, you, I understand it, are
3 engaged in the active practice of
4 medicine, as you mentioned?

5 A. That's correct.

6 Q. And may I assume that you're
7 licensed in the Commonwealth of
8 Pennsylvania?

9 A. Yes.

10 Q. And how long have you been so
11 licensed?

12 A. I graduated from medical school
13 in 1983 and got my license within that
14 year, so ---.

15 Q. And do you presently practice in
16 the Clearfield, Pennsylvania area?

17 A. Yes, I do.

18 Q. Where do you maintain your
19 office?

20 A. 502 Park Avenue in Clearfield.

21 Q. And do you have any particular
22 area of medicine or field of medicine
23 or specialty that you restrict your
24 practice to?

25 A. I'm Board Certified by the

1 American Osteopathic College of Family
2 Practice, and basically maintain a
3 full-service family practice from
4 pediatrics through geriatrics.

5 Q. And you indicate that you are
6 Board Certified by an organization?

7 A. Yes.

8 Q. And what is that organization
9 again?

10 A. The American Osteopathic Board
11 of Family Practice.

12 Q. And how long have you been so
13 certified?

14 A. Since 1985.

15 Q. What exactly does that mean, so
16 that the Jury will understand, to be
17 Board Certified in that field?

18 A. It means that I completed an
19 osteopathic family practice residency
20 and that I sat for a Board examination
21 and met certain criteria. I have
22 ongoing requirements regarding CME,
23 continuing medical education, that I
24 have to meet each year.

25 Q. And just briefly, would you give

1 us what your undergraduate education
2 and where your medical education
3 occurred?

4 A. Sure. I graduated from
5 Muhlenberg College in Allentown with a
6 Bachelor's in Science in 1979, and then
7 spent four years at the Philadelphia
8 College of Osteopathic Medicine, where
9 I received my D.O. degree in 1983. I
10 then did a rotating internship for a
11 year, followed by a family practice
12 residency at the Allentown Osteopathic
13 Medical Center in Allentown,
14 Pennsylvania.

15 Q. And the residency that you
16 referred to, what period of time did
17 you engage in that?

18 A. It was combined with the --- the
19 internship was from '85 to '86 and the
20 residency from '86 to '87.

21 Q. And following that residency,
22 where did you engage in practice?

23 A. I was in the Air Force
24 fulfilling an obligation for four
25 years, and then set up private practice

1 in 1989 here in Clearfield, where I've
2 been since.

3 Q. And have you been engaged in the
4 practice of medicine continuously since
5 that time here in Clearfield?

6 A. Yes, I have.

7 Q. And you indicate that in your
8 family practice that there is some
9 emphasis on geriatric medicine?

10 A. Yes. I'm also the medical
11 director up at the Ridgeview Elder Care
12 nursing home, and also maintain staff
13 privileges over at the Mount Laurel
14 nursing home and am the primary house
15 physician at Knickerbocker Villa
16 personal care home.

17 Q. So you actively and regularly
18 conduct the practice with respect to
19 elderly patients, I assume?

20 A. It consumes much of my time
21 during the day, yes.

22 Q. Do you have any estimate of what
23 percentage of your patient or practice
24 relates to people, let's say older than
25 70 years of age?

1 A. Older than 70, maybe 25 percent.

2 Q. Have you had occasion in the
3 past to provide depositions in either
4 personal injury or Workmen's
5 Compensation cases, things such as
6 that?

7 A. Occasionally, yes.

8 Q. Are there any professional
9 organizations or societies to which you
10 belong, either from a continuing
11 education standpoint or from a
12 qualification standpoint?

13 A. I have a copy of my CV if you'd
14 like it, but, yes, I maintain
15 membership in the American Osteopathic
16 Association, the American College of
17 Osteopathic Family Practice, the
18 Pennsylvania Osteopathic Medical
19 Association and the Pennsylvania
20 Osteopathic Family Practice Society.

21 Q. Okay. Thank you. If you have a
22 copy of your Curriculum Vitae, I would
23 appreciate a copy. And with that, at
24 this time I'll also offer the same to
25 opposing Counsel.

1 A. Those are two different pages.

2 Q. Oh, okay. This is the sole copy
3 we have?

4 A. Yes.

5 Q. I will provide that to
6 Co-Counsel. Now, are you presently
7 accredited or qualified to admit
8 patients to the local hospital?

9 A. Yes.

10 Q. Clearfield Hospital?

11 A. Clearfield Hospital, yes.

12 Q. And do you practice in any other
13 hospital other than Clearfield?

14 A. No.

15 Q. Now, the medical records that
16 have been provided by the Clearfield
17 Hospital, as well as your office,
18 indicates that the subject in this
19 case, Mr. Richard Hugar, was a
20 91-year-old individual, and that he had
21 been your patient for a period of time;
22 is that correct?

23 A. That's correct.

24 ATTORNEY SUGHRUE:

25 I have no further

1 questions with respect to his
2 education and qualifications.

3 I'll surrender to you if you'd
4 care to ask some questions.

5 ATTORNEY OLIVER:

6 Thank you, Mr. Sughrue.

7 Just one or two.

8 | EXAMINATION ON QUALIFICATIONS

9 BY ATTORNEY OLIVER:

10 Q. Doctor Conrad, in looking at
11 your Curriculum Vitae, I don't see
12 reference to Board Certifications in
13 psychiatry or any of the mental health
14 sciences. Do you have any
15 certifications particular to that
16 field?

17 A. N. O.

18 Q. And also, I guess, a similar
19 question with respect to the
20 professional memberships that you
21 maintain. Again, I don't see a
22 reference to memberships that would be
23 geared toward psychiatry or the mental
24 health sciences; is that correct, that
25 you don't maintain any such

1 professional memberships?

2 A. That's correct.

3 Q. Okay. Thank you.

4 ATTORNEY OLIVER:

5 I have no further
6 questions.

7 DIRECT EXAMINATION

8 BY ATTORNEY SUGHRUE:

9 Q. With respect to geriatric
10 medicine, what is the definition of
11 that field and just what does it cover?

12 A. It basically refers to the care
13 of the elderly.

14 Q. And is there any description or
15 limitation --- that's not the right
16 word. Is there any description of the
17 type of illnesses that you encounter
18 and treat regularly? Can you ---?

19 A. Well, the geriatric field
20 encompasses many of the same illnesses
21 that younger generations sustain.
22 However, there's special considerations
23 regarding the aging body on how
24 medications are metabolized and how a
25 patient will respond to certain

1 treatments. Obviously, you know, there
2 are more --- more emphasis on some of
3 the more age specific illnesses like
4 dementias and Parkinson's Disease and
5 other degenerative disorders but a lot
6 of geriatrics involves, you know,
7 taking care of patients in nursing
8 homes and just at the end of their
9 years.

10 Q. Would I be right to assume, or
11 may I ask then, that there is some
12 degree of chronicness (sic) to the
13 various type of illnesses and diseases
14 that you might treat from time to time?

15 A. Absolutely.

16 Q. As well as degenerative, I
17 guess?

18 A. Correct.

19 Q. Now, I'd like to draw your
20 attention to the individual involved in
21 this case, Mr. Richard Hugar. Do you
22 recall that name?

23 A. Yes, I can.

24 Q. You indicated Mr. Hugar was a
25 patient of yours?

1 A. Yes, he was.

2 Q. Do you have any recollection or
3 record of approximately how long he was
4 a patient?

5 A. Since March of 1991.

6 Q. And I'd like to draw your
7 attention to your office records,
8 particularly beginning with November
9 25th, 2002.

10 ATTORNEY SUGHRUE:

11 I have the things that
12 I'm going to refer to, Ms.
13 Oliver, office records and some
14 hospital records I've put
15 together to have just in one
16 place, which I thought might
17 make them readily available to
18 you for reference. I know you
19 have them but if you care to use
20 that, feel free to do so.

21 ATTORNEY OLIVER:

22 Thank you.

23 BY ATTORNEY SUGHRUE:

24 Q. Now, I'd ask you to draw your
25 attention to your office records of

1 November 25th of 2002. Did you, on or
2 about that date, receive a call from
3 Mr. Hugar's daughter regarding a
4 complaint of his?

5 A. Yes, I did.

6 Q. And did you subsequently
7 schedule and see Mr. Hugar at your
8 office on December 4th?

9 A. Yes, I did.

10 Q. Of 2002?

11 A. Yes.

12 Q. Now, the record you have with
13 respect to the phone call received,
14 that was available in your file at the
15 time that you saw Mr. Hugar on December
16 4th?

17 A. Yes.

18 Q. And do your office records also
19 reflect the fact that according to your
20 note there, Mr. Hugar was directed to
21 go to the emergency room on November
22 25th, 2002?

23 A. Yes, he was.

24 Q. And that would be the emergency
25 room at Clearfield Hospital?

1 A. Yes.

2 Q. Now, these records that we are
3 referring to, basically your office
4 records, will be referred to from
5 November 25th, '02 through December
6 16th, '02. Are these records prepared
7 by you in the ordinary course of
8 business as these events occur?

9 A. Yes, they are.

10 Q. They're prepared either by you
11 directly or by your staff members?

12 A. Correct.

13 Q. Now, the phone document that I'm
14 looking at, is that a typical form that
15 you use when a call is received?

16 A. Yeah, that note's taken by
17 either the receptionist or the nurse.

18 Q. Now, for all purposes of our
19 discussion here today, I want you to
20 assume that, in fact, that an
21 automobile did strike Mr. Hugar's house
22 on or about November 20th, 2002, okay?

23 A. Okay.

24 Q. You can assume that fact. And
25 then basically, I'm just going to

1 discuss with you your encounters with
2 him and your evaluation of him.
3 Understand?

4 A. Yes.

5 Q. Now, what does your record
6 reveal in terms of what the reason or
7 purpose of the call was that your
8 office received on November 25th?

9 ATTORNEY OLIVER:

10 Off record for one
11 moment.

12 OFF VIDEO DISCUSSION

13 ATTORNEY OLIVER:

14 I think that you're
15 asking Doctor Conrad to testify
16 about the message symptoms, and
17 I believe the testimony was
18 there was a call from Mr.
19 Hugar's daughter. I'll
20 stipulate that the car hit the
21 house, there's not an issue
22 there. But as far as the report
23 that the patient hurt his back,
24 I won't stipulate that that
25 occurred when the car hit the

8 ATTORNEY SUGHRIE:

11 ON VIDEO

12 BY ATTORNEY SUGHRUE:

13 Q. Now, Doctor Conrad, did you, on
14 December 4th, '02, have Mr. Hugar come
15 to your office?

16 A. Yes, I did.

17 Q. And at that time, did you meet
18 with him personally?

19 A. Yes, I did.

20 Q. And did you, at that time, take
21 a history from him of what his
22 complaints were at that time?

23 A. Yes, I did.

24 Q. And what was his complaints when
25 he came to you that day and what

1 history did he give you?

2 A. Mr. Hugar related that he had
3 some pain and some discomfort in his
4 right neck and shoulder. He related to
5 me that a car hit his house on November
6 20th, that it shook him up quite a bit
7 and that he did have an ER evaluation
8 on the 25th of November.

9 Q. At the Clearfield Hospital?

10 A. At the Clearfield Hospital
11 emergency room, yes.

12 Q. Now, at that particular time,
13 did you have in your records a copy of
14 the emergency room evaluation at the
15 hospital?

16 A. Yes, I did.

17 Q. And did you review those records
18 with respect to your consideration of
19 his symptoms and complaint on December
20 4th?

21 A. Yes, I did.

22 Q. In particular, do you have
23 available to you, do you have a record
24 of what the emergency room history
25 noted?

1 A. Yes, I do. It's here in the
2 records. Yes, I have the copy of the
3 ER report.

4 Q. And what does the ER record
5 reveal with respect to the complaints
6 given by Mr. Hugar when he was at the
7 ER?

8 A. I can read right off the ER
9 report, that he quoted a truck struck
10 his home on November 20th. He was
11 startled and shaken up, doesn't know if
12 he fell. He had pain behind his right
13 ear, a lump on his lower back and down
14 his left leg.

15 ATTORNEY OLIVER:

16 Sorry to interrupt. Can
17 we just know exactly what record
18 you're referring --- or Doctor
19 Conrad is referring to, please?

20 A. It's the copy of the Clearfield
21 Hospital ER record from November 25th
22 of '02.

23 BY ATTORNEY SUGHRUE:

24 Q. And can you refer to
25 specifically what particular record

1 you're referring to there, what you're
2 reading from, Doctor? The record is
3 multiple pages.

4 A. It's under the first page under
5 the heading of chief complaint. It
6 should be the first page.

7 Q. Under the chief complaint right
8 here?

9 A. Yeah, they generate different
10 copies as they send them out.

11 ATTORNEY SUGHRUE:

12 Are you looking at the
13 one I gave you?

14 ATTORNEY OLIVER:

15 Yes.

16 ATTORNEY SUGHRUE:

17 If you look at just the
18 second page ---.

19 ATTORNEY OLIVER:

20 Thank you.

21 BY ATTORNEY SUGHRUE:

22 Q. Is this the document that you're
23 looking at?

24 A. No, mine's a little bit
25 different. They sometimes send out

1 multiple copies and they're in
2 different formats. It's the same
3 visit. Did you get that one directly
4 from the hospital?

5 Q. Yes.

6 A. It may be different than the
7 copy they actually send out to the
8 physicians. They have a --- if I can
9 add in. They have --- this is about
10 the time the ER went to a new computer
11 system and you have a multi-page ---
12 John, that's page one of what up in the
13 corner?

14 Q. Page one of ten.

15 A. Right. The doctors complained
16 they didn't want page --- they didn't
17 want records that lengthy, we just
18 wanted nuts and bolts, so I got a
19 two-page abridged copy that was sent to
20 me. I didn't get the ten-page copy.

21 Q. Okay.

22 A. I have a shorter, two-page copy
23 that just has the history and what they
24 did and what the results were and you
25 have one with all the computer entries.

1 Q. Okay. And then what you're
2 referring to, though, in terms of the
3 chief complaint comes under triage in
4 this copy that Ms. Oliver and I have.

5 ATTORNEY OLIVER:

6 Mr. Sughrue, I believe I
7 may have a copy from Doctor
8 Conrad's records if it will help
9 to clarify and move things
10 along. I wasn't sure that that
11 was what he was referring to.

12 A. That's the copy that I have,
13 that's the hospital's copy that you
14 have.

15 ATTORNEY SUGHRUE:

16 Okay. Let's identify
17 that to our satisfaction so we
18 won't have that confusion. I
19 assumed that they would be
20 identical coming from the
21 hospital.

22 A. Nope.

23 ATTORNEY SUGHRUE:

24 Do you want us to
25 identify it on the record,

1 Kathy?

2 ATTORNEY OLIVER:

3 If you'd like to.

4 ATTORNEY SUGHRUE:

5 Back on the record, then.

6 ATTORNEY OLIVER:

7 How long have we been
8 off?

9 OFF RECORD DISCUSSION

10 BY ATTORNEY SUGHRUE:

11 Q. Doctor Conrad, the ER record
12 you're referring to specifically is a
13 document that's published by the
14 Clearfield Hospital, a two-page
15 document that gives a history of
16 present illness for the visit date
17 11/25/02?

18 A. Correct.

19 Q. And that's the document that I'm
20 showing you that Ms. Oliver provided to
21 me?

22 A. Okay.

23 Q. Thank you. Now, were the
24 complaints that Mr. Hugar --- that were
25 reflected in the emergency room

1 consistent with the complaints that he
2 likewise made to you on December 4th?

3 A. Yes.

4 Q. And did you at that time, on
5 December 4th, examine him?

6 A. Yes, I did.

7 Q. And what were your findings as a
8 result of that examination?

9 A. I found Mr. Hugar to have
10 tenderness when I would palpate in the
11 right side of the rear of his neck, his
12 shoulder and down into his trapezius
13 muscular area. The remainder of his
14 examination was fairly unremarkable.

15 Q. Did he indicate at that time
16 whether or not he was experiencing any
17 pain?

18 A. Yes. He said his right neck and
19 shoulder hurt.

20 Q. And when you indicate it's
21 tender, what exactly do you mean by
22 that?

23 A. Muscular tenderness when I would
24 press.

25 Q. Did you make any other

1 significant observations at that time?

2 A. No.

3 Q. Did Mr. Hugar communicate with
4 you specifically about the impact of
5 the motor vehicle against his house?

6 A. He just basically stated that a
7 vehicle hit his house and he was quite
8 shook up by it.

9 Q. Did you offer any further tests
10 or --- as a result of the examination?

11 A. I reviewed the x-rays that the
12 emergency room had ordered and added an
13 x-ray of his neck and his right
14 shoulder, as those were not done in the
15 emergency room.

16 Q. As a result of your examination,
17 did you develop a diagnosis or any
18 impression as to just what was his
19 condition or illness?

20 A. At that point we just labeled
21 him as having shoulder and hip pain,
22 pending the results of the x-rays.

23 Q. Did you, in addition to x-rays,
24 did you provide for any medication or
25 treatment?

1 A. I gave him a prescription for
2 Ultram, which is a analgesic, a pain
3 medication, non-narcotic.

4 Q. Now, Mr. Hugar also suffered at
5 this point in his life from a number of
6 chronic illnesses; did he not?

7 A. Yes, he did.

8 Q. Are you familiar with what they
9 were and can you tell us what they are?

10 A. Sure. Mr. Hugar was diagnosed
11 in the past as having heart disease,
12 coronary artery disease. He also had
13 chronic obstructive pulmonary disease
14 which we call COPD and which is
15 commonly referred to as emphysema in
16 the lay term. He had evidence in the
17 past of transitional cell cancer of his
18 bladder, which he was following with a
19 urologist for. He's had kidney stones
20 in the past, gastroesophageal reflux
21 disease, commonly referred to as GERD,
22 and some degenerative arthritis, things
23 of this nature.

24 Q. Now, when he came to your office
25 on this day of December 4th, '02, what

1 was his age at that time; do you have a
2 record of that?

3 A. I believe --- yeah. He was 91.

4 Q. And was he ambulatory at that
5 time?

6 A. Yes, he was.

7 Q. And was he oriented?

8 A. Yes, he was.

9 Q. And alert?

10 A. Yes.

11 Q. Now, the type of pain or injury
12 that he complained of to as you
13 described, is that a type of injury
14 that you'd typically encounter and
15 treat in your practice?

16 A. Yes, it is.

17 Q. And prior to seeing him on
18 December 4th, do you have a record of
19 when you saw him previously?

20 A. August 27th of '02.

21 Q. So when you saw him on August
22 27th of '02, was that an ordinary exam,
23 was there anything remarkable at that
24 time? What was the purpose of that
25 visit?

1 A. It was a routine visit. I saw
2 Mr. Hugar essentially every four months
3 just to monitor his chronic problems.
4 And at that time, he was complaining
5 and discussing some constipation and
6 some bowel issues that he was having.

7 Q. Now, so you saw him in August
8 and you followed him every four months,
9 so basically the ER visit of 11/25 and
10 the follow-up with you was right in
11 line, pretty much, with the standard
12 four-month follow-up you would have
13 engaged in in any event?

14 A. Correct.

15 Q. Now, did Mr. Hugar indicate to
16 you when this pain that you described
17 first occurred or when it started?

18 A. He basically just related that
19 it was, you know, since the incident
20 where the car hit the building --- the
21 truck or car, the vehicle hit the
22 building. I believe in the hospital
23 records we'll get into later, he
24 attributed that it came on a couple of
25 days later, that really, he noticed it

1 a couple days after the initial
2 incident.

3 Q. Okay. Now, you said he
4 indicated to you that when the impact
5 of the car hit his building, he was
6 shook up. Can you enlarge on that at
7 all?

8 A. I can distinctly remember
9 Richard telling me about that. In
10 fact, he would talk about this
11 incessantly in many of our interactions
12 after that. He doesn't know, he didn't
13 know if he got knocked out of bed, if
14 he just sprang up because of what
15 happened. He just remembers there
16 being a big jarring, a commotion,
17 something crashing into the house and
18 he just jumped out of a dead sleep.

19 Q. And that's what you mean by
20 shook up?

21 A. He was physically shook up by
22 that but he was emotionally shook up.
23 He was quite apprehensive, quite
24 nervous.

25 Q. Do you have any impression, do

1 you have any opinion that you're able
2 to give us as to what was the cause of
3 the shoulder and neck pain and
4 tenderness that you saw that day? Do
5 you have any opinion as to what caused
6 that?

7 A. I have no reason to not believe
8 it wasn't as he had said. You know,
9 just the sudden startlement, the sudden
10 movement, the sudden being awoken from
11 a dead sleep, springing up. I fully
12 believe that that could very well
13 explain why he had pain. I have no
14 reason to not believe it and have no
15 other explanation of why he would all
16 of the sudden just develop pain.

17 Q. This was not a condition or a
18 complaint that he made previously to
19 you in other visits?

20 A. No.

21 Q. And is it unusual --- do you
22 have an opinion that you can state with
23 a reasonable degree of medical
24 certainty or whether it's more likely
25 than not, then, as to what was the

1 cause of this shoulder and injury (sic)
2 pain?

3 A. I would say it would be more
4 likely than not that the pain was
5 caused by him being suddenly awoken,
6 springing up out of a dead sleep,
7 jumping out of bed.

8 Q. Now, would it be fair to
9 characterize this pain in the neck and
10 the shoulder as something that involved
11 the musculoskeletal structure of the
12 body?

13 A. He had underlying arthritis but
14 the pain was attributable to muscle
15 spasms and muscle strain.

16 Q. And is that basically how you
17 would characterize it, as a muscle
18 strain?

19 A. Yes.

20 Q. And spasms?

21 A. Sure.

22 Q. What would you expect the
23 resolution of that type of injury to
24 be, typically?

25 A. That depends on the underlying

1 character of his health.. He had a fair
2 amount of underlying degenerative or
3 osteoarthritis, and in somebody like
4 Mr. Hugar, it could be protracted. It
5 could take several weeks to a month to
6 go away, or if he's fortunate, a couple
7 days.

8 ATTORNEY OLIVER:

9 Off video for a moment,
10 please.

11 OFF VIDEO DISCUSSION

12 ATTORNEY OLIVER:

13 I'm going to object and
14 move to strike the answer as
15 being speculative. And you
16 haven't asked the Doctor what
17 did happen with respect to Mr.
18 Hugar and if he can testify to
19 that with a reasonable degree of
20 medical certainty. As far as an
21 opinion as to what might, could
22 or possibly happened, that's not
23 competent testimony for a judge
24 or a jury to make a
25 determination in this case. So

1 I'll object and move to strike
2 the answer as not competent.

3 ATTORNEY SUGHRUE:

4 Okay. And I would
5 disagree and would indicate that
6 I believe the testimony properly
7 indicates the Doctor's
8 understanding of the history and
9 what actually occurred to Mr.
10 Hugar, as described by the
11 Doctor. That based on that, he
12 can properly indicate what he
13 believes to be the cause of the
14 injuries. The injuries have
15 been adequately described. And
16 I believe it is competent for
17 him to indicate --- I believe my
18 question was, typically, how
19 long would it take that type of
20 injury to resolve itself. That
21 was basically the limits of the
22 question, and I was simply
23 seeking to ascertain generally
24 speaking, not specifically when
25 that injury might be expected to

1 resolve.

2 ATTORNEY OLIVER:

3 Just so you understand
4 that's the basis for my
5 objection, that you're asking
6 him, generally speaking, what
7 might happen with that kind of
8 an injury. Just so we're clear.

9 ATTORNEY SUGHRUE:

10 Okay. Thank you.

11 ON VIDEO

12 BY ATTORNEY SUGHRUE:

13 Q. Now, Doctor, with respect to
14 this type of musculoskeletal injury, is
15 it unusual for that to develop five
16 days after the incident that occurred
17 that you've indicated gave rise to it?

18 A. It's not uncommon for it to
19 develop a couple days after an
20 incident, five would be a little long
21 but a couple days. I believe he said
22 it was a couple days, you know, after
23 this happened that he first noticed the
24 pain.

25 Q. And if testimony at trial would

1 indicate through his daughters and if
2 the jury would find as a fact that he
3 had difficulty arising from bed as of
4 November 22nd, if they found that he
5 was stiff and began to walk with a cane
6 on November 22nd and began to complain
7 of an onset of pain on the 22nd but
8 resisted medical care, would that be
9 consistent with the type of injury that
10 you found on November 25th --- excuse
11 me, December 4th?

12 A. Yes.

13 Q. Now, you indicated he was
14 ambulatory when he came to your office
15 on December 4th, and I assume he was
16 ambulatory when he left?

17 A. Yes.

18 Q. Okay. Now, after ordering
19 x-rays, did you provide for him to have
20 any follow-up treatment with you?

21 A. Yes. I asked him to return to
22 the office in two weeks' time, after he
23 had the x-rays.

24 Q. And did he do so?

25 A. Yes, he did.

1 Q. And when was that?

2 A. December 16th of 2002.

3 Q. And when he came on December

4 15th, did you meet with him personally?

5 A. Yes, I did.

6 Q. And did you at that time find

7 him able to communicate with you?

8 A. Yes, I did.

9 Q. What was his situation when he

10 arrived on the 16th?

11 A. He was sick.

12 Q. Well, let me ask you to divide

13 this into two parts. Let me ask you to

14 first, what, if anything, did you find

15 or he relate to you with respect to the

16 injuries that he initially sought

17 treatment on December 4th? Was there

18 anything connected with that at that

19 point in time?

20 A. Well, he followed through, had

21 his neck x-rays completed, which showed

22 severe osteoarthritis, and x-rays of

23 his right shoulder showed calcific

24 tendonitis and some degenerative

25 changes of the joints. He was still

1 complaining of the right side of his
2 neck aching. He had a right-sided
3 headache and a lot of other symptoms
4 were developing. He was quite ill when
5 he came to the office that second time.

6 Q. And what else did you determine
7 he was suffering from on December 16th
8 that you haven't covered?

9 A. He had a myriad of symptoms. He
10 was dizzy, he was feeling very cold and
11 was shivering. His daughters were
12 present and related that he was quite
13 confused or he was confused at times
14 during the day. The pain medicine,
15 they thought, was making him feel sick.

16 He had abdominal pain. He was sick to
17 his stomach. He had loose stools.
18 Just basically did not look well at
19 all.

20 Q. Was this a significant change
21 from December 4th of '02?

22 A. Dramatic.

23 Q. Now, just to back up for a
24 minute, and not to revisit old
25 territory, but you described an

1 impression you had of Mr. Hugar
2 relating to you that he, at the very
3 least, was awakened by the impact of
4 the vehicle against his house, and you
5 described it as suddenly coming out of
6 a sleep and making a sudden movement.
7 Do you have an opinion that you can
8 state with a reasonable degree of
9 medical certainty as to what caused him
10 to be startled or awakened and to
11 engage in the motion, movement that you
12 previously described?

13 A. I would assume that the vehicle
14 striking the house, the noise and the
15 commotion associated with that was what
16 caused him to suddenly awaken.

17 Q. Based on your history and
18 examination and review of the records,
19 was there any other likely explanation
20 that you're aware of that could explain
21 it?

22 A. Not that I was aware of, no.

23 Q. Now, as a result of the
24 examination of December 16th, '02, what
25 action did you take or --- if any?

1 A. Well, his condition had
2 dramatically changed and, you know, the
3 office was not where he needed to be.
4 We directly admitted him to the
5 Clearfield Hospital, hospitalized him
6 and initiated a more comprehensive
7 evaluation of his problems.

8 Q. And in fairness, these problems
9 that you just specified and testified
10 to, they were not in any way related to
11 the chronic pain --- not the chronic
12 pain, excuse me, the complaints of pain
13 to his neck and shoulder that he had
14 discussed with you when he was at your
15 office on December 4th?

16 A. That's not why we --- no. We
17 hospitalized him because of his, you
18 know, his other constitutional
19 symptoms, his headache and his
20 abdominal pain and nausea and changing
21 bowel habits and everything else that
22 was going on.

23 Q. And how long was he maintained
24 at the Clearfield Hospital as a result
25 of this admission?

1 A. Well, we hospitalized him from
2 the office on December 16th of '02 and
3 he was in various categories in the
4 hospital, but basically never left the
5 hospital. He died, I believe, January
6 10th of 2003.

7 Q. So from the time he was admitted
8 on December 16th, '02, he basically
9 remained at the Clearfield Hospital
10 until he died on January 10th of '03?

11 A. Yes.

12 Q. Now, the hospital records reveal
13 that, and I'll show you the
14 admission/discharge summary from the
15 hospital records, that he was admitted
16 on December 16th and appeared to be
17 discharged, according to the way I read
18 it, on December 21st to what they call
19 a swing bed or a transitional care
20 unit; is that correct?

21 A. A skilled nursing category, yes.

22 Q. And what's the purpose of the
23 transfer within the hospital to the
24 transitional care unit?

25 A. Patients generally are not well

1 enough to go home, but not sick enough
2 to remain in the acute hospital
3 reimbursement for insured purposes.
4 The old days of putting a patient in
5 and keeping him there until everybody
6 was comfortable going home are long
7 gone, so we have criteria that need to
8 be met. He no longer met the criteria
9 for acute hospitalization, but he was
10 still too weakened and too
11 deconditioned to go home, so we will
12 frequently use this swing bed or
13 skilled nursing designation to continue
14 to offer the care and rehabilitation
15 that the patient requires until such
16 time that they can go home.

17 Q. Now, during this period from
18 when you originally saw him on December
19 4th of 2002, did you observe any change
20 in his demeanor, any change in his
21 mental attitude? Well, first of all,
22 let me ask you --- I withdraw the
23 question. My question simply is, what
24 was his demeanor when you first
25 observed him on December 4th and

1 December 16th, and was that in any way
2 different from his demeanor in prior
3 visits?

4 OFF VIDEO DISCUSSION

5 ATTORNEY OLIVER:

6 I just object to the form
7 and it's two questions. Can you
8 ask it as December 4th and
9 December 16th? He's already
10 described a very different
11 person on both dates.

12 ATTORNEY SUGHRUE:

13 Okay. I accept the
14 objection and will rephrase the
15 question.

16 ON VIDEO

17 BY ATTORNEY SUGHRUE:

18 Q. On December 4th of '02 when he
19 came to your office, what did you, if
20 anything, observe about his demeanor
21 and how he presented? By that I mean
22 how he presented himself.

23 A. Mr. Hugar was an apprehensive
24 fellow to begin with. My recollection,
25 he just wanted to just continuously

1 talk about what happened to his house.
2 We had to get him back on track as far
3 as, well, okay, that's fine but, you
4 know, how are you feeling and you want
5 to focus on, you know, on his injuries
6 and his physical complaints but his
7 whole frame of discussion revolved
8 around what had happened to his house
9 and how upsetting it was and he was
10 just focusing and preoccupied with what
11 had happened.

12 Q. Now, on December --- excuse me.
13 And was that different with his
14 demeanor and attitude as you had
15 observed in him in prior visits in the
16 course of the ten years you treated
17 him?

18 A. On which visit?

19 Q. Prior to December 4th, was
20 December 4th different in any way from
21 the demeanor he exhibited prior to that
22 time?

23 A. He was a little bit more, like I
24 said, preoccupied with these events and
25 was more apprehensive than normal. You

1 know, Richard was always a gentleman
2 who kind of set his own rules and you
3 basically did things his way and, you
4 know, he'd tell you what he was going
5 to allow you to do and not allow you to
6 do. But you know, he was more
7 apprehensive, more emotionally anxious,
8 you know, at the 12/4/02 visit.

9 Q. And then when you came to see
10 him again on 12/16/02, as we just
11 discussed, had his demeanor changed in
12 any way at that point?

13 A. He was just physically sick. I
14 mean, it wasn't so much long
15 interactions and discussions, he was
16 just very visibly physically ill.

17 Q. Do you have any observations or
18 is there any reason that you can cite
19 for this deterioration in his health
20 between December 4th and December 16th?

21 A. At the time of the visit on the
22 16th, I didn't have a good explanation
23 on why, you know, he was physically
24 ill. That's why we very quickly
25 precipitated an admission so we could

1 come to the root of the problems.
2 After now having had the privilege of
3 going through those hospitalizations
4 and knowing what transpired, I mean, he
5 was, you know, basically, I think, as
6 my discharge summary indicates, you
7 know, we identified several medical
8 illnesses during that hospitalization
9 to include a pneumonia and, you know,
10 some other medical conditions.

11 Q. Now, as I mentioned to you, he
12 ultimately appears to have been
13 readmitted to the hospital, and again,
14 I'll just show you a hospital summary
15 here just briefly, after being in the
16 transitional care unit as we discussed,
17 it appears from the hospital records
18 that he was readmitted on 12/31/02.

19 A. Correct.

20 Q. So that the Court and the Jury
21 will understand, even though the
22 hospital refers to admissions and
23 discharge, these are actually within
24 departments within the hospital; is
25 that right?

1 A. Never left the building, yeah.
2 He was there and just moved from
3 different wings.

4 Q. And what was the purpose for the
5 readmission to the hospital on
6 12/31/02, which I assume is --- well,
7 I'll let you tell me what?

8 A. Well, he developed atrial
9 flutter, which is a rapid, irregular
10 heart rhythm. And especially in older
11 patients with decompensated cardiac
12 problems can result in rapid
13 deterioration. His blood pressure was
14 low and his heart rate was fast and
15 conventional medications that we would
16 utilize didn't convert it or slow it
17 down. He required the interventions of
18 the cardiologist, the heart specialist
19 to cardiovert, to basically controlled
20 shock the heart to bring it back into
21 rhythm.

22 Q. Okay. And were you successful
23 with your colleagues during that
24 period, 12/31/02 and thereafter, to
25 re-stabilizing or stabilizing Mr. Hugar

1 for improvement?

2 A. In some aspects, yes, and in
3 other aspects other things developed.
4 I compare it to the proverbial snowball
5 rolling down the hill, it just one
6 thing led to another, led to another,
7 led to another and things just
8 decompensated and quickly deteriorated
9 in his overall health. He just didn't
10 thrive, he did not do well at all.

11 Q. Now, I note in one of the
12 hospital records that there is a
13 notation in there, failure to thrive.
14 What exactly does that mean?

15 A. Well, it's just basically a
16 referral to a patient's overall health,
17 multiple conditions build up and when a
18 patient's thriving, they have good
19 blood pressure, they're eating, they're
20 alert, they're ambulatory, they're
21 working and everything's functioning.
22 Multiple conditions contributed in Mr.
23 Hugar's case to just an overall decline
24 and deterioration in his health and the
25 easiest way to summarize that is the

1 patient basically failed to thrive.
2 Multiple problems were causing multiple
3 complications and just an overall bad
4 trend.

5 Q. And as you use the analogy, a
6 snowball --- one complication treated
7 engenders, perhaps, another
8 complication?

9 A. It's like a domino effect, you
10 know, once it starts it's almost next
11 to impossible to stop.

12 Q. Were you able, ultimately, to
13 make Mr. Hugar well enough that he was
14 able to return home or be discharged?
15 Well, obviously, you said he was never
16 discharged from the hospital.

17 A. No.

18 Q. What happened to him after this
19 period of treatment through
20 December --- through January 8th?

21 A. In attempting to treat his heart
22 rhythm, he subsequently developed blood
23 clots in his legs. In the attempts to
24 use Heparin, which is a blood thinner,
25 to cut down on the risk of developing

1 stroke and to help with the blood
2 clots, he developed gross visual
3 bleeding from the urine. His other
4 medical conditions continued to
5 deteriorate and at that point, you
6 know, it would have required a
7 last-ditch effort to send him to a
8 major medical center to get treatments
9 that were not available, but that was
10 not desired so we basically, after
11 discussion with the family, decided
12 enough was enough and to treat him
13 humanely and with comfort measures
14 allow mother nature to take its course.

15 Q. And as a result of that, did he
16 subsequently die?

17 A. Yes, he did.

18 Q. And he died on what date?

19 A. January 10th of 2003.

20 Q. And the cause of his death was
21 basically these underlying chronic
22 diseases; is that correct?

23 A. Yes, it is.

24 Q. Now, I cannot help but notice
25 that between November 25th when he went

1 to the ER and January 10th, a period of
2 less than a month, his health did
3 degenerate or go downhill rather
4 precipitously; did it not?

5 A. I believe the record speaks for
6 itself, yes.

7 Q. And do you have any explanation
8 for what caused that or any opinion as
9 to what caused that?

10 A. You know, the initial condition
11 appeared to be the pneumonia, multiple
12 complications developed and, you know,
13 it's hard to say why, you know, all
14 these things took this point in time to
15 develop. But Mr. Hugar was 91 years
16 old, had a lot of underlying what we
17 call co-morbid or underlying medical
18 problems and, you know, you can go for
19 years and cope and compensate fairly
20 well, but once one thing --- you tip
21 the scale and one thing decompensates,
22 it upsets another and it upsets another
23 and then everything seems to just go
24 bad at once, and that, in Mr. Hugar's
25 case, has appeared to be what happened.

1 And then complications that developed,
2 the treatment of one developed other
3 complications and, you know, treatment
4 of one was contrary to the other. It's
5 unfortunate when these type of
6 conditions happen but they happen,
7 especially as we get older.

8 Q. Did you observe any change in
9 his mental attitude or mental approach
10 to his illnesses after the motor
11 vehicle struck his house?

12 A. He seemed to have lost his will
13 to fight. Several times while he was
14 in the hospital he had to be given pep
15 talks, encouragement, you know, just
16 anything that happened to him medically
17 he just didn't seem to have much care
18 or desire to fight. In fact, leading
19 up to this last hospice admission, you
20 know, my record indicates he wasn't
21 eating. He had expressed to myself, as
22 well as the family, verbal wishes that
23 he wanted to die. He didn't care if he
24 got any better.

25 Q. Now, do you have --- assuming

1 everything that we've just covered,
2 assuming the automobile accident
3 hitting the house, I want you to assume
4 that he was startled and awakened
5 suddenly, had some movement, as you've
6 testified.

7 ATTORNEY OLIVER:
8 Let's go off for a
9 minute.

10 OFF VIDEO DISCUSSION

11 ATTORNEY OLIVER:
12 You keep kind of
13 re-characterizing what he's
14 testified. He testified that he
15 was awakened suddenly and
16 startled. And if you limit the
17 question to that I don't have an
18 objection, but once you get to
19 impact, movement, falling, his
20 testimony was that even Mr.
21 Hugar didn't know, I believe,
22 based on what was in the
23 records. And it's an important
24 legal point and I don't mean to,
25 you know, to delay this or

1 lengthen this deposition, but it
2 is an important legal point and
3 I need to make the objection.

4 ATTORNEY SUGHRUE:

5 And I appreciate that.
6 My recollection is that he did
7 testify that there was a history
8 of sudden movement and the
9 record will reveal whether it
10 was or not.

11 ATTORNEY OLIVER:

12 The objection's noted.

13 ATTORNEY SUGHRUE:

14 The objection's noted on
15 the record and we'll move on.

16 ON VIDEO

17 BY ATTORNEY SUGHRUE:

18 Q. Basically, rather than have me
19 re-characterize it, assuming everything
20 that you've testified to and everything
21 that you know that you've testified to,
22 and assuming the injuries that you
23 noted on December 4th that you
24 connected with the auto accident
25 previously in your testimony, assuming

1 all that and taking into consideration
2 all the knowledge you have directly
3 with respect to the deterioration in
4 his health, do you have an opinion that
5 you can state either with a reasonable
6 degree of medical certainty or state as
7 more likely than not whether or not the
8 automobile accident --- automobile
9 striking his house contributed in any
10 way, contributed to his overall decline
11 in his general health?

12 A. If I may, for treating Richard
13 for, you know, ten plus years, I can
14 picture him today as if he was still
15 here. Richard, if I can use the term,
16 was a controlling person. I think in
17 other things that you'll show or you
18 can find in the records, the daughters
19 had to encourage him to come to the
20 emergency room. It was only after he
21 called me five days after the accident
22 and I said, look, you need to go to the
23 emergency room that he went. Okay?
24 Richard did his own things. Richard
25 needed to be in control. Okay?

1 Control was taken away from him.

2 Assuming when this vehicle hit
3 his house the musculoskeletal injuries,
4 I think, definitely were related to his
5 sudden startlement, his sudden
6 movement. But talking to him, he, on a
7 regular basis, was just consumed with
8 what had happened. Consumed and
9 preoccupied with what happened to his
10 house, how was it going to be fixed,
11 you know. He was just totally
12 distraught over what had happened. And
13 I think that took away his control.
14 This was now controlling him. He was
15 not longer in control and his whole
16 psyche, his emotions, his spiritual
17 makeup was affected adversely. And you
18 know, I don't think any of us can have
19 to think very hard to find a
20 circumstance where emotions and, you
21 know, your emotional makeup, your
22 anxiety, your mood can affect your
23 medical well being.

24 Did the accident cause him to
25 get pneumonia? I would never say that.

1 Did how his --- did the accident affect
2 his psyche and his emotional makeup,
3 affect how he dealt with his medical
4 illnesses? I would say that. I would
5 say in very --- knowing Mr. Hugar that
6 in much medical certainty, this whole
7 incident, how it emotionally upset him,
8 played a definite role on how he dealt
9 with his medical conditions that
10 developed over that last month and how
11 he dealt with trying to get better and
12 trying to fight them off. I think it
13 did adversely affect his health in that
14 way. It took away his will to live.
15 That's my opinion.

16 Q. And you're satisfied that you
17 can give that opinion here today, based
18 on everything, with a reasonable degree
19 of medical certainty?

20 A. Absolutely.

21 ATTORNEY SUGHRUE:

22 Excuse me one minute.

23 May we go off the record while I
24 just confer with Co-Counsel?

25 OFF RECORD DISCUSSION

1 ATTORNEY SUGHRIE:

2 I have no further
3 questions of Doctor Conrad, and
4 I turn him over for Cross
5 Examination.

6 ATTORNEY OLIVER:

7 Off record for a moment,
8 please.

9 OFF VIDEO DISCUSSION

10 ATTORNEY OLIVER:

11 Before I start the Cross,
12 I just, to preserve the
13 objection, I guess, object to
14 the testimony in total as
15 lacking in foundation. I don't
16 believe that there is
17 evidentiary support for the main
18 premise of Doctor Conrad's
19 testimony that there was some
20 physical occurrence, some
21 physical harm to Mr. Hugar in
22 this accident, that's a matter
23 for the Court to decide.

24 That being the case, any
25 testimony about the mental

1 impact really, number one, is
2 irrelevant. It's not something
3 compensable. I don't think
4 there's foundation for that
5 testimony either. I don't think
6 there's evidentiary foundation
7 or record foundation for it, so
8 that's the objection to both of
9 those aspects, the physical
10 aspect and the mental, emotional
11 aspect that he's just testified
12 to.

13 Number two, I'm going to
14 object to Doctor Conrad offering
15 psychiatric testimony and mental
16 health testimony, in that he's
17 stated that he isn't certified
18 in psychiatry or other mental
19 health sciences, and it would
20 appear that the bulk of his
21 testimony is in that arena.

22 I'm going to object on
23 the basis that the testimony is
24 speculative and I guess that
25 also goes in lacking foundation,

1 but it's speculative and not
2 competent for the jury and the
3 Court to make a decision as to,
4 you know, whether, in fact,
5 there was some injury, physical
6 and/or mental from the accident.

7 And I'd move to strike the
8 testimony on that basis or
9 object to its admission into
10 evidence.

11 ATTORNEY SUGHRUE:

12 Thank you. And in
13 response, I'd like to briefly
14 state that I disagree,
15 respectfully, and believe that
16 the evidence at trial clearly
17 indicates a substantial impact
18 by the motor vehicle into Mr.
19 Hugar's house. The evidence
20 clearly shows that Mr. Hugar was
21 in bed, asleep at the time, was
22 suddenly awakened, was startled,
23 was jarred, however you want to
24 characterize it. He did engage
25 in a reaction which I have

1 called --- and it has been
2 referred to as a sudden movement
3 or motion. That this,
4 typically, as the Doctor
5 testified, may give rise to a
6 muscle strain or a trauma to the
7 musculoskeletal body as a
8 result, which is directly
9 related to the automobile
10 impact. And that these injuries
11 were noted by him as early as
12 November 22nd, according to the
13 evidence, taken to the hospital
14 on November 25th, '02 and
15 conferred with his treating
16 physician on December 4th. All
17 of which led to the diagnosis
18 that causally connects the soft
19 tissue injury as described to
20 the accident.

21 So I believe a proper
22 foundation, both in terms of
23 events and causation, has been
24 set. I think injury giving rise
25 to pain is established in the

1 record and that this is all
2 clearly attributable to the
3 vehicle impacting the house.

4 I think that whether or
5 not it's speculative does depend
6 whether or not there is enough
7 foundation on the record, and
8 for those reasons I think that I
9 also do not believe that Doctor
10 Conrad went into the specialty
11 area of mental health or
12 psychiatric diagnosis. I think
13 that his observations with
14 respect to demeanor, behavior,
15 mental attitude and approach are
16 very, very common areas in which
17 any treating physician normally
18 interacts with his patient and
19 may observe and comment on.

20 So based on that, I
21 believe that he has testified
22 within the realm of the scope of
23 treating physician and has, as
24 an expert, given an opinion
25 within the area of his

1 expertise. And for those
2 reasons, I ask the Court to deny
3 Ms. Oliver's motion.

4 I would like to --- well,
5 do you have something else that
6 you'd like to say?

7 ATTORNEY OLIVER:

8 No, I was going to start
9 my Cross Examination.

10 ATTORNEY SUGHRUE:

11 Okay. That's fine.

12 BRIEF INTERRUPTION

13 ON VIDEO

14 CROSS EXAMINATION

15 BY ATTORNEY OLIVER:

16 Q. Doctor Conrad, will you agree
17 with me that the testimony you've just
18 given is based, at least to some
19 degree, on speculation as to what
20 occurred at Mr. Hugar's home on
21 November 20th, 2002?

22 A. Can you clarify speculate?

23 Q. Are you able to answer whether
24 you know definitively what happened at
25 Mr. Hugar's home on November 20th,

1 2002?

2 A. No, I wasn't there.

3 Q. And is it fair to say that the
4 testimony you have just given to the
5 Court and the jury is based, to some
6 degree, on speculation?

7 ATTORNEY SUGHRUE:

8 Off the record, please.

9 OFF VIDEO DISCUSSION

10 ATTORNEY SUGHRUE:

11 I object to the use of
12 the word speculation. His
13 testimony speaks for itself. I
14 don't think there is any
15 speculation involved. And I
16 don't think it's possible for
17 the witness to know what you
18 mean by speculation. I think
19 that you have to be more
20 specific as to where his --- his
21 knowledge is obviously based on
22 some history and records as
23 opposed to first-hand knowledge,
24 but beyond that, I think the use
25 of the word speculation is

1 ambiguous and too broad.

2 ATTORNEY OLIVER:

3 Okay.

4 ATTORNEY SUGHRUE:

5 Okay. Go ahead. Answer
6 it.

7 ON VIDEO

8 A. If I may answer it, I would say
9 that it's no different than any other
10 speculation that would be used at any
11 other time that a patient comes in and
12 tells me a history. So I guess
13 speculation, in your sense, would be
14 present at every office visit, with
15 every patient that I have, on any day
16 that I work. So in that sense, yeah,
17 there's speculation.

18 BY ATTORNEY OLIVER:

19 Q. And you would agree, would you
20 not, and you've testified that your
21 testimony is based on some assumptions
22 that Mr. Sughrue has asked you to make;
23 correct?

24 A. Yes.

25 Q. And as you've said, you were not

1 there at Mr. Hugar's home on the
2 morning of November 20th, 2002 when Mr.
3 Luzier's truck hit the house; right?

4 A. Correct.

5 Q. And you're not testifying that
6 Mr. Luzier's truck actually hit Mr.
7 Hugar; is that right?

8 A. Correct.

9 Q. And based on your own knowledge,
10 you can't tell this jury, or the Court,
11 that Mr. Hugar had a physical impact
12 with anything as a result of the truck
13 hitting his home; is that also correct?

14 A. Correct.

15 Q. Do you even know, Doctor Conrad,
16 what part of the living space Mr.
17 Luzier's truck hit?

18 A. No, I don't.

19 Q. And you said that Mr. Hugar was
20 sleeping at the time; right?

21 A. That's what I was told.

22 Q. Do you know where he was
23 sleeping in the house at the time that
24 the truck hit the house?

25 A. No.

1 Q. Were you aware that after the
2 accident happened, that Mr. Hugar came
3 to the door and he talked with Mr.
4 Luzier there that morning?

5 A. No.

6 Q. Do you know what time the
7 accident happened on November 20th,
8 2002?

9 A. No.

10 Q. Are you aware that Mr. Hugar
11 walked around with Mr. Luzier that
12 morning right after this incident
13 happened so that they could check out
14 the damage and assess what had
15 happened?

16 A. No.

17 Q. Are you aware that the police
18 came to the accident to render any
19 assistance that was necessary?

20 A. I heard that they had, yes.

21 Q. Are you aware that Mr. Hugar was
22 not taken to the emergency room on the
23 day of the accident?

24 A. I'm aware of that, yes.

25 Q. Are you aware that he was not

1 taken anywhere for medical treatment on
2 the day of the accident?

3 A. I'm aware of that, yes.

4 Q. Are you aware, Doctor Conrad,
5 that Mr. Hugar, in fact, sat down in
6 his own house that morning and had
7 breakfast with his daughter?

8 A. No.

9 Q. And you didn't see Mr. Hugar the
10 same day as the accident; did you?

11 A. I was contacted five days later.

12 Q. And no one called you in that
13 five days to express any concern that
14 Mr. Hugar may have been hurt somehow
15 when the truck hit his house; isn't
16 that true?

17 A. Not to my knowledge, no.

18 Q. If that had, in fact, occurred,
19 wouldn't there be a note in your
20 records, just like the note that Mr.
21 Sughrue asked you about?

22 A. Ideally, yes.

23 Q. So in fact, the first contact
24 wasn't until five days later; right?

25 A. To the best of my knowledge,

1 yes.

2 Q. And even then, you didn't see
3 Mr. Hugar yourself that day; correct?

4 A. I directed him to go to the
5 emergency room.

6 Q. So the first time you saw him
7 was approximately ten days later on
8 December 4th, 2002; is that accurate?

9 A. That's accurate.

10 Q. Now, in the office notes from
11 that December 4th, 2002 visit, that
12 first time you saw Mr. Hugar about ten
13 days later, you make a specific note
14 that car hit patient house; right?

15 A. Correct.

16 Q. That's exactly what you've got
17 stated on there; am I accurately
18 reading that?

19 A. Yes.

20 Q. And where did that information
21 come from, sir?

22 A. Mr. Hugar told me that's what
23 happened.

24 Q. And would you agree with me that
25 it would be important to write down or

1 to document what Mr. Hugar had told you
2 about what had happened and what had
3 occurred if, indeed, you were assessing
4 him relative to an incident of November
5 20th, 2002?

6 A. I write down what I feel is
7 appropriate.

8 Q. If Mr. Hugar had told you that
9 he had fallen from bed or was struck by
10 debris or something of that nature,
11 would that be something appropriate for
12 you to document in your records?

13 A. Yes, it would.

14 Q. And again, there's no
15 documentation of any sort of that
16 nature; correct?

17 A. I believe he told me he didn't
18 know what, you know, if he jumped up or
19 if he was hit or whatever, so I didn't
20 put anything down in the chart because
21 he wasn't sure what happened.

22 Q. So Mr. Hugar himself did not
23 know if he had jumped up as of the time
24 you saw him on December 4th, 2002;
25 correct?

1 A. Well, he told me he jumped up.
2 He didn't know if he hit anything. He
3 didn't know if he fell out of bed, so I
4 didn't mark that down, no.

5 Q. And I know that you've talked
6 about this reference to Mr. Hugar being
7 shaken up after the accident, but you
8 don't make any reference in your notes
9 to there being any kind of physical
10 impact when that incident occurred,
11 when the truck hit his house on
12 November 20th; is that correct?

13 A. He didn't know what happened.

14 Q. Okay. And you didn't write
15 down, again, that Mr. Hugar was
16 physically jarred somehow; is that
17 right?

18 A. I didn't use those words, no.

19 Q. You mention referring Mr. Hugar
20 to the emergency room on November 25th,
21 five days later. And as I understand
22 it, he was evaluated at the emergency
23 room and then he was discharged that
24 same day in stable condition; is that
25 correct?

1 A. Correct.

2 Q. And you've already testified
3 that you had seen the records from his
4 visit to the emergency room?

5 A. Yes.

6 Q. And in those records, Doctor
7 Conrad, I'm going to hand you Defense
8 Exhibit Two for clarity on the record.

9 (Defense Exhibit Number
10 Two marked for
11 identification.)

12 BY ATTORNEY OLIVER:

13 Q. It is documented in those
14 records that Mr. Hugar himself said
15 that he had not been hit by the truck
16 or any debris; is that correct?

17 A. Yes, it is.

18 Q. And there's no documentation in
19 that record that Mr. Hugar had suffered
20 some kind of physical force or impact
21 when his house was hit; isn't that
22 correct?

23 A. Correct.

24 Q. And there's no documentation
25 that Mr. Hugar had fallen; is that also

1 correct?

2 A. Correct.

3 Q. And actually ---.

4 A. Well, his complaint, he doesn't
5 know if he fell. That's in the very
6 first entry there.

7 Q. So there would be no factual
8 evidence in there to say that Mr. Hugar
9 fell; is that correct?

10 A. Correct.

11 Q. And in fact, if you go down to
12 review of symptoms, it says, patient
13 states the injury --- pain, the injury
14 started spontaneously; do you see that?

15 A. Yes.

16 Q. And what does that mean to you?
17 Let me withdraw that and ask you a
18 different question. Does that suggest
19 that Mr. Hugar reported that the pain
20 had started spontaneously?

21 A. That would seem to indicate
22 that.

23 Q. And if you look at the emergency
24 room record from five days after this
25 incident where Mr. Luzier's truck hit

1 the Hugar house, there's no
2 documentation of bruises or cuts or
3 scratches; is that true?

4 A. Correct.

5 Q. And I know when you read from
6 the chief complaint section in your
7 Direct testimony, you had read about
8 some complaints and one of the things
9 was a lump on the lower back. Now,
10 that's something that was subjectively
11 reported by the patient; correct?

12 A. Correct.

13 Q. There's no documentation of any
14 lump or deformity on Mr. Hugar's back
15 in this emergency room record; is that
16 also true?

17 A. That's true.

18 Q. There is also no documentation
19 that Mr. Hugar presented in a state of
20 anxiety; is that correct?

21 A. There's no mention.

22 Q. And there's no mention of
23 depression?

24 A. No.

25 Q. And there's no mention, is

1 there, of a concern about releasing Mr.
2 Hugar from the hospital that night; is
3 there?

4 A. No.

5 Q. Mr. Hugar lived by himself;
6 didn't he?

7 A. I believe he did.

8 Q. And is that, in fact, documented
9 in this emergency room record? I'll
10 refer you to the psycho/social history
11 section.

12 A. Patient lives alone.

13 Q. So is it fair to assume that the
14 personnel at the emergency room would
15 have been aware that when they released
16 Mr. Hugar, he would have been going
17 home to his home alone; is that
18 correct?

19 A. I would assume that.

20 Q. And I know you didn't have, as
21 you testified, you didn't have the full
22 compliment of emergency room records
23 when you saw Mr. Hugar, but you had an
24 abbreviated version; is that true?

25 A. Yes, this two-page version.

1 Q. I'm going to hand you a
2 document. I'll mark it Defense Exhibit
3 2A.

4 (Defense Exhibit Number
5 2A marked for
6 identification.)

7 ATTORNEY SUGHRUE:

8 Excuse me, do you have a
9 copy of Two for me, did you say,
10 or do you not have an extra
11 copy?

12 ATTORNEY OLIVER:

13 I do have three copies.

14 ATTORNEY SUGHRUE:

15 If I could see it then,
16 I'd appreciate it. Thank you.

17 ATTORNEY OLIVER:

18 And Mr. Sughrue, this 2A
19 is one of the records you gave
20 to me earlier today, it's a
21 hospital record.

22 BY ATTORNEY OLIVER:

23 Q. I'm going to hand you Defense
24 Exhibit 2A, Doctor Conrad, and ask you
25 to take a look at that, please. And

1 there was a physical exam as documented
2 in that record which included an
3 examination of Mr. Hugar's back and
4 hips; correct?

5 A. Correct.

6 Q. And that would have all been
7 done at the hospital that day before
8 Mr. Hugar was released?

9 A. Correct.

10 Q. And before he was released home
11 alone and in stable condition; right?

12 A. Correct.

13 Q. Can I see that for a minute,
14 please? If I look at this Defense
15 Exhibit 2A, and I'm reading from the
16 section that says back, the back
17 appears normal; did you see that as you
18 read through this, Doctor Conrad?

19 A. Yes.

20 Q. There's no deformity of the
21 spine with certain types of movement,
22 range of motion or ROM of the spine is
23 normal; is that right?

24 A. That's what they documented,
25 yes.

1 Q. And under pelvis you saw where
2 it said pelvis appears normal and
3 symmetrical; correct?

4 A. Yes.

5 Q. Hip, the hips appear normal and
6 symmetrical; correct?

7 A. Yes.

8 Q. So is it fair to say that on the
9 examination, the doctors at the
10 hospital hadn't documented any kind of
11 injury to that area?

12 A. Correct.

13 Q. And you had testified that there
14 were some x-rays taken at the hospital
15 as well; right?

16 A. Uh-huh (yes). Yes.

17 Q. And did you say that you had
18 received copies of those x-rays?

19 A. No, just the ER report indicated
20 that they were done, and the results.

21 Q. I'm sorry, the results, you got
22 copies of the results?

23 A. I'm not sure if I have copies or
24 if it was --- I'm not sure if I
25 received actual copies of the results

1 or if it was just referred to in the ER
2 document what the results were.

3 Q. And did you say that those
4 results showed arthritis changes?

5 A. Yes.

6 Q. And the arthritis changes that
7 were on those x-rays, would you agree
8 with me that those are not something
9 that could have been caused by an
10 accident five days before?

11 A. No.

12 Q. That's correct?

13 A. That's correct.

14 Q. And they only x-rayed the hip at
15 that point and what other area, sir?

16 A. The hip, the lumbar spine and
17 the sacroiliac joint, which is all part
18 of the pelvis.

19 Q. And did all of those x-rays, in
20 fact, show those arthritis changes?

21 A. Yes.

22 Q. And again, none of those changes
23 are related to this November 20, 2002
24 accident; is that accurate?

25 A. That's accurate.

1 ATTORNEY OLIVER:

2 May I see that Exhibit
3 Two, please? We seem to have
4 been sharing copies. I'll give
5 it back, Mr. Sughrue.

6 ATTORNEY SUGHRUE:

7 No problem.

8 BY ATTORNEY OLIVER:

9 Q. Now again, looking to Defense
10 Exhibit Two, which is the kind of
11 abbreviated ER records that you
12 received, Doctor Conrad, there's not a
13 reference in the complaint section or
14 anywhere really to complaints of the
15 right neck and shoulder ache that you
16 later saw Mr. Hugar for; is there?

17 A. No, there is not.

18 Q. So he was not presenting with
19 those complaints five days later when
20 he went to the ER; is that right?

21 A. Correct.

22 Q. You had testified to seeing Mr.
23 Hugar every four months at that time;
24 is that right?

25 A. That's correct.

1 Q. And that was for various
2 different medical issues and conditions
3 that he had, even before the November
4 2002 accident where his house got hit
5 by a truck?

6 A. Correct.

7 Q. And am I correct, too, you said
8 that you'd last seen him before this
9 incident in August of 2002; yes?

10 A. Yes.

11 Q. And then you had a scheduled
12 four-month, you know, follow-up visit,
13 if you will, and that would have been
14 December 4th, 2002; is that right?

15 A. That's correct.

16 Q. So this December 4th, 2002 was
17 not a special visit?

18 A. No. He had the existing
19 appointment, and I believe his follow
20 up just coincided with that.

21 Q. And as a matter of that follow
22 up, you testified on Direct to various
23 conditions that Mr. Hugar had, and I
24 just want to make sure that the jury
25 has a sense, I'm not going to try to

1 cover them all, but, of Mr. Hugar's
2 health before this incident. Now, at
3 the time that he died, he was 91;
4 right?

5 A. Yes.

6 Q. He had been a patient of yours
7 for about ten years?

8 A. Correct.

9 Q. And can we agree that during
10 those ten years, he had many different
11 medical conditions that he presented to
12 you with?

13 A. Correct.

14 Q. And sometimes you would send him
15 to specialists; is that true?

16 A. I believe I had, yes.

17 Q. Okay. So there would be times
18 when he would present to you with a
19 condition outside of your realm of
20 expertise, so to speak, and so you'd
21 send him off to someone else for a
22 consult or treatment or whatever was
23 appropriate; is that right?

24 A. Correct.

25 Q. That's something you believe in

1 doing, in consulting with other
2 specialists?

3 A. Yes.

4 Q. And again, to review, generally,
5 some of the conditions that Mr. Hugar
6 was following, you know, for every four
7 months, you mentioned, I believe, kind
8 of peripherally, osteoarthritis?

9 A. Yes.

10 Q. And what is osteoarthritis, can
11 you tell us that?

12 A. It's a degenerative wear and
13 tear arthritic change that develops
14 over time.

15 Q. And what kinds of symptoms come
16 along with osteoarthritis?

17 A. Generally pain, limited motion
18 of the joint.

19 Q. Achiness?

20 A. Achiness, yes.

21 Q. Stiffness?

22 A. Yes.

23 Q. And Mr. Hugar had degenerative
24 changes, this osteoarthritis, in many
25 areas of his body; isn't that true?

1 A. That is true.

2 Q. He had it in many of his joints;
3 right?

4 A. Correct.

5 Q. He even had it in his shoulders
6 before the accident; right?

7 A. Yes.

8 Q. And he had had a left hip
9 replacement sometime back, too; is that
10 correct?

11 A. I believe so.

12 Q. Another of the conditions he was
13 following for was bladder cancer, and
14 he was continuing to kind of see a
15 specialist to monitor that; is that
16 correct?

17 A. A urologist, yes.

18 Q. And I also noted, I don't think
19 you mentioned this on Direct testimony,
20 that Mr. Hugar was seeing a specialist
21 for problems with chronic
22 disequilibrium; is that accurate?

23 A. He may have had. I don't
24 remember. He may have seen a
25 neurologist in the past.

1 Q. That's not something you recall
2 him talking to you about ever?

3 A. At this point I'd have to refer
4 to the records. It's not something
5 that stands out as being striking.

6 Q. Do you recall Mr. Hugar talking
7 to you about problems with falling,
8 Doctor Conrad?

9 A. He would occasionally, yes.

10 Q. How occasionally do you think
11 that occurred?

12 A. I don't know.

13 Q. Do you think that was a
14 significant problem for Mr. Hugar?

15 A. On a regular basis, no, I don't
16 think so.

17 Q. What about problems with
18 confusion? Do you remember him
19 presenting with problems having
20 confusion?

21 A. Yeah, in the past there was some
22 concern that he would have some
23 confusion, and that's a few years
24 before we had sent him to a
25 neurologist.

1 Q. Okay. What about, he had
2 trouble hearing; is that right?

3 A. He had wax in his ears at one
4 point that we referred him to an ear
5 specialist.

6 Q. He didn't have chronic hearing
7 problems; is that your testimony?

8 A. Not anything more than could be
9 attributed to a 91-year-old gentleman.

10 Q. Did he have trouble hearing,
11 Doctor Conrad?

12 A. I believe he had trouble
13 hearing, yes.

14 Q. Beyond wax in his ears on
15 occasion?

16 A. Sure, on occasion.

17 Q. And did he have problems with
18 his vision in both eyes, Doctor Conrad?

19 A. Yes.

20 Q. And he had, you talked about
21 emphysema and heart disease as well;
22 right?

23 A. Correct.

24 Q. All of that, all of those
25 conditions he was coming back to follow

1 up for even before the accident where
2 the truck hit his house; right?

3 A. Correct.

4 Q. And in addition to seeing Mr.
5 Hugar on a, you know, kind of every
6 four months basis, you would also see
7 him more frequently if the need arose,
8 if he had some special problem; right?

9 A. Correct.

10 Q. And would it be fair to say,
11 Doctor Conrad, that there were many
12 times that Mr. Hugar came to see you
13 even before his house was hit by Mr.
14 Luzier's vehicle, with complaints of
15 pain and stiffness in his shoulders?

16 A. Correct.

17 ATTORNEY OLIVER:

18 I'll make this easier for
19 you. And again, to give the
20 Court and the jury a sense of
21 those occasions, I'm not going
22 to go through every office
23 record for ten years, but I'd
24 like to take a look at some of
25 the visits and some of the

1 complaints. And I'm going to
2 hand you Defense Exhibit Three
3 and ask you to take a look at
4 that, please, and identify it
5 for us.

6 (Defense Exhibit Number
7 Three marked for
8 identification.)

9 A. It's an entry out of my chart
10 from December 19th, 2001.

11 | BY ATTORNEY OLIVER:

12 Q. And at that point Mr. Hugar had
13 come back for his four-month visit;
14 right?

15 A. Correct.

16 Q. And he was complaining of ---
17 you write, ongoing shoulder pain; is
18 that right?

19 A. Yes, I did.

20 Q. And that was something that came
21 from Mr. Hugar himself as far as a
22 complaint?

23 A. Yes.

24 Q. And you also note that he --- it
25 says he uses a cane; is that right?

1 A. On occasion, he does, yes.

2 Q. Why was he using a cane then,
3 can you tell the jury that?

4 A. Because of his chronic
5 osteoarthritis.

6 Q. That necessitated the use of a
7 cane?

8 A. In his opinion, yes.

9 Q. And you also then, going down a
10 little bit, you did a physical exam on
11 that visit; right?

12 A. Yes.

13 Q. And you have that he has a
14 decreased range of motion in the left,
15 greater than the right shoulder; right?

16 A. Correct.

17 Q. And you note that it's positive
18 for chronic, I think that means
19 osteoarthritic changes; is that what
20 you write?

21 A. Yes.

22 Q. And what does that mean?

23 A. His fingers, his hands had
24 classic, you know, knobby knuckles and
25 deformed fingers, digits from

1 osteoarthritis.

2 Q. And then what do you write under
3 the impression, Doctor Conrad?

4 A. Degenerative joint disease,
5 bilateral shoulder pain.

6 Q. Okay. And is impression the
7 same thing as like a diagnosis?

8 A. Sure.

9 Q. And when you say degenerative
10 joint disease, bilateral shoulder, what
11 was that last word ---

12 A. Pain.

13 Q. --- pain, what is degenerative
14 joint disease?

15 A. Same thing as --- osteoarthritis
16 and DJD can be used interchangeably.

17 Q. And that's in his shoulders; is
18 that right?

19 A. Yes, it is.

20 Q. And he had pain there then, too?

21 A. Yes.

22 Q. Then you saw him --- and again,
23 that's all before the accident that
24 this lawsuit is about; right?

25 A. Yes.

1 Q. And then I'm going to hand you
2 Defense Exhibit Four.

3 (Defense Exhibit Number
4 Four marked for
5 identification.)

6 BY ATTORNEY OLIVER:

7 Q. Could you identify that, please?

8 A. Well, it's an entry from my
9 chart but the date's cut off on the
10 photocopy so I'm not sure. It's the
11 20th of 2001, I'm not sure what month.

12 Q. I'll represent that I got these
13 in this condition from your office, so
14 if you want to go ahead and check
15 against your chart, I believe it would
16 be in August of 2001, but don't take my
17 word for it, please. Check against
18 your original record.

19 A. Yes, it would be August.

20 Q. So that was a record from an
21 August 2001 visit?

22 A. Yes.

23 Q. And what was the --- what are
24 the complaints that are listed at the
25 top there?

1 A. He had a red patch on his right
2 cheek and an ache in his shoulders.

3 Q. And you again, at that visit,
4 you note that same degenerative joint
5 disease, shoulder aches and increased
6 with activity; do you see that?

7 A. Yes, I do.

8 Q. And what does that notation
9 mean?

10 A. Which notation?

11 Q. The one, degenerative joint
12 disease, dash, shoulder, semicolon,
13 aches. Then you have, increased with
14 activity.

15 A. Worse with activity.

16 Q. Okay. But what's worse with
17 activity?

18 A. The discomfort.

19 Q. Discomfort where?

20 A. In his --- well, it's referring
21 to his shoulder.

22 Q. And again, you also put that his
23 shoulder, he's got a decrease in range
24 of motion at the shoulder; right?

25 A. Correct.

1 Q. What does that mean?

2 A. He has limited motion, he's not
3 able to move it full degrees of arc and
4 range.

5 Q. And what were your diagnoses on
6 that occasion?

7 A. Right facial cheek growth, COPD,
8 heart disease, degenerative joint
9 disease of his shoulders and
10 transitional cell CA of his bladder.

11 Q. Transitional cell CA, excuse me.
12 Is that the bladder cancer that you
13 talked about?

14 A. That's the bladder cancer, yes,
15 ma'am.

16 Q. Exhibit Five, please.

17 (Defense Exhibit Number
18 Five marked for
19 identification.)

20 BY ATTORNEY OLIVER:

21 Q. Which again, I think that date
22 is clear, April 20th, 2001; right?

23 A. Correct.

24 Q. So can you just generally
25 identify what Exhibit Five is?

1 A. It's a copy of an office visit
2 from my chart from April 20th, 2001.

3 Q. And what were the complaints
4 then, Doctor Conrad?

5 A. Chronic right shoulder
6 discomfort, chronic right wrist pain.

7 Q. Up above that there's a C/O and
8 some words after it. What does that
9 signify?

10 A. C/O complains of unsteady gait.

11 Q. What does an unsteady gait mean?

12 A. Unsteady gait. His ambulation,
13 his degree of walking is unsteady.

14 Q. So you're talking about walking
15 when you talk about gait?

16 A. Yes.

17 Q. Thank you. And then you
18 actually make a note that his gait or
19 his walking ability is poor; right?

20 A. Yes.

21 Q. And again, you note that he's
22 walking with a cane; right?

23 A. Yes.

24 Q. Under the impression there, what
25 do you have down on that date, what was

1 your diagnosis?

2 A. COPD, heart disease, chronic
3 disequilibrium, constipation and
4 degenerative joint disease.

5 Q. And what does chronic
6 disequilibrium mean?

7 A. Poor balance.

8 Q. And you prescribed some
9 medications at that visit; didn't you?

10 A. Yes.

11 Q. What did you prescribe?

12 A. Senokot, which is a stool
13 softener and Ultram, which is a pain
14 medication.

15 Q. So he was having bowel
16 complaints at that point, too?

17 A. Yes.

18 Q. And the Ultram, is that the same
19 thing you ended up giving him when he
20 came in December 2002 after the
21 accident that this case is about?

22 A. Yes.

23 Q. Now, I want to go back to that
24 chronic disequilibrium for a moment. Do
25 you recall, I know I asked you before

1 and you didn't seem to recall that
2 being a problem. Does looking at this
3 office visit refresh your recollection
4 at all in that regard?

5 A. Sure. Yes.

6 Q. Did Mr. Hugar, in fact, have a
7 problem with chronic disequilibrium?

8 A. Yes, he did.

9 Q. What does chronic mean?

10 A. Longstanding.

11 Q. Okay. So he had a longstanding
12 problem with balance; correct?

13 A. Yes.

14 Q. Did he, in fact, have trouble
15 with falling?

16 A. Again, on occasion, I imagine he
17 would fall.

18 Q. And do you recall now whether
19 you did, in fact, send Mr. Hugar to a
20 specialist for treatment of that
21 problem?

22 A. I had said that we had sent him
23 to see Doctor Lipitz, a neurologist.

24 Q. I'm going to hand you a copy of
25 Defense Exhibit Six and ask you to

1 identify that, please.

2 (Defense Exhibit Number
3 Six marked for
4 identification.)

5 A. It's a copy of a consultation
6 from the neurologist, Doctor Lipitz.

7 BY ATTORNEY OLIVER:

8 Q. Okay. So that's a letter to you
9 from Doctor Lipitz after he had seen
10 Mr. Conrad (sic)?

11 A. Mr. Hugar, yes.

12 Q. Excuse me, Mr. Hugar.

13 A. Yes.

14 Q. And when was that, sir?

15 A. March 24th, 1999.

16 Q. And according to the specialist
17 at that point, Mr. Hugar had been
18 having trouble with balance for about
19 two years; is that right?

20 A. That's what it states, yes.

21 Q. And Mr. Hugar had reported that
22 he was having trouble walking straight
23 and that he might fall to either side;
24 right?

25 A. Okay, yes.

1 Q. Did that indicate to you that he
2 was having problems with falling?

3 A. It would indicate that, yes.

4 Q. If you look at Defense Exhibit
5 Seven, please.

6 (Defense Exhibit Number
7 Seven marked for
8 identification.)

9 BY ATTORNEY OLIVER:

10 Q. Can you identify just generally
11 what that record is?

12 A. It's follow-up visits with the
13 neurologist from January 17th, 2000.

14 Q. That's that same neurologist we
15 just talked about, Doctor Lipitz, is
16 it?

17 A. Yes.

18 Q. And what in the, you know, as
19 far as Mr. Hugar's complaints, what
20 does Doctor Lipitz tell you there? Is
21 it fair to say that Mr. Hugar was still
22 complaining of balance problems?

23 A. Oh, yes.

24 Q. And he was using a cane at that
25 point, as Doctor Lipitz documents;

1 right?

2 A. Yes.

3 Q. Now, Doctor Lipitz also notes a
4 problem with memory loss; do you see
5 that?

6 A. Yes.

7 Q. And in the assessment --- and
8 just to be clear, this is a record
9 provided to you, a letter written to
10 you as a part of your care of Mr.
11 Hugar; right?

12 A. Right.

13 Q. What was the assessment that
14 Doctor Lipitz was communicating to you
15 or his diagnosis at that point?

16 A. That he had cerebral atrophy,
17 which is a degenerative process of the
18 brain, probably on the basis of age.
19 Memory loss and some neuropathy and
20 gait abnormality.

21 Q. What's neuropathy?

22 A. Just refers to an abnormality of
23 the nerves and nerve pain.

24 Q. And gait abnormality, again, is
25 the trouble with walking?

1 A. Yes.

2 Q. Turn to page two of that letter
3 to you, Doctor Conrad.

4 A. Uh-huh (yes).

5 Q. And what does --- Doctor Lipitz
6 indicates that Mr. Hugar --- I'll just
7 read from it, if you will. He should
8 use the cane and try to protect himself
9 from falling as much as possible. Do
10 you see that?

11 A. Yes.

12 Q. Do you remember now there being
13 a concern about Mr. Hugar having
14 problems with falling?

15 A. Yes.

16 Q. And could you read the next
17 sentence following that, please?

18 A. I have not identified any
19 reversible etiologies to his gait
20 abnormality.

21 Q. What does that mean, kind of in
22 layperson's terms?

23 A. He did not find anything that
24 could be reversed with treatment to be
25 the cause of his gait abnormality.

1 Q. So Doctor Lipitz, as of January
2 2000, and this has been going on for
3 some time now; right?

4 A. Correct.

5 Q. For years; is that right?

6 A. Yes.

7 Q. And Doctor Lipitz is telling
8 you, look, I can't find anything that
9 we can cure or reverse; is that
10 accurate?

11 A. Correct.

12 Q. Now, going back to the records
13 from visits with you, Doctor Conrad,
14 I'm going to hand you Defense Exhibit
15 Eight.

16 (Defense Exhibit Number
17 Eight marked for
18 identification.)

19 BY ATTORNEY OLIVER:

20 Q. And this date is cut off as
21 well, I believe; do you see that?

22 A. Yes.

23 Q. Again, go ahead and check your
24 own records if you'd like. I believe
25 it's a December 2000 visit, but please

1 correct me if I'm wrong.

2 A. The top one would be an August
3 of 2000 and the bottom one would be
4 December of 2000.

5 Q. Okay. If you look at the top
6 one, do you make any notation of that
7 disequilibrium problem there?

8 A. Yes.

9 Q. What do you write there?

10 A. Chronic disequilibrium.

11 Q. And you also make a note about
12 the arthritis; don't you?

13 A. Yes.

14 Q. What do you write?

15 A. Under impression, degenerative
16 joint disease.

17 Q. So again, that was part of your
18 diagnosis at that point?

19 A. It's an ongoing diagnosis, yes.

20 Q. And if you look at the bottom
21 half, we see the same DJD, degenerative
22 joint disease again in December, and
23 that's still ongoing; right?

24 A. Yes.

25 Q. Did that ever change? I mean,

1 he never just stopped having that
2 degenerative joint disease; did he?

3 A. No, it doesn't go away.

4 Q. Again, on the bottom record from
5 December 2000, you make a note, it
6 looks to me like it's occasionally off
7 balance; is that right? It says O-C-C
8 off B-A-L-A-N.

9 A. Oh, yes, occasionally off
10 balance.

11 Q. Do you think you're referring
12 again to that gait problem, the problem
13 falling?

14 ATTORNEY SUGHRUE:

15 I object to the form of
16 the question. First of all,
17 it's leading, secondly ---.

18 ATTORNEY OLIVER:

19 Let's go off.

20 ATTORNEY SUGHRUE:

21 I'm sorry.

22 OFF VIDEO DISCUSSION

23 ATTORNEY SUGHRUE:

24 I object to the form of
25 that question. First of all,

1 it's leading. More importantly,
2 it characterizes a fact that is
3 not supported by the record,
4 specifically the problem of
5 falling. A gait --- difficulty
6 with gait, difficulty with
7 balance does not equal or come
8 up to actually falling. And so
9 far, nowhere in the records has
10 Defense Counsel elicited a
11 record of where Mr. Hugar
12 actually fell or complained of
13 falling. A gait abnormality is
14 not falling, nor is any of the
15 other items that have been
16 referred to in this Cross
17 Examination. That's all I have.

18 ATTORNEY OLIVER:

19 Okay. I'll just respond
20 by saying, number one, I'm
21 allowed to lead on Cross
22 Examination. I'm supposed to do
23 it is what I'm told.

24 ATTORNEY SUGHRUE:

25 I withdraw that part of

1 the objection.

2 ATTORNEY OLIVER:

3 That's fine. Number two,
4 I do believe the evidence in
5 testimony and records will bear
6 out that there's been a problem
7 falling, and if they haven't yet
8 they will. So, you know, I
9 guess that's my response and we
10 can go ahead, unless you have
11 something further, Mr. Sughrue.

12 ATTORNEY SUGHRUE:

13 No. Back on the record.

14 ON VIDEO

15 BY ATTORNEY OLIVER:

16 Q. Doctor, I'm not sure where we
17 were there, but there's a reference to,
18 I think we said, occasionally off
19 balance; is that right?

20 A. Correct.

21 Q. Do you recall talking to Mr.
22 Hugar about that on the occasion of
23 this visit?

24 A. I marked it down so obviously I
25 would have talked to him about it.

1 Q. Do you think that that reference
2 is also to the disequilibrium problems
3 that you've testified about already?

4 A. It's possible. This is notated
5 underneath the complaint that he was
6 having some sinus congestion, and I
7 believe he was, again, referring that
8 he was off balance referable to his
9 congested sinuses.

10 Q. Do you agree with me, Doctor
11 Conrad, that Mr. Hugar, over the years,
12 presented to you and to Doctor Lipitz
13 with complaints of difficulty with
14 falling?

15 A. Difficulty in ambulating,
16 difficulty in balance, yes.

17 Q. But my question was, did he
18 present with complaints about
19 difficulty with falling?

20 A. Not on a regular basis he
21 wouldn't complain of falling, no.

22 Q. Do you think he ever presented
23 to you with that complaint, Doctor
24 Conrad?

25 A. Sure.

1 Q. Do you think that was an
2 isolated incident or something related
3 to this disequilibrium problem and gait
4 and walking problem that you testified
5 about?

6 A. Again, I'm not quite sure what
7 you're asking me.

8 Q. Okay. How many times did Mr.
9 Hugar present to you with a problem
10 about falling?

11 A. Off the top of my head, I can't
12 tell you. I would need some time to go
13 over ten years of records.

14 Q. Sure. But as far as the ones
15 we've already gone over today, when we
16 looked at the record to you --- the
17 letter to you from Doctor Lipitz, that
18 neurologist or specialist, excuse me,
19 you sent Mr. Hugar to, we already ---
20 you said that Mr. Hugar states that he
21 may fall to either side; is that right?

22 A. Yes.

23 Q. So would that suggest to you
24 that he was having problems with
25 falling?

1 A. Problems with falling, but I
2 can't tell you how many times and how
3 often he would fall.

4 Q. Move on to Defense Exhibit Ten,
5 please.

6 (Defense Exhibit Number
7 Ten marked for
8 identification.)

9 BY ATTORNEY OLIVER:

10 Q. Could you identify that, please,
11 sir?

12 A. It's a copy of my office records
13 from 12/18/99 and 2/25/2000.

14 Q. And looking at the 1999 visit at
15 the top, what were the complaints?

16 A. No recent falls. Memory
17 continues to be a problem. Difficulty
18 --- memory loss, difficulty with
19 present. Can remember the past.

20 Q. Now, why would you make a
21 notation that there were no recent
22 falls? What was the concern in your
23 mind then?

24 A. It was five years ago. I can't
25 really tell you.

1 Q. If Mr. Hugar was not having
2 difficulty, generally, with falling in
3 that period, do you think you would
4 have made that notation, Doctor Conrad?

5 A. Again, I can't comment.

6 Q. You do document that memory
7 continues to be a problem; right?

8 A. Yes.

9 Q. And what was your impression or
10 your diagnoses at that visit?

11 A. To consider an early dementia.

12 Q. What is dementia, sir?

13 A. A confusional state.

14 Q. You also put as a diagnosis,
15 again, that degenerative joint disease
16 or the arthritis we've talked about?

17 A. Correct.

18 Q. The heart disease is there as
19 well; right?

20 A. Yes.

21 Q. What's the significance of the
22 possible early dementia, why would you
23 make a note of that?

24 A. That may be an explanation to
25 his poor memory, especially with more

1 recent things.

2 Q. And maybe his confusion as well?

3 A. Yes.

4 Q. I'll hand you Defense Exhibit
5 11.

6 (Defense Exhibit Number
7 11 marked for
8 identification.)

9 BY ATTORNEY OLIVER:

10 Q. And can you identify that,
11 please?

12 A. It's an office record copy from
13 12/19/1999.

14 Q. And from the top there, can you
15 read what the complaint was?

16 A. He fell three to four weeks ago.

17 Q. And continue on --- there are
18 more words there; are there not?

19 A. Still unsteady gait, difficulty
20 with his memory.

21 Q. So there he's --- the fall there
22 is noted in relation to that unsteady
23 gait; right?

24 A. That's an episode where he
25 complained that he fell, yes.

1 Q. And you write on that occasion,
2 disequilibrium persists; right?

3 A. Yes.

4 Q. Meaning he's still having
5 problems with balance?

6 A. Correct.

7 Q. And you write that he's got poor
8 memory at times?

9 A. Yes.

10 Q. And what does it say under that?

11 A. Balance poor at times.

12 Q. So is that something in addition
13 to the disequilibrium or are you kind
14 of writing the same thing twice?

15 A. The same thing twice.

16 Q. And your diagnosis was what?

17 A. Disequilibrium, decreased
18 memory, heart disease and degenerative
19 joint disease.

20 Q. And you also note that he was
21 using a cane then; right?

22 A. Yes.

23 Q. I'll hand you Defense Exhibit
24 12, please, and ask you to identify
25 that.

1 (Defense Exhibit Number
2 12 marked for
3 identification.)

4 A. It's a copy of an evaluation by
5 Doctor Lipitz, the neurologist.

6 BY ATTORNEY OLIVER:

7 Q. From what date?

8 A. September 27th, 1999.

9 Q. And again, Mr. Hugar was there
10 for imbalance problems?

11 A. Yes.

12 Q. And also that neuropathy or that
13 nerve problem you told us about?

14 A . Yes .

15 Q. And do you know exactly what
16 that nerve problem was?

17 A. N. C.

18 Q. Can you tell us what the ---
19 there's a subjective portion there, and
20 first, could you tell us what
21 subjective signifies there?

22 A. Patient's complaints.

23 Q. And what was Mr. Hugar
24 complaining of then?

25 A. Increased imbalance.

1 Q. So he was having even increased
2 problems with balance at that point;
3 right?

4 A. According to this note, yes.

5 Q. Do you have any reason to doubt
6 what Doctor Lipitz, that neurologist,
7 was telling you, that that was
8 accurate?

9 A. No.

10 Q. I'll hand you Defense Exhibit
11 13.

12 (Defense Exhibit Number
13 13 marked for
14 identification.)

15 BY ATTORNEY CLIVER:

16 Q. Can you identify that, please,
17 sir?

18 A. It's a copy of my office note
19 from 1999.

20 Q. From August of 1999; is that
21 right?

22 A. Probably. It's cut off again.

23 Q. Okay. Would you like to clarify
24 it against the record?

25 A. August 30th of '99.

1 Q. And in the complaints, what do
2 you see there? Again, some of this is
3 cut off from what you gave me. If you
4 need to refer to your original note,
5 please feel free to do that.

6 A. I might have to take my chart
7 apart. History of bladder cancer.
8 Would like left side of face checked
9 and that two months ago ears noisy.
10 Right side of neck felt like a bolt and
11 sharp pain radiated up right side of
12 face. Off balance when walking.

13 Q. Okay. And you missed, it looks
14 like, now has a bump.

15 A. A bump in it.

16 Q. Okay, a bump ---.

17 A. This is my nurse's handwriting.

18 Q. But that's what --- she would
19 have gotten that information from Mr.
20 Hugar; right?

21 A. Correct.

22 Q. So you noted the off balance
23 when walking. Also you note further
24 down, in your writing, some
25 disequilibrium; right?

1 A. Correct.

2 Q. And what is under the impression
3 there, again, the diagnosis section?

4 A. Tinnitus, which is ringing in
5 the ears, right facial pain,
6 disequilibrium and degenerative joint
7 disease.

8 Q. And then on the bottom there's
9 a, it looks like a note, the same kind
10 of note that Attorney Sughrue asked you
11 about earlier, like where there would
12 be a phone call and there's a message
13 written down; is that right?

14 A. Yes.

15 Q. And would that note have
16 preceded the visit in August of '99?

17 A. Yes. No, it would have been
18 after the visit.

19 Q. And was there a problem with
20 falling even then?

21 A. Yes.

22 Q. And you were going to follow up
23 with Doctor Lipitz, that neurologist
24 we've talked about?

25 A. The patient was going to follow

1 up with Doctor Lipitz, yes.

2 Q. And again, Mr. Hugar was using a
3 cane as of that point; was he not?

4 A. Yes.

5 Q. I'll hand you Exhibit 14.

6 (Defense Exhibit Number
7 14 marked for
8 identification.)

9 BY ATTORNEY OLIVER:

10 Q. Now, this is cut off again for
11 the date. I believe it's May 26th,
12 '99, if you can find your place in your
13 original records. And my question
14 simply is, again, is that balance
15 problem noted even then?

16 A. Yes, it is.

17 Q. Defense Exhibit 15, please.

18 (Defense Exhibit Number
19 15 marked for
20 identification.)

21 BY ATTORNEY OLIVER:

22 Q. Looking to the bottom portion of
23 Defense Exhibit 15, and that's from
24 1999, I'm not sure if it's February or
25 March. Would you like to check?

1 A. February.

2 Q. And could you read to me what's
3 there as far as the patient complaints?

4 You said that C/O meant complaints of;
5 right?

6 A. Complains of unable to have a
7 steady gait.

8 Q. And what follows that, please?

9 A. Needs, wants answers.

10 Everything came back okay. Can't walk
11 straight.

12 Q. And can't walk straight, is that
13 in quotations?

14 A. Yes.

15 Q. And what does that signify?

16 A. That's what the patient said.

17 Q. And you have a chronic symptoms
18 list; right?

19 A. Right.

20 Q. What does chronic mean in that
21 case?

22 A. Three months or more.

23 Q. And what's listed under there?

24 A. Disequilibrium continues.

25 Q. And at that point it's been a

1 lot more than three months; right?

2 A. Correct.

3 Q. And your impression at that
4 time, please?

5 A. Disequilibrium, cardiomyopathy
6 and degenerative joint disease.

7 Q. What's cardiomyopathy, Doctor
8 Conrad?

9 A. A weak heart.

10 Q. Exhibit 16.

11 (Defense Exhibit Number
12 16 marked for
13 identification.)

14 ATTORNEY SUGHRUE:

15 May we go off the record
16 one moment?

17 OFF VIDEO DISCUSSION

18 ATTORNEY SUGHRUE:

19 I presume since you have
20 these exhibits marked, you want
21 to go through them all. Are you
22 going to go through them all?

23 ATTORNEY OLIVER:

24 Again, I really, so you
25 know, I just have a couple more

1 on this kind of vein, and then -
2 -- .

3 ATTORNEY SUGHRUE:

4 Okay. I was going to
5 say, I get that.

6 ATTORNEY OLIVER:

7 I'm not going to go
8 through ten years.

9 ATTORNEY SUGHRUE:

10 I guess I can't object
11 but I was wondering if it wasn't
12 getting a little repetitive.

13 But my biggest problem was that
14 I kind of represented to the
15 Doctor, perhaps out of
16 ignorance, that we would be done
17 by 6:00, and I don't know
18 whether or not we need to
19 adjourn this. I'd like to get
20 through it if we can.

21 A. We'll get through it.

22 ATTORNEY OLIVER:

23 We'll get through it.
24 I'll try to move on. I
25 appreciate your point.

1 Q. Exhibit 17, please.

2 (Defense Exhibit Number
3 17 marked for
4 identification.)

5 BY ATTORNEY OLIVER:

6 Q. Can you identify Defense Exhibit
7 17, please, refer your --- I'm sorry.
8 I refer you to the bottom half. I
9 think there are two records there.

10 A. Note from May 7th of '98.

11 Q. And can you tell us the
12 complaint, please?

13 A. Improper balance while
14 ambulating.

15 Q. And under that you write,
16 chronic but intermittent
17 disequilibrium.

18 A. Yes.

19 Q. What does that signify?

20 A. It's longstanding but it comes
21 and goes. It's not present all the
22 time.

23 Q. There also had been an MRI
24 performed as of that time; is that
25 right?

1 A. Correct.

2 Q. And what did that show?

3 A. Atrophy.

4 Q. And is that atrophy of the
5 brain?

6 A. Yes.

7 Q. What does that signify, Doctor?

8 A. Degeneration.

9 Q. Exhibit 18, please, which is a
10 visit from October 28, '96; is that
11 right?

12 (Defense Exhibit Number
13 18 marked for
14 identification.)

15 A. Correct.

16 BY ATTORNEY OLIVER:

17 Q. And you note there's a quote,
18 feeling drunk, end quote, at times;
19 right?

20 A. Correct.

21 Q. Was it your impression that that
22 was related to the balance problem that
23 Mr. Hugar had been reporting for years?

24 A. Yes.

25 Q. And you note that he's

1 staggering at times; right?

2 A. Correct.

3 Q. And your impression or diagnosis
4 at that time, please?

5 A. Disequilibrium.

6 Q. And you also note the heart
7 disease; right?

8 A. Correct.

9 Q. And that's something that's just
10 been noted all throughout your records;
11 is that true, the heart disease?

12 A. Yes.

13 Q. Defense Exhibit 19, please,
14 which, I believe is a visit from July
15 16, 1996.

16 (Defense Exhibit Number
17 19 marked for
18 identification.)

19 BY ATTORNEY OLIVER:

20 Q. Again, if you focus on the
21 bottom half of the record, is that
22 accurate?

23 A. Yes.

24 Q. And again, he was reporting
25 feeling like he was drunk; is that

1 right?

2 A. Yes.

3 Q. And that was in connection with
4 the problem with balance or
5 disequilibrium; right?

6 A. Yes.

7 Q. Your diagnosis included
8 disequilibrium; correct?

9 A. Correct.

10 Q. And if we keep going back over
11 the years, Doctor Conrad, would you
12 agree with me that we would continue to
13 see complaints related to balance
14 problems?

15 A. Yes.

16 Q. And in addition to that, we'd
17 continue to see complaints related to
18 arthritis problems; is that true as
19 well?

20 A. Correct.

21 Q. And even specifically, we would
22 see complaints about arthritis
23 problems, pain, achiness, stiffness in
24 his right shoulder; right?

25 A. Amongst other places, yes.

1 Q. And I want to focus on that for
2 a moment because I know that that's the
3 first complaint that you mentioned Mr.
4 Hugar making even after the car
5 accident that this whole case is
6 involved with; right?

7 A. That he complained of right
8 shoulder pain?

9 Q. Yes.

10 A. Yes.

11 Q. Take a look at Defense Exhibit
12 20, please.

13 (Defense Exhibit Number
14 20 marked for
15 identification.)

16 BY ATTORNEY OLIVER:

17 Q. And I just want to focus your
18 attention on that exhibit. That's
19 again a series of office records from
20 your office; is that correct?

21 A. Correct.

22 Q. And looking at Exhibit 20, if we
23 went back even as far as 1990, we'd see
24 that Mr. Hugar had at that point had a
25 fall and had injured his right

1 shoulder?

2 A. 1990, yes.

3 ATTORNEY SUGHRUE:

4 You're referring to where
5 on Exhibit 20, Counselor?

6 ATTORNEY OLIVER:

7 Various places. I think
8 we could look at the top corner
9 of it.

10 ATTORNEY SUGHRUE:

11 Oh, I was just looking
12 for direction on that.

13 ATTORNEY OLIVER:

14 I'll read it. It says,
15 states fell and landed on right
16 shoulder and back.

17 BY ATTORNEY OLIVER:

18 Q. Did he injure his back then as
19 well, Doctor Conrad?

20 A. Yes.

21 Q. Then there's a second page.
22 It's a two-page exhibit.

23 ATTORNEY SUGHRUE:

24 Thank you.

25 BY ATTORNEY OLIVER:

1 Q. Your impression on the second
2 page, Doctor Conrad, and this would be
3 now in April of '91, was a right
4 shoulder tendonitis, dash, it says
5 calcifica. Does that mean
6 calcification?

7 A. Right.

8 Q. That's the same kind of thing we
9 saw on the x-rays from later, too;
10 right?

11 A. Correct.

12 Q. So again, we're seeing it even
13 before this accident ever happened?

14 A. Right. Yeah, it would be pre-
15 existing.

16 Q. Defense Exhibit 21.

17 (Defense Exhibit Number
18 21 marked for
19 identification.)

20 BY ATTORNEY OLIVER:

21 Q. You had sent --- and again, this
22 is back in May of 1991, you had sent
23 Mr. Hugar to a specialist, an
24 orthopedic specialist for the shoulder
25 issue; is that accurate?

1 A. Correct.

2 Q. And that orthopedist wrote you a
3 letter just the way we saw Doctor
4 Lipitz, the neurologist, would write
5 you letters about his impressions. And
6 that's why you sent him there; right?

7 A. Right.

8 Q. And Doctor Piasio, is it, is
9 that the orthopedic specialist?

10 A. Yes.

11 Q. His impression was a probable
12 massive rotator cuff tear with
13 subsequent adhesive capsulitis; is that
14 right?

15 A. Correct.

16 Q. What does that mean in
17 layperson's terms?

18 A. Torn muscle or ligament in his
19 shoulder with restrictive motion from
20 what we call frozen shoulder.

21 Q. And what does massive mean in
22 that context?

23 A. Large, significant.

24 Q. And am I correct that Mr. Hugar
25 had discussed or had surgery

1 recommended to him for that problem at
2 one point but then declined to do that
3 in favor of some less radical
4 treatment?

5 A. Correct.

6 Q. I'll hand you Defense Exhibit 22
7 and ask if generally that's what's
8 conveyed in that letter from Doctor
9 Piasio to you?

10 (Defense Exhibit Number
11 22 marked for
12 identification.)

13 A. Your question is what?

14 BY ATTORNEY OLIVER:

15 Q. Whether that letter generally
16 conveys having discussed surgical
17 intervention with Mr. Hugar and that he
18 determined not to do that in favor of -
19 --

20 A. Correct.

21 Q. --- less radical therapy;
22 correct?

23 A. That's correct. He did not want
24 surgery.

25 Q. And he was still having

1 significant residual limitations at
2 that time; right?

3 A. That's correct, but he did not
4 want surgery.

5 Q. And I know that was back in '91.
6 We've kind of worked backwards but we
7 know from some of the other records
8 that we've looked at that Mr. Hugar did
9 continue to have complaints with the
10 right shoulder over the years after
11 that; right?

12 A. Correct.

13 Q. I want to focus back on the time
14 of the December 2002 visit. So
15 everything we've really been talking
16 about was all relative to Mr. Hugar's
17 condition before the accident this case
18 is about ever occurred; right?

19 A. Right.

20 Q. So now, I want to kind of switch
21 gears now and go back to the first time
22 you saw Mr. Hugar after that accident,
23 which as you've testified was December
24 4th, 2002, about ten days later.

25 A. Right.

1 Q. And that was at that kind of
2 routine, four-month visit; right?

3 A. Right.

4 Q. At the time of that visit, you
5 would have had the emergency room
6 information; is that right?

7 A. Yes.

8 Q. And we had talked about how you
9 took the information about how the car
10 hit the house; right?

11 A. Right.

12 Q. And you had some x-ray results
13 at that point, as well, to look at from
14 the hospital; is that right?

15 A. Right.

16 Q. Let me hand you Defense Exhibit
17 23.

18 (Defense Exhibit Number
19 23 marked for
20 identification.)

21 ON VIDEO

22 BY ATTORNEY OLIVER:

23 Q. And we've already gone over this
24 so I don't want to belabor it. Is this
25 ---- Exhibit 23 is the hospital report

1 of the lumbar spine x-ray, the hip x-
2 ray and the sacroiliac joint x-ray;
3 right?

4 A. Correct.

5 Q. What's the sacroiliac joint?

6 A. It's your sacroiliac, it's part
7 of your pelvis.

8 Q. Is that the hip area?

9 A. It's close to the hip. It's not
10 the hip.

11 Q. And again, those x-rays showed
12 that Mr. Hugar has that arthritis at
13 all of those levels; right?

14 A. Correct.

15 Q. All levels of his low back;
16 correct?

17 A. Yes.

18 Q. And in the hip as well?

19 A. Yes.

20 Q. And that was really the only
21 positive finding, if you will; is that
22 right? I mean, there was no immediate
23 injury shown on those x-rays; is
24 that true?

25 A. No, there was no fractures.

1 Q. And again, the arthritis was not
2 something that could have been caused
3 by the car hitting Mr. Hugar's house;
4 correct?

5 A. No.

6 Q. I'm sorry, am I right on that?

7 A. It would not have been caused by
8 the accident.

9 Q. Let me just ask too, Doctor
10 Conrad, that you didn't have ---
11 between the time that Mr. Hugar went to
12 the ER on November 25th when he went
13 five days after the incident, then
14 there's about ten days pass until you
15 see him; right?

16 A. Correct.

17 Q. And there are no calls to your
18 office documented in that time period;
19 are there?

20 A. Correct.

21 Q. No notes that somebody called
22 with a concern or an emergent reason or
23 pain complaints?

24 A. No.

25 Q. The other thing you did, we

1 talked about the information you had
2 when you saw Mr. Hugar on December 4th,
3 2002, and the other thing you did was a
4 physical examination; right?

5 A. Yeah, a focused one.

6 Q. And so when you say a focused
7 one, what does that refer to?

8 A. Focused on his complaints at the
9 time.

10 Q. So if in doing that examination
11 you had, yourself, found any visible
12 signs of injury like bruising, cuts,
13 scratches, is it fair to assume you
14 would have put that in your notes of
15 this focused examination?

16 A. Yes.

17 Q. And there are no notes to that
18 effect in your record; are there,
19 Doctor Conrad?

20 A. No.

21 Q. And to be clear, you don't make
22 any observation in your records of
23 signs of a visible injury of any kind;
24 do you?

25 A. Correct.

1 ATTORNEY OLIVER:

2 Let's go off for just a
3 minute.

4 OFF RECORD DISCUSSION

5 BY ATTORNEY OLIVER:

6 Q. Now, Doctor Conrad, when you
7 were doing this focused exam on
8 December 4th, 2002, and we're looking
9 at an enlargement of your office note
10 from that date; is that right?

11 A. Yes.

12 Q. And when you were doing your
13 focused examination, would you have
14 documented in your notes if Mr. Hugar
15 was showing some level of anxiety that
16 concerned you?

17 A. I suppose.

18 Q. And the same would be true about
19 confusion, if there were some level of
20 confusion that you thought was of
21 concern, you would have documented that
22 in your notes of this very focused
23 examination; right?

24 A. Correct.

25 Q. And can you show us where on

1 your office note from December 4th,
2 2002 you documented any of those
3 concerns?

4 A. No.

5 Q. Because you didn't document
6 anything like that; did you, sir?

7 A. No.

8 Q. And if you thought that at that
9 point, on December 4th, 2002, when you
10 were doing a focused exam, if you
11 thought that Mr. Hugar was having
12 trouble with depression or with, you
13 know, some kind of overall feeling low,
14 feeling concerned, would you also have
15 documented that?

16 A. If it was overwhelming, yes.

17 Q. And where did you document that
18 on December 4th, 2002?

19 A. I didn't document it.

20 Q. Okay. And is it fair to assume
21 that Mr. Hugar didn't appear that way
22 to you on that occasion; is that true?

23 A. I didn't document anything that
24 day, no.

25 Q. And if there had been some note

1 or some concern about depression,
2 about, you know, significant anxiety or
3 something of that nature, you might
4 have even prescribed some treatment for
5 him; is that fair to say?

6 A. In Mr. Hugar's case, no.

7 Q. You wouldn't have even talked
8 with him about that, Doctor Conrad?

9 A. Well, we would have talked about
10 it but Mr. Hugar was not a person who
11 liked a lot of medications and liked a
12 lot interventions. His symptoms would
13 have had to been pretty overwhelming
14 for me to broach it with him;
15 otherwise, we would have ended up in an
16 argument.

17 Q. And would you maybe have sent
18 him to see some kind of specialist if
19 you had thought he needed something
20 beyond your expertise as a general
21 family practitioner?

22 A. If it was beyond my expertise,
23 yes.

24 Q. And where on that December 4th,
25 2002 record, Doctor Conrad, do you make

1 notations about a loss of appetite?

2 A. In that record I don't, no.

3 Q. If Mr. Hugar had presented on
4 December 4th, 2002 when you did your
5 focused exam, and he had problems with
6 his appetite, would you have noted
7 that, Doctor Conrad?

8 A. If it was brought up. If it was
9 mentioned to me I would have mentioned
10 it, yes.

11 Q. If he had appeared ill or thin
12 to you, would you have questioned him
13 and documented that?

14 A. Well, he was chronically thin.
15 It was nothing new.

16 Q. If there had appeared to be some
17 change in Mr. Hugar on December 4th ---
18 ?

19 A. If there was a change I would
20 have documented it.

21 Q. Can you please wait for my
22 question, sir, so that we're all on the
23 same page? If there was some change in
24 Mr. Hugar's condition that concerned
25 you as of December 4th, 2002 when you

1 did your focused exam, you would have
2 documented that; would you not?

3 A. Yes.

4 Q. And if Mr. Hugar had presented
5 with signs of substantial physical
6 decline when you saw him on December
7 4th, 2002, you would have documented
8 that; wouldn't you?

9 A. Correct.

10 Q. And is it fair to say and to
11 assume that you, as his family doctor
12 for more than ten years now at this
13 point, if you had seen some need to
14 refer him to some other kind of
15 specialist because of anxiety,
16 depression, you know, appetite loss, et
17 cetera, you would have done that; would
18 you not?

19 A. Yes.

20 Q. And you didn't do any of those
21 things; did you?

22 A. It wasn't felt to be indicated
23 at that time.

24 Q. What was indicated at that time
25 was to order some additional x-rays

1 and to give him some Ultram; right?

2 A. Correct.

3 Q. And Ultram is that same thing he
4 had taken before for the same
5 complaints he had made before; is that
6 correct?

7 A. Yes.

8 Q. And then you sent him home that
9 day; right?

10 A. Yes.

11 Q. And you were aware that he lived
12 alone?

13 A. Yes.

14 Q. You weren't concerned about
15 having him admitted to the hospital on
16 that date, on December 4th, 2002?

17 A. Not on that date, no.

18 Q. You weren't concerned about
19 having him go to a nursing home or to
20 hospice care?

21 A. On that date, no.

22 Q. Okay. And did you suggest to
23 him that someone come in to be with him
24 during the night?

25 A. No.

1 Q. You didn't see a need for that;
2 did you?

3 A. No.

4 Q. The next time that you saw Mr.
5 Hugar after this date, after this
6 December 4th, 2002, when you did your
7 focused exam, noted your findings and
8 then you sent him home, was about a
9 month after the November 20, 2002 car
10 accident; right?

11 A. About three weeks, I believe,
12 yeah.

13 Q. December 16, 2002; is that
14 correct?

15 A. Yes.

16 Q. And I'm going to just take a
17 moment to walk back around. And you
18 looked at the x-rays you had ordered;
19 is that correct?

20 A. Yes.

21 Q. And that was x-rays of the
22 shoulder and the neck; true?

23 A. Yes.

24 Q. I'm going to hand you Defense
25 Exhibit 24.

1 (Defense Exhibit Number
2 24 marked for
3 identification.)

4 BY ATTORNEY OLIVER:

5 Q. Can you identify that, please?

6 A. It's an entry from 12/16/02 from
7 my chart.

8 Q. And what do you note as far as
9 what those x-rays showed?

10 A. Severe osteoarthritis and
11 calcific tendonitis and degenerative
12 changes of the right shoulder.

13 Q. And that calcific tendonitis, we
14 had already seen that from right
15 shoulder x-rays from long before this
16 accident of November 2002 ever
17 happened; right?

18 A. Correct.

19 Q. So again, that's not something
20 that was caused by the accident?

21 A. The actual changes on the x-
22 ray, no.

23 Q. And I believe you had testified
24 on Direct that Mr. Hugar had various
25 different symptoms on that December 16,

1 2002 visit; is that right?

2 A. Correct.

3 Q. Is it fair to say he looked far
4 different than he had looked when you
5 saw him on December 4th, 2002?

6 A. Dramatically different.

7 Q. Some of the symptoms were he
8 reported having had a headache for a
9 week and a half; is that right?

10 A. Correct.

11 Q. That headache's not something
12 you relate to the incident where the
13 truck hit Mr. Hugar's house; is it?

14 A. I don't know what the headache
15 was caused by.

16 Q. Well, he had only had it for a
17 week and a half; is that what he told
18 you?

19 A. Right.

20 Q. And the accident was long before
21 that; correct?

22 A. Correct.

23 Q. He had reports of --- do you
24 have reports of fever on that office
25 visit?

1 A. He was cold and shivering, yes.

2 Q. Nausea; right?

3 A. Yes.

4 Q. You note that he's got abdominal

5 pain ---

6 A. Yes.

7 Q. --- and change in bowel habits;

8 correct?

9 A. Yes.

10 Q. And those are all things that

11 had been going on even before the car

12 accident; is that right?

13 A. Yes.

14 Q. You had even recommended to him

15 that he go to a specialist for that but

16 he declined to do so; correct?

17 A. Correct.

18 Q. And again, that was all before

19 the car accident; right?

20 A. Yes.

21 Q. Now, the nausea, the headache

22 that he'd had for a week and a half,

23 the cold and the shivering, just to be

24 clear, you're not telling the jury and

25 the Court that those symptoms were

1 caused by the truck hitting his house
2 on November 20th; are you?

3 A. Absolutely not.

4 Q. And you make a reference to
5 vague symptoms. Does that signify that
6 you're not quite sure what this all
7 means at that point?

8 A. He was not very specific on
9 giving us specifics of the symptoms. He
10 wouldn't go into much detail.

11 Q. And then, so you had testified,
12 you admitted him to the hospital?

13 A. Yes.

14 Q. And he was found to have
15 pneumonia on admission to the hospital;
16 is that right?

17 A. Yes.

18 Q. And it's not uncommon for
19 elderly people to develop pneumonia,
20 certainly in the wintertime; is that
21 true?

22 A. Not uncommon at all.

23 Q. And it's not unusual with
24 someone with pneumonia to have aches
25 and pains throughout their body; true?

1 A. Correct.

2 Q. And it's not unusual for someone
3 with pneumonia to be feverish and to
4 have a poor appetite; is that also
5 true?

6 A. Correct.

7 Q. It's not unusual to see a
8 general decline in health in someone
9 who has pneumonia; is that true?

10 A. Correct.

11 Q. And that's particularly correct
12 for someone who is in their early 90s;
13 is that true as well, Doctor Conrad?

14 A. Correct.

15 Q. And again, for someone with many
16 other chronic illnesses that we know
17 Mr. Hugar had even before this
18 accident; correct?

19 A. Correct.

20 Q. And I know you had testified
21 that Mr. Hugar had been discharged, I
22 think was the word, we know he actually
23 stayed in different departments in the
24 hospital but was discharged from the
25 hospital admission and then readmitted

1 because of heart problems; right?

2 A. Correct.

3 Q. When he stayed in that swing bed
4 status you talked about, was that
5 because of the pneumonia that he was
6 being treated for?

7 A. It was from his general weakness
8 and deconditioning related to his
9 medical problems.

10 Q. Okay. Do you think the general
11 weakness and deconditioning could
12 possibly be related to the pneumonia?

13 A. That would be one of the
14 reasons, yes.

15 Q. And then he was readmitted
16 because of the heart problems, and we
17 know he had a long history of heart
18 disease; is that right?

19 A. Correct.

20 Q. I also noted within the hospital
21 records that Mr. Hugar was diagnosed
22 with possible shingles on the left side
23 at some point during the hospital
24 admission; is that true?

25 A. Correct.

1 Q. And that was actually at the
2 left hip area; is that true as well?

3 A. Yes.

4 Q. He had had problems with
5 shingles before; had he not?

6 A. At least on one occasion, yes.

7 Q. And shingles can also cause
8 symptoms like achiness and pain; is
9 that true?

10 A. Usually preceding by about two
11 to three, maybe four days.

12 Q. But it does cause symptoms of
13 achiness and pain; right?

14 A. Yes.

15 Q. Now, when Mr. Hugar was
16 readmitted for the heart problems, it
17 was decided at that point by his family
18 that other than the heart shocking you
19 talked about, that his only care would
20 be for comfort, to make sure that he
21 was comfortable at all times; is that
22 right?

23 A. Correct.

24 Q. They, for their own reasons, did
25 not want life support or ventilation at

1 that point; right?

2 A. Correct.

3 Q. Now, when Mr. Hugar ultimately
4 died on January 10th, 2002, what was
5 the cause of death listed as? I'll
6 hand you what I believe is one of your
7 records, and correct me if I'm wrong.
8 Defense Exhibit 29.

9 (Defense Exhibit Number
10 29 marked for
11 identification.)

12 BY ATTORNEY OLIVER:

13 Q. I know it's a hospital record
14 but is that --- did you sign off on
15 that, Doctor Conrad?

16 A. Yes, I did.

17 Q. And what was the cause of death
18 listed as?

19 A. It was several. Bilateral leg
20 deep vein thrombophlebitis, which were
21 blood clots. Recent pneumonia with
22 sepsis and contributing causes of heart
23 disease, his bladder cancer, his
24 irregular heartbeat and his gross
25 hematuria, which is blood in his urine.

1 Q. Nowhere in there is there
2 mention of a car accident or a car
3 hitting his house; is that right?

4 A. Correct.

5 Q. And those conditions, I believe
6 you testified in Direct but I want to
7 be clear, those medical conditions
8 weren't caused because a car hit Mr.
9 Hugar's house; is that right?

10 A. Correct.

11 Q. So I guess to just kind of sum
12 up what we've gone over, Doctor Conrad,
13 we are talking about, with respect to
14 Mr. Hugar, someone who is 91 years old
15 at the time you last treated him;
16 right?

17 A. Correct.

18 Q. And you had seen him for many,
19 many years with many serious medical
20 conditions; is that true?

21 A. Yes.

22 Q. And that was even before this
23 accident that this lawsuit involves
24 ever occurred; right?

25 A. Correct.

1 Q. He had pain complaints on and
2 off over the years, all before the
3 accident?

4 A. Yes.

5 Q. He had problems with balance and
6 with memory, all before the accident?

7 A. Yes.

8 Q. And he had problems with falling
9 even before the accident; did he not?

10 A. Yes.

11 Q. And you can't tell this jury
12 whether Mr. Hugar had any falls between
13 the time of the incident and the time
14 that you saw him on December 4th, 2002,
15 can you?

16 A. No.

17 Q. And you don't know what happened
18 at Mr. Hugar's home on the morning of
19 November 20th, 2002 when the truck hit
20 his house; do you, Doctor Conrad?

21 A. No, I was not there.

22 Q. To the best of your knowledge,
23 Mr. Hugar didn't suffer any direct
24 physical force during the accident this
25 case is about; is that true?

1 A. That's true.

2 Q. And when you did see him,
3 actually, nine days or so later, you
4 never observed any sign of injury?

5 A. Correct.

6 Q. And the tests that you took, the
7 x-rays showed only problems that even
8 you agree were there before the
9 accident; is that also correct?

10 A. That's correct.

11 ATTORNEY OLIVER:

12 I need just a moment.

13 Let's go off for a minute. I
14 may be about done.

15 OFF VIDEO DISCUSSION

16 ON VIDEO

17 BY ATTORNEY OLIVER:

18 Q. And if I heard you correctly in
19 your Direct testimony, Doctor Conrad,
20 you had told Attorney Sughrue that when
21 Mr. Hugar came to see you on that
22 December 16th visit before he went to
23 the hospital, that at that time, and
24 based on the information you had then
25 at that time, you didn't have a reason

1 for the deterioration that you were
2 observing; is that accurate?

3 A. That's accurate.

4 Q. Okay. So you weren't able to
5 tell based on all of the information
6 available to you then what was causing
7 that decline?

8 A. No.

9 Q. Thank you.

10 ATTORNEY OLIVER:

11 No further questions.

12 ATTORNEY SUGHRUE:

13 Thank you.

14 REDIRECT EXAMINATION

15 BY ATTORNEY SUGHRUE:

16 Q. Just briefly, hopefully,
17 Redirect, Doctor Conrad. Number one,
18 looking at Plaintiff's --- excuse me,
19 Defendant's Exhibit One, which is
20 enlarged and is also in the packet,
21 where you wrote down the client's
22 complaints and talk about pain, in
23 addition, is it not true that in
24 addition to the shoulder you also
25 reference the neck as an area where the

1 complaint of pain is made?

2 A. Yes, I do.

3 Q. And looking at your office
4 records of November 25th, 2002, and
5 specifically a phone message which I'm
6 going to mark Plaintiff's Exhibit A,
7 which was a record created by your
8 nurse, I'll ask you to take an
9 opportunity to look at it.

10 (Plaintiff's Exhibit A
11 marked for
12 identification.)

13 BY ATTORNEY SUGHRUE:

14 Q. The symptom or complaint cited
15 in there by your nurse or office staff
16 is what? Patient --- what's his
17 complaint? Car hit his house and
18 patient what?

19 A. Hurt his back.

20 Q. At that point, on the phone, the
21 back was the complaint given.

22 Admittedly, by his caretaker or by Elma
23 Morris, his daughter; is that right?

24 A. Yes.

25 Q. Now, similarly, when you

1 examined him, he had been to the
2 emergency room on November 25th, 2002;
3 correct?

4 A. Yes.

5 Q. Now, we've previously covered
6 that emergency room document and I'm
7 not going to do it again, but in Cross
8 Examination Counselor Oliver indicated
9 that somehow this visit of 12/4/02 was
10 simply a routine pre-scheduled
11 follow up. But I want to draw your
12 attention to the emergency room record
13 and ask you, in terms of disposition at
14 the emergency room, was Mr. Hugar given
15 any directions as to what he should do
16 subsequent to discharge from the
17 emergency room?

18 A. He was asked to follow up with
19 my office in two to four days.

20 Q. And did he follow up with your
21 office within two to four days? I
22 guess not ---

23 A. No.

24 Q. --- if he came December 4th.

25 A. Right.

1 Q. Now, was December 4th, however,
2 --- previously scheduled follow-up date
3 that he had an appointment?

4 A. I believe it was.

5 Q. So instead of coming in two to
6 four days, he came when he was already
7 scheduled?

8 A. Right.

9 Q. Now, you said he was an
10 individual who didn't like a lot of
11 medication?

12 A. Correct.

13 Q. And he lived alone?

14 A. Yes.

15 Q. And you said he was pretty
16 strong willed, he decided what he'd let
17 you do with him?

18 A. Very much so.

19 Q. So he was pretty independent?

20 A. Very much so.

21 ATTORNEY SUGHRUE:

22 Also, may I see
23 Plaintiff's --- Defense Exhibit
24 Two? I think I still have that
25 or did you take that back?

1 ATTORNEY OLIVER:

2 I have a copy for you.

3 ATTORNEY SUGHRUE:

4 I think you borrowed it.

5 BY ATTORNEY SUGHRUE:

6 Q. In Cross Examination, Defense
7 Counsel also brought to your attention
8 on her Exhibit Two and had you discuss
9 the fact that a notation where it says,
10 quote, patient states pain, the injury
11 started spontaneously; do you see that?

12 A. That's the ER's record, yes.

13 Q. That's the ER record from 11/25;
14 right?

15 A. Yes.

16 Q. She drew your attention to that;
17 right?

18 A. Yes.

19 Q. Now, on the very same document,
20 in the paragraph above where there's a
21 history of present illness, is there
22 also not a statement by the patient
23 noted, with respect to the pain that
24 he's complaining of?

25 A. Correct.

1 Q. And what is recorded above it
2 with respect to the pain? Would you
3 mind reading it for the jury?

4 A. Patient states he was sleeping
5 at the time of the accident and he was
6 not hit directly by the truck, nor any
7 debris.

8 Q. Okay. And now, I'm going to ask
9 you to read the sentence right above
10 it. I thought that this was something
11 that I'd outlined but actually it was
12 by the ---. Would you read the
13 sentence above it where the patient
14 refers to the pain?

15 A. Patient states pain starts in
16 his left lower back and radiates down
17 his thigh. Pain began after his house
18 was struck by a truck, causing it to
19 shift off its foundation.

20 Q. So this is on Defense Exhibit
21 Two; correct?

22 A. Yes.

23 Q. And that particular notation of
24 the patient's recitation of his history
25 refers to his left lower back and

1 radiates down his thigh; does it not?

2 A. Yes, it does.

3 Q. Now, in response to Cross
4 Examination, you had some discussion
5 with Defense Counsel regarding the
6 chronic nature injury occurring in his
7 shoulders, his right shoulder or either
8 shoulder, it doesn't really matter; do
9 you recall that?

10 A. Yes.

11 Q. And in your response you
12 indicated and noted that pain in the
13 shoulder would increase with activity.

14 A. Yes.

15 Q. Meaning that if you used it
16 more, the more he used the shoulder

17 ---

18 A. The more he used it the more it
19 hurt.

20 Q. --- more it hurt. Okay. By the
21 same token, because of the prior
22 condition of that shoulder that's been
23 well illustrated, could the shoulder --
24 - I'm asking you, could pain also be
25 activated in that shoulder as a result

1 of being startled or the sudden motion
2 or movement that you described earlier?

3 A. Sure, it could.

4 Q. So he actually had various pre-
5 existing conditions that he was living
6 with at the time of this vehicular
7 accident; right?

8 A. I think I alluded to that
9 earlier, yes.

10 Q. Right. Now, if I come to you
11 and say, I have a gait abnormality,
12 that every time I walk my knee hurts
13 and I favor my knee, that would be an
14 abnormality in the way I walk; right?

15 A. Correct.

16 Q. And gait means the motion to
17 walk?

18 A. Correct.

19 Q. Now, the fact that I have an
20 abnormality in my gait or in the fact
21 that I am having a problem with
22 balance, that does not necessarily mean
23 that I did, in fact, or do, in fact,
24 fall all the time; does it?

25 A. Correct.

1 Q. In fact, I could have an
2 imbalance that's been well covered and
3 be concerned about falling; could I
4 not?

5 A. Yes.

6 Q. And that would be something I
7 should be concerned about?

8 A. Yes.

9 Q. And we are concerned about older
10 people falling?

11 A. Yes.

12 Q. And a cane gives some degree of
13 security as you walk with your abnormal
14 gait; does it not?

15 A. Yes, it does.

16 Q. And so as we reviewed these
17 records with Defense Counsel, it
18 appears to me that it was a number of
19 years prior to this accident when the
20 first documentation of Mr. Hugar
21 actually falling occurred; was it not?

22 A. Yes.

23 Q. He hadn't had any recent falls?

24 A. Not that I was aware of.

25 Q. And much ado was made about the

1 Blair Medical Associate report of March
2 24th, 1999, which was Defendant's
3 Exhibit Six. And there Counsel for the
4 defense indicated to you and had you
5 read in that report, he states ---
6 excuse me, and I'll read that. This is
7 an 87-year-old man complaining of
8 gradual difficulty walking straight.
9 Now, may I assume that means simply
10 what it says, that he had a hard time
11 walking straight as in a straight line?

12 A. Yes.

13 Q. And duration is two years. And
14 then he says, he states that he may
15 fall to either side. Now, in context
16 to having difficulty walking straight,
17 could that be interpreted that --- is
18 that necessarily interpreted as he's
19 falling all the time, or can it simply
20 be interpreted to mean that as he tries
21 to walk straight he falls or moves side
22 to side?

23 A. It doesn't even mean that he
24 falls to the ground. It means he
25 falls, you know. He may catch himself,

1 he may right himself. You know, you
2 can read a lot into that.

3 Q. Okay. So it's a matter of
4 interpretation?

5 A. Yes.

6 Q. Now, with respect to Defense
7 Exhibit 21, which was an examination by
8 Doctor Piasio with respect to a
9 specific factual situation, that
10 referral by you arose out of the fact
11 of a fall that Mr. Hugar actually
12 sustained; right?

13 A. I believe so, yes.

14 Q. It's clear from Exhibit 21 of
15 the Defense that Mr. Hugar actually did
16 fall back then on his right shoulder
17 and suffered injury; is that correct?

18 A. Yes. He fell onto his right
19 shoulder.

20 Q. And the injuries he sustained,
21 such as a torn rotator cuff and
22 calcification, et cetera, the things
23 that have been described were directly
24 related to the trauma of falling on the
25 shoulder at that time?

1 A. I would assume so, yes.

2 Q. Now, x-rays are given for what
3 purpose?

4 A. To look for bony abnormalities.

5 Q. Right. So does an x-ray or is
6 an x-ray designed to show or
7 demonstrate to the doctor injuries to
8 the soft tissue such as the skin, the
9 fatty tissue, the muscle, the tendons
10 and the like?

11 A. It will not show that, no.

12 Q. So an x-ray does really nothing
13 more than rule out fractures or trauma
14 to the bones themselves?

15 A. Or subluxations or movements,
16 dislocations of bone.

17 Q. Now, in terms of falling, if we
18 go back to where I asked you to assume
19 everything that I previously asked you
20 to assume, everything that you've
21 already discussed, if, in fact, there
22 were independent evidence presented at
23 Court admitted with respect to
24 establishing the fact that Mr. Hugar,
25 in fact, fell from his bed in response

1 to the vehicular impact, and if the
2 jury were to find that the vehicular
3 impact not only startled him, caused
4 him to make a motion, but caused him to
5 fall out of bed, would the complaints
6 that he made with respect to --- let me
7 finish the question. Would the
8 complaints that he made with respect to
9 the pain and injuries that he described
10 in the ER and at his visit of 12/4/02
11 be consistent also with what could
12 occur to a gentleman of his health
13 condition by falling from a bed to the
14 floor?

15 A. It could, yes.

16 ATTORNEY OLIVER:

17 off record.

18 OFF VIDEO DISCUSSION

19 ATTORNEY OLIVER:

20 I'm not sure where to
21 begin. I'll try to be brief.
22 I'm objecting. I don't know
23 what all those assumptions that
24 you started off your question
25 with were. I mean, that's ---

1 that is so vague.. I'd be
2 shocked if Doctor Conrad could
3 remember what they were, it's
4 been a long time now today. So
5 all those assumptions and things
6 you've already testified to, I
7 object to the form of the
8 question in that regard.

9 I object to your
10 suggesting to the jury, to
11 Doctor Conrad, to you know,
12 ultimately the judge and the
13 jury that there will be any
14 admissible evidence that there
15 was a fall from the bed. There
16 just isn't any evidence of that
17 nature in this case. As a
18 matter of fact, the evidence is
19 no one knew what occurred. You
20 can't build a case on not
21 knowing what occurred. There's
22 not evidence of a fall, so I'm
23 going to object to the question
24 and move to strike both the
25 answer and the question. And

1 that's it.

2 ATTORNEY SUGHRUE:

3 Okay. Thank you. I
4 appreciate the objection. The
5 assumptions were simply a matter
6 of time were referring to the
7 assumptions I previously asked
8 him to make. I didn't repeat
9 them. The same assumptions I
10 asked him before, giving a prior
11 opinion. I simply added one
12 variable, and that was if it
13 were found that he did, in fact,
14 fall from his bed to the floor,
15 would the injuries be
16 consistent.

17 Now, you're correct in
18 the sense that there might not
19 be any evidence at this point in
20 the development of the case that
21 he fell from his bed, but that
22 does not mean at the time of
23 trial that that evidence may not
24 be presented.

25 In fact, you have been

1 given notice of the fact that he
2 told his one daughter, that is
3 Mr. Hugar told his one daughter,
4 Mrs. Fetters (phonetic) as I
5 recall, that he did, in fact,
6 fall from the bed and onto the
7 floor. Now, whether or not
8 that's admissible, of course, is
9 a legal issue.

10 ATTORNEY OLIVER:

11 I've already --- just to
12 preserve the objection, my
13 position is it's inadmissible
14 hearsay. I think the judge can
15 figure this all out for us
16 though. Unless you need to say
17 something else?

18 ATTORNEY SUGHRUE:

19 No. I'm only stating it
20 so that, A, you'll know what I'm
21 looking at and B, ---.

22 ATTORNEY OLIVER:

23 And that's the only
24 evidence you think there is;
25 correct?

1 ATTORNEY SUGHRUE:
2 That's the evidence that
3 I --- the only evidence that I'm
4 aware of at this point. But I
5 thought if I didn't say
6 something I might have waived
7 anything and everything. Who
8 knows. Okay. I have nothing
9 more. I have nothing further.
10 Just give me one moment.

14 ON VIDEO

24 VIDEOGRAPHER: .

25 Off record 6:52 p.m.

Richard Hugar

8-27-02 RTG 4 mo. constipation + glauco LR

do constipation, 1 past month
belches + flatus
- BM q 2-3 days
wt 12#

ASHD - asymptomatic

Copd - stable

Bp 130/74

~~copd~~
stable
no wheezing
no edema

hit lot consumer (upset)

- EMT (distressed)

→ Dr. Rose
9/11/02
10/02

constipation, bowel habits

ASHD

Copd

DBY.
call

to pt

- rec. colonoscopy - pt hesitant - C 1st refuses
but he finally agrees

meds reviewed

no pt above



Patient: Richard Hugar Age: _____ Caller: Cima Morris

Phone: 765-9438 Pharmacy: _____

Date/time: 11/25/02 9:00am By: an

Test results

Appointment/Rx

Rx Reaction

Requests Dr./Nurse to call

Returning Dr./Nurse call

Message/symptoms: car hit their house, pt ~~hit~~ hurt his back. I recommended ER, pts daughter just wants an X-ray.

Doctor's instructions: What part of back hurt, was he hit?
Follow rec ER but if won't go, will x-ray

Action taken: Will go to ER, 11/25/02 am.

EXHIBIT

A

Richard Hugar

2/4/02 RTO 4 mos.

car hil pt. hang 11/20/02

- shoot pt up ~ ER 11/25 -

c/o (P) neck/shoulder ache

X-ray - L spine = DDD

(S) hip nofr

St. Jt - DDD

feels (P) parsonal/shoulder - topous

neck nppb

Cervical

lumbar

no focal neuro)

~~fr~~ (P) shoulder/hip pain → X-ray C spine + shoulder (P)

Copd/ASHTh

Rx Ultam 50, 1/2 po BID

(# 154) - daily

Mr. 2nd

De

DEFENDANT'S
EXHIBIT

Clearfield Hospital
809 Turnpike Avenue, P.O. Box 992
Clearfield, PA 16830
8147655341

Patient: HUGAR, RICHARD EARL 814765534
Physician: Stephen Pyo, PA
Visit Date: 11/25/02 PCP: Donald E. Conrad, DC
(The information contained in this document is...) 11/25/02

MR#: 084508
Acct #: 000001050000
DOB: 8/1/1911 Age: 91y

PCP: Donald E. Conrad, DO Acct #: 000001050000
DOB: 8/1/1911 Age:91y
(The information contained in this document has been extracted from the medical chart to provide a summary overview and is NOT intended to replace the complete Medical Record.
Refer to the medical chart for the complete Medical Record.)

CHIEF COMPLAINT: E₂₁₁

Chief complaint/quote:a truck struck his home on Nov. 20th and he was startled and shaken up .dosen't know if he fell..has pain behind right ear, has lump on lower back and down left leg.

HISTORY OF PRESENT ILLNESS: Patient is a 91 yom who presents to the ED complaining of left lower back, hip, and leg pain x 6 days. Patient states pain starts in his left lower back and radiates down his thigh. Pain began after his house was struck by a truck causing it to shift off of its foundation. Patient states he was sleeping at the time of the accident, and he was not hit directly by the truck nor any debris. Pain has increased since the time of the accident. Patient also complains of pain behind his right ear that radiates down his right side of his neck. Patient admits to being "off balance," right sided CP that is not a new onset, and abdominal pain that also is not a new onset. Patient denies SOB, change in vision, change in urination, dysuria, nor any tingling or burning sensation in his left lower extremity. Patient has tried IBprofen for the pain with little relief. Patient has a history of a left hip replacement in 1977.

1ST MEDICAL/SURGICAL HISTORY: CABG Hip replacement
Cataract Surgery

ST PSYCHOSOCIAL HISTORY: Social history obtained, including arrangement; Patient lives alone.

PRESENT MEDICATIONS.

RENT MEDICATIONS:
rent meds: Aspirin, baby QOD
Ibuprofen PRN

ALLERGIES: Medication allergies: No known allergies.
x Allergy (-)

VIEW OF SYSTEMS: *Ulmus* (continued)

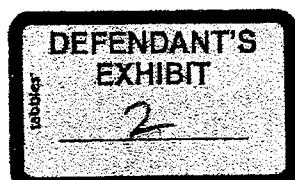
mechanism of pain, location: Patient states pain the injury started spontaneously. Pain located in left hip tender to swelling. The area is ROM is limited. pain

Mechanism of pain, location, associated s/sx: Patient presents complaining of pain in the entire low back with tingling into, left, and thigh. Patient states the the pain started spontaneously. There is increased pain. Position worsened with light activity. Prior treatment includes Ibuprofen. This treatment was moderately effective.

L SIGNS: See Nursing Flow Sheet

SICAL EXAM.

MENT:



Clearfield Hospital
809 Turnpike Avenue, P.O. Box 992
Clearfield, PA 16830
8147655341

Patient: **HUGAR, RICHARD EARL** MR#: 084508
Physician: **Stephen Pyo, PA** Acct #: 000001050000
Visit Date: **11/25/02** PCP: **Donald E. Conrad, DO** DOB: **8/1/1911 Age:91y**

*(The information contained in this document has been extracted from the medical chart to provide a summary overview and is NOT intended to replace the complete Medical Record..
Refer to the medical chart for the complete Medical Record.)*

PROCEDURE:

CARDIOPULMONARY ORDERS:

RADIOLOGY ORDERS: SPINE LUMBAR GE 4 VIEWS Stephen PA-C Pyo
HIP COMPLETE LEFT Stephen PA-C Pyo
SACROILIAC JOINTS GE 3 VIEWS Stephen PA-C Pyo
Order1 SPINE LUMBAR GE 4 VIEWS Stephen PA-C Pyo

Result1

no fracture

Order2

HIP COMPLETE LEFT Stephen PA-C Pyo

Result1

no fracture

Order3

SACROILIAC JOINTS GE 3 VIEWS Stephen PA-C Pyo

Result1

no fracture

MEDICINE ORDERS: Tylenol 1 gram(s) PO Now ; Transcribed order Stephen PA-C Pyo
Toradol 60mg/2ml vial
IM Now ; Transcribed order Stephen PA-C Pyo

LAB ORDERS: CBC W/DIFF

COMPREHENSIVE METABOLIC PANEL

URINALYSIS WITH MICROSCOPIC

CULTURE URINE (CLEAN CATCH) None

CULTURE BLOOD AERO/ANER; Specimen type: BLOOD None

Blood Culture #2; Specimen Type: Blood None

DIAGNOSIS: Pain - backpain - joint, hip, left

PROGRESS NOTES: The patient's condition is slightly improved. Patient is feeling slightly better. Patient is ready to go home.

DISPOSITION: Disposition - Discharge from ED: The patient is discharged to home. Patient's condition is stable. The patient is to follow-up with Dr. Conrad OFFICE: 765-2950 in 2-4 day(s)

Prednisone 20mg 3 po daily X 3 days then 2 po daily X 3 days then 1 po daily X 3 days #18 - Refills: None

Clearfield Hospital - Clearfield, PA 16830

Patient: HUGAR, RICHARD EARL

DOB: 8/1/1911

Age/Gender: 91 M

11/25/2002 12:52 Fall

MR#: 084508

Acct#: 000001050000

ED Phys.: Stephen Pyo, PA

BACK: The back appears normal. Tender to palpation over lumbar spine. Tender to palpation over left sided SI joint. Mild tenderness to palpation over left sided sciatica. ROM of the spine is normal. The paravertebral muscles, scapulae and iliac crests are symmetrical. There is no deformity of the spine with flexion, extension or lateral bending.

PELVIS: The pelvis appears normal and symmetrical. There is no pain on palpation or compression. ROM of the pelvis is normal. There is normal alignment of the legs and feet.

HIP: The hips appear normal and symmetrical. Mild pain to palpation over left lateral hip. Left hip passive ROM is limited secondary to discomfort. Right hip ROM is normal with flexion, extension, abduction, adduction, internal and external rotation.

SP:Stephen Pyo, PA 11/25/02 22:33

Neuro-Psych

NEURO: Alert and oriented to person, place and time. Speech is normal. Cranial nerves II-XII grossly intact. Upper and lower extremity strength grossly normal. Biceps, patellar and achilles reflexes normal bilaterally.

SP:Stephen Pyo, PA 11/25/02 22:36

PROCEDURES

PROCEDURES - NURSING

Physician Overview saved: CEC 11/25/02 21:48

Consult

Radiology notified of order: Patient for xray in Imaging Department. KAR 11/25/02 17:35

Lab: notified of orders. KAR 11/25/02 17:54

Patient back from X-ray department. KAR 11/25/02 18:10

Urine: urine collected/sent to lab KAR 11/25/02 18:25

ORDERS

MEDICATIONS

Tylenol 1 gram(s) PO Now ; Transcribed order Stephen PA-C Pyo Stephen Pyo, PA 11/25/2002 19:23

Toradol 60mg/2ml vial IM Now ; Transcribed order Stephen PA-C Pyo Stephen Pyo, PA 11/25/2002 19:40

LAB

CBC W/DIFF Stephen Pyo, PA 11/25/2002 17:53

COMPREHENSIVE METABOLIC PANEL Stephen Pyo, PA 11/25/2002 17:53

URINALYSIS WITH MICROSCOPIC Stephen Pyo, PA 11/25/2002 17:53

CULTURE URINE (CLEAN CATCH) None Stephen Pyo, PA 11/25/2002 17:53

CULTURE BLOOD AERO/ANER; Specimen type: BLOOD None Stephen Pyo, PA 11/25/2002 17:53

Blood Culture #2; Specimen Type: Blood None Stephen Pyo, PA 11/25/2002 17:53

RADIOLOGY

SPINE LUMBAR GE 4 VIEWS Stephen PA-C Pyo Stephen Pyo, PA 11/25/2002 17:23

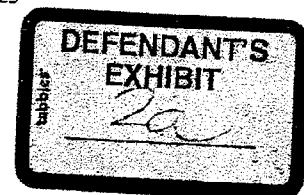
HIP COMPLETE LEFT Stephen PA-C Pyo Stephen Pyo, PA 11/25/2002 17:23

SACROILIAC JOINTS GE 3 VIEWS Stephen PA-C Pyo Stephen Pyo, PA 11/25/2002 17:23

RESULTS

LAB

CBC W/DIFF



Michael Hager

12/19/01 - RTD 4 mos - c/o. bilateral shoulder pain menstrual

- ongoing shoulder pain
pt refused medications post fracture to refuse

→ use cane

Copd/ASTH - stable

neck/upper

CV/RD

cycle

↑ ROM L > R should

swelling

(+) chronic OA Δ

DSO - bilateral shoulder

ASTH/COPD - stable

astheno

RTD 4 Month. 4/24/02
245

DR

DEFENDANT'S
EXHIBIT

3

chard Hugar

120101 RTO 4 mos - Red patch on R cheek. Ache in shoulders

12/19/01

growth - R facial cheek

x? month - you
- pt hasn't done anything but new growth

has FLU - Dr Rosenthal (TCC bladder)

Copd - stable

ASAD - no chest pain

DJD - shoulder; ache, ↑ c activity

R cheek - papillary growth

to touch
no cellulitis
no ulceration

no discharge

no PPD

negative

shoulder & R arm (tension)

1/4 R Facial cheek growth - surgeon; Dr. Yingling

Copd,

ASAD

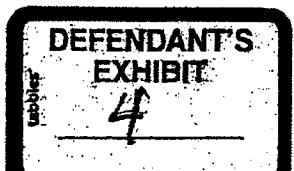
DJD / shoulder - pt denies medication

TCC bladder - FLU c Dr Rosenthal

RTO 4 months

12/19/01
945

DR



Richard Hugan

4.20.01 RTO 4mo

to unnoted grant.

c/o R. Wm. & dec.

LR

chronic (2) should discomfort

- (2) wrist pain
no edema
no swelling

|
| good pain
| not any worse than
| baseline
|
| chronic constipation

Cord - Stable

ASHD - Stable

BP 124/58

neck & upper

Cor PDR

cycle

no scale pt.

walks down

no food nev/s

- no fistulas soft are fib

Fig:

Cord/ASHD

chronic dysregulation

constipation

DJN

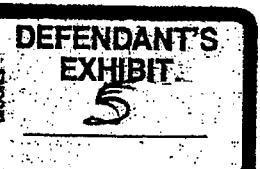
- Rx: Senokot-S 9h
(30/23)

10/19/99 ③ 21/2m 50, 1/2-1 po BID pm

12/24/99

8/12/01
9:30a

DR



Blair Medical Associates

March 24, 1999

Donald E. Conrad, D.O.
502 Park Avenue
Clearfield, PA 16830

RE: Richard E. Hugar
DOB: 08/01/11
MRN: 56179

Dear Doctor Conrad,

I saw Richard E. Hugar for neurologic consultation 03/24/99 at your kind request.

CHIEF COMPLAINT AND HISTORY OF PRESENT ILLNESS: This is an 87 year old man complaining of gradual difficulty walking straight. Duration is two years. He states that he may fall to either side. He had a kidney stone and recurrent bladder cancer two years ago and he feels his complaints have increased since then.

He has also noted some double vision on left gaze for about one years' duration. He has not had any facial, tongue, or lip dysesthesia or numbness.

He states he had an MRI of the brain on January 25, 1999 as well as an echocardiogram and a cardiac stress test. The MRI of his brain revealed superficial cortical atrophy according to the report and was otherwise negative. Gadolinium was given. He has also had blood work done periodically and had a normal TSH in 1995 and 1999. His PSA is normal and his blood sugar is normal.

PAST MEDICAL HISTORY: Silent MI, coronary artery disease.

PAST SURGICAL HISTORY: Hip replacement, left bilateral cataract extractions, CABG, two herniorrhaphies.

MEDICATIONS: Baby aspirin, nephrolithiasis, bladder cancer.

ALLERGIES: No known drug allergies.

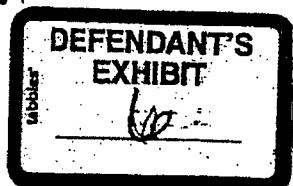
SOCIAL HISTORY: Non-smoker, non-drinker.

FAMILY HISTORY: Brother had heart disease.

BMA

1414 Eighth Avenue
Altoona, PA 16602
814/946-1655
FAX 814/946-7616

It is the purpose of BMA to maintain and improve the health of our community through the treatment and promotion of disease prevention.



Page 2

March 24, 1999
Dr. Conrad
RE: Richard Hugar

REVIEW OF SYSTEMS: Cardiac: As above. General/Constitutional negative. Endocrine negative. ENT: Hearing loss. GI: Abdominal pain, heartburn, indigestion, constipation. GU: Nephrolithiasis as above. Musculoskeletal: Arthritis. Psychiatric negative. Respiratory negative. Integument negative. Hematologic negative.

Of note, he denies any neck problems or headaches. He did fall and hurt his left shoulder 21 years ago. He has had biceps muscle tendon tears bilaterally.

PHYSICAL EXAMINATION: BP 138/80. Weight 148 pounds. He has proximal and distal interphalangeal joint hypertrophy on inspection of his hand muscles. Neck: Supple without bruits. Heart: Regular rate and rhythm. S1, S2, without murmurs. Lungs: Slightly diminished breath sounds more on the right. The thyroid is not enlarged. He does have dorsal interosseae atrophy.

He did have some difficulty getting out of a chair without the use of his hands evidencing some slight proximal lower extremity weakness.

NEUROLOGICAL EXAMINATION: Mental status: Awake, alert, oriented X 3. Fluent, not dysarthric, non-aphasic. Naming, repetition, comprehension intact. Recall intact.

CRANIAL NERVES: II: Visual fields full. III, IV, VI: Mild ptosis, no double vision. The ptosis does not fatigue with upgaze. V: Facial sensation symmetric to light touch and cold. VII: The left nasolabial fold is slightly flatter. Smile is symmetric. VIII: Hearing reduced. IX: Soft palate elevates in the midline. XI: Shoulder shrug symmetric. XII: Tongue midline, no fasciculations.

MOTOR: No drift. There is dorsal interosseae atrophy bilaterally and he can't fully abduct the fingers. Otherwise strength is symmetric and intact to confrontational testing.

SENSORY: Position sense is slightly reduced distally in the great toes. Pinprick is reduced distally in the lower extremities and vibration is reduced in the great toes.

DEEP TENDON REFLEXES: Biceps, brachioradialis 0 bilaterally. Triceps 1 bilaterally. Patella 1 bilaterally. Achilles absent bilaterally. Plantars equivocal bilaterally to Babinski.

Page 3

March 24, 1999

Dr. Conrad

RE: Richard Hugar

CEREBELLAR: No finger to nose or heel to shin dysmetria. Romberg negative.

ASSESSMENT:

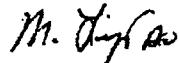
1. Neuropathy.
2. Possible cerebellar degeneration.

PLAN: Check B-12 level, CPK. A TSH had been ordered prior to finding out that it has already been done in January.

I can also electrically work him up for neuropathy with NCV studies, but it is clinically suspected. Blood tests ordered today include a B-12 level and CPK.

Thank you for the courtesy of this consultation.

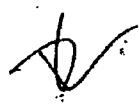
Sincerely,



Mark E. Lipitz, D.O.
Blair Medical Associates
Department of Neurology

MEL/ndd

D: 03/29/99
T: 03/31/99



Blair Medical Associates

1414 Eighth Avenue Altoona, PA 16602 (814) 946-1655 Fax: (814) 949-7616

January 17, 2000

Donald E. Conrad, D.O.
502 Park Avenue
Clearfield, PA 16830

RE: RICHARD E HUGAR
DOB: 08/01/1911
MRN: 56179

Dear Dr. Conrad:

I saw Richard Hugar for neurologic follow up January 12, 2000, re: imbalance. He is still off balance; though he is using a cane.

REVIEW OF SYSTEMS: Bladder cancer has been found.

He has also been started on Aricept, re: Memory loss.

PHYSICAL EXAMINATION: On exam, he is oriented to "the New Year", January, Wednesday. He couldn't tell me it was 2000, but knew it was the new millennium. He can recite steps of directions from his home in Mount Zion to Greenwood to Clearfield (going in the Mount Zion to Clearfield direction), but has difficulty going backwards. He had 3 out of 3 recall.

Palmomental reflexes are present bilaterally. Romberg is positive.

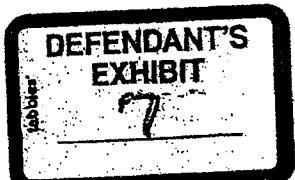
ASSESSMENT:

1. Cerebral atrophy, memory loss.
2. Neuropathy.
3. Gait abnormality.

PLAN: Vitamin E 400 units b.i.d. He is already on Aricept. I am not convinced he has Alzheimers; although, he may have memory dysfunction on the basis of progressive atrophy. He may benefit from Aricept, as you have started.

AM 8/8

2/1/00



Page 2

January 14, 2000

Dr. Conrad

RE: Richard Hugar

He should use the cane and try to protect himself from falling as much as possible. I have not identified any reversible etiologies to his gait abnormality. He does have a neuropathy contributing to a positive Romberg, and this may be in part on the basis of a paraneoplastic syndrome (bladder cancer). I don't think his bladder cancer is large from what he tells me, or causing a plexopathy.

Thanks for allowing me to participate in his care. If you have any questions or comments, or would like to discuss him further with me, please don't hesitate to call. I would simply suggest taking every precaution to minimize his risk for falls at home and in the bathtub.

Sincerely,



Mark E. Lipitz, D.O.
Blair Medical Associates
Department of Neurology

MEL/lss

D: 01/14/00

T: 01/17/00



Richard Hugar

1/10 RTO 4 mos - On Keflex per SPR. Due to infection. No 40.
Complaint of "dizziness." 90 redness & scarring on ① cheek (check memo)

Follows in Dr Rosenthal shift

presently on antibiotic

chronic dyspepsia

90 DOE, nocturnal phr

BP 122/64

neck supply

cor RRC

lung clcr

abd pain

noddles

↑: Copd / DOE
ASHD
DJD

CXR 8/9/00 → mild Copd

ECG = RBBB

③ Severe dyspepsia + p BID

RTO 3-4 months, 2/18/00, 2/23/00
Flu Dr Rosenthal

2-18-00 RTO 4 mo. Complaint of unsteadiness. ↑ flatulence
States severe t/disk eng - causing n/pa.

Copd - stable

ASHD - stable

- c/o ↑ flatulence, ↑ gurgling

DJD - stable

BP 130/70

neck supply

cor RRC

lung clcr

abd pain

noddles

↑: Copd
ASHD
DJD

④ Sinus congestion

- occ off bottom

Rx Simethicone chew tabs,

↑ chewed po pr

(# L.R3)

Rx 4 months

4/20/01

10/5

DEFENDANT'S
EXHIBIT

8

36.00 RTD 7-10 clamp.

on Valtrex → shingles, finished now

— improving, "drying up"
st diposulfot still but resolved much

dried (scrubbed lesion)

no vesicles

no cellulitis

BP 118/66

↑↑ rendering Shingles

→ no further Rx
RTD 4/100 as scheduled

4-18-00: RTD 4 mos *AC* C10 (R) 3rd digit pain.

ASHD = stable

no cardiovsgx symptoms

DJD → arthralgias
knuckle got large & knobby
no calcif. jt.

① sinu drainage

BP 116/62
neck 8/10
Cox 8/10
Lung 2/10
abd 8/10
med 8/10

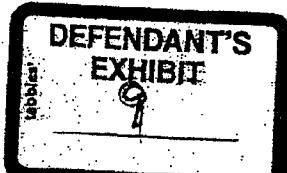
↑↑ ASHD
DJD
PAC

— ③ Vicore 12.5g qd

— ③ flunarizine 1-2sp qd

RTD 3-4 months

may not
need
attached
7/14/00



12/11/09 RPO 2 mod - Memory loss - difficulty C present, can remember past.

Pl doesn't want to come back to see doc until summer.

WRayburn

No signs D

No recent falls

Memory continues to be problem

BP 120/64

ASHD - Stable

DJD - Stable

COT PDR

EEG ok

2b00mg

meds

no foot neuropathy D

↑ ASHD

DJD

Memory ↑ - ? early dementia

→ Consider Aricept 5mg qd (Rx #3023)
pt unsure will take.

RTO 4 months

11/18/09 US

JK

1/15/10 % ^{had} discomfort, painful to touch. This am had a rash develop
in same region. ^{had} had a rash develop
NACP

midepigastri pain

→ LUL - back

broke out & blistery rash

② sides only

- red bざe, blistery rash



↑ Shingles

→ ③ Valtrex 1000mg TID x 7d.

N/ 7-10 day 3/6/10 ^{US} 10 AM

JK

DEFENDANT'S
EXHIBIT

10

Richard Hugar

10/12/99. RTG 6 weeks - fell 3-4 wks ago still unsteady gait, difficulty memory. ^{memcon}

had neuritis flu - Dr. Lpitz

- sent to hospital for tests

Results pending ^{10/15/99} → no homodynamically agnt stimon

BP 124/70

dequilibrium persist

poor memory & times

balance poor sometimes

not tremor

co: PPE

leukocytosis

abn. tkey

not tremor

tx regrettably

no spinal rigidity

Rhomboid neg

All carotens

→ ↓ [↓] dequilibrium
+ memory

ASHD - b646

DDD - stable

— use cone ^{10/15/99 10⁴⁵}

Pro 2-3 months.

no specific Rx @ this point

flushed

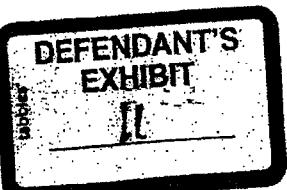
DC

ENT - Ko

cerumen removal

Dr. Newberg 10/20/99
900

10/12/99. Flu vaccine 0.5mL in ① deltoid Lot # 499824L Wyeth-Lab Umanco



Associates

September 27, 1999

Donald E. Conrad, M.D.
502 Park Avenue
Clearfield, PA 16830

RE: Richard E. Hugar
DOB:
MR#: 159574/1

Dear Dr. Conrad:

I saw Mr. Hugar for a neurologic follow-up on September 22, 1999 regarding imbalance and neuropathy.

Subjective: He complains of increased imbalance.

On examination, he is awake, alert, fully oriented, fluent and not dysarthric. There is cerumen in the external auditory canals bilaterally. The tympanic membranes are not visualized. Cranial nerves: PERRLA, EOMI. No nystagmus or disconjugate gaze. Motor: No drift. Cerebellar: No finger-to-nose dysmetria. Sensory: Vibration sense is absent at the great toes. Romberg: Positive. There is a left carotid bruit.

Assessment:

1. Neuropathy.
2. Gait abnormality.
3. Left carotid bruit. He had a normal range CT scan of the head on September 8, 1999, as per the report from Clearfield Hospital.

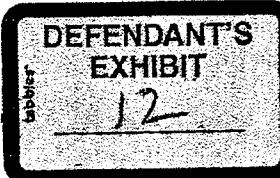
Plan:

1. Aspirin 81 mg daily.
2. Noninvasive carotid Doppler studies.
3. Four-pronged pain.
4. Consideration of Antivert 12.5 mg p.o. p.r.n. spells of imbalance. He is 81 years old.

8/10/8199

1414 Eighth Avenue
Altoona, PA 16602
814/946-1655
FAX 814/949-7616

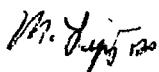
It is the purpose of BMA to maintain and improve the health of our community through prevention of disease and the promotion of wellness.



Page 2

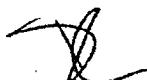
September 27, 1999
Dr. Conrad
Re: Richard E. Hugar

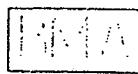
Thank you for allowing me to participate in his care. If you would like to discuss him further, please do not hesitate to contact me.
Sincerely yours,


Mark E. Lipitz, D.O.
Blair Medical Associates
Department of Neurology

MEL/mam

D: 09/27/99
T: 10/07/99 - MTS





1/31/99 2PM 3-4 m.v. - hx bleeding nose w/n. - world like side of face. 1-2 mos ago - ear ring. (R side of neck felt like a boil then sharp pain radiated up (R side of face now has a bump and - W/G) "off balance" when walking.

c/o tinnitus, (R), occ (R) temporal orbital-like pain

some dizziness/balance

- saw Dr. Lopitz - rec: Cane, v.t. B12 (R) int E & B2b, EDS

BP B2/60

Tinnitus

fever (R) 38.0°C, (no fever)

no TMJ tenderness

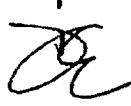
carpal

clay-der

8-30-99 ESR done fm

Imp tinnitus, (R) facial pain
dysregulation

Djh

✓ Sed rate ^{slightly} | X-ray - (R) facial bones
RTO 6 weeks 
10/10/99 10^{4.5} 

Patient: Richard Hugar

Age: _____ Caller: Elma

Phone: 765-76660

Pharmacy: _____

Date/time: 9/2/99

By: mm

Test results

Appointment/Rx

Rx Reaction

Requests Dr./Nurse to call

Returning Dr./Nurse call

Message/symptoms: Called to results of facial x-rays. Wife notified me pt was so dizzy, he fell going down steps. stitches above right skin of toe & shins on, & chint elbow. What are you

Doctor's instructions: going to do now?

Sept 22 11⁴⁵ AM C+ hand

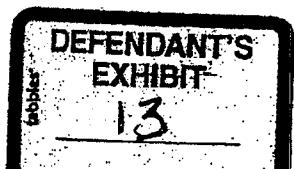
Action taken: + Fluic Diltiaz (maxiagent)

Sept 8 10³⁰ AM 4 hours fast

2

9/13/99. Pt notified per Doc. C+ of Brain Okay

MEMO/PW



Richard Hugar

126-99 - RTO 3 months -> ft dry & swollen. Still a staggering gait.
memPN

Chronic dysequilibrium

- had neurology pt ~ Dr Lipitz
- had option of further pt but pt declined
- B12 level low

BP 102/60

C10 (L) foot discomfort

- remembered injury
- ? pt? contusion

CW RRC

lungs clear

Sh/leg

2nd toe - pulsable & color

no palpable tenderness

no foot swelling

Fig. ? DSD (L) Ankle
chronic dysequilibrium
ASHD

→ XRay (L) ankle - today

(S) Celebrex 100mg bid

RTO 3 months 8/30/94 105

26-99 Kray, (L) ankle xraye

10 DSD

DEFENDANT'S

EXHIBIT

14

1/199 Pt not fed (p.m. 1), DEC. MRI of Brain. WNL. METHLP

1/99 Pt wife noticed pt DEC. stress thallium ok W.Raynor

Patient: Richard Hager Age: _____ Caller: _____

Phone: 765-7600 Pharmacy: _____

Date/time: _____ By: _____

Test results Appointment/Rx Rx Reaction

Requests Dr./Nurse to call Returning Dr./Nurse call

Message/symptoms: Pt unable to take Imdur 30mg
Makes him sick to stomach & dizzy. advised
not to take O/K 2/22/99 11/5 AM

Doctor's instructions: 1 Dose Imdur

Action taken: 2/5/99 wife removed 12.7 →

1/199 RTO 1 m/s - Ch unable to have steady gait - Steady/wants answers everything
one back ok. "Can't Walk Straight." W.Raynor

Chronic symptoms

- dysequilibrium continues
prev MDT & obs-pathology

→ Echo - LVEF 30-35% mild AF/AR.
Thallium neg
CTR - neg
MRI head - mild cortical changes

BPI/BG
negative
cerebral
angiogram
no findings

↑ dysequilibrium.
Cardiopathy
PSI

5/24/99
JL

- neurology opinion / Lymph

RTO 3 months

5/24/99 11/5

DEFENDANT'S
EXHIBIT

15

1/19/99 - 6% "staggering gait" Not dizzy. Wake up at night SOB
 Does not happen during day. 6% epigastric pain, if passes
 feature feels better. in energy memor
 Concerned c ureg urination thru night. Unable to urinate
 when she has to go. 6% sensation memor

87 yo W, male

- S1P CABG 192, chronic RBBB, prev MI. hr mitral insuffic

(+) SOB no, not nightly
 variable frequency couple x/wk
 no chest pain

(+) fatigue

— occ lower abd & adcr, & c flutters

(+) polyuria

- FBS = 100 10/98

hr TCC bldsh

- follow c Dr Rosenthal

cor RBB

brugada

2nd soft mvtend, no palp mvt

medullus

no focal neuroly

top paroxysmal nocturnal dyspnex

polyuria

fatigue

desynchronization

- ✓ SMA12/dcl/TSH/UA CTS + f(+) Hosp

MRI heart + post fossa 1/25/99.

Echocardiog 1/25/99

1-19-99 EKG, CXR lh ET(e)

✓ - copd, chronic l.

NR, IVD

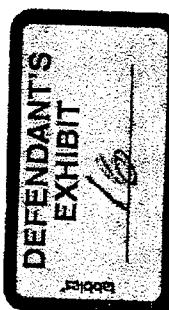
- Steinlechner 1/29/99 10³⁰

Rx Funder 30g qd (#30R3)

contm ABA

RTO 1 month - 800m 95% - 62%

2/27/99 10:15



Richard Hugue

10/31/97 JHU v. CIO sharp pain on (R) side of chest (doesn't occur often, 3-4x a month) — generally happens @ bedtime — WRays
CIO shoulder swelling.

(86) Oct self-limited RSB pain, sharp
- brief, no SOBS or palpitation

(1) Shoulder pain is over head left & front Ext Rotation

BP 132/62

CV RRR

lung clcr

strong

↓ RRR, front Ext rotation

↑ ASHD

rotator cuff tendinitis

DSO

→ RTO 4 months

4/14/98

5-7-98 RTO 6 mos % improved balance while ambulating — Take off
COPD

BP 124/62

- chronic but intermittent dysequilibrium (preced Flomax x yrs)
MRI 7/98 → Mild atrophy

ASHD → stable

CV RRR

lung clcr

no edema

TMX com

no fist, heartly D

Rheumberg Negative

↑ ASHD
chronic dysequilibrium

- RTO 4 months 9/14/98
use cane

DEFENDANT'S
EXHIBIT

17

NAME: Richard Hugar

ADDRESS:

DATE:

2-27-96 pt wife notified that TSH 0.95 okay (per Dec) ~ (URgenc)

Patient: Richard Hugar Age: _____ Caller: wife

Phone: _____ Pharmacy: _____

Date/time: _____ By: _____

 Test results of MRI Appointment/Rx Rx Reaction Requests Dr./Nurse to call Returning Dr./Nurse call

Message/symptoms: _____

pt wife notified MRI brain okay
Doctor's instructions: dc per Dec URgenc

Action taken: _____

10-28-96 ~ follow up - pt in intensive geo to feeling "drunk" @ time - Akathisia
refusing to take multivitamins(84) "feels drunk" - staggers @ time - "ever since I had kidney stone
removed"

propranolol

metformin

NO NA

no hand/arm clonus

not using on NTG patch

on met - baby ASA

PEP - TMJ ch

carotid bruit.

(or DSE)

lungs clear

abdomen

normals

↑ - Dysrhythmia
ASHD

DTRs symmetric

Phenyleph. neg

had uneventful MRI - head 7/96

- ✓ contig L/S 10-21-96 12:30

- eye/ophthalmic

RTO 3-4 month

2-28-97 11:00

DEFENDANT'S
EXHIBIT

18

Bickford Hospital

CONFIDENTIAL

AME

ADDRESS

DATE

7-17-96 Follow-up - Hospital check - on 10/10 - indicates only the
as on NTG patch - ~~nothing on~~

Continued c. Dr Rosenthal

- had stent removed yesterday
→ BP 12/70

| had ESWL

pt adamantly denies chest pain
had non-specified ST-TD in hospital

→ on NTG patch

for 5 months 4/30/96

cost RRP

lung clear

no edema

↑ tip ASAD
Osteoarthritis

→ Continue NTG patch probably Strength
RTO 3 months

7-17-96 2:00

✓

5-8-96 - wife reported per doc stress gallbladder - ~~nothing on~~

7-16-96 - Follow-up - to tell about abdominal pain past week - increased area @ tip
occiput (PP) -
- was it related to "what I do for work" - ~~nothing on~~

no dysuria, constipation
- kidney stone removed

BP 126/84

had stent "probably removed"

BP - 118/68 ↑ 112/64 ↑ 114/64

Pulse - 72 ↑ 78 ↑ 84

Confused patient

(1) ear column - irrigated & removed

neck swelling

CorPn

lung clear

no chest narrowing

↑ tip dysuria

✓ MRI head & post fossa 7-22-96

✓ TSH done

10-23 10:45 RFD 3-4 months

✓

DEFENDANT'S EXHIBIT

NAME: RICHARD F. FELICE, JR., M.D.

ADDRESS: 511 N. 9TH

DATE

SS# 157 #

EP 142/80 (C)

FELICE 91

MEDS: NONE

STATES FED. & CANADA 3/1/86
 SHELLSHK. & BACK 11/14/90 -
 FELICE 91 PINN (R) SHOULDR. &
 11/14/90 MEDICAL (C) PAIN -
 M.D. BEEN SEEING 11/14/90 PAIN
 EXPLAINING (C) SHOULDR. HADLY, 11/14/90

no A/C tend

ROM I/E 100%

no sleep aff

DTR, sign

Pain tenderness

80% W.M.L.

fell 11/4/90, tripped down
 1-2 slips ↓ (R) LOC
 landed on (R) shoulder

cl/lo pain ↓ / Dom

(R) shoulder/ldr

→ biceps - forearm
 worse c/attempt

b/soft bone

shoulder/ldr

g1
 11/14/90
 (R) shoulder/ldr
 ↓ strength
 (R) shoulder/ldr

3/11/91 (R) Shoulder D.R.T.

→ ? rot/cif tendons

→ warm compress

Naprosyn 800mg twice/food

No fracture, some soft

4-4-91 Follow-up - still 90% PINN UPPER (C) Arm - (R) shoulder

Receiving P.T. → making some progress per P.T. - improvement in (R) shoulder
 strength, more capsular tenderness / tightness
 → did not tolerate Naprosyn → dizzy

No crutches today (has been noted)

ROM → Ext/Fnt Rot 80°

Flex 20°

Pain Tenderness

→ P/C Naprosyn (done)

Sampling Trickles 1000mg BID = Food

Rating

Continue P.T.

5/14/91
W.M.L.

DEFENDANT'S
 EXHIBIT
 20

5-7-91 Follow-up since 4/20/91 (R) 3/1/91 ER & Dr. S. (C) 4/21/91
& limited rain. D.H.A.D.Y. 5/1

→ on/off discomfort (R) shoulder → upper arm
completed physical therapy
→ X-ray? rotator cuff tendinitis

↓ ROM, ↓ ABD, test rotator cuff mostly

Plan (1) (R) shoulder tendinitis - cortisone
c adhesive capsulitis

→ normal trilisite 1000mg BID (L, R3)

→ no orthopedics evaluation, pt request Dr. Pascio

RTO p orthopedics evl.
5/10/91 10:45 AM

5-31-91 Follow-up - - saw Dr. Pascio continues P.T. - D.H.A.D.Y.

Saw Dr. Pascio 5/23 → suspects rotator cuff tear c adhesive capsulitis

→ referred back to physical therapy for aggressive
therapy → 3x/wk.

motion improving slowly
cut trilisite both to 1/2 gd → using prn

(2) droptin

(3) cortisone

(4) ROM → Abd 60-70°; For flex 90°
+ I/E not done

Plan → Rotator cuff tear c adhesive capsulitis

→ Continue P.T.

hrs 2pt + c Dr. Pascio 7/25

→ RTO begin 8/91

1/2
1/2
1/2
1/2

1/2
1/2
1/2
1/2



Clearfield
Hospital



Tufts University
School of Medicine

Mark A. Pasio, M.D.
107 Turnpike Ave., Suite 140
Clearfield, PA 16830
814) 768-2225

Orthopaedic Surgeon
Clearfield Hospital
Clinical Instructor Orthopaedic Surgery
Tufts University School of Medicine

May 28, 1991

Donald E. Conrad, D.O.
Clearfield Family Medicine Associates
502 Park Avenue
Clearfield, Pennsylvania 16830

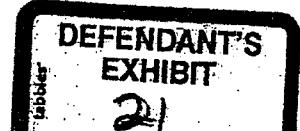
RE: Richard Hugar

Dear Don:

Thank you for your referral of Richard Hugar, whom I saw on the 23rd of May, 1991. As you know, he is a 79-year-old gentleman who fell onto his right shoulder on November 23rd of 1990. He saw a chiropractor, Dr. Rich, who manipulated his back multiple times but insisted he see an orthopedist or some other physician for his shoulder problem, which he reportedly did not treat. He recently has been in Physical Therapy for about 1-2 months, specifically Clark Husted, for some therapy to the right shoulder for adhesive capsulitis. The patient reports that there is some lateral arm pain with therapy and some tightness of the shoulder joint. His hand has no dysesthesias nor weakness that he can report. He has difficulty raising his arm above his head, however, in the forward flexed position.

Physical exam shows a mildly cachectic male in no distress. His right shoulder has severe crepitus with any range of motion in the subacromial space. He has a positive drop test, and his passive range of motion shows 90° of forward flexion, 60° of abduction, 0° of external rotation, and 70° of internal rotation. Distal neurovasculature reveals interosseous wasting bilaterally, right worse than left. He is also noted to have some CMC arthritis and PIP osteoarthritis bilaterally.

X-rays of his shoulder show superior migration and some mild osteoporosis.



Donald E. Conrad, D.O.
May 28, 1991
Page 2

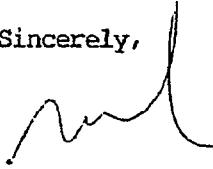
RE: Richard Hugar

Impression: Probable massive rotator cuff tear with subsequent adhesive capsulitis.

Plan: Clearly, no tendinous procedure can be performed until the capsule has been loosened, and I have referred him back to Clark Husted for very aggressive passive range of motion. This will be coupled with heat therapy as well as a home pulley system and broomstick exercises. If we can loosen the shoulder up, we can consider corticosteroid injection and possibly tendon repair if his function does not improve. However, if we can alleviate the adhesive component of his rotator cuff tear, I do feel he will probably do well without surgery. I will see him back in 2 months' time and keep you informed as to his progress.

Again, thank you so much for your very kind and interesting referral.

Sincerely,


Mark A. Piasio, M.D.

MAP:sev

DR. E. CONRAD
MAY 28, 1991
10:00 AM
10:00 AM
10:00 AM
10:00 AM
10:00 AM
10:00 AM





DONALD E. CONRAD, D.O.
CLEARFIELD FAMILY MEDICINE ASSOCIATES
502 Park Avenue
Clearfield, PA 16830
Telephone: (814) 765-2950

August 14, 1991

Mark A. Piasio, M.D.
807 Turnpike Avenue
Clearfield, PA 16830

RE: Richard Hugar

Dear Mark:

I recently saw Mr. Richard Hugar on 8/06/91, and as you previously reported, he is progressing well with his physical therapy program. Mr. Hugar and I had a long conversation regarding potential surgical intervention as you had outlined to him for his adhesive capsulitis and rotator cuff tear. Mr. Hugar is presently quite satisfied in his progress, and although he is still left with significant residual limitations, he is quite rational and has good insight into the expectations of a surgical procedure. Mr. Hugar is presently 80 years old, and at this point in time he is content to progress with a physical therapy program and chooses to withhold any decision regarding surgery until a point in time where he no longer is happy with his progress.

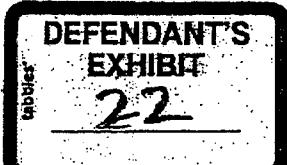
He has been given the encouragement to let your or my office know if at any time he changes his mind regarding surgical intervention, and I tentatively plan to follow up with him again on November 5th, 1991, unless he contacts our office earlier.

Again, thank you for your assistance in the care of Mr. Hugar, and if he notifies our office of any change in mind regarding potential surgery, we will promptly have you re-evaluate him.

Warmest Regards,

Donald E. Conrad, D.O.

DEC:sev



CLEARFIELD HOSPITAL
IMAGING DEPARTMENT
(814) 768 - 2275

PATIENT:	HUGAR, RICHARD EARL	MR #:	084508
AGE:	91	SEX:	M
DOB:	08/01/1911	ADM#:	50070317
ORD DR:	PYO, STEPHEN	ROOM/BED:	
ATT DR:	DESGANTIS, JAMES P	PT CLASS:	ED
ALT DR:	CONRAD, DONALD E	PT TYPE:	E FC: H
		HOSP SVC:	E/D ORDER #: 90035

REFERRING DIAGNOSIS: PAIN

CONTRAST DOCUMENTATION:

BRAND: AMT: BY:

HISTORY/ COMMENTS: PT STATES HE WAS HIT BY A TRUCK 3 DAYS AGO, PAIN LEFT HIP RADIATING DOWN LEFT LEG @1811

IS PATIENT PREGNANT? NA LMP: -

SHIELDED: NO. OF FILMS: 13 FLUORO TIME:

ORDER #: 90035

11/25/2002 SPINE LUMBAR => 4 VIEWS 72110

PROCEDURE ENDED: 11/25/2002 18:04 Initials: CJJ SAD JEN

There is abnormal narrowing of all of the intervertebral discs with vacuum disc phenomenon. Severe reactive hypertrophic degenerative disease is seen at all levels. No acute fracture, dislocation or destructive process is evident.

IMPRESSION: Severe degenerative disc and joint disease at all levels.

11/25/2002 HIP COMPLETE LEFT 73510

PROCEDURE ENDED: 11/25/2002 18:04 Initials: CJJ SAD JEN

Total hip arthroplasty is in place. Metallic wires are seen through the region of the great trochanter. No acute fracture or dislocation is noted.

IMPRESSION: Status post total hip arthroplasty.

11/25/2002 SACROILIAC JOINTS => 3 VIEWS 72202

PROCEDURE ENDED: 11/25/2002 18:04 Initials: CJJ SAD JEN

Degenerative changes are seen in the lower portions of both sacroiliac joints.

IMPRESSION: Degenerative joint disease.

READING DOCTOR: DAVID L. OBLEY, M.D.
ELECTRONICALLY SIGNED: DAVID L. OBLEY, M.D.
TRANSCRIBED BY: MAP 11/26/2002 11:00AM

DEFENDANT'S
EXHIBIT

23

Richard Hugar

12-16-02 RTO 2 wks. c/o of pain that starts in head & then goes down face, face is numb. Confused & restlessness.
② hand swollen. c/o ② side pain, lower quadrant. c/o being very cold & shivering a lot.

L C₆ ② Sided HA → neckache ② x 1¹/₂ wks
occ dizzy, BP 130/70
+ tylaw

c/o abdominal pain; ② nausea & emesis
② loose stools = x (couple), no bleeding
daughter reltive: confused re: time of dry
felt sick & vomited

vague symptoms

Cspine r/r - Severe OA

R shoulder - soft tenderness/degent

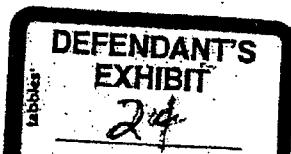
neck r/r
c/o P.M.
lungs clear
sh dull
no edema

pt refused colonoscopy rec. 8/2002
nr. D bowel habits

Ahd pain / D bowel habits
Cephalexin

→ Admit

Du



CLEARFIELD HOSPITAL, P.O. BOX 992, CLEARFIELD, PA 16830
DISCHARGE SUMMARY

PATIENT: HUGAR, RICHARD EARL

MR# 084508

DONALD E CONRAD, D.O.

ADMITTED: 01/08/2003

DISCHARGED: 01/10/2003

The patient expired. This was a Hospice admission.

DISCHARGE DIAGNOSES:

1. Bilateral deep vein thrombosis, lower extremities, above knee.
2. Gross hematuria secondary to anticoagulation.
3. Arteriosclerotic heart disease with left ventricular dysfunction.
4. Paroxysmal atrial flutter converted to normal sinus rhythm.
5. Failure to thrive.
6. History of transitional cell carcinoma of the bladder.
7. Bibasilar pneumonia.

HISTORY: Mr. Hugar is a 91-year-old white male admitted to the Hospice services from the ICU. Recent hospitalization with bibasilar pneumonia. He was admitted to a swing bed then developed paroxysmal atrial flutter with rapid heart rate up to 170 bpm. He did not respond to Adenocard or Cardizem and required urgent cardioversion. He was subsequently anticoagulated for bilateral DVT's of the lower extremities, developed gross hematuria. The family refused transfer for a vena cava filter. He cannot be anticoagulated. The family has requested comfort measures. He has continued to decline. He is not eating, he is poorly responsive, he has expressed verbal wishes regarding to die and relates that he does not care if he gets better. He has multiple comorbid problems that include arteriosclerotic heart disease, transitional cell CA of the bladder, BPH, coronary artery bypass grafting, bibasilar pneumonia.

HOSPITAL COURSE: Mr. Hugar was admitted to the Hospice services, moved to the Hospice room, he was not anticoagulated secondary to hematuria and with the family's acknowledgment of the pros and cons of doing so. The family has requested no heroics. They refuse transfer for a vena cava filter.

His appetite was poor. He was offered nutrition as he was able to ingest. He was placed on the Hospice protocol, continued on his Lopressor, Lasix, Lanoxin and Capoten as able, diet as tolerated, oral Levaquin. Pain control was attempted with liquid Morphine, Tylenol suppositories. Ativan order and the Hospice protocol as noted.

He continued to decline. He appeared comfortable. There was no obvious pain or agitation. He did expire in a no code status on 01/10/03 with the death certificate being completed. The cause of death: Bilateral leg deep vein thrombophlebitis with recent pneumonia with sepsis with contributing causes of arteriosclerotic heart disease, transitional cell CA of the bladder, paroxysmal atrial flutter and gross hematuria.

DATE

SIGNATURE

D: 02/18/2003

T: 02/19/2003

DEC / AMF

PR: (*Y1)

DEFENDANT'S
EXHIBIT
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

DEPOSITION CONCLUDED AT 6:52 P.M.

* * * * *

* * * *

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF INDIANA)

3 C E R T I F I C A T E

4 I, Lacey C. Gray, Notary Public in and for the
5 Commonwealth of Pennsylvania, do hereby certify:

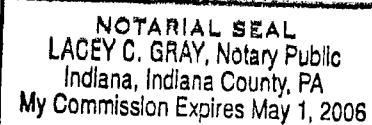
6 That the witness was hereby first duly sworn to
7 testify to the truth, the whole truth, and nothing
8 but the truth; that the foregoing deposition was
9 taken at the time and place stated herein; and that
10 the said deposition was taken in Stenotype by me and
11 reduced to typewriting, and constitutes a true and
12 correct record of the testimony given by the witness.

13 I further certify that the reading and signing
14 of said depositions were (not) waived by counsel for
15 the respective parties and by the witness.

16 I further certify that I am not a relative,
17 employee or attorney of any of the parties, nor a
18 relative or employee of counsel, and that I am in no
19 way interested directly or indirectly in this action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and stamp this 21 day of June 2005.

22
23
24
25
Lacey C. Gray



• PITTSBURGH, PA

• CLEARFIELD, PA

• STATE COLLEGE, PA

• HOLLIDAYSBURG, PA

• ERIE, PA

• OIL CITY, PA

• HARRISBURG, PA

SARGENT'S
COURT REPORTING
SERVICE, INC.

210 Main Street
Johnstown, PA 15901
(814) 530-8908

• INDIANA, PA

• GREENSBURG, PA

• WILKES-BARRE, PA

• PHILADELPHIA, PA

• SOMERSET, PA

• CHARLESTON, WV

EXHIBIT C

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

* * * * *

*

ELMA M. MORRIS and *

SANDRA JONES, *

Co-Executrices of *

the ESTATE of *

RICHARD E. HUGAR, *

Deceased, *

Plaintiffs * Case No.

vs. * 03-129-C.D.

DONALD B. LUZIER, *

Defendant *

*

* * * * *

DEPOSITION OF

ELMA MORRIS

March 15, 2004

ORIGINAL

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

1 Q. How far do you think he lives
2 from your mom's and dad's house?

3 A. Oh, five, ten, 15 minutes. It
4 depends.

5 Q. Did you ever ask your father
6 whether he had been acquainted with Mr.
7 Luzier in the past?

8 A. No.

9 Q. So you don't know one way or the
10 other; is that fair to say?

11 A. No. Right.

12 Q. How did you learn that the
13 November 25th --- or excuse me,
14 November 20th, 2002 accident had
15 occurred?

16 A. My sister called me. I think it
17 was around 6:00. I'm not sure.

18 Q. When you say my sister called
19 me, which sister?

20 A. Sandra.

21 Q. Around 6:00, did you say?

22 A. I'm not sure exactly. I don't
23 remember. I'd say around 6:00 she
24 called me.

25 Q. What did she say to you?

1 A. She said a truck went through
2 the house. There's water all over, and
3 dad is upset. I said, I'll be right
4 there, but you'd better get somebody to
5 shut the water off. You know, take
6 care of that before I get there.

7 Q. Do you know if there was anyone
8 else there with her?

9 A. I think the man who came to fix
10 the furnace was there.

11 Q. Where was she when she called
12 you?

13 A. My dad's house. I can't think
14 what his name was. I might be able to
15 think of it in a minute.

16 Q. So you think there was someone
17 else there with your sister and your
18 father?

19 A. Uh-huh (yes).

20 Q. What about the police, were they
21 there?

22 A. They were there, but I don't
23 know when they left.

24 Q. Do you think they were there
25 when your sister called?

1 A. I can't remember what she told
2 me.

3 Q. Was Mr. Luzier there when your
4 sister called?

5 A. Oh, I don't think so. No. Not
6 that I know.

7 Q. Why do you say that?

8 A. I don't think he was there. I
9 think he --- because he went to the
10 hospital.

11 Q. Do you know how he got to the
12 hospital?

13 A. I don't remember.

14 Q. Do you know if there was an
15 ambulance at your father's home?

16 A. I don't remember that either.

17 Q. So you do think that there was a
18 furnace maintenance person there when
19 your sister called?

20 A. He must of got there afterward
21 if he --- well, no he couldn't have
22 been there when she called me, because
23 I told her she should call somebody.
24 So he couldn't have been there until
25 afterward. But by the time I got

1 A. No.

2 Q. Where in the home was your dad's
3 bedroom?

4 A. On the other side of the wall
5 --- upstairs on the other side of the
6 wall where the truck went in.

7 Q. We'll look at the pictures.

8 Maybe you can show me a little better
9 in a moment.

10 A. Well, the two bedrooms are in
11 the front like this (indicating). And
12 then on the other side of this bedroom,
13 my dad's is here (indicating). You'd
14 go a step down and it's there.

15 Q. You're not saying the truck went
16 into his bedroom, are you?

17 A. No, on the other side of that.

18 Q. When you arrived, what was it
19 that you saw there at your dad's home?

20 A. A mess.

21 Q. Can you describe for me what you
22 saw?

23 A. There was broken pipes from the
24 radiator in the bedroom.

25 Q. In which, in your dad's bedroom?

1 A. That he'd slept in it. I mean
2 that's what the bed looked --- it
3 wasn't damaged if that's what you mean.

4 Q. Was there any furniture in the
5 bedroom that was displaced or looked
6 displaced to you?

7 A. It's just a small bedroom. I
8 mean, it's like a closet, you know,
9 it's real small, so it's not, you know
10 ---.

11 Q. Was there any furniture in the
12 bedroom that looked displaced to you?

13 A. All the drawers came out of, you
14 know, the chest at the bottom of his
15 bed.

16 Q. You talked about one photograph
17 that was, I guess, face down on the bed
18 stand?

19 A. Yeah.

20 Q. Was there anything else that you
21 observed?

22 A. I don't think so.

23 Q. When you go there, when you got
24 to your father's home that morning,
25 what was he doing?

1 A. Wondering around.

2 Q. Where?

3 A. He was going up and down the
4 stairs. He was going around. He had
5 his hands behind his back. He was just
6 --- he wasn't really with himself, you
7 know. He didn't know what he was going
8 to do and he was just upset. He didn't
9 want to be cold and there was no heat,
10 so things like that. He was concerned.

11 Q. Was he saying those things to
12 you?

13 A. Yeah.

14 Q. What else did he say to you?

15 A. I don't remember exactly.

16 Q. How long did you stay at your
17 fathers on the morning of November
18 20th, 2002?

19 A. My sister and I were there all
20 day until the evening after supper
21 sometime. I'm not sure exactly.

22 Q. You stayed there at his home?

23 A. Yeah.

24 Q. During the time that you were
25 there, was there an ambulance there?

1 A. I didn't see an ambulance, no.

2 Q. During the time you were there,
3 were there any police officers there?

4 A. No.

5 Q. Other than yourself, your
6 sister, Sandy, and your father, was
7 there anyone else there that entire
8 time?

9 A. Yes, the furnace man.

10 Q. Anyone else?

11 A. And later the --- what do you
12 call them, when there's a tragedy, the
13 men who come. The men who come and
14 clean up, you know. I can't think what
15 you call the men.

16 Q. So how many men were there?

17 A. There were two of them.

18 Q. Do you have any idea where they
19 had come from? I mean I know you can't
20 think the precise name.

21 A. Not today, I can't, no.

22 Q. You don't know who they were?

23 A. No. I called --- I got on the
24 phone and I called the insurance
25 company and they sent them out, the

1 cleanup crew. I think I talked to
2 several different insurance companies.

3 Q. The two men you're talking about
4 were sent by the insurance company?

5 A. Yes.

6 Q. What did they do there that day,
7 those two men?

8 A. The boarded up the crash area
9 and cleaned up a lot of the water, and
10 put in fans and things. Checked it
11 out, you know.

12 Q. When you left that evening, what
13 time do you think it was?

14 A. I have no idea. I just know it
15 was after supper. And by that time, my
16 dad had heat and water and he seemed to
17 be okay.

18 Q. Did you take him home with you?

19 A. No.

20 Q. Did he stay there at his home?

21 A. Yes, he did.

22 Q. Did he stay there alone?

23 A. Yes.

24 Q. During that day, did your dad say
25 anything to you about what had happened

1 to him, if anything, when the car hit
2 his house --- or the truck hit his
3 house?

4 A. He said, he doesn't remember.

5 Q. He said that to you?

6 A. He heard a noise. He remembers
7 --- he hardly remembers getting up he
8 said. He just remembers going --- he
9 heard somebody at the front door, and
10 they didn't use the front door, you
11 know, and he looked out and saw a man
12 with a bloody face. And he said, come
13 around, and he used --- in the basement
14 door.

15 Q. Did he tell you anything else
16 about the way things had occurred
17 during the accident?

18 A. I don't remember.

19 Q. Did your father say to you that
20 he didn't remember what occurred?

21 A. Yeah. He doesn't remember.

22 Q. He specifically told you that?

23 A. Yeah. Yes.

24 Q. Did he ever say to you that he
25 had fallen out of bed or been bumped or

1 hit by anything when the truck hit his
2 house?

3 A. He doesn't know. But we felt
4 that he was knocked out of bed because
5 of what happened later, you know, a
6 couple days later.

7 Q. When you were there that first
8 day, the day the accident happened,
9 were there any bruises on your father,
10 any scrapes or scratches, anything you
11 can see?

12 A. We didn't see any.

13 Q. Wait until I finish the
14 question.

15 A. Sorry.

16 Q. That's okay. Was there
17 anything, any visible sign of injury as
18 far as you could observe?

19 A. No, not that day.

20 Q. Did he appear, whether or not
21 there were scratches or bumps, to be
22 hurting anywhere that you could
23 observe?

24 A. He was just upset and you know,
25 not really with it, you know, confused.

1 Q. What about physically in pain?

2 Do you know whether he was having
3 physical pain that day?

4 A. He didn't say anything that day.

5 Q. Just from what you could
6 observe, did it appear to you that he
7 was physically in pain?

8 A. No.

9 Q. Tell me if this is wrong. But
10 based on what you've said, it seems
11 that the only reason you believe your
12 father had fallen from the bed was
13 based on something that happened a few
14 days later; is that right?

15 A. Stop a minute.

16 Q. Okay.

17 A. Sometimes when you have a jolt
18 or a bang or something, you don't
19 always have a reaction that day. It
20 sometimes happens later, and that's
21 what his did.

22 Q. Did he ever tell you that he had
23 fallen from bed?

24 A. He wasn't sure what happened.
25 He doesn't remember.

1 Q. Here's my question though. Did
2 he ever tell you that he had fallen
3 from bed?

4 A. He said he did not know what
5 happened, whether he did or not.

6 Q. So he didn't ever say to you, I
7 fell out of the bed or I was jolted?

8 A. No.

9 Q. He didn't know; is that right?

10 A. No. He doesn't know.

11 Q. Now can you tell the reasons you
12 believe, in a little more detail, you
13 eluded to a couple days later? Why is
14 it that you think that he had some fall
15 or direct impact when this accident
16 happened?

17 A. In my words?

18 Q. Sure.

19 A. Okay. Because we went up he was
20 starting to have --- he was holding his
21 head. He had a lump on his --- back
22 there.

23 Q. When is this, ma'am? I'm sorry.

24 A. It was three days later.

25 Q. So this would be November 23rd?

1 A. I don't the date, but it was
2 three days later. I know that.

3 Q. You're certain of that?

4 A. Yes. Because we kept asking
5 him, you know, are you okay. Then when
6 we got there on the third day, he was
7 complaining about his head.

8 Q. Okay. I'm sorry. Let me back
9 up so I understand our time frame.

10 A. Okay.

11 Q. The first couple days you're
12 asking if every thing is okay ---

13 A. Seemed to be.

14 Q. --- and I'm sorry, he said what?

15 A. He seemed to be okay.

16 Q. So the third day ---

17 A. Yes.

18 Q. --- then what happened?

19 A. We went in and he was having a
20 hard time walking.

21 Q. Could he walk?

22 A. With a cane, yes, in the house.

23 Q. Why did he have the cane?

24 A. Because he felt like he was
25 going to fall down.

1 Q. How long had he had a cane?

2 A. He used a cane outside lots of
3 times, but he never used it in the
4 house.

5 Q. How long had he had the cane?

6 A. I don't know, a year, you know.

7 Q. I'm sorry. Go ahead.

8 A. He was an elderly man, you know.

9 Q. How old was he when this
10 happened?

11 A. He was 91.

12 Q. I'm sorry. So you said he had
13 difficulty walking from what you could
14 observe. What else was going on?

15 A. He said he had a pain right here
16 (indicating) in his back, and he had a
17 lump there.

18 Q. You're pointing to maybe the
19 small of your back?

20 A. It's right in this area here
21 (indicating).

22 Q. About the middle of your back?

23 A. It was a bulge about yea big
24 (indicating), and it was not there
25 before.

1 Q. Before what?

2 A. Before the accident.

3 Q. Did he tell you that?

4 A. No. My sister and I had helped
5 him wash his hair, and he took his shirt
6 and things off. I washed his back and
7 everything, and it was not there. That
8 was before the accident.

9 Q. How long before the accident was
10 that?

11 A. I don't know.

12 Q. Was it the night before?

13 A. Oh, no, maybe a couple weeks.

14 Q. A couple weeks before?

15 A. Yeah. My dad was able to take
16 care of himself, you know. You don't,
17 you know, do everything for your dad.
18 Just make sure he gets something to eat
19 and you know he's okay.

20 Q. Why is it that you were giving
21 him a bath a couple weeks before the
22 accident?

23 A. We weren't giving him a bath.
24 He had a hard time getting his hands
25 up, you know, back. And his hair

EXHIBIT D

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

* * * * *

*

ELMA M. MORRIS and *
SANDRA JONES, *
Co-Executrices of *
the ESTATE of *
RICHARD E. HUGAR, *
Deceased, *
Plaintiffs * Case No.
vs. * 03-129-C.D.
DONALD B. LUZIER, *
Defendant *

*

* * * * *

DEPOSITION OF

SANDRA JONES

March 15, 2004

ORIGINAL

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

1 had told me when I got there what had
2 happened.

3 Q. Who told you?

4 A. My dad.

5 Q. So you never heard Mr. Luzier
6 say anything about the speed he was
7 going; right?

8 A. No. Because I didn't talk to
9 him.

10 Q. So any information in that
11 answer that I was just reading, that
12 was the answer to interrogatory number
13 11, that was just based on what your
14 dad said?

15 A. Uh-huh (yes).

16 Q. And your sister said she didn't
17 know anything about that. So that was
18 just a conversation with you and your
19 dad?

20 A. Right. When I first got there,
21 yes.

22 Q. Was anybody else there?

23 A. I think the policemen had just
24 left, and I asked him what in the world
25 happened. And then he was telling me

1 what happened. Because they had been
2 blasting for coal around the house and
3 it makes the house shake. Well, when
4 this happened, when he realized what
5 happened, he said, I know they're
6 blasting harder than they should have
7 now, because he didn't know what
8 happened. I mean, it was just a shock.
9 Then he heard a noise at the front
10 door. And he went and he said he saw a
11 bloody guy there and it shocked him,
12 and that was him. This all happened
13 before I got there.

14 Q. I'm sorry that was who, Mr.
15 Luzier?

16 A. Right.

17 Q. Did you dad specifically tell
18 you that Mr. Luzier said that he was
19 driving 45?

20 A. Yes.

21 Q. And that was your dad's
22 statement?

23 A. Yes.

24 Q. And again, no other police
25 officers, nobody else there to hear

1 A. I can't remember their name. I
2 think they were the only ones around
3 that towed, but I can't remember their
4 name.

5 Q. Where was your dad when you go
6 there?

7 A. He was upstairs in the rooms
8 where it was all pushed in.

9 Q. And again, there was no damage
10 in his bedroom; right?

11 A. No. Just all his dresser
12 drawers were like somebody sat there
13 and pulled every one of his dresser
14 drawers out.

15 Q. None of them were on the floor
16 though, were they?

17 A. No. They were just wide open.

18 Q. And I'm sorry, what was your dad
19 doing when you got there?

20 A. He was talking to a policeman
21 upstairs.

22 Q. He was actually speaking with
23 him?

24 A. Uh-huh (yes).

25 Q. Did your dad appear to you to be

1 Lawrence Township Police. That, you
2 know, he gave me the number of that.
3 And I think that was about it.

4 Q. But you didn't talk with him
5 about how the incident happened, did
6 you?

7 A. No, because it went quick. I
8 mean, I got there and he was finishing
9 up, and he got another call out. I
10 didn't have much time to talk to him.

11 Q. Were you aware that your father
12 had told the police that he hadn't been
13 injured?

14 A. I don't know what he told them
15 for sure. I wasn't there.

16 Q. So what did your dad tell you
17 about what happened?

18 A. He said he was in bed sleeping
19 and he heard this big boom. He thought
20 that they were dynamiting. He doesn't
21 know what happened. He said, I know
22 they've been dynamiting harder than
23 they should have. Then he heard a
24 knock at the door and he went out and
25 saw Mr. Luzier out there, told him to

1 go around back because my dad doesn't
2 wear pajama bottoms. So he said you go
3 around back and he jumped in his
4 clothes and went downstairs. And he
5 had called the police, Mr. Luzier had
6 called the police.

7 Q. When you say downstairs, do you
8 mean to the basement?

9 A. Yeah, around the house. Yeah,
10 because that's were their kitchen,
11 their living room and everything is.
12 Then the bedroom are upstairs now. And
13 he said he's sitting here waiting for
14 the police to come when he called me
15 and told me those things I told you.
16 You know, about every thing falling out
17 of the cabinets and water on the floor.

18 Q. Okay. You're dad told you that
19 Mr. Luzier's here and he's waiting for
20 the police to come?

21 A. Right.

22 Q. Go ahead.

23 A. And then again, I got there. I
24 don't know. Like I said, I don't
25 remember who was there and what was

1 going except the policeman upstairs
2 talking to him. And the when they
3 left, I had to hurry up. My sister
4 called back and said call the
5 contractor. And he came and fixed the
6 furnace. By that time, most everybody
7 was gone. Then we made him sit down
8 and eat breakfast. Then he just kept
9 walking through the house looking to
10 see what happened. By that time, it
11 was daylight.

12 BRIEF INTERRUPTION

13 A. So he was following the --- it
14 was Brian who did that.

15 BY ATTORNEY OLIVER:

16 Q. Who did what?

17 A. Fixing the --- shutting the
18 furnace off, because he's a furnace
19 man. And he was talking to him and
20 following him around. Then went it
21 became daylight, we were was looking at
22 all the stuff, the damage.

23 Q. I'm going to stop you there a
24 minute. All these he's are confusing
25 me. Your dad was talking to the

1 furnace repair guy and following him
2 around?

3 A. Yeah. Right. And I was sort of
4 following around, too, to see what was
5 going on. Because we couldn't see what
6 damage there was until it was daylight.
7 And then when these people, --- I can't
8 remember. It's not HAZMAT. I don't
9 think. But when they came and boarded
10 it up, and then they were looking
11 around. And they said they would
12 inspect the house for the insurance,
13 because they did dealing with State
14 Farm. So I followed them around and I
15 didn't realize how much damage was
16 done.

17 Q. Did you dad participate in that,
18 too?

19 A. Not all of it. He didn't go
20 outside. He just stayed in the house,
21 walked around that. Then I went
22 outside with them because it was snow
23 out there. And that's what I said, I
24 saw things I didn't see before because
25 we weren't looking really hard, but the

1 house was pushed off the foundation.

2 Q. When you walked around with you
3 dad and with the furnace guy, and when
4 you got there, he was talking to the
5 police, again, he did not appear to be
6 visibly injured as far as you were
7 concerned?

8 A. No, because everything was going
9 so fast, I --- he didn't seem to, no.

10 Q. Did you talk to him during that
11 period, during the first three hours,
12 after you got there?

13 A. Yeah. That was when the
14 policeman was there. And that's what I
15 said, he was getting ready to go. And
16 I said, well what happened and he was
17 telling me, you know, he talked to Mr.
18 Luzier and he said he told me he was
19 only doing 45 miles an hours. And to
20 me I thought 45 miles an hour and to
21 knock off the foundation, but he didn't
22 hurt the hedges. I couldn't figure
23 that out.

24 Q. What else did your dad say about
25 what had happened?

1 couple more days he would have a
2 doctor's appointment on December 4th.
3 He would have a doctor's appointment,
4 just wait for that day. Well, we went
5 in there, he said about the right side
6 of his head hurt and around his eye and
7 down his neck. And I asked the doctor
8 about that. I said, what would do
9 that? He said, maybe blunt trauma or
10 something like that. I guess that's
11 how you say it, blunt force, blunt
12 trauma. Then he was worried about
13 him, so on December 6th he wanted him
14 to go get x-rays to make sure that he
15 was okay. Then after that my dad quit
16 eating.

17 Q. Did your dad ever tell you that
18 he hit any part of his body in that
19 accident?

20 A. He really doesn't know. It
21 happened so quick that --- I mean, I
22 think he told my other sister that he
23 picked himself up off the floor. But I
24 mean it was such a shock.

25 Q. What other sister?

1 A. Our middle sister.

2 Q. What's her name?

3 A. Eunice Fedder.

4 Q. Why do you think he told her
5 that?

6 A. I don't know. Because he had
7 called her on the phone because I had
8 forgot to call her. It was a long day.

9 Q. Has she since told you that your
10 dad said that?

11 A. Yeah. She had told me later.

12 She said well --- because they were
13 saying did he fall out of bed or not.
14 And she said, well, he told me he was
15 knocked out of bed.

16 Q. When did your sister Eunice tell
17 you that?

18 A. I think it was the next day
19 because she hollered at me and said,
20 you didn't call me, or it was that
21 night. I said, well it was a long day
22 when I got home that night. It was
23 late and I was tired and I fell asleep.

24 Q. So you think that very next day
25 Eunice told you that? The day after

1 the accident Eunice said to you, yeah,
2 dad said he fell out of bed?

3 A. No. It had to be the same day.
4 Because after we went home it was sort
5 of late, and he hurried up and called
6 her. When the phone rang I was
7 sleeping, so it had to be the same day.

8 Q. So other than that Eunice says
9 your dad said that, and then she told
10 you that?

11 A. Uh-huh (yes).

12 Q. Then she told you that?

13 A. Right.

14 Q. Did anybody else ever tell you
15 that you dad had either fallen out of
16 bed, hit any part of his body, when
17 this incident happened?

18 A. No. But it would only make
19 sense that he would have been knocked
20 out of bed because all of the dresser
21 drawers and everything flew out.

22 Q. What size bed did you dad sleep
23 on?

24 A. A single bed. And it was laying
25 on the same wall that when the truck

1 hit this way, he would have went this
2 way (indicating).

3 Q. Where is it that you think he
4 hit when he fell out of bed?

5 A. Well, his bed is like this and
6 he has a night stand here (indicating).
7 And he lays on his stomach with his arm
8 hanging out, so he probably went this
9 way (indicating). And I don't know if
10 he hit it on the little stand next to
11 him.

12 Q. Hit what?

13 A. It must have been his back
14 because he had a big lump there and he
15 didn't have it before.

16 Q. But you don't really know, do
17 you? You don't know if he hit anything
18 at all. You're kind of speculating
19 based on ---?

20 A. Only God would know that because
21 it happened so quick. And he was woke
22 up and everything went fast. He
23 doesn't know.

24 Q. And he didn't know; right?

25 A. No one really knows for sure.

1 Q. The lump on his back, how do you
2 know it wasn't there before the
3 accident happened?

4 A. Well, he usually complains if
5 there's something wrong with him. I'm
6 trying to think, when was that --- I'm
7 trying to think. Sometimes he ran
8 around without his shirt on.

9 Q. Your dad did?

10 A. Uh-huh (yes). Because it was
11 hot and I don't know what he was doing,
12 but there was no lump there. I mean,
13 there might have been a little lump
14 there, but it wasn't this lump.

15 Q. Can you tell me that in the week
16 before the accident, he was running
17 around without a shirt on and you saw
18 his back and you remember that now,
19 today?

20 A. I can't remember if my sister
21 --- he wanted his neck washed or ---
22 you'd have to ask her. But anyhow he
23 has his shirt off for some reason and I
24 can't remember why. I think he wanted
25 his neck washed because he had to go to

1 the doctor.

2 Q. Do you think your sister, Elma
3 Morris, would be the best person to
4 tell me about that?

5 A. Yes. Because she actually saw
6 it for sure and I really didn't.

7 Q. What injuries do you think that
8 you dad had from the vehicle accident?

9 A. It had to do something with his
10 back because he had pains down his leg.
11 He couldn't walk right. He never had a
12 cane inside the house. But he couldn't
13 get around. His head hurt all the
14 time. He didn't want to eat then after
15 that. He just --- I don't know. He
16 got different after that.

17 Q. He at breakfast that morning;
18 right?

19 A. Yeah, because I gave it to him.
20 Then he figured there's something
21 wrong, maybe I'm drinking too much
22 coffee because I don't feel good. And
23 my sister would make snacks up for him
24 at night and put them in the
25 refrigerator, and the next morning,

1 they were gone. But then, they were
2 there. He wouldn't even eat them.
3 Then when she wasn't there and I had to
4 get his meals. He only at half of what
5 he would normally eat. He wouldn't
6 eat. He was just totally different
7 after that.

8 Q. When did you start to notice
9 those kinds of things?

10 A. Well, that was on December 6th.

11 Q. So we're in December 6th now
12 that you start noticing what you've
13 just been describing?

14 A. Yeah.

15 Q. Before December 6th, had he been
16 eating?

17 A. Some. But I mean, it's not like
18 --- it really got bad then, because he
19 refused all snacks and everything after
20 that.

21 Q. When your dad went to the
22 hospital on November 25th, 2002, ---?

23 A. Uh-huh (yes).

24 Q. Are you there? You're looking
25 at your notes?

1 knowledge that your dad hit his head in
2 this incident; right?

3 A. Nobody knows, even him. He
4 says, how am I going to know. I was in
5 a sound sleep. And boom, everything
6 happened so quick. Then he heard a
7 knock at his front door.

8 Q. Did he ever tell you whether he
9 was in bed or out of bed when he heard
10 the knocking on the door?

11 A. I don't think he realized. It
12 happened quick. Just like when he
13 called, I don't remember getting out of
14 bed or picking up the phone. I just
15 remember saying, hello. It was a
16 shock. I was just there. So I don't
17 think he knew.

18 Q. Am I correct, that based on what
19 your dad has told you and everything
20 you know, it's your understanding that
21 not even your dad knew whether he hit
22 anything or was bumped in any way ---?

23 A. When he talked to me ---.

24 Q. You need to just wait. Is it
25 your impression that not even your dad

EXHIBIT E

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

* * * * *

* —

ELMA M. MORRIS and *
SANDRA JONES, *
Co-Executrices, of *
the ESTATE of *
RICHARD E. HUGAR, *
Deceased, *
Plaintiffs * Case No.
vs. * 03-129-C.D.
DONALD B. LUZIER, *
Defendant *
*

* * * * *

DEPOSITION OF
DONALD B. LUZIER
March 15, 2004

COPY

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

1 A. No. That's what I'm saying. I
2 could never figure out what I hit
3 unless it might have been the rearview
4 mirror.

5 Q. So after the truck hit --- by
6 the way, do you remember going through
7 bushes going in there?

8 A. No, I don't.

9 Q. After it hit, and I assume you
10 were bleeding; right, ---

11 A. Uh-huh (yes).

12 Q. --- what did you do?

13 A. Well, the first thing I did was
14 get out of the truck and shut the truck
15 off, and got out and went and knocked
16 on the door to get Mr. Hugar around.

17 Q. Which side did you get out of
18 the truck, left or right?

19 A. Through the left, driver's side.

20 Q. So you didn't have a problem
21 opening the door?

22 A. Uh-uh (no).

23 Q. You went and knocked on the
24 door?

25 A. Uh-huh (yes). I had to knock a

1 couple of times and Mr. Hugar came to
2 the door. And I said, Mr. Hugar, I'm
3 sorry, but I hit your house.

4 Q. Then what? -

5 A. Do you want me to tell you what
6 he told me?

7 Q. Yes. Oh, sure.

8 A. Okay. He said, Thank God. He
9 said, I thought Swisher was starting to
10 blast already. Then from there we
11 could hear what sounded like water
12 running, so I decided we'd better check
13 on it. So we went down around the
14 house and into the basement and there
15 was water running and shut the water
16 off.

17 Q. Do you recall saying to Mr.
18 Hugar, I can't understand what
19 happened, I was only going 45 miles and
20 hour?

21 A. No, I never said that.

22 Q. You definitely deny saying it?

23 A. Yes. I never said that.

24 Q. What else did you say to him?

25 A. Boy, I don't know. A lot. We

EXHIBIT F

Law Offices
COLAVECCHI & COLAVECCHI
221 East Market Street
(across from Courthouse)
P.O. Box 131
Clearfield, Pennsylvania 16830
(814) 765-1566

FAX
(814) 765-4570

March 17, 2004

Katherine V. Oliver
Attorney at Law
811 University Drive
State College, PA 16801

In Re: Morris and Jones vs. Luzier

Dear Ms. Oliver:

I just wanted to advise you that an additional witness whom we will call at the trial of this case is Eunice Fetter who resides at 153 Smeals Road, West Decatur, Pennsylvania.

Eunice Fetter is the daughter of Richard Hugar and of course the sister of Elma Morris and Sandy Jones.

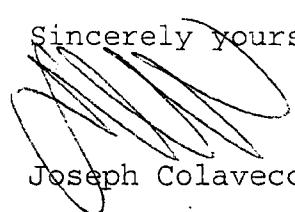
I spoke with Mrs. Fetter and she told me that her father called her the day that Luzier drove into his house.

He said that the force of the impact caused him to be thrown out of bed and further causing him to hit a table.

He described the water on the floor, etc.

The purpose of my calling her at the trial of this case is in order to bring out the violence of the truck hitting into the home and further causing the injuries to Richard Hugar.

This letter is intended as an amendment to the Answers to your Interrogatories.

Sincerely yours,

Joseph Colavecchi

JC:llh
cc: Elma Morris
Sandy Jones

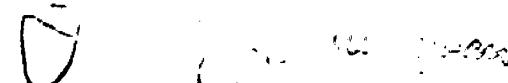
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE OF :
RICHARD E. HUGAR, Deceased :
: vs. : No. 03-129-CD
: :
DONALD B. LUZIER :
:

O R D E R

AND NOW, this 29th day of August, 2005, upon consideration of
Defendant's Motion for Summary Judgment filed in the above matter, it is the
Order of the Court that argument has been scheduled for the 20th day of
September, 2005, at 10:00 A.M, in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

AUG 29 2005

o 12:50 | was

William A. Shaw
Prothonotary

2 CENT w/ memo to Appy
LAW

FILED

AUG 29 2005

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, : TYPE OF PLEADING:
Plaintiffs, : **AFFIDAVIT OF SERVICE**
v. :
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
 : **DEFENDANT**
 :
 : COUNSEL OF RECORD FOR
 : FOR THIS PARTY:
 : JAMES M. HORNE, ESQ.
 : I.D. NO. 26908
 : KATHERINE V. OLIVER, ESQ.
 : I.D. NO. 77069
 : McQUAIDE, BLASKO,
 : FLEMING & FAULKNER, INC.
 : 811 University Drive
 : State College, PA 16801
 : PH# (814) 238-4926

11:15 AM NO CC
AUG 31 2005 LM

RONALD A. DAVIS
Prothonotary Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: DONALD B. LUZIER, :
: Defendant. :
:

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared Katherine V. Oliver, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Court Order dated August 29, 2005, in the above-captioned case was served upon counsel of record by First Class Mail to: John Sughrue, Esquire, 23 North Second Street, Clearfield, PA 16830 and Joseph Colavecchi, Esquire, Colavecchi & Colavecchi, 221 East Market Street, P.O. Box 131, Clearfield, PA 16830.

McQUAIDE, BLASKO, FLEMING
& FAULKNER, INC.

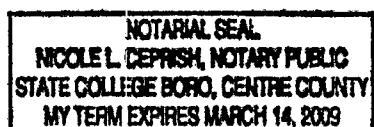
BY


KATHERINE V. OLIVER
Counsel for Defendant

Sworn to and subscribed before me

this 30th day of August, 2005.

Nicole L. Ceprish
Notary Public



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

Vs.

**DONALD B. LUZIER,
Defendant**

CIVIL DIVISION

No. 03 - 129 - CD

MOTION FOR CONTINUANCE

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

JOHN SUGHRUE, ESQUIRE
PA I.D.

23 North Second Street
Clearfield, PA 16830
814/765-1704

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

NO CC
010:34 64
SEP 07 2005

PA Court of Common Pleas

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

MOTION FOR CONTINUANCE

TO: THE HONORABLE FREDRIC J. AMMERMAN,
PRESIDENT JUDGE

AND NOW COMES, Plaintiffs, by their Attorneys, Joseph Colavecchi, Esquire and John Sughrue, Esquire, and move the court to grant a continuance of the argument scheduled in the above matter and in support thereof, represent the following:

1. Defendant filed a Motion for Summary Judgment on or about August 25, 2005.
2. An Order was issued on August 29, 2005 scheduling argument on said Motion for Summary Judgment for September 20, 2005 at 10:00 a.m.

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

3. Plaintiffs, through their Attorneys, are requesting additional time to prepare an Answer to the Motion for Summary Judgment and to prepare a Brief.

4. No prior requests have been made by either Counsel to extend, continue or postpone this matter previously.

5. Plaintiffs believe and therefore aver that the period of time in which to prepare an Answer to the Motion for Summary Judgment, together with a Brief, should be expanded to October 3, 2005.

WHEREFORE, Plaintiffs respectfully move your Honorable Court to amend the Order dated August 25, 2005 and reschedule Argument on the Motion for Summary Judgment.

Respectfully submitted:



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs
221 East Market Street
Clearfield, PA 16830

VERIFICATION

I verify that the statements made in this Motion for Continuance are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

Vs.

**DONALD B. LUZIER,
Defendant**

CIVIL DIVISION

No. 03 - 129 - CD

ORDER

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

JOHN SUGHRUE, ESQUIRE
PA I.D.

23 North Second Street
Clearfield, PA 16830
814/765-1704

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

④
2CC
019:34 AM
SEP 07 2005 Atty
J. Colavecchi

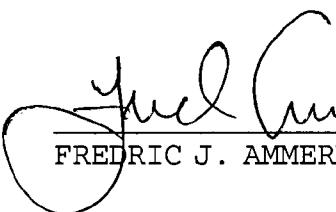
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

O R D E R

AND NOW, this 6th day of September, 2005, upon
consideration of the foregoing Motion for Continuance, the Argument
on the Motion for Summary Judgment is hereby scheduled to be held
on the 3rd day of October, 2005, at
9:00 o'clock A.M. at the Clearfield County
Courthouse.

BY THE COURT:


FREDRIC J. AMMERMAN, PRESIDENT JUDGE

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,

Plaintiffs,

v.

DONALD B. LUZIER,
Defendant.

: No. 03-129-C.D.
:
: TYPE OF PLEADING:
: **DEFENDANT'S RESPONSE TO**
: **PLAINTIFFS' MOTION FOR**
: **CONTINUANCE**
:
:
:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
: **DEFENDANT**
:
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

SEP 09 2005
M/12-0510

Prothonotary Clerk of Court
no 470

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
Defendant. :
:

DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR CONTINUANCE

AND NOW comes, Defendant, by and through his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc. and files the following Response to Plaintiffs' Motion for Continuance.

1. Admitted.
2. Admitted.
3. Admitted.
4. It is admitted that neither party has previously requested a continuation or postponement of the summary judgment argument which is the subject of Plaintiffs' motion.

5. Defendant has no objection to Plaintiffs' request that they be permitted until October 3, 2005 to file an Answer to Defendant's Motion for Summary Judgment and a Brief, and that argument on Defendant's Summary Judgment Motion be scheduled for sometime thereafter. Defendant also intends to submit a Brief in support of his Summary Judgment Motion, and understood that a scheduling Order would be entered by the Court. Defendant submits that a scheduling Order would facilitate resolution of this matter for the parties and the

Court, and respectfully requests that an Order in nature of that attached hereto as Exhibit "A" be entered of record for this purpose.

WHEREFORE, Defendant respectfully requests that a scheduling Order be entered to accommodate Plaintiffs' request for extended time to file an Answer and Brief in Opposition to Summary Judgment as set forth in Plaintiffs' Motion for Continuance, and to facilitate expeditious resolution of this matter for the parties and the Court.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: September 8, 2005

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Response to Plaintiffs' Motion for Continuance, in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 8th day of September, 2005, to the attorney of record:

John Sughrue, Esquire
23 North Second Street
Clearfield, PA 16830

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: September 8, 2005

EXHIBIT “A”

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :

ORDER

AND NOW, upon consideration of Plaintiffs' Motion for Continuance and Defendant's response thereto, it is hereby ORDERED as follows:

1. Plaintiffs' Motion to reschedule the summary judgment argument currently scheduled for September 20, 2005 at 10:00 a.m. is GRANTED. Argument on Defendant's Motion for Summary Judgment is hereby scheduled for

2. Plaintiffs shall file a summary judgment Response and any supporting affidavits or exhibits in accordance with Pennsylvania Rule of Civil Procedure 1035.3 on or before October 3, 2005.
3. Defendant shall file a Brief in Support of Summary Judgment within ____ days after receipt of Plaintiffs' summary judgment Response, and supporting documents.
4. Plaintiffs shall file a Brief in Opposition to Summary Judgment within ____ days of the receipt of Defendant's Brief in Support of Summary Judgment.

BY THE COURT:

J.

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

ELMA MORRIS and SANDY JONES, : No. 03-129-C.D.
Co-Executrices, of the ESTATE of :
RICHARD E. HUGAR, Deceased, : TYPE OF PLEADING:
Plaintiffs, : **DEFENDANT'S MOTION IN LIMINE**
v. : **RE TESTIMONY OF DONALD**
: **CONRAD, M.D.**
: :
: :
DONALD B. LUZIER, : TYPE OF CASE: CIVIL
Defendant. : FILED ON BEHALF OF:
: **DEFENDANT**
: :
: :
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

NO CC
M110:9 R24
SPP / 12003 (60)

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
Defendant. :
:

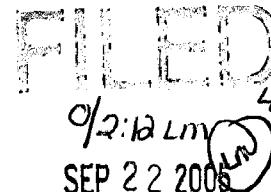
ORDER

AND NOW, this 21st day of September, 2005, upon consideration of the foregoing motion, it is hereby ORDERED that:

- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within 10 days of this date;
- (3) the motion shall be decided under Pa. R.C.P. 206.7;
- (4) argument shall be held on October 3, 2005, in Courtroom No. 1 of the Clearfield County @ 9:00 A.M. Courthouse; and
- (5) notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT:

 _____ J.


FILED
09/22/2005
SEP 22 2005
4CC/HH/Oliver

William A. Shaw
Prothonotary

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

ELMA MORRIS and SANDY JONES,	:	
Co-Executrices, of the ESTATE of	:	No. 03-129-C.D.
RICHARD E. HUGAR, Deceased,	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
DONALD B. LUZIER,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, upon consideration of Defendant's Motion in Limine re Testimony of Donald Conrad, M.D. and Plaintiffs' Response thereto, it is hereby ORDERED as follows:

- (1) Defendant's Motion is hereby GRANTED;
- (2) Plaintiffs are hereby precluded from introducing testimony or opinions from Dr. Donald Conrad regarding any physical injury allegedly sustained by Richard Hugar in the November 20, 2002 accident, and from making reference to such testimony and/or opinions at trial in the presence of the jury; and
- (3) Plaintiffs are hereby precluded from introducing testimony from Dr. Donald Conrad that Richard Hugar suffered any emotional injury in the November 20, 2002 accident, including testimony regarding Richard Hugar's physical and/or emotional decline from December 16, 2002 until his death, and testimony that Richard Hugar lost his will to live as a result of the accident.

J.

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
Defendant. :
:

DEFENDANT'S MOTION IN LIMINE
RE TESTIMONY OF DONALD CONRAD, M.D.

AND NOW COMES Defendant, Donald B. Luzier, by and thorough his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and files the following motion in limine, seeking to preclude Plaintiffs from introducing testimony from Dr. Donald Conrad at the trial of this case, in whole or in part. In support of his motion, Defendant avers as follows:

PERTINENT PROCEDURAL BACKGROUND

1. This Court entered an Order in this personal injury action on May 16, 2005 requiring that all motions pertaining to testimony of Plaintiffs' expert, Donald Conrad, be filed within ninety days after defense counsel received the transcript of Dr. Conrad's deposition testimony for use at trial.

2. The transcript from Dr. Conrad's deposition testimony was received by defense counsel on June 27, 2005.

3. In accordance with the Court's May 16, 2005 Order, Defendant filed a Motion for Summary Judgment on or about August 25, 2005, seeking judgment in his favor because

Plaintiffs cannot come forward with admissible evidence to prove that their decedent suffered compensable personal injury as a result of the accident at issue in this case.

4. In accordance with the Court's May 16, 2005 Order, Defendant files this motion in limine, seeking to preclude testimony of Plaintiffs' expert, Dr. Donald Conrad, in whole or in part, in the event that Defendant's summary judgment motion is denied.

5. Pursuant to local rule 208.2(d), concurrence in this motion was sought from Plaintiffs' counsel, but such concurrence was denied.

FACTUAL BACKGROUND

6. This case involves a single-vehicle accident that occurred on November 20, 2002 when Defendant Donald Luzier lost control of his truck and collided with the residence of Richard E. Hugar, deceased.

7. There is no dispute that Defendant's vehicle struck Richard Hugar's residence, and that the accident resulted in substantial property damage.

8. There is no claim for property damage in this case. Rather, Plaintiffs seek damages for personal injuries allegedly sustained by Mr. Hugar when the incident occurred.

9. Defendant disputes Plaintiffs' claim that Richard Hugar sustained some bodily injury or impact during the incident.

10. Richard Hugar, who was 91 years old at the time of the accident, died from unrelated medical conditions on January 10, 2003. (See Conrad Depo., at 154-55).¹

11. There is no admissible evidence that, before his death, Mr. Hugar himself claimed to have been physically injured or to have suffered any impact during the accident.

¹ All deposition pages referenced herein were filed of record with Defendant's Motion for Summary Judgment, as exhibits thereto. Defendant incorporates his summary judgment exhibits herein by reference.

12. Mr. Hugar was sleeping when Defendant's vehicle struck his house, and the vehicle did not enter the portion of the residence where Mr. Hugar slept. (See e.g., Elma Morris Depo., at 35; and Sandra Jones Depo., at 50, 55-56, 94).

13. Moreover, the evidence demonstrates that, at the time of the accident, Mr. Hugar was not even aware that his residence had been struck, let alone in fear for his own safety. (See, e.g., Elma Morris Depo., at 41-42; Sandra Jones Depo., at 44-45, 55-56).

14. When Mr. Hugar came to the door of his house after the accident, he told Defendant that he thought the commotion he heard had been caused by blasting in the area. (See Luzier Depo., at 25-26). Mr. Hugar also informed Plaintiff Sandra Jones that he thought the commotion was from blasting by a coal company, a common occurrence in the area. (See Sandra Jones Depo., at 44-45, 55-56).

15. Plaintiffs testified in their depositions that Mr. Hugar initially did not know what had occurred when his house was struck by Defendant's truck, (see Sandra Jones Depo., at 67, 94), and that Mr. Hugar did not tell Plaintiffs that he had suffered any kind of physical injury or impact when his house was struck. (Elma Morris Depo., at 41-45; Sandra Jones Depo., at 55, 93-94).

16. Mr. Hugar did not have any pain complaints or other difficulties immediately after the accident.

17. Plaintiffs, who were present immediately after the accident and remained at the Hugar residence throughout the remainder of the day and into the evening, testified that Mr. Hugar did not appear to be injured. (Elma Morris Depo., at 38-44; Sandra Jones Depo., at 59).

18. Despite the above, Plaintiffs claim that Richard Hugar sustained physical injury in the accident, and intend to present testimony from Dr. Donald Conrad in support of this claim.

19. Dr. Conrad's testimony for use at trial was taken on June 9, 2005.

20. During his deposition, Dr. Conrad offered an opinion that shoulder and neck pain Mr. Hugar presented with almost two weeks after the accident could very well have been a result of the accident, and also that Mr. Hugar lost his will to live as a result of the accident.

21. For the reasons set forth below, Defendant files this motion in limine to preclude Plaintiffs from introducing Dr. Conrad's testimony at the trial of this case.

MOTION IN LIMINE

Testimony Regarding Alleged Shoulder Strain/Sprain Injury

22. Dr. Conrad saw Mr. Hugar for a regularly scheduled office visit on December 4, 2002, two weeks after the accident when his house was struck.

23. The record of the December 4th visit specifically notes that Mr. Hugar reported that his house was struck by a truck, but there is no mention of a physical impact or injury. (See Conrad Depo., at 74-76).

24. In fact, Dr. Conrad testified that Mr. Hugar did not know whether he had experienced any kind of bodily impact when the accident occurred. (Id. at 74-78).

25. Dr. Conrad's examination on December 4, 2002 included reviewing records from Clearfield Emergency room, where Mr. Hugar had presented five days after the accident with complaints of pain behind his ear and left-sided low back pain. (See id., at 24-25, 77-85 and Def. Exh's. 2 and 2a thereto). Mr. Hugar was released in stable condition, and no sign of acute injury was documented. (Id.).

26. When Mr. Hugar presented to Dr. Conrad on December 4, 2002, he had complaints of shoulder and neck pain. (Id. at 23-24).

27. Medical records and testimony establish that Mr. Hugar had presented to Dr. Conrad over many years with these same kinds of complaints attributable to severe arthritis, as well as for many other medical conditions. (See, e.g., id., at 85-99, 107-108 and Def. Exh's. 3-19 thereto).

28. Dr. Conrad prescribed Ultram for Mr. Hugar, as he had done on other occasions for relief of arthritis, and sent him home. (Id. at 31-32, 144-45, 100).

29. X-rays taken at the time of the December 4, 2002 visit showed pre-existing arthritis changes, but no injuries attributable to the November 20, 2002 accident. (Id. at 41-43, 144-47).

30. Despite the absence of any evidence that Mr. Hugar actually sustained a bodily impact of any sort during the accident, Dr. Conrad testified in his deposition for use at trial that he had no reason to believe that the shoulder and neck complaints Mr. Hugar reported at his December 4th visit two weeks after the accident were not the result of a strain caused when Mr. Hugar jumped from bed when the truck hit his home, and that it "could very well" explain the complaints. (Id. at 35-41).

31. Pennsylvania Rule of Evidence 702 permits opinions of a qualified expert to be introduced to the jury at trial when expert opinion is necessary to comprehend the evidence or determine a fact at issue. See Pa.R.E. 702.

32. To be admissible, however, an expert must express his opinion with reasonable certainty; "expert" opinions that fail to meet this standard are not competent, would encourage

decisions based on speculation and conjecture, and are not admissible. See, e.g., Kravinsky v. Glover, 263 Pa. Super. 8, 396 A.2d 1349 (Pa. Super. 1979).

33. Furthermore, when expert testimony is offered in support of an issue or claim, the expert's testimony must be based on facts of record. Collins v. Hand, 431 Pa. 378, 246 A.2d 398 (1968). Significantly, "the opinion of the expert does not constitute proof of the existence of the facts necessary to support the opinion." 431 Pa. at 390, 246 A.2d at 404.

34. Dr. Conrad's opinion that a shoulder strain/sprain caused by the accident "could very well explain" the pain complaints Mr. Hugar had on December 4, 2002 was offered in equivocal terms, and not with the requisite certainty required of expert testimony under Pennsylvania law.

35. Furthermore, Dr. Conrad's proffered testimony that Mr. Hugar actually sustained a shoulder sprain/strain from some mechanism of injury triggered when his house was struck by Defendant's vehicle is not based on any facts of record, and is unsupported by anything other than his own speculative opinion.

36. Permitting Plaintiffs to present Dr. Conrad's testimony of the alleged shoulder sprain/strain to the jury would completely contravene the well established principles noted above, and would severely prejudice Defendant by suggesting to the jury that this highly speculative, incompetent, testimony qualifies as "expert" evidence upon which the jury's decision could be based.

WHEREFORE, Defendant respectfully requests that Plaintiffs be precluded from presenting Dr. Conrad's testimony regarding Mr. Hugar's shoulder strain/sprain allegedly resulting from the November 20, 2002 incident at the trial of this matter, or from otherwise making reference to such testimony or opinions at trial.

Psychological/Emotional Injury Testimony

37. Defendant incorporates paragraphs 1 through 36 herein by reference as though set forth in full.

38. Plaintiffs elicited testimony from Dr. Conrad regarding Mr. Hugar's physical decline beginning approximately three weeks after the accident and continuing to the time of his death, concluding with Dr. Conrad's opinion that Mr. Hugar lost his will to live as a result of the accident. (See Conrad Depo., at 50-57, 59-62).

39. In this vein, Dr. Conrad testified that Mr. Hugar presented to his office on December 16, 2002 with various symptoms of physical illness. Dr. Conrad had no explanation for these symptoms at that time, (id. at 50-51), and Mr. Hugar was sent to the Clearfield Hospital emergency room, where he was diagnosed with pneumonia. (Id. at 41-45, 50-51).

40. Following Mr. Hugar's hospital admission for pneumonia, he developed various other physical impairments and complications, including heart fluttering, blood clots, and bleeding. (Id. at 50-55).

41. Hospital records from this time period indicate that there was a "failure to thrive," to which Dr. Conrad testified as well. (Id at 50-57).

42. Mr. Hugar died on January 10, 2003. The causes of death were bilateral leg deep vein thrombophlebitis, recent pneumonia with sepsis, heart disease, bladder cancer, irregular heartbeat, and gross hematuria. (Id. at 154-55).

43. Although Dr. Conrad conceded that Defendant's truck striking the Hugar residence did not directly *cause* Mr. Hugar's death, Dr. Conrad offered an opinion that this event resulted in emotional/psychological injury to Mr. Hugar.

44. Specifically, Dr. Conrad testified that the occurrence of the accident lead to increased anxiety in Mr. Hugar, and that Mr. Hugar “lost his will to live” as a result, which contributed to Mr. Hugar’s overall decline. (Id. at 55-62).

45. Dr. Conrad is a family practice doctor, with no specialization in psychology, psychiatry, or any other mental health science. (Id. at 11-18).

46. Moreover, Dr. Conrad did not treat Mr. Hugar for depression or anxiety before his death, did not document that he had any concerns in this regard, and did not arrange for consultation with any mental health specialist because he had not observed a need for such a consultation. (Id. at 138-144).

47. Although Pennsylvania law is liberal with respect to qualification of experts, an expert must have some reasonable pretension to specialized knowledge in an area before his or her testimony can be presented to the jury as the opinion of a qualified “expert.”

48. Dr. Conrad does not have the requisite qualifications to offer a competent opinion that Mr. Hugar’s mental health significantly deteriorated as a result of the accident, and, in fact, Dr. Conrad did not treat or even assess Mr. Hugar for emotional/psychological injuries before his death.

49. Dr. Conrad’s opinion that Mr. Hugar suffered some emotional/psychological injury and lost his will to live because of the accident amounts to speculation and conjecture, cloaked as “expert” testimony.

50. In addition, with limited exception not applicable herein, Pennsylvania law only permits recovery for emotional/psychological injury in cases where there has been a demonstrable physical impact to the plaintiff, or where the plaintiff was in the zone of danger at

the time of the accident and feared for his own safety.² See e.g., Hough v. Meyer, 55 Pa. D&C 4th 473, 479-87 (Fayette Co. March 26, 2002).

51. Plaintiffs in this case cannot come forward with any admissible evidence that Mr. Hugar sustained a bodily injury or impact when Defendant's truck hit his house, or that he feared for his safety when the accident occurred. Thus, Plaintiffs cannot lay the requisite foundation for recovery of emotional/psychological damages.

52. In sum, Dr. Conrad's opinion that Mr. Hugar suffered an emotional injury and lost his will to live because of the accident is not competent in the first instance, and is also inadmissible because Plaintiffs in this case cannot lay the requisite foundation for an emotional injury claim.

53. Consequently, Plaintiffs must not be permitted to present Dr. Conrad's testimony and opinions regarding Richard Hugar's physical decline from December 16, 2002 through the time of his death, and his alleged emotional injury, to the jury.

² A third theory of recovery for emotional injuries exists in "bystander" cases, where a plaintiff witnesses physical injury to a relative and experiences a direct emotional impact from the sensory and contemporaneous observance of the same. See, e.g., Sinn v. Burd, 486 Pa. 146, 404 A.2d 672 (1979). This theory is not even arguably raised by the case at bar.

WHEREFORE, Defendant respectfully requests that Plaintiffs be precluded from presenting Dr. Conrad's testimony regarding Mr. Hugar's physical decline from December 16, 2002 until death, and his alleged emotional injury, or loss of will to live, at the trial of this matter, or from otherwise making reference to such testimony or opinions at trial.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: September 20, 2005

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

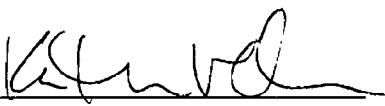
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Motion in Limine Re
Testimony of Donald Conrad, M.D., in the above-captioned matter was mailed by U.S. 1st Class
Mail, postage prepaid, on this 20th day of September, 2005, to the attorney of record:

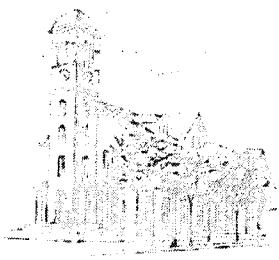
John Sughrue, Esquire
23 North Second Street
Clearfield, PA 16830

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,

Plaintiffs,

v.

DONALD B. LUZIER,
Defendant.

: No. 03-129-C.D.
:
: TYPE OF PLEADING:
: **PRAECIPE FOR BRIEFING**
: **SCHEDULE**
:
:
:
: TYPE OF CASE: CIVIL
: FILED ON BEHALF OF:
: **DEFENDANT**
:
:
:
: COUNSEL OF RECORD FOR
: FOR THIS PARTY:
: JAMES M. HORNE, ESQ.
: I.D. NO. 26908
: KATHERINE V. OLIVER, ESQ.
: I.D. NO. 77069
: McQUAIDE, BLASKO,
: FLEMING & FAULKNER, INC.
: 811 University Drive
: State College, PA 16801
: PH# (814) 238-4926

m110:5/20/04
NO CC
6/11/04

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

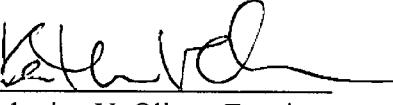
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
:
Plaintiffs, :
v. :
:
DONALD B. LUZIER, :
:
Defendant. :
:

PRAECIPE FOR BRIEFING SCHEDULE

In accordance with Clearfield County Rule of Court 211, please direct the Court Administrator to establish a briefing schedule with respect to Defendant's Motion in Limine Re testimony of Donald Conrad, M.D.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____


Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: September 20, 2005

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
Defendant. :
:

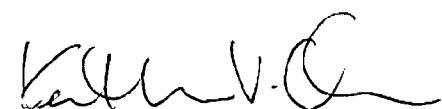
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Praecipe for Briefing Schedule in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 20th day of September, 2005, to the attorney of record:

John Sughrue, Esquire
23 North Second Street
Clearfield, PA 16830

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

vs.

DONALD B. LUZIER,

Defendant

CIVIL DIVISION

No. 03 - 129 - CD

**ANSWER TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

01/10/3487
Sep 2, 2005
JW

Prothonotary, Court of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, : Jury Trial Demanded
Defendant :
:

ANSWER TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Plaintiffs, Elma Morris and Sandy Jones, Co-Executrices of the Estate of Richard E. Hugar, Deceased, by and through their Counsel, Joseph Colavecchi, Esquire, and sets forth the following Answer to Motion for Summary Judgment.

1-18. Procedural background and applicable law. No answer required.

19. Admitted that the case involves a single vehicle accident that occurred on November 20, 2002 in which the truck driven by Defendant collided with the home of Richard E. Hugar, Deceased. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief as to the cause of the accident.

20. It is admitted that Richard Hugar was 91 years of age at the time of the accident and died on January 10, 2003. It is denied that the cause of his death was from medical conditions unrelated to the accident. On the contrary, it is alleged that the cause of Mr. Hugar's death was directly related to his emotional and physical response to the auto accident.

21. Admitted.

22. States a conclusion to which no answer is required.

23. Admitted that Mr. Hugar was sleeping when Defendant's vehicle struck his house. The allegations regarding where the vehicle entered are denied. On the contrary, Mr. Hugar was sleeping in a bedroom on the same floor and directly behind the area entered by the vehicle. (Depo. Morris, Pg. 68)

24. States a conclusion to which no answer is required.

25. Admitted that Mr. Hugar stated he originally thought the incident was caused by blasting in the area.

26. States a conclusion to which no answer is required.

27. Admitted.

28. Denied. On the contrary, Plaintiffs testified that Mr. Hugar was "in a daze and wandered around the house with his hands behind his back and did not appear to be aware of what was happening to him".

29. Admitted that Plaintiffs arrived at their father's home shortly after the accident and remained at Mr. Hugar's home during the day. To the contrary, Mr. Hugar was wandering around the home and visibly upset by the events. (Depo. Morris, Pg. 39)

30. Admitted in part and denied in part. Mr. Hugar had to be reminded and urged to eat breakfast by his daughters because of his mental state. (Depo. Jones, Pg. 57)

31. Admitted that Plaintiffs testified that Mr. Hugar did not know what had happened initially because he was awakened from sleep. Denied that Plaintiffs testified Mr. Hugar had not suffered a "physical impact". To the contrary, Plaintiffs believed that he may have been "knocked out of bed". (Depo. Morris, Pg. 43)

32. Admitted

33. Admitted that Plaintiffs allege that Mr. Hugar began to complain about his head hurting and that he was having a hard time walking on November 23, 2002. (Depo. Morris, Pg. 46)

34. Admitted in part and denied in part. It is admitted that on November 25, 2002, Mr. Hugar was treated in the Clearfield Hospital Emergency Room. On the contrary, Mr. Hugar was treated for pain behind his right ear into his neck and pain in the left lower back, hip with a lump on the lower back and pain down the thigh. (Defendant's Exhibit 2 and 2a)

35. Admitted.

36. States a conclusion to which no answer is required.

37. States a conclusion to which no answer is required.

38. Admitted that Mr. Hugar was examined by Dr. Donald Conrad, his primary care physician, on December 4, 2002. At that time, he had complaints of right neck and shoulder pain. The allegations characterizing the visit as "regularly scheduled" are denied. To the contrary, Mr. Hugar was having increasing pain and problems related to the auto accident to include "some pain and some discomfort in his right neck and shoulder" and was "shook up quite a bit" by the incident. (Depo. Dr. Conrad, Pgs. 23 and 24)

39. States a conclusion to which no answer is required.

40. States a conclusion to which no answer is required.

41. States a conclusion to which no answer is required.

42. Admitted that Dr. Donald Conrad testified that Mr. Hugar told him that he had "jumped up", but that he did not know whether he had "hit something" or "fallen out of bed". The characterization that Dr. Conrad testified regarding bodily impact is denied. (Depo. Dr. Conrad, Pg. 76)

43. Admitted that x-rays taken at the time of the December 4, 2002 visit showed arthritis changes.

44. Admitted that Dr. Donald Conrad prescribed Ultram. Denied that it was prescribed for the same problem for which it was previously prescribed.

45. Admitted that Mr. Hugar was seen by Dr. Donald Conrad on December 16, 2002 and sent to the Clearfield Hospital Emergency Room where he was admitted to the hospital.

46. Admitted that during Mr. Hugar's hospital admission he developed other physical impairments and complications.

47. Admitted.

48. States a conclusion to which no answer is required.

49. States a conclusion to which no answer is required.

50. States a conclusion to which no answer is required.

51. Admitted.

52. States a conclusion to which no answer is required.

53. States a conclusion to which no answer is required.

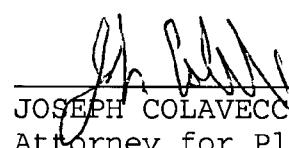
54. States a conclusion to which no answer is required.

55. States a conclusion to which no answer is required.

56. States a conclusion to which no answer is required.

57. States a conclusion to which no answer is required.

WHEREFORE, Plaintiffs respectfully request your Honorable Court to deny Defendant's Motion for Summary Judgment.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiffs
221 East Market Street
Clearfield, PA 16830

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE :
of RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of September, 2005, a true and correct copy of an Answer to Defendant's Motion for Summary Judgment in the above matter was served on the following by depositing said copy in the United States Mail, first class, postage prepaid and addressed as follows:

KATHERINE V. OLIVER, ESQUIRE
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-6699

DATE: September 21, 2005


JOSEPH COLAVECCHI, ESQUIRE
COLAVECCHI & COLAVECCHI
221 East Market Street
Clearfield, PA 16830
(814) 765-1566

10:34 AM NO
cc
R

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :
*m 19.04.01
NO CC
7/2005 (JW)*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Order of Court dated September 21, 2005 regarding Defendant's Motion in Limine re Testimony of Donald Conrad, M.D.** in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 23rd day of September 2005, to the attorney(s) of record:

Joseph Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street, P.O. Box 131
Clearfield, PA 16830

John Sughrue, Esquire
23 North Second Street
Clearfield, PA 16830

McQUAIDE, BLASKO, FLEMING &
FAULKNER, INC.

By: Katherine V. Oliver

Katherine V. Oliver
I.D. No. 77069
811 University Drive
State College, PA 16801
(814) 238-4926

Attorneys for Defendant

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

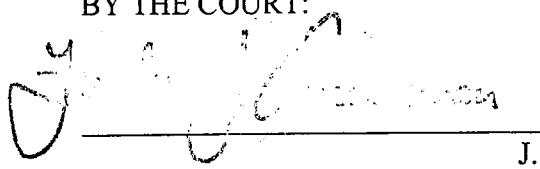
ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
Plaintiffs, :
v. :
DONALD B. LUZIER, :
Defendant. :

ORDER

AND NOW, this 21st day of September, 2005, upon consideration of the foregoing motion, it is hereby ORDERED that:

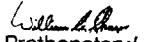
- (1) a rule is issued upon the respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within 10 days of this date;
- (3) the motion shall be decided under Pa. R.C.P. 206.7;
- (4) argument shall be held on October 3, 2005, in Courtroom No. 1 of the Clearfield County @ 9:00 A.M. Courthouse; and
- (5) notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT:


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

SEP 22 2005

Attest.


Prothonotary/
Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE OF :
RICHARD E. HUGAR, Deceased, :
Plaintiffs :
vs. : No. 03-129-CD
DONALD B. LUZIER, :
Defendants :
:

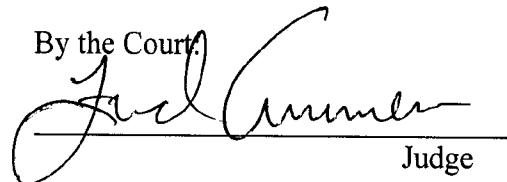
FILED
O/3.42 cm
OCT - 4 2005
1CC Att/Sughrae
S

ORDER

William A. Shaw
Prothonotary

AND NOW, this 4th day of October, 2005, upon consideration of Plaintiff's Motion to Extend Time Within Which to File Answer to Motion In Limine with respect to Dr. Donald Conrad's testimony, it is ORDERED that the time for filing such answer shall be and is hereby extended to twenty days following the date on which this Court adjudicates Defendant's outstanding Motion for Summary Judgment.

By the Court:



Judge

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

CA

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

ELMA MORRIS and SANDY JONES, *
Co-Executrices, of the ESTATE OF *
RICHARD E. HUGAR, Deceased, *
Plaintiffs *

vs.

DONALD B. LUZIER, *
Defendants *

No. 03-129-CD

* Type of Pleading: **PLAINTIFF'S MOTION
FOR EXTENSION OF TIME TO FILE
ANSWER TO DEFENDANT'S MOTION IN
LIMINE**

* Filed on Behalf of: **Plaintiffs**

* **Counsel of Record for this Party:**

* Joseph Colavecchi, Esq.
* P.A. I.D. #06810
* COLAVECCHI & COLAVECCHI
* 221 E. Market St.
* PO Box 131
* Clearfield, PA 16830
* Phone: (814) 765-1566

* John Sughrue, Esq.
* P.A. I.D. #01037
* 23 North Second Street
* Clearfield, PA 16830
* Phone: (814) 765-1704
* Fax: (814) 765-6959

* **Other Counsel of Record:**

* Katherine V. Oliver, Esq.
* ID No. 77069
* James M. Horne, Esq.
* ID No. 26908
* McQUAIDE, BLASKO, FLEMING &
* FAULKNER, INC.
* 811 University Drive
* State College, PA 16801
* Phone: (814) 238-4926

01/8/09 BL
3CC
Atty Sughrue
JZB:JW (6)

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

ELMA MORRIS and SANDY JONES, Co-Executrices, of the ESTATE OF RICHARD E. HUGAR, Deceased,	:	
		Plaintiffs
vs.	:	No. 03-129-CD
DONALD B. LUZIER,	:	
		Defendants

PLAINTIFF'S MOTION FOR EXTENSION OF TIME
TO FILE ANSWER TO DEFENDANT'S MOTION IN LIMINE

To the Honorable Fredric J. Ammerman, President Judge of said Court:

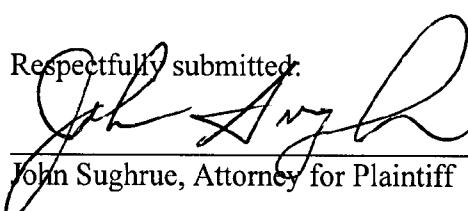
AND NOW, comes Plaintiff by their attorney's Joseph Colavecchi and John Sughrue, and respectfully requests an extension of time within which to answer to Motion In Limine filed September 21, 2005 and in support thereof represents the following:

1. On September 21, 2005, Plaintiff's counsel received Defendant's Motion In Limine with respect to the testimony of Dr. Donald Conrad consisting of fifty-three paragraphs.
2. On September 26, 2005, Plaintiff's counsel received this Court's Order dated September 21, 2005 directing an Answer to the Motion to be filed by October 1, 2005, a Saturday, extended by Rule to October 3, 2005.
3. At the same time, this Court ordered argument on the Motion In Limine for Monday, October 3, 2005 at 9:00 a.m.
4. Plaintiff's counsel believes and therefore avers that five business days is insufficient time to file an informed and intelligent answer to said Motion.
5. There is presently pending before this Court Defendant's Motion for Summary Judgment, which depending upon the Court's adjudication, could render the Motion In Limine moot.

6. That the Motion for Summary Judgment is being argued on October 3, 2005 at 9:00 a.m. before this Court.
7. That this case is not presently on the trial list of Clearfield County, Pennsylvania.
8. Plaintiff's counsel requests an extension of time to twenty days after the Court's determination of the Motion for Summary Judgment to file an answer to said Motion In Limine.
9. That such an extension will not prejudice the Defendant or unnecessarily delay the trial of this action.
10. That Plaintiff's counsel has conferred with Defense counsel regarding the request for this extension and Defense counsel has indicated that they do not consent to the prayer of this Motion.
11. Plaintiff's counsel presented a copy of this Motion to Defense counsel by facsimile transmission on September 30, 2005 following his phone conversation with Defense counsel, at which time Plaintiff's counsel indicated that the matter would be filed on Monday, October 3, 2005 and brought to the Court's attention during the course of argument.

WHEREFORE, Plaintiff, by their counsel respectfully moves the Honorable Court to enter an Order extending the time within which Plaintiffs may file Answer to Motion In Limine to twenty days following the date on which the Court adjudicates the Motion for Summary Judgment or such other extension as the Court deems appropriate under the rules, facts and circumstances of this case.

Respectfully submitted,


John Sughrue, Attorney for Plaintiff

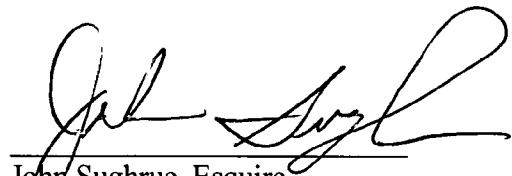
CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on September 30, 2005 caused a true and correct copy of PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE ANSWER TO DEFENDANT'S MOTION IN LIMINE to be served on the following and in the manner indicated below:

By Facsimile and United States Mail, First Class, Postage Prepaid
Addressed as Follows:

Katherine V. Oliver, Esq.
811 University Drive
State College, PA 16801
Fax: 814-234-5620

Date: September 30, 2005



John Sughrue, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ELMA MORRIS and SANDY
JONES, Co-Executrices of
the ESTATE OF RICHARD E.
HUGAR, Deceased

-vs-

No. 03-129-CD

DONALD B. LUZIER

09.08.01
2005
UN
10/05 J. Colavecchi
J. Horne

O R D E R

NOW, this 3rd day of October, 2005, following
argument on the Defendant's Motion for Summary Judgment and
in regard to the Defendant's Motion in Limine, it is the
ORDER of this Court as follows:

1. The Plaintiff shall have no more than twenty (20) days from this date in which to file an Answer to the Defendant's Motion in Limine;
2. The Court will not rule upon or hear further argument relative the Motion in Limine until such time as the Court issues a decision on the Motion for Summary Judgment. In the event that the Court would grant the Motion for Summary Judgment, no argument on the Motion in Limine would be required;
3. In the event the Court does not grant the Motion for Summary Judgment, counsel shall thereafter request the Court to schedule argument on the Motion in



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

Vs.

**DONALD B. LUZIER,
Defendant**

CIVIL DIVISION

No. 03 - 129 - CD

AFFIDAVIT

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
814/765-1566

JOHN SUGHRUE, ESQUIRE
PA I.D.

23 North Second Street
Clearfield, PA 16830
814/765-1704

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

03:46 AM
OCT 10 2005
no
cc
WAS

William A. Shaw
Prothonotary/Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

A F F I D A V I T

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF CLEARFIELD :
:

On this 10 day of October, 2005, the undersigned,
EUNICE J. FETTER, being first duly sworn, deposes and says that:

1. Deponent is an adult individual over the age of eighteen years and competent in every respect to make this Affidavit.
2. Deponent is a daughter of Richard E. Hugar, above mentioned, and presently resides at 153 Smeal's Road, West Decatur, Clearfield County, Pennsylvania, 16878.
3. Deponent usually talked with her father, Richard E. Hugar, every day by telephone.

4. Deponent did not learn of the car crashing into her father's house until her father called her on the day of the crash.

5. On the day Mr. Luzier's car crashed into her father's house, her father called her in the early evening between 6:00 p.m. and 8:00 p.m. At that time he related to her the facts of the car hitting his house. In that conversation Mr. Hugar stated to Deponent that as a result of the crash he got throwed out of bed, dresser drawers were knocked open, and a picture fell on the floor in the bedroom. In that conversation, Mr. Hugar also stated to Deponent that water was over the floor and spices were knocked over in the kitchen.

IN WITNESS WHEREOF, the undersigned has set her hand and seal the date and year first above written.

WITNESS:

Eunice J. Fetter (SEAL)
EUNICE J. FETTER

Sworn to and subscribed before me
this 10 day of October, 2005.

Linda L. Ziemblo

NOTARIAL SEAL
LINDA L. ZIEMBO, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires December 17, 2005

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE :
of RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of October, 2005, a true and correct copy of an Affidavit in the above matter was served on the following addressed as follows:

First Class Mail

KATHERINE V. OLIVER, ESQUIRE
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-6699

Personal Delivery

HONORABLE FREDRIC J. AMMERMAN
PRESIDENT JUDGE
Clearfield County Courthouse
Clearfield, PA 16830

DATE: 10-10-05

BY: JOSEPH COLAVECCHI

JOSEPH COLAVECCHI, ESQUIRE
COLAVECCHI & COLAVECCHI
221 East Market Street
Clearfield, PA 16830
(814) 765-1566

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**ELMA MORRIS and SANDY JONES,
Co-Executrices of the ESTATE
of RICHARD E. HUGAR,
DECEASED,**

Plaintiffs

vs.

DONALD B. LUZIER,

Defendant

CIVIL DIVISION

No. 03 - 129 - CD

**PLAINTIFFS' ANSWER TO
DEFENDANT'S MOTION IN LIMINE RE
TESTIMONY OF DONALD CONRAD,
M.D.**

Filed on Behalf of:

Plaintiff, ELMA MORRIS and
SANDY JONES, Co-Executrices of
the ESTATE of RICHARD E. HUGAR,
DECEASED

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
PA I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830
Phone: 814/765-1566
Fax: 814/765-6959

JOHN SUGHRUE, ESQUIRE
PA I.D. 1037

23 North Second Street
Clearfield, PA 16830
Phone: 814/765-1704
Fax: 814/875-6959

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

NO
03/04/04
EOT 21 2005
cc
N. A. Shaw
Prothonotary Clerk of Courts

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE :
OF RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

PLAINTIFFS' ANSWER TO DEFENDANT'S MOTION IN LIMINE
RE TESTIMONY OF DONALD CONRAD, M.D.

AND NOW COMES Plaintiffs, by their Counsel, and responds to Defendant's Motion in Limine relating to the testimony of Dr. Donald Conrad as follows:

PERTINENT PROCEDURAL BACKGROUND

1. - 5. Paragraphs 1 through 5 are admitted.

FACTUAL BACKGROUND

6. Admitted.

7. Admitted.

8. In particular, Plaintiffs seek compensation for actual personal injury sustained and for emotional and mental distress arising out of the occurrence.

9. Defendant disputes the fact of bodily injury or physical impact giving rise to emotional distress during the incident. However, those questions should ultimately be left to a jury to determine and the following evidence supports a finding of some bodily injury:

a. Mr. Hugar occupied a bedroom at the time of the collision that sustained vibration movement. The sounds and vibrations of the collision caused Mr. Hugar to be startled and awakened;

b. Following the collision, Mr. Hugar's children observed Mr. Hugar's daze, unsteadiness, diminished activity, difficulty getting out of bed, and the fact that he began to use a cane in the house, which he had not done before, when he ambulated to aid him in his walking;

c. On the second day following the accident, Mr. Hugar complained of pain in his head, neck and shoulder and again on the third day. This led to a visit to the Emergency Room on the fifth day following the accident and that led to a follow-up visit with Dr. Donald Conrad;

d. Dr. Donald Conrad upon examination concluded that Mr. Hugar was experiencing pain symptoms in his neck and back and opined that it occurred from the movement of Mr. Hugar's body at the time of the crash, and that the injuries were caused by the accident;

e. Mr. Hugar's children observed in the days following the occurrence that his activities declined, he became more sedentary, complained of ailments, had a different mental outlook and subsequently declined in health leading to hospitalization on or about December 16, 2002 and his ultimate demise thereafter.

Further, the following evidence of record supports a finding that Mr. Hugar sustained a "physical impact":

a. Witnesses at the scene observed that Defendant's vehicle crashed into Mr. Hugar's house with such force that it intruded into the bedroom located on the same level and next to the bedroom occupied by Mr. Hugar at the time of the collision;

b. Mr. Hugar's daughters observed Mr. Hugar's bedroom immediately after the collision and noted that drawers in a chest were knocked open and a picture that ordinarily sits on a table was knocked to the floor by the force of the collision;

c. Witnesses at the scene observed that the force of the collision broke the internal heating system and caused water to be about the floor;

d. Mr. Hugar stated to his daughter, Eunice Fetter, by telephone between 6:00 p.m. and 8:00 p.m. on the day of the collision that he was "thrown from his bed";

e. Defendant, Donald B. Luzier, in his deposition testified that Mr. Hugar exclaimed immediately after the collision that he thought the house had sustained damage from mine blasting activities, that he was sleeping and was awakened by the event.

The immediate conclusion by Mr. Hugar that blasting was involved suggests and gives rise to the inference that he was awakened by a loud noise and vibrations, all of which are consistent with blasting impact;

f. From the above evidence, a jury may infer the facts that the car collision caused vibrations throughout the house and that Mr. Hugar as an occupant of a bed in a bedroom where drawers were knocked open and pictures displaced, would have been physically jarred or jostled much like occurs in a car collision to an occupant and that Mr. Hugar would have been startled as a result of being awakened suddenly by this event.

Pennsylvania Law clearly provides under the Pennsylvania "Impact Rule" that any degree of physical impact, however slight, proximately caused by the negligence of the defendant supports recovery for the consequential psychological emotional pain and suffering. Botek v. Mine Safety Appliance Corp., 611 A.2d 1174 (1992).

Physical impact is further **defined under the law simply as any jarring or jostling of a person however slight.** See Zelinsky v. Chimics, 175 A.2d 351 (1961). In this case, occupants in a car involved in an accident did not suffer significant injury but were jarred and jostled. As a consequence of the accident, they suffered and recovered for emotional distress. Similarly in this case, Mr. Hugar was an occupant of his house rather than a

car. A jury may find from the evidence set forth above that he was jarred or jostled in the house as a result of Defendant's car impact with his house. Injury was slight, however, his experience in the accident as in zelensky gave rise to emotional pain and suffering, despondency and ultimate deterioration of his health. Dr. Donald Conrad testified to that effect.

10. Admitted. However, Dr. Donald Conrad likewise testified that the fact of the accident and Mr. Hugar's preoccupation with it, and emotional distress contributed to the decline in his health.

11. Denied. The fact of Mr. Hugar's physical injury is evidenced by the testimony of his daughters that he had difficulty getting out of bed, complained of pain, began to use a cane about the house when he ambulated, presented himself to the Clearfield Hospital Emergency Room, stated to Dr. Donald Conrad that he had pain and the medical opinion of Dr. Donald Conrad that the stiffness and pain that arose two to three days after the accident was caused by the accident.

The jury may find as a fact that Mr. Hugar suffered a physical impact, either directly or by inference from the following evidence:

a. He was awakened by a "boom" which caused a sensory impact to his hearing;

b. The drawers in the dresser in his bedroom were knocked open and a picture sitting on a stand was knocked to the floor. This was observed by his daughters immediately after the impact and one may infer that the impact caused this in his bedroom from the jolt or vibrations. Common sense may be used by a jury to infer that this jolt or vibration caused jolting or jostling to his body which meets the requirement of physical impact;

c. The decedent's statements to his daughter on the day of the occurrence that he was "thrown from his bed";

d. Decedent's statements to Dr. Donald Conrad that the crash awakened him and caused him to jump from his bed;

e. The alleged fact that the house was knocked to some degree from its foundation as a result of the impact infers that there was movement of the house structure and infers that this would have caused vibrations at a minimum and actual movement at a maximum of a house structure;

f. The heating system was broken and water was leaking about the floor;

g. Decedent was observed by his daughter visibly upset that day, walking about in a daze; and

h. The fact that Decedent's house was a wreck as a result of the occurrence may be reasonably inferred by common sense to be the cause and to give rise to anxiety in a ninety-one-year-old man.

There is evidence that Mr. Hugar was immediately impacted emotionally by the event, that he complained of pain within the next two days, presented himself to the Clearfield Hospital Emergency Room on approximately the fifth day, called his personal doctor, Dr. Donald Conrad, for an appointment and upon confirming that he had a regular scheduled appointment on December 4, 2005 presented himself for examination. Dr. Donald Conrad testified that he had been Mr. Hugar's personal physician and treated him for an extended number of years, knew him well, took a history in which Mr. Hugar indicated that he was in pain and described the occurrence. Dr. Donald Conrad testified in his deposition that certain pain was being experienced by Mr. Hugar. As a result, Dr. Conrad diagnosed Mr. Hugar, prescribed a course of treatment and medication and rendered an opinion that the injuries and pain complained of, as well as the emotional distress evidenced by Mr. Hugar, was the result of the occurrence.

12. Admitted. The vehicle did, however, break through the outside walls of the house and physically entered the bedroom next to Mr. Hugar's bedroom on the same level. A jury may infer that this degree of impact and intrusiveness into the structure caused Mr. Hugar to be jarred, jostled and awakened.

13. It is admitted that Mr. Hugar was sleeping at the time of the accident at approximately 6:00 a.m. and was not aware of the event until he was awakened by the sounds of the wreck and the vibrations within his house.

14. Admitted. However, this is really irrelevant. Mr. Hugar's initial speculation as to the cause of the sounds and vibrations do not change what the evidence shows in fact happened. This statement by Mr. Hugar actually supports an inference that he heard both a loud sound and felt vibration. Those are the exact sensory perceptions that one would expect to receive from blasting; i.e., a large boom and shaking of your house.

15. Admitted, except this fact relates only to the day immediately following the impact. Mr. Hugar's children also testified that he evidenced emotional distress on the first day and the following day, began to use a cane, had difficulty getting out of bed, and complained of pain by the third day.

16. Admitted. Matters are as set forth above in Paragraphs 9, 10, 11, 12 and 15 above.

17. Admitted. Further, matters were as set forth in Paragraphs 9, 10, 11, 12 and 15 above.

18. Admitted.

19. Admitted.

20. Admitted. Further, the shoulder and neck pain is recognized by Dr. Donald Conrad as having been the pain that was consistent with the complaints of Mr. Hugar within two to three days of the accident, and which gave rise to his visit to the Clearfield Hospital Emergency Room on the fifth day and caused him to seek an appointment with Dr. Conrad at that time.

21. Admitted. It is denied that the Motion has merit.

MOTION IN LIMINE

Testimony Regarding Alleged Shoulder Strain/Sprain Injury

22. Denied as stated. The evidence shows that Mr. Hugar did have a regular office visit with Dr. Donald Conrad scheduled for December 4, 2002 as part of his long-term treatment by Dr. Conrad, his personal physician. However, that date was merely coincidental. The evidence shows that Mr. Hugar in fact evidenced emotional distress immediately after the accident and complained of physical pain within two or three days of the accident which resulted in his visit to the Clearfield Emergency Room. The evidence shows that the Emergency Room directed him to consult with his personal physician and this gave rise to an immediate telephone call to the office of Dr. Donald Conrad. At that point, Mr. Hugar's daughters, upon being advised that Mr. Hugar had a December 4, 2005 appointment, decided to wait until that time to follow up on the Emergency Room Visit.

23. On the contrary, Dr. Donald Conrad testified that he was Mr. Hugar's treating physician for an extended number of years, that he knew Mr. Hugar well, and that Mr. Hugar did report shoulder and neck pain at that visit.

24. Admitted. However, in context, this simply means that Mr. Hugar did not relate knowledge of any physical impact by an

object to his person, such as being hit by the car or having furniture or material knocked into him. There is evidence that he told his daughter on the same day of the accident that he was thrown from his bed as a result of the occurrence.

25. It is admitted that Mr. Hugar went to the Emergency Room within five days complaining of pain and in fact had pain. It is admitted that Mr. Hugar's injuries and pain were not substantial and that he was released in stable condition.

26. Admitted.

27. Admitted. However, Dr. Donald Conrad further indicated, as a reading of the whole of his deposition will indicate, that these complaints were episodic and occurred from time to time. In this case, Dr. Conrad was of the opinion that Mr. Hugar's physical condition had been aggravated by the occurrence and gave rise to the pain on this occasion.

28. Admitted. Further, a jury may infer from the evidence at hand that the pain was caused in this instant by the occurrence and that the Ultram was in fact conservative medical treatment for control of pain in a ninety-one-year-old gentleman.

29. Admitted. However, the x-rays by their very nature were taken to examine the bone structure and are not used or expected to diagnose soft tissue trauma such as strain or sprain to muscles, ligaments, and cartilage.

30. Denied as stated. For the reasons set forth above, there are ample facts from which a jury may conclude that Mr.

Hugar sustained "physical injury" and/or "physical impact" within the definition of the Botek and Zelinsky cases cited above. Actual bodily impact by the car or other physical object is not required.

Further, Dr. Conrad in his deposition opined that it was more probable than not that the accident was the cause of the physical and emotional complaints that Mr. Hugar presented at the office visit. These statements by Dr. Conrad satisfy the requirements of Pennsylvania Law with respect to an opinion by both a treating physician and an expert.

31. Admitted.

32. Admitted to generally be a correct statement of law.

33. Admitted to generally be a correct statement of law.

However, the application of this law may be fact specific.

34. Denied. On the contrary, the testimony of Dr. Donald Conrad is fully admissible and as Mr. Hugar's long time personal physician who treated him regularly, the opinions that Dr. Conrad gives in his deposition on the whole and in context meet the requirements of Pennsylvania Law and are admissible in the sound discretion of the trial court.

35. Denied. On the contrary, a reading of the deposition of Dr. Donald Conrad on the whole will establish that Dr. Conrad is Mr. Hugar's treating physician as defined under Pennsylvania Law, is licensed to practice medicine in Pennsylvania, has treated Mr.

Hugar for a number of years and knows him well, and engages in the family practice of medicine with a substantial part of his practice centering on the treatment and care of the elderly. The record reveals that Dr. Conrad by virtue of his education and experience is well qualified to offer and support his testimony. His deposition further supports the fact that he personally met with Mr. Hugar, took a history from Mr. Hugar that included Mr. Hugar relating to him the facts of the occurrence and the specifics of his discomfort. Dr. Conrad throughout the examination was able to observe Mr. Hugar with respect to his demeanor, anxieties, alertness and the like. Dr. Conrad conducted an examination and made a diagnosis with respect to shoulder and neck injury which Dr. Conrad concluded was caused by the occurrence. Dr. Conrad thereafter prescribed a conservative course of treatment with medication, which is admitted by the Defendant to be for the control of pain. Whether or not these symptoms arose out of a pre-existing condition or the aggravation of the prior existing condition and/or directly from the occurrence, is a question of fact that should be determined by the jury. The facts presented to Dr. Conrad are further based on facts of record, specifically statements of the decedent, observations by his children, including Mr. Hugar's ambulatory difficulties immediately following the accident, Mr. Hugar's expression of pain and emotional distress, Mr. Hugar's statements to his children and to Mr. Luzier and the

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

inferences that may be drawn from these facts, all as set forth above in Paragraphs 9, 10, 11, 12 and 15.

36. Denied. On the contrary, Dr. Donald Conrad is fully qualified as a treating physician and as an expert in the areas in which he proposes to testify, his testimony is trustworthy, competent, and within the requirements of Pennsylvania Law and the discretion of this court to admit.

WHEREFORE, Plaintiff respectfully moves the Honorable Court to deny Defendant's Motion that Plaintiffs be precluded from presenting the testimony of Dr. Donald Conrad relating to the shoulder strain/sprain for the reasons set forth above and in accordance with Pennsylvania Law.

Psychological/Emotional Injury Testimony

37. Denied. On the contrary, facts and matters are as set forth in Paragraphs 1 through 36 of this Answer above, the averments of which are incorporated herein by reference as though the same was set forth herein at length verbatim.

38. Admitted. Further, there is evidence that Mr. Hugar immediately following the accident was significantly impacted by the wreck of his home. His daughters testified, as did Dr. Donald Conrad, that Mr. Hugar was visibly upset that day and thereafter consumed with the event, particularly the damages to his home. The evidence reveals that Mr. Hugar prior to the occurrence was living

alone in his home, was doing relatively well for his age and was aided on a daily basis by his daughters. Dr. Donald Conrad also described the change in Mr. Hugar as being less able or willing to manage his health issues.

39. Admitted. These symptoms developed substantially after the occurrence and were not the basis for the testimony of Dr. Conrad or his opinions.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted in part and denied in part. Specialization in psychology, psychiatry, or other mental health science has not been shown to be a prerequisite to diagnosis, treatment or consideration in treatment of emotional distress or anxiety of the kind exhibited by Mr. Hugar. Further, the qualifications of Dr. Donald Conrad indicate that he has been a practicing doctor for an extended period of time, that he has a significant number of elderly citizens (geriatric patients) in his practice and over the years, as a result of his experience, acquired knowledge sufficient to treat Mr. Hugar's symptoms and form an opinion with respect to them.

45. Denied. It is admitted that Mr. Hugar was not referred to any mental health specialist. He was, however, treated for his

symptoms by Dr. Conrad's time, attention and medication, all of which may reasonably be expected to calm emotional distress and/or anxiety.

47. Admitted. Further, it is within the sound discretion of the court to determine the limits of Dr. Conrad's testimony, if any, as a treating physician and whether or not he qualifies to make the observations or give the opinions he offered based on his education, training, experience and certifications.

It is well established that the testimony of the licensed treating physician may be taken by oral deposition and is admissible pursuant to Pennsylvania Statute. See 42 Pa. C.S.A. §5936. The defense does not dispute that Dr. Donald Conrad is a licensed physician and was Mr. Hugar's treating physician for a period of time. Dr. Conrad's testimony should be admissible under this Statute and Rules of Court subject only to issues of relevancy and his qualifications to render each specific opinion.

48. Denied. Dr. Donald Conrad is qualified as aforesaid to testify to his observations and conclusions with respect to the emotional distress of his patient as determined from his clinical examination and knowledge of Mr. Hugar's health.

49. Denied. On the contrary, the facts and matters are as set forth above, all of which are incorporated herein by reference.

50. Admitted in part and denied in part. Pennsylvania Law permits recovery for emotional distress in cases where there is actual physical injury, however slight; or in the alternative,

physical impact as discussed above. In this case, there is both mild physical injury and physical impact. Where a Plaintiff suffers physical injuries, even though they may be relatively mild, or physical impact, however slight, all of the consequential psychological and emotional pain and suffering is compensable. See **Botek v. Mine Safety**, Supra. and **Zelinsky v. Chimics**, Supra. It is admitted that the "zone of danger" rule is not at issue in this case.

51. Denied for the reasons set forth above, all of which are incorporated herein by reference. The evidence does set forth mild bodily injury and slight physical impact directly resulting from the car collision with the house. The factual foundation is present independently in the testimony of the decedent's daughters, decedent's statements, Dr. Donald Conrad's clinical examination and medical conclusions, and the testimony of Donald B. Luzier that Mr. Hugar immediately stated a belief that blasting had occurred next to his house which indicates sensory perception of sound and vibration. The bodily injury, or in the alternative, physical impact necessary has been demonstrated as discussed above, all of which is incorporated herein by reference.

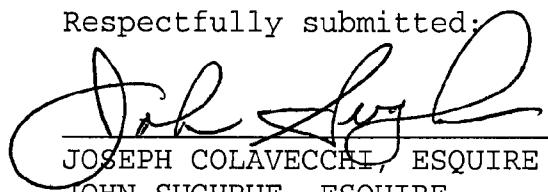
52. Denied. On the contrary, Plaintiff suggests that Dr. Donald Conrad's testimony is the result of a competent clinical examination and that he relied upon the history given to him at the time of the clinical examination and subsequently in his deposition

relied upon that clinical examination and his knowledge of other facts or hypothetical facts that were provided to him at the time he was asked to provide an opinion. In any event, his testimony to a large extent is admissible as Mr. Hugar's treating physician and the extent to which that testimony and/or his opinions are trustworthy and the weight to be given his testimony is a matter for the jury to determine.

53. Denied. On the contrary, the testimony and opinions of Dr. Donald Conrad are admissible in full for the reasons set forth above, all of which are incorporated herein by reference.

WHEREFORE, Plaintiff respectfully moves the Honorable Court to deny Defendant's Motion in Limine with respect to the testimony of Dr. Donald Conrad for the period December 16, 2002 until death and with respect to the emotional distress, loss of will and failure to thrive.

Respectfully submitted:



JOSEPH COLAVECCHI, ESQUIRE
JOHN SUGHRUE, ESQUIRE
Attorneys for Plaintiffs
221 East Market Street
Clearfield, PA 16830
(814) 765-1566

Dated: 10-21-05

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices of the ESTATE :
of RICHARD E. HUGAR, Deceased, :
Plaintiffs :
:
vs. : No. 03 - 129 - CD
:
DONALD B. LUZIER, :
Defendant :
:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of October, 2005, a true and correct copy of Plaintiffs' Answer to Defendant's Motion in Limine Re Testimony of Donald Conrad, M.D. in the above matter was served on the following addressed as follows:

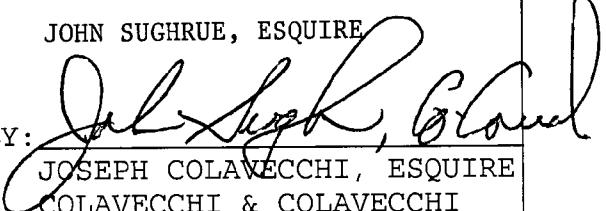
First Class Mail

KATHERINE V. OLIVER, ESQUIRE
McQuaide Blasko
Attorneys at Law
811 University Drive
State College, PA 16801-6699

HONORABLE FREDRIC J. AMMERMAN
PRESIDENT JUDGE
Clearfield County Courthouse
Clearfield, PA 16830

DATE: 10-21-05

JOHN SUGHRUE, ESQUIRE

BY: 
JOSEPH COLAVECCHI, ESQUIRE
COLAVECCHI & COLAVECCHI
221 East Market Street
Clearfield, PA 16830
(814) 765-1566

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

ELMA MORRIS and SANDY JONES,
Co-Executrices, of the ESTATE of
RICHARD E. HUGAR, Deceased,

Plaintiffs,

v.

DONALD B. LUZIER,

Defendant.

: No. 03-129-C.D.
:
: TYPE OF PLEADING:
: **CERTIFICATE OF SERVICE**

:

:

:

:

: TYPE OF CASE: CIVIL

: FILED ON BEHALF OF:

: **DEFENDANT**

:

:

: COUNSEL OF RECORD FOR

: FOR THIS PARTY:

: JAMES M. HORNE, ESQ.

: I.D. NO. 26908

: KATHERINE V. OLIVER, ESQ.

: I.D. NO. 77069

: McQUAIDE, BLASKO,

: FLEMING & FAULKNER, INC.

: 811 University Drive

: State College, PA 16801

: PH# (814) 238-4926

m12/13/04
NO CC
CCI 25 2005 (P)

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

ELMA MORRIS and SANDY JONES, :
Co-Executrices, of the ESTATE of : No. 03-129-C.D.
RICHARD E. HUGAR, Deceased, :
: Plaintiffs, :
v. :
: :
DONALD B. LUZIER, :
: :
Defendant. :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Supplemental Brief in Support of Motion for Summary Judgment in the above-captioned matter was mailed by U.S. 1st Class Mail, postage prepaid, on this 24th day of October, 2005, to the attorney of record:

John Sughrue, Esquire
23 North Second Street
Clearfield, PA 16830

Joseph Colavecchi
Colavecchi & Colavecchi
221 East Market Street
P. O. Box 131
Clearfield, PA 16830

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

Katherine V. Oliver, Esquire
ATTORNEYS FOR DEFENDANT
DONALD B. LUZIER
811 University Drive
State College, PA 16801
(814) 238-4926

CA

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

ELMA MORRIS and SANDY JONES, *
Co-Executrices of the ESTATE of *
RICHARD E. HUGAR, Deceased, *
Plaintiffs *
vs. * NO. 03-129-CD
DONALD B. LUZIER, *
Defendant *

01244/01
NOV 09 2005

100 Ays. J. Colavercini
Horne

ORDER

NOW, this 8th day of November, 2005, upon consideration of the Defendant's Motion for Summary Judgment, the oral argument presented by counsel, the parties' briefs and the documents produced as part of the record in determining the propriety of summary judgment, it is the ORDER of this Court as follows:

1. The Court finds that the Plaintiffs cannot present admissible evidence to meet their burden of proving that Richard Hugar suffered a physical injury when his house was struck by the Defendant's truck. Thus the Plaintiffs are unable to comply with the requirements of the "impact rule".

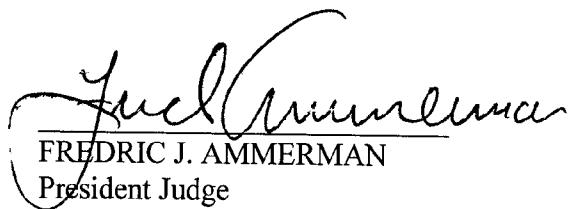
A. The alleged statement by the decedent to Eunice Fetter as set forth in the Affidavit filed on October 10, 2005 constitutes inadmissible hearsay and does not fall within any exception to the hearsay rule.

B. The opinion testimony of Dr. Donald Conrad that Richard Hugar sustained a physical injury as a result of any impact from the accident is inadmissible as not being supported by admissible facts of record and being unduly speculative.

2. The Defendant's Motion for Summary Judgment is hereby GRANTED. The above-captioned case is hereby DISMISSED.

3. Opinion to be filed in the event of an appeal.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,



William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions: