

2003-135-CD  
DAVID J. KARCEWSKI

VS

MORTON BUILDINGS, INC.

**The Superior Court of Pennsylvania**  
**Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND**  
under

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

**Original Record in one part, Two Transcripts, One set of Exhibits and Certified Copy  
Of discontinuance**

As remanded from said court in the following matter:

**IN RE: David Karcewski, etc. v. Morton Buildings Inc., etc**  
**NO. 44 WDA 2006**

**Court of Common Pleas, Civil Division of the County of Clearfield**  
**At NO. 03-135-CD**

**FILED**  
**MAY 05 2006**  
William A. Shaw  
Prothonotary/Clerk of Courts

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is **May 2, 2006**

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor K. Valecko*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: May 5, 2006

*William A. Shaw*  
(Signature & Title)

**WILLIAM A. SHAW**  
**Prothonotary**  
**My Commission Expires**  
**1st Monday in Jan. 2010**  
**Clearfield Co., Clearfield, PA**



**Superior Court of Pennsylvania**

Western District

May 2, 2006

Karen Reid Bramblett, Esq.  
Prothonotary

Eleanor R. Valecko  
Deputy Prothonotary

310 Grant Street, Suite 600  
Pittsburgh, PA 15219-2297  
412-565-7592  
www.superior.court.state.pa.us

**Notice of Discontinuance of Action**

RE: Karcewski, D. v. Morton Buildings, Inc., etc.

Appeal of:

Type of Action: Notice of Appeal

No. 44 WDA 2006

Clearfield County Court of Common Pleas

Agency Docket Number:

No. 03-135-CD

FILED  
MAY 05 2006  
no cc  
CR

William A. Shaw  
Prothonotary/Clerk of Courts

The above-captioned matter has been marked "Discontinued" with this court.  
Certification is being sent to the lower court.

<b>Attorney Name</b>	<b>Party Name</b>	<b>Party Type</b>
Theron G. Noble, Esq.	David Karcewski	Appellee
John Robert Ryan, Esq.	Morton Buildings, Inc.	Appellant

Mr. William A. Shaw  
Prothonotary  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

A

# In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No. 44 WDA 2006

David Karcewski, etc

v.

Morton Buildings, Inc., an Illinois  
Corporation, Appellant

Appeal from the Order entered in this matter  
on December 16, 2005, by the Hon. Frederic  
Ammerman, P.J., Court of Common Pleas,  
Civil Div of the County of Clearfield  
At NO. 03-135-CD

**CERTIFIED FROM THE RECORD**

FILED  
MAY 23 2006  
MAY 05 2006  
CR

William A. Shaw  
Prothonotary/Clerk of Courts

May 1, 2006 – Praecipe for Discontinuance filed.

Appeal Discontinued

Testimony Whereof, I have hereunto set my hand and the seal of said Court at  
Pittsburgh  
Pa. this 2<sup>ND</sup> Day of MAY 2006

*Eleana R. Valecho*  
DEPUTY PROTHONOTARY

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 44 WDA 2006

Page 1 of 2

January 9, 2006

David Karcewski, an adult individual  
V.

Morton Buildings, Inc., an Illinois Corporation, Appellant

03-135-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 9, 2006

Awaiting Original Record

 FILED  
 JAN 11 2006  
 GR

Journal Number:

William A. Shaw  
Prothonotary/Clerk of Courts

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: January 23, 2006

Next Event Type: Original Record Received

Next Event Due Date: February 21, 2006

## COUNSEL INFORMATION

Appellant Morton Buildings, Inc.  
Pro Se: Appoint Counsel Status:

IFP Status: No

## Appellant Attorney Information:

Attorney: Ryan, John Robert

Bar No.: 38739

Law Firm: Belin &amp; Kubista

Address: 15 N Front Street  
Clearfield, PA 16830

Phone No.: (814)765-8972

Fax No.: (814)765-9893

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Karcewski, David

Pro Se: Appoint Counsel Status:

IFP Status:

## Appellee Attorney Information:

Attorney: Noble, Theron G.

Bar No.: 55942

Law Firm: Ferraraccio &amp; Noble

Address: 301 E Pine Street  
Clearfield, PA 16830

Phone No.: (814)765-4990

Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

 Record - 1 Part  
 21 pages. + 1 set EXHIBITS.

44 WDA 2006

4132

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 44 WDA 2006

Page 2 of 2

January 9, 2006



## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
1/9/06	Notice of Appeal	60.00	60.00	2006SPRWD000022

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: December 16, 2005

Judicial District: 46

Date Documents Received: January 9, 2006

Date Notice of Appeal Filed: January 3, 2006

Order Type: Order Entered

OTN:

Judge: Ammerman, Fredric J.  
President Judge

Lower Court Docket No.: No. 03-135-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
January 9, 2006	Notice of Appeal Filed	Appellant	Morton Buildings, Inc.
January 9, 2006	Docketing Statement Exited (Civil)		Western District Filing Office

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(C)

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:


**03-135-CD**

**David J. Karcewski**  
**VS.**  
**Morton Buildings, Inc.**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 39**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is April 20, 2006.

  
Prothonotary/Clerk of Courts

(seal)



## Civil Other

Date		Judge
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karcewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge
03/19/2003	Verification. s/David J. Karcewski Notice of Service no cc	No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc	No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan	Fredric Joseph Ammerman
	Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman I hereby certify this to be a true and attested copy of the original statement filed in this case.

APR 19 2006

Attest

*[Signature]*  
 Prothonotary/  
 Clerk of Courts

## Civil Other

Date		Judge
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike matter, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Ryan	Fredric Joseph Ammerman
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
	Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praecipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praecipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karcewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman

Date: 04/19/2006

**C' field County Court of Common Pleas**

User: BHUDSON

Time: 02:41 PM

ROA Report

Page 3 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karcewski vs. Morton Buildings, Inc.

Civil Other

Date		Judge
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check)	Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. for \$60.00 to Superior Crt.	Fredric Joseph Ammerman
	Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan	Fredric Joseph Ammerman
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed. 44 WDA 2006	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
03/17/2006	Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record.	Fredric Joseph Ammerman
	Certified Mail Receipt, filed. Record mail to Superior Court.	Fredric Joseph Ammerman
03/22/2006	Certified Mail Receipt, filed. To Superior Court of PA, received 3-20-2006	Fredric Joseph Ammerman
04/13/2006	Order, Certified From the Record, In The Superior Court of Penna., Ordered that the record is Remanded to the trial court for a period of time not to exceed 40 days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is Suspended and shall be reset following the return of the record to this court. Jurisdiction of this court is retained pending compliance with this Court's Order. Prothonotary is Directed to transmit a copy of the instant application to the trial court along with a copy of this order. Per Curiam, dated 4/10/06. copy to Judge Ammerman	Fredric Joseph Ammerman
	Certificate of Contents of Remanded Record and Notice of Remand, Record to be returned to Superior Court on or before May 22, 2006 Record is remanded April 12, 2006	Fredric Joseph Ammerman
04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005, filed.	Fredric Joseph Ammerman
	Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005, filed.	Fredric Joseph Ammerman

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

**No. 03-135-CD**  
**David J. Karcewski**  
**VS.**  
**Morton Buildings, Inc.**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	02/03/2003	Civil Complaint	16
02	02/07/2003	Acceptance of Service, Complaint	02
03	02/24/2003	Answer, New Matter and Counterclaim	11
04	03/14/2003	Reply To New Matter and Answer To Counter-Claim	06
05	03/19/2003	Verification	02
06	04/23/2003	Certificate of Service, Notice of Deposition	01
07	11/24/2003	Notice of Service, Plaintiff's First Set of Discovery Materials	01
08	01/28/2004	Motion to Compel	14
09	02/02/2004	Rule to Show Cause	01
10	02/09/2004	Notice of Service, Rule to Show Cause	01
11	02/13/2004	Answer of Defendant to Motion to Compel	07
12	02/13/2004	Certificate of Service	02
13	02/25/2004	Order, Re: Plaintiff's Motion to Compel	01
14	03/08/2005	Certificate of Readiness for Non-Jury Trial	01
15	04/27/2005	Order, Re: Pre-Trial Conference scheduled	01
16	07/21/2005	Order, Re: Civil Non-Jury Trial scheduled	01
17	08/04/2005	Order, Re: Counsel to provide brief	01
18	11/09/2005	Order, Re: Finding of Court following trial and receipt of briefs	03
19	11/17/2005	Motion for Post-Trial Relief	07
20	11/21/2005	Certificate of Service, Motion for Post-Trial Relief	02
21	11/21/2005	Order, Re: Motion scheduled for argument	02
22	11/23/2005	Certificate of Service, copy of Motion for Post-Trial Relief	02
23	12/15/2005	Order, Re: argument rescheduled	02
24	12/19/2005	Order, Re: Defendant's Motion for Post Trial Relief Dismissed	02
25	12/28/2005	Praecipe for Entry of Judgment, filed on behalf of Defendant	04
26	12/29/2005	Praecipe to Enter Judgment, filed on behalf of Plaintiff	04
27	01/03/2006	Appeal to High Court	05
28	01/03/2006	Request for Transcript	02
29	01/06/2006	Order, Re: concise statement	02
30	01/09/2006	Statement of Matters Complained of Pursuant to Pa.R.A.P. Rule 1025(b)	03
31	01/10/2006	Certificate of Service, Statement of Matters Complained of	02
32	01/11/2006	Appeal Docket Sheet, Superior Court No. 44 WDA 2006	02
33	03/16/2006	Opinion	08
34	03/17/2006	Certified Mail Receipt, Appeal mailed to Superior Court	01
35	03/22/2006	Certified Mail Receipt, received by Superior Court	01
36	04/13/2006	Superior Court Order, record remanded to trial court for 40 days	01
37	04/13/2006	Certificate of Contents of Remanded Record and Notice of Remand	01
38	04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005	Separate Cover
39	04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005	Separate Cover

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**David J. Karcewski**

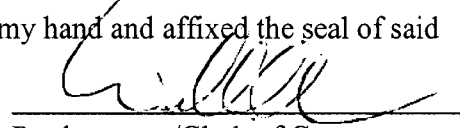
VS.

**Morton Buildings, Inc.**

**03-135-CD**

**So full** and entire as the same remains of record before the said Court, at **No. 03-135-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 19<sup>th</sup> Day of April, 2006.

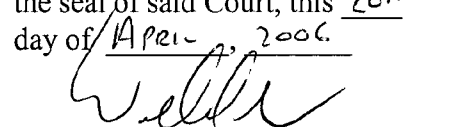
  
Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have  
hereunto set my hand and affixed  
the seal of said Court, this 20<sup>th</sup>  
day of April, 2006.

  
Prothonotary/Clerk of Courts

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(C)

---

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

**03-135-CD**

**David J. Karcewski**  
**VS.**  
**Morton Buildings, Inc.**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 33**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

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Prothonotary/Clerk of Courts

(seal)

## Civil Other

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04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman

## Civil Other

Date		Judge
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike matter, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty.	Fredric Joseph Ammerman
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
11/23/2005	Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praecipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praecipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karcewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check)	Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. for \$60.00 to Superior Ct.	Fredric Joseph Ammerman
	Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan	Fredric Joseph Ammerman



Date: 03/17/2006

Clerk Field County Court of Common Pleas

User: BHUDSON

Time: 09:01 AM

ROA Report

Page 3 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karcewski vs. Morton Buildings, Inc.

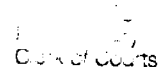
Civil Other

Date		Judge
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed.	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman

I hereby certify this to be a true and correct copy of the original statement of the court.

MAR 17 2006

Attest:

  
Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNT. ENNSYLVANIA**

**No. 03-135-CD**  
**David J. Karcewski**  
**VS.**  
**Morton Buildings, Inc.**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	02/03/2003	Civil Complaint	16
02	02/07/2003	Acceptance of Service, Complaint	02
03	02/24/2003	Answer, New Matter and Counterclaim	11
04	03/14/2003	Reply To New Matter and Answer To Counter-Claim	06
05	03/19/2003	Verification	02
06	04/23/2003	Certificate of Service, Notice of Deposition	01
07	11/24/2003	Notice of Service, Plaintiff's First Set of Discovery Materials	01
08	01/28/2004	Motion to Compel	14
09	02/02/2004	Rule to Show Cause	01
10	02/09/2004	Notice of Service, Rule to Show Cause	01
11	02/13/2004	Answer of Defendant to Motion to Compel	07
12	02/13/2004	Certificate of Service	02
13	02/25/2004	Order, Re: Plaintiff's Motion to Compel	01
14	03/08/2005	Certificate of Readiness for Non-Jury Trial	01
15	04/27/2005	Order, Re: Pre-Trial Conference scheduled	01
16	07/21/2005	Order, Re: Civil Non-Jury Trial scheduled	01
17	08/04/2005	Order, Re: Counsel to provide brief	01
18	11/09/2005	Order, Re: Finding of Court following trial and receipt of briefs	03
19	11/17/2005	Motion for Post-Trial Relief	07
20	11/21/2005	Certificate of Service, Motion for Post-Trial Relief	02
21	11/21/2005	Order, Re: Motion scheduled for argument	02
22	11/23/2005	Certificate of Service, copy of Motion for Post-Trial Relief	02
23	12/15/2005	Order, Re: argument rescheduled	02
24	12/19/2005	Order, Re: Defendant's Motion for Post Trial Relief Dismissed	02
25	12/28/2005	Praecipe for Entry of Judgment, filed on behalf of Defendant	04
26	12/29/2005	Praecipe to Enter Judgment, filed on behalf of Plaintiff	04
27	01/03/2006	Appeal to High Court	05
28	01/03/2006	Request for Transcript	02
29	01/06/2006	Order, Re: concise statement	02
30	01/09/2006	Statement of Matters Complained of Pursuant to Pa.R.A.P. Rule 1025(b)	03
31	01/10/2006	Certificate of Service, Statement of Matters Complained of	02
32	01/11/2006	Appeal Docket Sheet, Superior Court No. 44 WDA 2006	02
33	03/16/2006	Opinion	08

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**David J. Karcewski**

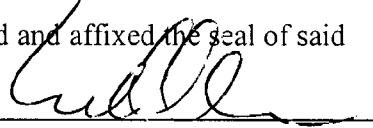
VS.

**Morton Buildings, Inc.**

**03-135-CD**

So full and entire as the same remains of record before the said Court, at No. **03-135-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 25<sup>th</sup> Day of JANUARY, 2006.

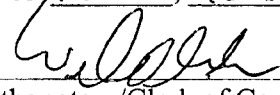
  
Prothonotary/Clerk of Courts

I, **Fredric J. Ammerman**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Fredric J. Ammerman**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have  
hereunto set my hand and affixed  
the seal of said Court, this 17  
day of MARCH, 2006

  
Prothonotary/Clerk of Courts

**The Superior Court of Pennsylvania**  
**Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND  
under  
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

**Record , Certified copy of order and copy of petition**

**Record to be returned to our court on or before May 22, 2006.**

As remanded from said court in the following matter:

**IN RE: David Karcewski, etc. v. Morton Buildings Inc an illnois corporation**  
**No. 44 WDA 2006**

**Court of Common Pleas, Civil Division of the County of Clearfield Co**  
**At NO 03-135-CD**

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is **April 12, 2006**

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor R. Valecko*

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: *William A. Shaw* 4/13/06

*mll:0901*  
APR 13 2006

William A. Shaw  
Prothonotary/Clerk of Courts

WILLIAM A. SHAW  
Prothonotary  
(Signature & My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield PA

(137)

# In the Superior Court of Pennsylvania

Sitting at Pittsburgh

No. 44 WDA 2006

David Karcewski An Adult Individual

v.

Morton Buildings Inc., an Illinois  
Corporation Appellant

Appeal from the Order entered in this matter  
on December 16, 2005, by the Hon. Frederic  
Ammerman, Court of Common Pleas, Civil  
Division of the County of Clearfield  
At No. 03-135-CD

## CERTIFIED FROM THE RECORD

### ORDER

Upon consideration of appellant Morton Buildings, Inc.'s March 31, 2006 "application for relief—extension of time," the following is **ORDERED**: The record is **REMANDED** to the trial court for a period of time not to exceed forty (40) days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is **SUSPENDED** and shall be reset following the return of the record to this court. Jurisdiction of this court is **RETAINED** pending compliance with this order. For the trial court's information, the prothonotary is **DIRECTED** to transmit a copy of the instant application to the trial court along with a copy of this order.

Date: 4/10/06

Per Curiam

Testimony Whereof, I have hereunto set my hand and the seal of said Court at

Pittsburgh  
Pa. this

12<sup>th</sup>

Day of

April

2006

*Eleanor R. Valecko*

DEPUTY PROTHONOTARY

*m/11/05/06 copy to*  
**APR 13 2006**  
*Judge Ammerman*  
William A. Shaw  
Prothonotary/Clerk of Courts *GP*

*#25*

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- Print your name and address on the reverse so that we can return the card to you.
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**1. Article Addressed to:**

Superior Court of P. Magistrate  
Office of Prothonotary  
600 Court Building  
P. H. Stoughton PA 15219

03-135 (D)

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

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☐ Addressee

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3-26

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

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03-135 (D)

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William A. Shaw  
Prothonotary/Clerk of Courts

William L. Shaw  
Proprietary

03-135-CV

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PS Form 3800, June 2002 See Reverse for instructions

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234

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff,

No. 03-135-CD

v.

MORTON BUILDING, INC.,  
an Illinois corporation,  
Defendant.

1cc Amy: Noble  
Ryan  
D. M. Kestell  
Law Library  
01/25/06  
JAN 25 2006  
CLERK OF COURT

OPINION

This case involves a breach of contract action between David J. Karcewski (hereinafter "Plaintiff") and Morton Buildings, Inc. (hereinafter "Defendant" or "Morton"). Non-jury civil trial was held August 2, 2005. Upon consideration of the presented evidence and the submitted Post-Trial Briefs, the Court found in favor of Plaintiff. Defendant then appealed and this Opinion is issued pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

The Defendant alleges five (5) errors in his Concise Statement of Matters Complained of on Appeal filed on January 9, 2006, as follows:

1. The trial court committed an error of law in permitting Plaintiff's expert witness, Brooks Harris, to express his opinion on the issue of liability, where the written reports authored by Harris and provided in discovery did not address the issue of liability, but were limited to the issue of damages.
2. The trial court committed an abuse of discretion in ignoring, or failing to give appropriate weight, to the expert testimony of Defendant's witness Walter Schneider and by accepting the testimony of Plaintiff's expert Brooks Harris where it conflicted with that of Schneider.
3. The trial court's finding that Defendant was liable for breach of contract by failing to construct the concrete floor in a good and workmanlike manner, thereby rendering the floor unfit for its intended purpose, is unsupported by the evidence, where Plaintiff admitted that he designed the floor, including the placement of the drains, where Plaintiff admitted that he was advised by Defendant that Plaintiff's design would require him to manually push fluids to



the trench drain, and where Plaintiff nonetheless insisted on the construction pursuant to his design.

4. In the alternative, the trial court's finding that the appropriate remedy for the Defendant's breach of contract was total removal and replacement of the floor was not supported by the evidence, where the court was provided with unequivocal testimony by a qualified expert that there were other less drastic remedies available.
5. The trial court abused its discretion in determining the amount of damages awarded to Plaintiff, where the Defendant presented clear and unequivocal testimony from a qualified expert that showed the amount of damages claimed by Plaintiff were not reasonable since there were less drastic solutions available.

First, the Defendant alleges that Plaintiff's expert, Brooks Harris, should not have been permitted to testify in excess of his expert report, as his addressed damage issues and not liability. Pennsylvania Rule of Civil Procedure 4003.5(c) provides that an expert's direct testimony may not go beyond the fair scope of his report(s) prepared during the process of discovery. The Commonwealth Court explained the application of Rule 4003.5(c) more fully in Com., Dept. of General Services, et al. v. United States Mineral Products Company, et al.:

The question of whether the permissible limits of testimony under the Rule have been violated is to be determined on a case by case basis, and the essence of the inquiry is fairness. The question is whether the discrepancy between the expert's pretrial report and his trial testimony is of a nature which would prevent the adversary from preparing a meaningful response, or which would mislead the adversary as to the nature of the appropriate response. The opposing party must be prejudiced as a result of the testimony going beyond the fair scope of the expert's report before admission of the testimony is considered reversible error.

809 A.2d 1000, 1032 (Pa.Cmwlt. 2002) (internal citations omitted).

The Plaintiff's expert report contains a full paragraph impliedly discussing liability. The expert opines the Defendant's recommended solution "will not solve the drainage problem and provide the structural stability required by the lift's manufacturer." (Judge Exhibit A, p. 2) Additionally, Defendant's own expert witness acknowledges liability in his pre-trial report. "We

have documented that the floor does pond in the center of the building. With this fact in mind, we feel that the presence of standing water and other liquids present in this type of environment does pose a slip hazard to the occupants of the space as well as a housekeeping problem.”

(Defense Exhibit B, p. 3) The acknowledgment was continued during trial where Mr. Schneider expressly acknowledged the floor, in its present condition, was unsafe. Based upon both engineering experts’ references to liability, there was no surprise or prejudice to the Defendant from Mr. Harris’ testimony.

Next, the Defendant alleges the Court failed to properly consider the conflicting expert testimony provided by both parties’ witnesses. In other words, the Defendant claims the Court was obligated to grant more weight to Defendant’s expert because of his allegedly greater qualifications. The sufficiency of an expert’s qualifications to testify is solely within the discretion of the trial court. “Whether a witness has been properly qualified to express an expert opinion is generally vested in the sound discretion of the trial court.” Gloviak v. Tucci Const. Co., Inc., 608 A.2d 557, 559 (Pa.Super. 1992). Here both parties’ witnesses were qualified to testify as experts. However, the qualification of a witness to testify as an expert is a threshold determination. The Court is not required to find any particular expert’s testimony to be credible. In Diener Brick Co. v. Mastro Masonry Contractor, the Superior Court explains:

Our appellate role in cases arising from non-jury trials is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence or if its findings are premised on an error of law. (citations omitted).

885 A.2d 1034, 1038 (Pa.Super. 2005). Despite the defense expert’s allegedly greater qualifications, this Court did not find his testimony to be credible. Mr. Schneider testified the

current floor was not defective. In support, he asserts the current floor complies with existing PennDOT regulations that require a floor's slope be one (1) percent or less for a commercial inspection station. As mentioned previously, a letter (Defense Exhibit B) from Mr. Schneider acknowledges unsafe conditions. Mr. Schneider's testimony affirming the opinion expressed in the letter are contradictory to Defendant's overall position that the floor was safe and not defective. Accordingly, the Court gave limited weight to the Defendant's expert.

On the other hand, the Court found greater credibility on the part of Plaintiff's expert, Brooks Harris. Mr. Harris testified to both liability and a workable remedy. First, he testified the current floor was unsafe because of the pooling of liquids in the center. Additionally, he questioned the Defendant's expert recommendation to correct the floor. Specifically, the defense recommended placing a drain near the low spot or creating a new piping system. Essentially, either of these remedies would create an opening in middle of the garage floor. Mr. Harris provided credible testimony of his safety concerns relative the proposed remedy. He questioned the continued integrity of the cement floor in conjunction with the hydraulic lifts, which require support to lift heavy commercial vehicles. Mr. Harris advocated complete replacement of the floor and the Court agreed the recommendation was reasonable under the circumstances.

Defendant next alleges no liability for failure to construct the floor in a good and workmanlike manner because the Plaintiff himself designed the floor, supplied the construction plans and should be obligated to accept the resulting floor. The general rule is that all building contracts, including contracts for commercial construction, contain an implied warranty for reasonable workmanship.<sup>1</sup> Defendant points to the axiom "[i]t is well established that a contractor who performs according to detailed plans and specifications is not responsible for

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<sup>1</sup> See Wade v. Haycock, 25 Pa. 382 (1855); Elderkin v. Gaster, 288 A.2d 771 (Pa. 1972); Metropolitan Edison v. United Engineers, 4 D.&C. 3d 473 (1977); Moyer v. White, 48 D.&C. 3d 487 (1988) (discussing implied warranty of reasonable workmanship in construction contracts).

defects in the result.” Commonwealth Department of Transportation v. W.P. Dickerson, et al., 400 A.2d 930, 932 (citing Canuso v. Philadelphia, 326 Pa. 302, 192 A. 133 (1937); Filbert v. Philadelphia, 181 Pa. 530, 37 A. 545 (1897)). However, this Court believes the case at bar is factually distinguishable. In Dickerson, PennDOT provided detailed specifications to be used for constructing concrete beams. The specifications dictated the composition of, and the procedure for mixing, the concrete. Further, a team of PennDOT inspectors supervised the entire process and had the authority to stop the production at any time. The court concluded the contractor exercised “little if any independent discretion in the construction of the beams.” Id. Here, the Plaintiff exercised no control over the construction process. The contract contained no provision addressing the Plaintiff supervising the project. Plaintiff did provide drawings (Plaintiff Exhibit One) outlining his vision for a new building. The drawings are hand sketched on rough paper and not professionally created. The Plaintiff testified he wanted a sloped concrete floor with a trench drain located in the rear of the building, and the Morton representative agreed it could be constructed.

Further evidence of Plaintiff’s lack of control involves the installation of the floor. Plaintiff testified he noticed a low spot in the middle of the floor. Plaintiff expressed his concerns to the subcontractor, who responded that his belief was unwarranted. The next day, Defendant’s representative, Fred Lehman, came to review the progress. The Plaintiff again pointed out the problem and was told nothing could be done until the floor cured.

Clearly this evidence does not establish the necessary control to be exercised such that responsibility for the defective floor should be borne by Plaintiff. On the contrary, the evidence supports that the Plaintiff was relying on the skill of the builder. Precedent supports Plaintiff’s reliance. “Once construction has begun, the vendee has ‘no other choice but to rely on the skill

and integrity of the builder.” Moyer v. White, 48 D.&C. 3d 487 (1988) (citing Pittsburgh National Bank v. Welton Beckett Associates, 601 F.Supp. 887 (1985)). Additionally, the Court viewed a video (Joint Exhibit Three), which showed large amounts of grease and water on the floor. The video, coupled with Plaintiff’s testimony estimating the time to clean the floor is three (3) to four (4) hours per day establishes the defective condition. This Court considered the video tape to be important visual evidence in the case and recommends that the appellate court review it. The constant efforts required to remove water, grease and chemicals is a major interference with the Plaintiff’s ability to run his business and a considerable safety hazard.

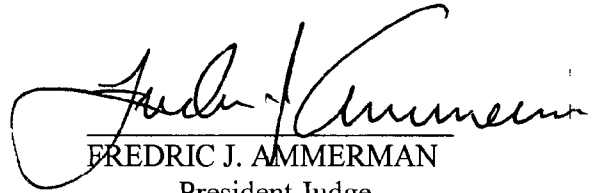
The Defendant questions the appropriateness of the remedy, and claims other less drastic remedies were available instead of total removal and replacement of the concrete floor. However, as discussed previously, the Court did not find Mr. Schneider’s recommendations to be credible. For example, the Court questioned Mr. Schneider directly, asking if it is possible to pour a concrete floor of this size that slopes in a particular direction as Plaintiff wished, without ponding. Ultimately, he responded affirmatively. Mr. Harris’ recommendations seemed more reasonable, especially due to safety concerns. He expressed a reluctance to breach the middle of the floor due to the hydraulic lifts necessary for Plaintiff’s business. Therefore, the Court was not obliged to follow the remedy recommended by Defendant’s expert.

Finally, the Defendant asserts the Court abused its discretion in determining the amount of damages when the Defendant presented expert testimony showing there were other less drastic solutions available. “Pennsylvania courts... have generally allowed damages for incomplete or defective performance of a building contract to be measured by the cost of completing the work or correcting the defects by another contractor.” Gloviak, 608 A.2d at 559 (quoting Douglass v. Licciardi Construction Co., Inc., 562 A.2d 913 (Pa.Super. 1989)). Here, the Plaintiff provided

credible evidence supporting the measure of damages. Witnesses included a civil engineer, general contractor, and certified public accountant. The Court evaluated the testimony and found the Plaintiff's witnesses to be more credible. Therefore, the remedy recommended by the Defendant was not mandatory. Damages as detailed in the Court's Order of November 8th, 2005 were appropriately determined based upon the detailed testimony of the Plaintiff's witnesses and accompanying exhibits.

BY THE COURT,

March 16, 2006

  
FREDRIC J. AMMERMAN  
President Judge

Noble, Ryan

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

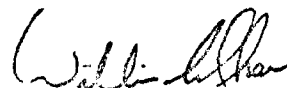
**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

DATE: 3/16/06

\_\_\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ X Plaintiff(s)/Attorney(s)

\_\_\_\_\_ X Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 44 WDA 2006****Page 1 of 2****January 9, 2006**David Karcewski, an adult individual  
V.

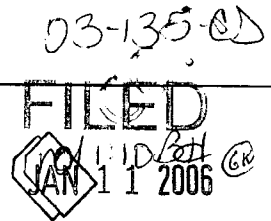
Morton Buildings, Inc., an Illinois Corporation, Appellant

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 9, 2006

Awaiting Original Record

William A. Shaw  
Prothonotary/Clerk of Courts

Journal Number:

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

**SCHEDULED EVENT**

Next Event Type: Receive Docketing Statement

Next Event Due Date: January 23, 2006

Next Event Type: Original Record Received

Next Event Due Date: February 21, 2006

**COUNSEL INFORMATION****Appellant** Morton Buildings, Inc.

Pro Se: Appoint Counsel Status:

IFP Status: No

**Appellant Attorney Information:**

Attorney: Ryan, John Robert

Bar No.: 38739

Law Firm: Belin &amp; Kubista

Address: 15 N Front Street  
Clearfield, PA 16830

Phone No.: (814)765-8972

Fax No.: (814)765-9893

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

**Appellee** Karcewski, David

Pro Se: Appoint Counsel Status:

IFP Status:

**Appellee Attorney Information:**

Attorney: Noble, Theron G.

Bar No.: 55942

Law Firm: Ferraraccio &amp; Noble

Address: 301 E Pine Street  
Clearfield, PA 16830

Phone No.: (814)765-4990

Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No



## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 44 WDA 2006

Page 2 of 2

January 9, 2006



## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
1/9/06	Notice of Appeal	60.00	60.00	2006SPRWD000022

## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: December 16, 2005

Judicial District: 46

Date Documents Received: January 9, 2006

Date Notice of Appeal Filed: January 3, 2006

Order Type: Order Entered

OTN:

Judge: Ammerman, Fredric J.  
President Judge

Lower Court Docket No.: No. 03-135-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
January 9, 2006	Notice of Appeal Filed	Appellant	Morton Buildings, Inc.
January 9, 2006	Docketing Statement Exited (Civil)		Western District Filing Office

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

No. 03 – 135 – CD

**CERTIFICATE OF SERVICE**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED

JAN 10 2006

6/10:55/0

William A. S...  
Prothonotary/Clerk of Court

no 4/6 Lm

31

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

No. 03 – 135 – CD

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

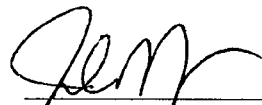
**CERTIFICATE OF SERVICE**

This is to certify that I have served a certified copy of Statement of Matters  
Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-  
captioned matter on the following parties in the manner set forth below on the 10th day of  
January, 2006:

The Honorable Fredric J. Ammerman  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830  
Via Hand Delivery

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
Attorney for Plaintiff  
Via First Class United States Mail, Postage Prepaid

BELIN & KUBISTA



John R. Ryan  
Attorney for Defendant

**BELIN & KUBISTA**

**ATTORNEYS AT LAW**

15 NORTH FRONT STREET

P.O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

**FILED**

**JAN 10 2006**

**William A. Shaw**  
**Prothonotary/Clerk of Courts**

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

No. 03 – 135 – C.D.

**STATEMENT OF MATTERS  
COMPLAINED OF PURSUANT TO  
Pa. R.A.P. RULE 1025(b)**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED 5cc  
03:08:201  
JAN 09 2006  
Atty Ryan  
CR

William A. Shaw  
Prothonotary/Clerk of Courts

st 1.

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

No. 03 – 135 – C.D.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

**STATEMENT OF MATTERS COMPLAINED OF**  
**PURSUANT TO Pa.R.A.P. 1925 (b)**

NOW COMES, Morton Buildings, Inc, Defendant above named, and by its Attorneys,  
Belin & Kubista, files its Statement of Matters Complained Of pursuant to Pennsylvania Rule  
of Appellate Procedure 1925 (b) as follows:

1. The trial court committed an error of law in permitting Plaintiff's expert witness, Brooks Harris, to express his opinion on the issue of liability, where the written reports authored by Harris and provided in discovery did not address the issue of liability, but were limited to the issue of damages.
2. The trial court committed an abuse of discretion in ignoring, or failing to give appropriate weight, to the expert testimony of Defendant's witness Walter Schneider and by accepting the testimony of Plaintiff's expert Brooks Harris where it conflicted with that of Schneider.
3. The trial court's finding that Defendant was liable for breach of contract by failing to construct the concrete floor in a good and workmanlike manner, thereby rendering the floor unfit for its intended purpose, is unsupported by the

evidence, where Plaintiff admitted that he designed the floor, including the placement of the drains, where Plaintiff admitted that he was advised by Defendant that Plaintiff's design would require him to manually push fluids to the trench drain, and where Plaintiff nonetheless insisted on the construction pursuant to his design.

4. In the alternative, the trial court's finding that the appropriate remedy for the Defendant's breach of contract was total removal and replacement of the floor was not supported by the evidence, where the court was provided with unequivocal testimony by a qualified expert that there were other less drastic remedies available.
5. The trial court abused its discretion in determining the amount of damages awarded to Plaintiff, where the Defendant presented clear and unequivocal testimony from a qualified expert that showed that the amount of damages claimed by Plaintiff were not reasonable since there were less drastic solutions available.

Respectfully submitted,

BELIN & KUBISTA

A handwritten signature in black ink, appearing to read 'John R. Ryan', is written over a horizontal line.

John R. Ryan  
Attorney for Defendant

**BELIN & KUBISTA**

ATTORNEYS AT LAW

15 NORTH FRONT STREET

P. O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

**FILED**

**JAN 09 2006**

William A. Shaw  
Prothonotary/Clerk of Courts



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

DAVID KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant


\*  
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\*  
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\*

NO. 03-135-CD

**ORDER**

NOW, this 5<sup>th</sup> day of January, 2006, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

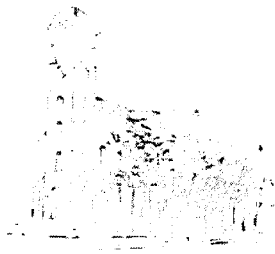
BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED 100  
9/9-22-2004  
JAN 06 2006  
Any's Noble  
Ryan

William A. Shaw  
Prothonotary/Clerk of Courts

(F. 17)



## 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

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

DATE: 11/6/06

\_\_\_\_\_ You are responsible for serving all appropriate parties.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

DAVID KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

No. 03 – 135 - CD

**REQUEST FOR TRANSCRIPT**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED 7cc  
01/25/06  
JAN 03 2006  
Atty Ryan  
Cx

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

No. 03 – 135 – CD

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

**REQUEST FOR TRANSCRIPT**

A Notice of Appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify and file the transcript of the trial in this matter, which took place on August 2 and August 3, 2005, in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

BELIN & KUBISTA



John R. Ryan, Esquire  
Attorney for Defendant

**BELIN & KUBISTA**

**ATTORNEYS AT LAW**

**15 NORTH FRONT STREET**

**P.O. BOX 1**

**CLEARFIELD, PENNSYLVANIA 16830**

**FILED**

**JAN 03 2006**

**William A. Shaw**  
**Prothonotary/Clerk of Courts**

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

DAVID KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

No. 03 - 135 - CD

**NOTICE OF APPEAL**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED Any pd  
012:5430 45.00  
JAN 03 2006 6.00 Any

William A. Shaw 100.00 for  
Prothonotary/Clerk of Courts 60.00 to  
Superior Ct.  
(6k)

#21

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

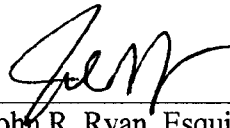
MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

No. 03 – 135 – CD

**NOTICE OF APPEAL**

Notice is hereby given that Morton Buildings, Inc., Defendant above named, hereby appeals to the Superior Court of Pennsylvania from the Order entered in this matter on the 16<sup>th</sup> day of December, 2005. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

BELIN & KUBISTA



John R. Ryan, Esquire  
Attorney for Defendant

## Civil Other

Date		Judge
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karcewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge
03/19/2003	Verification. s/David J. Karcewski Notice of Service no cc	No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc	No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman



## Civil Other

Date		Judge
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike matter, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty.	Fredric Joseph Ammerman
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
	Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praecipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Fredric Joseph Ammerman Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	

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

DEC 28 2005

Attest.

*William J. Shaw*  
Prothonotary/  
Clerk of Courts

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

No. 03 – 135 – CD

**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and  
in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:


Theron G. Noble, Esq. (814) 765- 4990  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16930  
(Counsel for David J. Karcewski)

Service in person as follows:

The Honorable Fredric J. Ammerman (814) 765-2641  
Judges Chambers  
Clearfield County Courthouse  
Clearfield, PA 16830

Clearfield County Court Reporter (814) 765-2641  
Clearfield County Courthouse  
Clearfield, PA 16830

Dated: 1/3/06

  
John R. Ryan, Esq.  
Attorney ID No. 38739  
Belin & Kubista  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16930  
Counsel for Morton Buildings, Inc.  
(814) 765- 8972

**BELIN & KUBISTA**

ATTORNEYS AT LAW

15 NORTH FRONT STREET

P.O. BOX 1

CLEARFIELD, PENNSYLVANIA 16830

**FILED**

JAN 03 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,

DEFENDANT.

No. 03- 135 -CD

Type of Pleading:

**PRAECIPE TO ENTER  
JUDGMENT**

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.No.: 55942

DEC 29 2005  
M/243/12  
Prothonotary Clerk of Courts  
NO C/C  
NOTICE TO AFTY  
R4AL

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,

DEFENDANT.

No. 03- 135 -CD

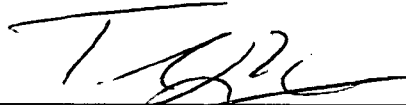
**PRAECIPE TO ENTER JUDGMENT**

To: William A. Shaw, Prothonotary

Date: December 28, 2005

Pursuant to Pa.R.Civ.P. 227.4(1)(b), please enter judgment in favor of Plaintiff, David J. Karcewski, and against Defendant Morton Buildings, Inc., in the amount of \$26,175, plus interest and costs.

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Plaintiff  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,

DEFENDANT.


No. 03-135-CD

**NOTICE OF SERVICE**

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this  
28th day of December, 2005, that I did serve a true and correct copy  
of Plaintiff's PRAECIPE TO ENTER JUDGMENT to the below indicated person, being  
counsel of record for the Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

David J Karcewski

Vs.

No. 2003-00135-CD

Morton Buildings, Inc.

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$26,175.00 on the December 29, 2005.

William A. Shaw  
Prothonotary

---

William A. Shaw

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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.  
Defendant

No. 03 – 135 - CD

**PRAECIPE FOR ENTRY OF  
JUDGMENT**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

Atty Ryan pd.  
2000  
012:37/30  
DEC 28 2005 2cc Atty Ryan  
Prothonotary, Clerk of Courts  
Notice to Atty Noble  
Atty Ryan  
(3/27)



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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.  
Defendant

No. 03 – 135 - CD

**PRAECIPE FOR ENTRY OF JUDGMENT**

TO THE PROTHONOTARY:

Pursuant to Pennsylvania Rule of Civil Procedure 227.4 (2), please enter Judgment in  
favor of the Plaintiff and against the Defendant.

BELIN & KUBISTA

December 27, 2005



John R. Ryan, Esquire  
Attorney for Defendant

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

No. 03 – 135 – CD


MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

**NOTICE OF PRAECIPE FOR JUDGMENT**

Pursuant to Pennsylvania Rule of Civil Procedure 237, I hereby certify that I have mailed a true and correct copy of the Praecipe for Entry of Judgment in the above captioned matter to Theron G. Noble, Esquire, Counsel for David J. Karcewski, Plaintiff above named.

BELIN & KUBISTA

December 28, 2005



John R. Ryan, Esquire  
Attorney for Defendant

**BELIN & KUBISTA**

**ATTORNEYS AT LAW**

**15 NORTH FRONT STREET**

**P.O. BOX 1**

**CLEARFIELD, PENNSYLVANIA 16830**

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

David J Karcewski

Vs.

No. 2003-00135-CD

Morton Buildings, Inc.

To: Morton Buildings, Inc.

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you on December 28, 2005.

William A. Shaw  
Prothonotary

---

William A. Shaw

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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

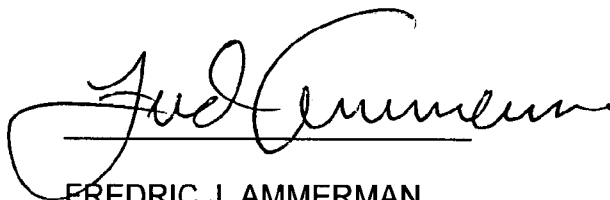
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NO. 03-135-CD

**ORDER**

NOW, this 16<sup>th</sup> day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

0/3 26cm  
DEC 19 2005 (10)  
ICC  
Atty Noble  
Ryan

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

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

DATE: 12-19-05

\_\_\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

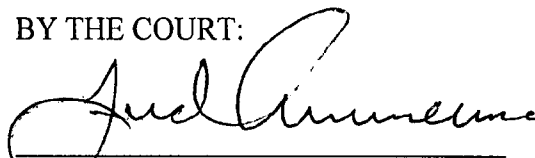
MORTON BUILDINGS, INC.,  
Defendant

No. 03 – 135 – C.D.

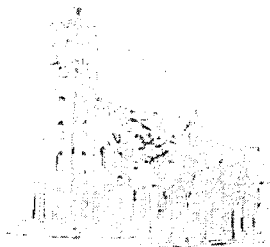
**ORDER**

AND NOW, this 9<sup>th</sup> day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005, at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial Relief without argument.

BY THE COURT:

  
Fredric J. Ammerman  
Judge

100 Arkys. Noble  
Ryan  
DEC 15 2005  
#13



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.

12/15/05 \_\_\_\_\_ X The Prothonotary's office has provided service to the following parties:

\_\_\_\_\_ X Plaintiff(s)/Attorney(s)

\_\_\_\_\_ X Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:



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

DAVID J. KARCEWSKI,  
Plaintiff

VS.

MORTON BUILDINGS, INC.,  
Defendant

NO. 03 - 135 - C.D.

**CERTIFICATE OF SERVICE**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

NOV 23 2005  
0/10:30  
William A. Shaw  
Prothonotary/Clerk of Courts  
we c/c

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

DAVID J. KARCEWSKI,  
Plaintiff

VS.

MORTON BUILDINGS, INC.,  
Defendant

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NO. 03 – 135 – C.D.

**CERTIFICATE OF SERVICE**

This is to certify that I have served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on the following party by postage prepaid first-class United States mail, on the 18th day of November, 2005:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
Attorney for Plaintiff

BELIN & KUBISTA



John R. Ryan  
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830

P.O. BOX 1

15 NORTH FRONT STREET

ATTORNEYS AT LAW

**BELIN & KUBISTA**

FILED

NOV 23 2006

William J. Belin  
Prothonotary Clerk of Court

CA

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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

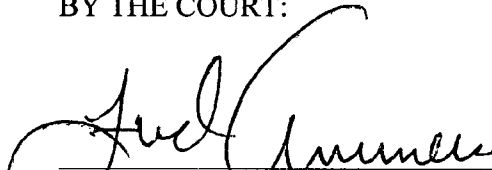
MORTON BUILDINGS, INC.,  
Defendant

No. 03 – 135 – C.D.

**ORDER**

AND NOW, this 18 day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16<sup>th</sup> day of December, 2005, at 11:00 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

  
Fredric J. Ammerman  
President Judge

3cc  
0/4.00/30  
NOV 21 2005  
Amy Ryan  
William A. Shaw  
Prothonotary/Clerk of Courts

# 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

X 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 DIVISION

DAVID J. KARCEWSKI,  
Plaintiff

VS.

MORTON BUILDINGS, INC.,  
Defendant

NO. 03 – 135 – C.D.

**CERTIFICATE OF SERVICE**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

0/10:58/01 NO CC  
NOV 21 2003

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,  
Plaintiff

VS.

MORTON BUILDINGS, INC.,  
Defendant

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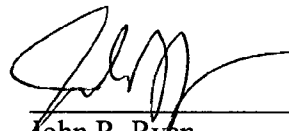
NO. 03 – 135 – C.D.

**CERTIFICATE OF SERVICE**

This is to certify that I have served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on the following party by postage prepaid first-class United States mail, on the 18th day of November, 2005:

Thereon G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
Attorney for Plaintiff

BELIN & KUBISTA



John R. Ryan  
Attorney for Defendant

CLEARFIELD, PENNSYLVANIA 16830

P. O. BOX 1

15 NORTH FRONT STREET

ATTORNEYS AT LAW

**BELIN & KUBISTA**

FILED

NOV 2 1 2006

WILSON J. STACY



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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

No. 03 – 135 – C.D.

**MOTION FOR POST-TRIAL RELIEF**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

400  
0130181  
NOV 17 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
Ryan

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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

No. 03 – 135 – C.D.

**MOTION FOR POST-TRIAL RELIEF**

NOW COMES, Morton Buildings, Defendant above named, and by its Attorneys, Belin & Kubista, moves the Court for Post-Trial Relief pursuant to Pennsylvania Rule of Civil Procedure 227.1 and avers in support thereof as follows:

1. The Court erred in permitting the Plaintiff's expert witness, Brooks Harris, to express his opinion in the issue of liability, where the written reports authored by Harris did not address the issue of liability, but were limited to the issue of damages. The grounds for this portion of the Motion were perfected at the time of trial by a timely objection by Defendant's counsel, which was overruled by the Court. It is believed that the Court's ruling thereon was error. Copies of the relevant reports are attached hereto and marked Exhibit "A".
2. The Court abused its discretion in ignoring the expert testimony of Defendant's witness Walter Schneider, in that:
  - a. The evidence showed that Schneider was more experienced, more credible, and more knowledgeable as to the matters on which he testified than was Brooks Harris;

- b. Schneider presented credible and unequivocal testimony as to the issue of liability, as well as to the appropriate remedy in the event that the Court determined that Defendant was liable;
  - c. While the Court has discretion in matters of credibility of any witness, it is respectfully submitted that to accept the testimony of Harris over that of Schneider represents an abuse of that discretion.
- 3. The Court's finding that the Defendant was liable for breach of the contract by failing to construct the concrete floor in a good and workmanlike manner thereby rendering the floor unfit for the intended purpose is unsupported by the evidence, where Plaintiff admitted that he designed the floor, including the placement of the drains, where Plaintiff admitted that he was advised by Defendant that the placement would result in Plaintiff would have to push fluids to the trench drain, and where Plaintiff nonetheless insisted on the construction of the floor pursuant to his design.
- 4. In the alternative, Defendant submits that the Court's finding that the appropriate remedy for the Defendant's breach of contract is removal and replacement of the floor is unsupported by the evidence and therefore is an abuse of discretion, in that:
  - a. There is unequivocal testimony from Defendant's witness Schneider that there are other, less drastic, remedies available which would not involve removal of the entire floor and which would avoid the need for the loss of income in shutting down Plaintiff's business;

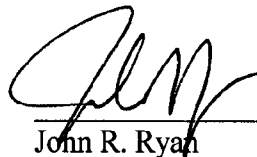
b. Plaintiff's witness, Brooks Harris, offered equivocal testimony in this regard. For example, he stated he was "not sure" that adding a central drain would weaken the vehicle lifts, where Schneider clearly stated that it would not.

5. The Court abused its discretion in determining the damages awarded to Plaintiff. Defendant offered clear and unequivocal testimony from an experienced expert in the field of structural engineering to state that the remedies would not require removal and replacement of the floor, and that there was no reason to shut down the business for the fifteen (15) weeks found by the Court to be appropriate. Accordingly, the damages as found by the Court are unsupported by credible and competent evidence.

WHEREFORE, Defendant requests that the Court grant the following relief:

1. Vacate its Order of November 8, 2005 and grant a new trial;
2. In the alternative, vacate its Order of November 8, 2005, and grant judgment in favor of the Defendant on Plaintiff's Complaint, and judgment in favor of the Defendant on its Counterclaim.

BELIN & KUBISTA



---

John R. Ryan  
Attorney for Defendant



Engineers & Landscape Architects

October 8, 2003

Kars Transmission Center  
Mr. David Karcewski  
4225 Morrisdale / Allport Highway  
Morrisdale, PA 16858

Re: Site Inspection

Dear Mr. Karcewski:

I have reviewed the information you have supplied us consisting of: Belin and Kubista Letter, dated April 1, 2003, Hrenko Insurance Agency Letter, dated May 19, 2003, Morton Buildings Mechanical, Plumbing, and Electrical Plans, sheet number ME1, dated 2.06.02, materials supplied by Mohawk Resources Ltd., and Official Inspection Station Requirements-Subchapter B. In addition I visually inspected the site on September 26, 2003.

In response to the proposals submitted by Morton Buildings, Inc (from Belin and Kubista letter dated April 1, 2003) the following recommendations are given:

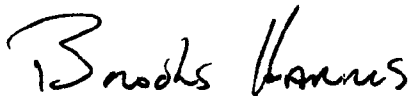
1. A single 4" square floor drain and associated 1-1/2" PVC conveyance pipe would not provide adequate drainage. A system of this caliber would have a great tendency to clog with oils and debris associated with your type of work. This system would not provide adequate accessibility to the line to clean (remove debris). Furthermore we do not feel that this system could provide positive slope to the existing trench drain since the bottom of the drain would most likely be placed below the bottom of the trench drain. Even if clogging did not occur the water would have a tendency to pond and not flow into the trench drain. It is unclear how the valve would work. The cutting and disruption of the concrete in the vicinity of the lifts has the potential to create an unstable base for the lifts. Mohawk gives strict guidelines for the concrete pad supporting the lifts. By cutting the floor between the lifts the reduced pad size may not meet the manufacture's specifications.
2. This option has similar implications as the previous option. From a conveyance standpoint the bottom of the proposed trench drains would probably be lower than the existing one, creating undesired ponding. The integrity of the concrete pads for the lifts would be more severely impacted than the first option. Safety concerns as stated by Hrenko Insurance Agency, Inc. should also be considered.

3. As stated by Hrenko this option could prevent you from installing a third lift in the garage. Again, this system would not have sufficient capacity and would have a great potential to clog without any way of removing the debris. Will Morton Buildings pay for and install the new oil separator?

It is our opinion that grinding and re-surfacing the floor with a veneer layer (to produce the 1% slope) will not solve the drainage problem and provide the structural stability required by the lift's manufacturer. The grinding and veneer surfacing will not provide the required structural stability and integrity for the lifts, and will have a tendency to exfoliate in weak bonded areas. Removal of the entire floor versus cutting around the office is recommended. The slope of the floor needs to be 1% max front to back to meet the drainage requirements. The contractor may not be able to match the cut line around the office and meet the 1% max slope. This option could create a "ridge line" at the office door. The floor should have been constructed with appropriate slope to provide drainage to the trench drain as designed. Therefore we recommend that the entire floor be removed and replaced with the appropriate slope and structural requirements as provided by the lift's manufacturers.

Please do not hesitate to contact me with any comments or questions.

Sincerely,  
**ELA GROUP, INC.**



Brooks Harris, P.E.  
Project Engineer

F:\MS Word\Project Folders\SC135-001 Kars Transmission Center\Responses.DOC



**Engineers & Landscape Architects**

October 17, 2003

Kars Transmission Center  
Mr. David Karcewski  
4225 Morrisdale / Allport Highway  
Morrisdale, PA 16858

Re: Construction Timeline Estimation

Dear Mr. Karcewski:

An initial estimate of the time required for the improvements as recommended by us in our letter dated October 8, 2003 is as follows:

Three weeks for pre-demolition work including, but not limited to:

- Removing equipment, lifts, tools, shop sinks, tool chests, etc.,
- Removing lobby, office, and bathroom facilities, including wiring, plumbing, etc.,
- Installing protective measures for the walls and ceiling.

Seven weeks for concrete work including, but not limited to:

- Removing existing concrete,
- Re-set the subbase,
- Pouring and curing of concrete (28 day strength required for lifts),
- Epoxy coating (the epoxy seal cannot be applied to concrete less than 45 days old).

Five weeks for shop set-up including, but not limited to:

- Installing equipment, lifts, tools, shop sinks, tool chests, etc.,
- Installing lobby, office, and bathroom facilities, including wiring, plumbing, etc.

One week should also be budgeted for contingencies including, but not limited to:

- Downtime (time between contractors on site),
- Unforeseen circumstances,
- Weather.

It is our estimate that this project, as recommended in our letter dated October 8, 2003 will take approximately sixteen (16) weeks. Please do not hesitate to contact me with any comments or questions.

Sincerely,  
**ELA GROUP, INC.**

Brooks Harris, P.E.

Project Engineer

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CLEARFIELD, PENNSYLVANIA 16830

P. O. BOX 1  
15 NORTH FRONT STREET

ATTORNEYS AT LAW  
BELIN & KUBISTA

CA

FILED

NOV 1 / 2005

William A. Shaw  
Prothonotary/Clerk of Courts



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

DAVID J. KARCEWSKI,  
Plaintiff

MORTON BUILDINGS, INC.,  
Defendant

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\*  
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NO. 03-135-CD

012-2751  
NOV 09 2005

2 CC Attys Noble  
Ryan

**ORDER**

NOW, this 8<sup>th</sup> day of November, 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows:

1. The Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike manner, thereby rendering the floor not reasonably fit for the intended purpose;

2. The Court finds that the appropriate remedy is for the existing floor to be removed and replaced. Damages related thereto as established by the evidence are as follows:

a) \$27,950.00 to replace the cement floor.

b) Due to the interruption of his business activities, Plaintiff will suffer loss of profits and unrecoverable costs and expenses in the amount of \$10,464.00 per month, or \$2,415.00 per week.

c) The Court finds it will reasonably take fifteen (15) weeks to complete the repairs, making Plaintiff's total loss of profits and unrecoverable costs and expenses the amount of \$36,225.00. (15 weeks x \$2,415.00)

d) Plaintiff's total damage award is \$64,175.00.

3. Plaintiff agrees that he did not pay the final payment due under the contract in the amount of \$38,000.00, and that this amount should be offset against any verdict in favor of the Plaintiff.

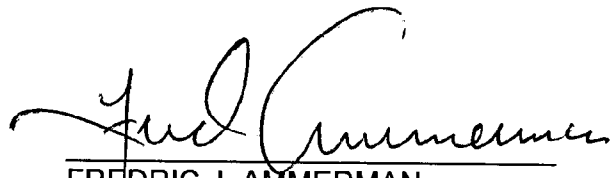
4. Total verdict entered in favor of the Plaintiff is \$26,175.00.

5. The Court will issue a separate order to case No. 02-1760-CD dismissing the Defendant's Mechanics Lien.

6. Defendant's Counterclaim is dismissed.

7. 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.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID J. KARCEWSKI

:

VS.

: NO. 03-135-CD

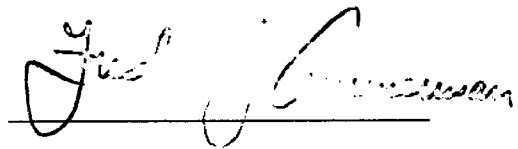
MORTON BUILDINGS, INC.

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O R D E R

NOW, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the ORDER of this Court that counsel for Plaintiff provide the Court with brief within no more than twenty (20) days from today's date; and, upon receipt of Plaintiff's brief, counsel for Defendant shall have twenty (20) days thereafter to respond in kind.

BY THE COURT,



President Judge

013:2364  
AUG 04 2005

@  
ICC Atty's  
Noble  
Ryan

C

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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

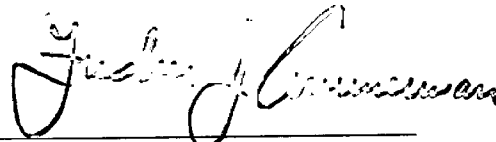
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NO. 03-135-CD

**ORDER**

NOW, this 20<sup>th</sup> day of July, 2005, it is the ORDER of the Court that Civil Non-Jury Trial in the above-captioned matter has been scheduled for **Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 A.M.** each day in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

62  
100  
CJ: 84891  
JUL 21 2005  
Atty: Noble Ryan

Prothonotary - Clerk of Courts

CA

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

DAVID J. KARCEWSKI,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

:  
:  
:  
: NO. 03-135-CD  
:  
:

ORDER

AND NOW, this 26<sup>th</sup> day of April, 2005,, it is  
the ORDER of the Court that a Pre-Trial Conference in the  
above matter shall be held on the 13<sup>th</sup> day of May, 2005, in  
Chambers at 2 o'clock p.m.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

APR 27 2005  
013:30/ [initials] @  
William A Shaw  
Prothonotary/Clerk of Courts  
SENT TO ATTY'S

NEBLC  
+  
2420

ok 01/31/2004  
1/31/2004  
cc

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

CASE NUMBER	TYPE TRIAL REQUESTED	DATE PRESENTED ESTIMATED TRIAL TIME
03-135-CD	( ) Jury (X) Non-Jury	
Date Complaint	( ) Arbitration	<u>2</u> Days
Filed: 2/8/03		

PLAINTIFF(S)

David J. Karcewski ( )

DEFENDANT(S)

Morton Buildings, Inc. ( )

~~ADDITIONAL DEFENDANT(S)~~ (COUNTERCLAIM):

Morton Buildings, Inc. vs. David J. Karcewski ( )

Check Block if  
a Minor is a  
Party to the  
Case

JURY DEMAND FILED BY:

N/A

DATE JURY DEMAND FILED:

N/A

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
-----------------	---------------	----------------------------

more than \$ 25,000.00	(X) yes ( ) no
---------------------------	----------------

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

  
\_\_\_\_\_  
John R. Ryan

Theron G. Noble, Ferraraccio & Noble

(814) 765-4990

FOR THE PLAINTIFF

TELEPHONE NUMBER

John R. Ryan, Belin & Kubista

(814) 765-8972

FOR THE DEFENDANT

TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID J. KARCEWSKI

:

VS.

: NO. 03-135-CD

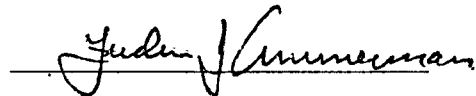
MORTON BUILDINGS, INC.

:

O R D E R

NOW, this 23rd day of February, 2004, following argument on the Plaintiff's Motion to Compel, the Motion is denied in regard to Interrogatories 8, 9, 10, 15, 16, 22, 23, 24 and 26. The Motion to Compel is granted in regard to Interrogatory 11. Defendant shall have no more than forty-five (45) days from this date to provide a more specific response to Interrogatory 11.

BY THE COURT,



President Judge

FILED

FEB 25 2004

William A. Shaw  
Prothonotary/Clerk of Courts



FILED

~~13:00~~  
FEB 25 2004

William A. Shaw  
Prothonotary-Clerk of Courts

icc

Atty Noble

icc

Atty Ryan

GWS

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

No. 03 – 135 - C.D.

**CERTIFICATE OF SERVICE**

Filed on behalf of:  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

**FILED**

**FEB 13 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

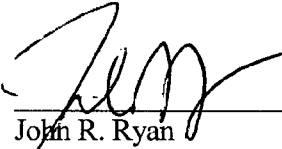
No. 03 – 135 - C.D.

**CERTIFICATE OF SERVICE**

This is to certify that I have served a certified copy of Defendant's Answer to Plaintiff's Motion to Compel in the above captioned matter on the following person by first class United States mail, on the 13th day of February, 2004:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
Attorney for Plaintiff David J. Karcewski

BELIN & KUBISTA



John R. Ryan  
Attorney for Defendant Morton Buildings, Inc.

**BELIN & KUBISTA**  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P. O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

**FILED**  
*CLP 4/10/04*  
FEB 13 2004

*(Law)*  
AC  
CC

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

NO. 03 – 135 – C.D.

**ANSWER OF DEFENDANT TO  
MOTION TO COMPEL**

Filed on behalf of  
Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

**FILED**

FEB 13 2004

William A. Shaw  
Prothonotary

*(Signature)*

*3 cert to App*

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

NO. 03 – 135 – C.D.

**ANSWER OF DEFENDANT TO MOTION TO COMPEL**

NOW COMES, Morton Buildings, Inc., Defendant above named, and by its Attorneys,  
Belin & Kubista, files its Answer to the Plaintiff's Motion to Compel as follows:

1. Admitted.
2. Denied as stated. The Plaintiff contends that the floor is improperly sloped, which results in pooling of water and other liquids in the center of the floor. Defendant admits that a low spot exists on the floor, but has alleged that Plaintiff insisted on the placement of a trench drain at the entrance of the building as opposed to the center, which causes the failure to drain and that Plaintiff was aware that he would be required to push liquids to the trench drain. The parties have had discussions regarding potential resolutions, none of which have resulted in settlement.
3. Admitted.
4. Admitted.
5. Admitted.

5. (As numbered in Plaintiff's Motion) Defendant admits that liquids pool in the center of the floor and do not run to the trench drain.
6. Defendant admits that an issue has arisen regarding the admissibility of matters discussed by the parties as potential settlement options. Defendant's position, which it believes is in accordance with well-established law and the Rules of Evidence, is that settlement proposals are not admissible as evidence of liability.
7. Admitted.
8. Admitted. Further, Defendant denies Plaintiff's allegations that the floor is rendered dangerous and hazardous.
9. Denied. Plaintiff has posited his interrogatories as requesting prior settlement discussions, apparently for the purpose of trying to establish an admission of liability on the part of Defendant. Plaintiff obviously has the burden of proving liability and cannot use proof of settlement proposals to do so. Assuming Plaintiff can meet his burden of proof as to liability, he then must prove his damages. Defendant believes that the "remedial solution" proposed by Plaintiff's expert is actually his alleged measure of damages. Defendant has the right to dispute liability and at the same time offer evidence to dispute Plaintiff's alleged damages. Defendant does not dispute that the "remedies" proffered by the parties may be admissible as proof of or in defense of Plaintiff's damages in this action, but those "remedies" are not admissible as to the issue of liability.

#### SPECIFIC OBJECTIONS

##### ISSUE I: INTERROGATORIES 8 AND 9

10. Admitted. See response to No. 10 herein above.

11. As stated above, the possible resolutions referred to by Plaintiff are not admissible as proof of liability. They may be admissible as proof of and defense to claims of damages. Plaintiff's interrogatories are stated broadly, therefore, Defendant properly stated its objections so as not to waive same at time of trial. Further, Defendant responded by referring to prior disclosures of proposals, which are known to Plaintiff and his counsel, and which were made in an attempt to settle the action.
12. Interrogatories 8 and 9 as stated make no reference as to "when" Defendant admitted anything. Again, Plaintiff has phrased his Interrogatory in terms of seeking an admission of liability by use of settlement proposals. Hence, the objection.
13. Defendant responded by stating that it did make several offers to remedy the low spot in the floor and that its proposals were rejected by Plaintiff. That it why Defendant "failed to remedy the problem."

ISSUE II: INTERROGATORY 11

14. Plaintiff requested that Defendant identify "all persons or entities", who worked on Defendant's behalf in constructing the building. Defendant provided the name of the subcontractor who installed the floor and stated that it was without knowledge as to the names of employees of that subcontractor who may have worked on the floor. The names of other subcontractors not involved in the installation of the floor are not relevant, in that the floor is the sole issue in this action.
15. Admitted.



16. Denied for the reasons set forth at No. 14.

ISSUE III: INTERROGATORIES 15 AND 16

17. Again, Plaintiff has propounded an overly broad request, which is not limited to the issue before the Court. Defendant, in its response to Interrogatory 14, provided a detailed summary of the communications between Plaintiff and Defendant prior to the formation of the contract, and in response to No. 23 described when Defendant was first aware that Plaintiff had a complaint about the floor. To request discovery of every communication between the parties during construction is overly broad and unreasonable.
18. Admitted for the reasons set forth at No. 17.
19. Denied for the reasons set forth at No. 17.
20. Denied for the reasons set forth at No. 17.
21. Denied in that the parties entered into a written contract which speaks for itself as to the obligations of the parties in construction of the building.
22. Denied for the reasons set forth at No. 17.

ISSUE IV: INTERROGATORY 22

23. Admitted.
24. The report supplied by Defendant does in fact address in part the feasibility of Plaintiff's "expert suggestion." Further, Defendant has requested and expects to receive a supplemental report from its expert addressing the feasibility of what Plaintiff terms his "expert suggestion." That report will be provided when received in accordance with the Rule of Civil Procedure. Defendant has

provided Plaintiff with the sole report presently in his possession. The objection was raised for the reasons set forth herein above.

25. Defendant agrees that it has the absolute right to refute Plaintiff's expert position at trial, as said position contains proposed corrective measures relevant to the issue of damages, and as stated above will supply Plaintiff with supplemental expert reports as same are received. Further, Plaintiff's insistence on the use of the term "remedial measures" implies that a condition exists which requires remedy, and by implication, seeks an admission of liability from Defendant which it cannot obtain by use of matters which are part of settlement discussions.

26. Admitted for the reasons stated above.

27. Defendant will identify all such witnesses to the extent it has not already done so. (See response to Interrogatory No. 4)

ISSUE V: INTERROGATORY 24

28. Defendant objects to No. 24 in its entirety for the reasons set forth above.

29. See answer to No. 28 and other responses above.

30. Plaintiff has not supplied Defendant with any opinion, expert or otherwise, that would lead Defendant to the conclusion that its "solutions" are "less than perfect." As stated above, Defendant will supply Plaintiff with any supplement expert report received. Plaintiff is free to depose any witness prior to trial as to the "perfection" of such matters and is free to employ experts to address the "perfection" of lack thereof.

ISSUE VI: INTERROGATORY 26

31. Without waiving any objection, Defendant did in fact, in its response to Interrogatory 26, provide, again, the names of experts which Defendant intends to call in attacking the opinions of Plaintiff's expert. There is nothing further to compel by way of response.
32. See response to No. 31.

ISSUE VII REQUEST FOR PRODUCTION NO. 11

33. No response required.
34. See responses above.

Respectfully submitted,

BELIN & KUBISTA

A handwritten signature in black ink, appearing to be 'J. Belin', written over a horizontal line.

Attorney for Defendant  
Morton Buildings, Inc.

CLEARFIELD, PENNSYLVANIA 16830

P.O. BOX 1

15 NORTH FRONT STREET

ATTORNEYS AT LAW

**BELIN & KUBISTA**

**FILED**

FEB 13 2004

William A. Shaw  
Prothonotary

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

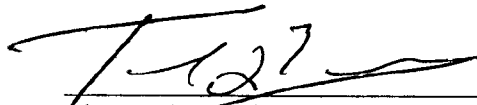
**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this 4th  
day of February, 2004, that I did serve a true and correct copy of RULE TO  
SHOW CAUSE issued upon Plaintiff's MOTION TO COMPEL to the below indicated  
person, being counsel of record for the Defendant, via United States Mail, postage  
prepaid, first class:

John R. Ryan, Esquire  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

FILED

FEB 09 2004

William A. Shaw  
Prothonotary Clerk of Courts

FILED  
M 11:30 AM  
FEB 09 2004

NO CC.

g/24

William A. Shaw

Prothonotary, Clerk of Courts

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

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

PLAINTIFF,

v.

DAVID J. KARCEWSKI,  
an adult individual,

DEFENDANT.

No. 03- 135 -CD

Type of Pleading:

**MOTION TO COMPEL**

Filed By:

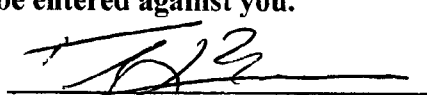
Defendant/Counter-Plaintiff


To: Defendant

Counsel of Record:

**You are hereby notified to file a written response  
to the enclosed MOTION TO COMPEL  
within twenty (20)  
days from service hereof or judgment  
may be entered against you.**

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814-375-2221  
PA I.D.#: 55942

  
Theron G. Noble, Esquire  
Attorney for Plaintiff

  
JAN 28 2004 <sup>(T200)</sup>  
~11:20 AM  
William A. Shaw  
Prothonotary  
NO CFM

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

**RULE TO SHOW CAUSE**

Now, this 27 day of January, 2004, upon consideration of the attached Plaintiff's MOTION TO COMPEL, a RULE is hereby issued upon the Defendant to SHOW CAUSE why the PETITION should not be granted. RULE RETURNABLE, for filing written response, is set for the 19 day of February, 2004 and argument on the PETITION set for the 23 day of February 2004, at 1:30 P.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

**NOTICE**

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO 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 ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. 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 CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Second & Market Streets  
Clearfield, PA 16830  
(814)-765-2641

By The Court,

Judge

FEB 02 2004

William A. Shaw  
Prothonotary



FEB 02 2004

112468 acct City Mobile

244

William A. Shaw  
Frothnotary

DAVID J. KARCEWSKI,  
an adult individual,  
  
PLAINTIFF,  
  
v.  
  
MORTON BUILDINGS, INC.,  
an Illinois Corporation;  
  
DEFENDANT.

**AND NOW, comes the Plaintiff, David Karcewski, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in uspport of Plaintiff's MOTION TO COMPEL:**

1. This matter was commenced by the filing of a CIVIL COMPLAINT arising from a breach of contract claim concerning the construction of a commercial building for Plaintiff by Defendant to be used as a state inspection facility and transmission repair shop.
2. The thrust of this case is that the cement floor is improperly sloped and water and other liquids runs away from the drain and ponds in the center of the floor. The parties each have suggested ways to correct this problem, neither of which has appeased the other party.
3. Following the close of pleadings, the parties have been engaged in the discovery process.
4. That Plaintiff propounded discovery requests, consisting of Interrogatories and Requests for Production of Documents.
5. That Defendant essentially responded in a timely fashion, but has raised objections as to some requests and the subject of this present motion. A true and correct copy of the relevant questions and objections are attached hereto as Exhibit "A".

### General Issue

5. There is no dispute that the floor is sloped in such a way that liquids do not run to the drain but back away from the drain.
6. Given this fact, it raises an issue which is a general theme through these objections as to what can be discovered and discussed as evidence while what is inadmissible as being in pursuit of settlement.
7. Plaintiff's expert has proffered that the floor needs to be dug and re-poured while Defendant's expert states that a drain should be installed in the area of the low spot, being the center of the floor.
8. There is little doubt that Defendant will contend Plaintiff's solution is not commercially reasonable.
9. Plaintiff believes that given the nature of this case that you can not have a blanket exclusion as to these remedies or solutions as otherwise we are going to be trying a case on a basis less than what is permitted in discovery.

### Specific Objections

#### Issue I: Interrogatories 8 and 9

10. Defendant objects to information requested in Interrogatories 8 and 9 primarily on the basis that the same is inadmissible at trial as protected as offers of settlement.
11. Plaintiff readily admits that some possible resolutions between the parties were discussed at the onset of this lawsuit. However, this is neither a blanket exclusion for all like information nor specific to the information in said questions.
12. The questions seek information as to when defendant admits that it was aware of the problem with the slope of the floor. This is relevant not only to the issue of liability but also as to whether it would have been commercially reasonable for the defendant to correct the problem prior to the completion of the project.
13. If in fact Defendant was aware of the problem, it should also state why it failed to remedy the problem, which is the information sought by Interrogatory 9.

Issue II: Interrogatory 11

14. The information sought in Interrogatory 11, to which Defendant objects, is the identification of potential witnesses.

15. Defendant objects to this Interrogatory on the basis that it is not likely to lead to relevant or material evidence in that it involves other areas of the building not in issue.

16. Plaintiff contends these other individuals, whom Defendant hired either as employees or employees of other subcontractors, could be and probably are witnesses as to the issues of the slope of the floor as well as to when Defendant was aware that the slope was improper.

Issue III: Interrogatory 15 and 16

17. Interrogatories 15 and 16 are broad questions seeking a detail of all communications, prior to (15) and after construction (16) between the parties concerning the construction of the Plaintiff's building.

18. Defendant objects as being overly broad and not seeking relevant information of the case.

19. Said interrogatory also seeks other information about these communications such as (i) what was said; (ii) by whom; (iii) when; and (iv) who was present during such conversations.

20. Said Interrogatories are entirely appropriate as it deals with possible admissions between the parties (16) while seeking information as to other potential witnesses and permitting the parties the opportunity to weigh the significance of the allegations.

21. Furthermore, Interrogatory 15 seeks information which will be helpful in understanding the parties expected duties and obligations to each other concerning the construction.

22. Lastly, Defendant in response to other Interrogatories (See for instance response to #23) recites such communications. However, in that it has objected hereto, it does not state the surrounding particulars as herein requested. This limits the usefulness of Defendant's responses for no legitimate reason other than Defendant does not wish Plaintiff able to investigate and weigh the alleged circumstances of these communications.

Issue IV: Interrogatory 22

23. Interrogatory 22 seeks information as to why Plaintiff's expert suggestion is not reasonable.

24. Defendant cites his expert report which does not address Plaintiff's solution but instead

details how he would remediate the problem.

25. If Defendant intends to refute, or attempt to refute Plaintiff's expert position at trial, it would be entirely appropriate for them to state the reasons through discovery.

26. Defendant refuses to make such disclosures as it relates to 'remedial measures discussed as possible settlement'.

27. Plaintiff also requests that Defendant identify all witnesses which Defendant intends to call in support of its position herein.

Issue V: Interrogatory 24

28. Interrogatory 24 seeks information, besides that which Defendant objects, as to whether the solution proffered by Defendant would only lessen or entirely correct the defect as well as any ensuing problems it can envision with its suggested solution.

29. Again, Defendant objects with the blanket objection that it relates to settlement discussions.

30. This Interrogatory seeks admissions of Defendant that its solutions sought to be admitted at trial are less than perfect, which is wholly relevant and material.

Issue VI: Interrogatory 26

31. Plaintiff seeks information as to whom Defendant will rely upon in attacking Plaintiff's solution.

32. Again, Plaintiff believes this information is entirely discoverable in order for Plaintiff to fully weight its position prior to trial as well as prepare for trial.

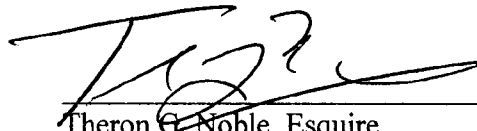
Issue VII: Request for Production No. 11

33. Plaintiff seeks supporting documentation in its Request for Production No. 11 as to the various Interrogatories objected to by Defendant.

34. To the extent Plaintiff is correct in its position as to the previous Interrogatories, it would flow that Defendant should also produce any supporting documentation as to its responses.

**WHEREFORE, PLAINTIFF requests that Defendant be ordered to provide the herein requested information within fifteen (15) days hereof.**

Respectfully Submitted,

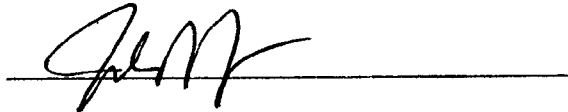
A handwritten signature in black ink, appearing to read 'T. Noble', is written over a horizontal line.

Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Plaintiff  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

8. For any defect(s) which was/were known to exist but for which no remedial action was taken by Defendant, state the reason(s) why no such remedial actions were taken or performed.

Answer

Defendant objects to the question No. 8 as seeking discovery of information that is not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. The information requested represents evidence of settlement offers and/or negotiations which are inadmissible as evidence in this action. Subject to and without waiving those objections, Defendant did offer several proposals to remedy the low spot and to satisfy Plaintiff's concerns, none of which were acceptable to Plaintiff. The specifics of those proposals were supplied to counsel for Plaintiff previously.



9. For any known defects which were not remedied, state in detail what action(s) was/were believed necessary by the Defendant to remediate the defect(s).

Answer

See response to No. 8.




Exhibit "A"

10. For any defects Defendant admits existed after the commercial structure was completed and for which no remedial action was taken, state whether Defendant believes that Plaintiff is in any manner liable or responsible for either the cause of the defect or the remediation of such defects. In the event your response is in the affirmative, please identify such defect(s) and the reason(s) why Defendant believes Plaintiff is so responsible.

Answer

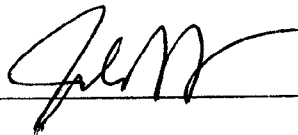
Defendant denies any liability whatsoever for any alleged defect. Further the proposals made by Defendant were attempts to avoid or resolve litigation and as such were not admissions of liability and in any event, are not admissible as evidence, as set forth in answer to No. 8 herein above.

11. Identify all persons or entities who worked on Defendant's behalf, either as an employee or an independent contractor, in attempt to fulfill its contractual obligations to Plaintiff concerning the subject matter of this litigation. Your response hereto shall identify any such person or entity's relationship to Defendant as well as a statement as to the specific function performed by any such person or entity.

Answer

The entity which installed the floor was Bowman Masonry, the subcontractor employed by Defendant. Information regarding the identity and number of employees of Bowman Masonry involved in the installation of the floor of the building in question is not known to Defendant.

Defendant objects to the balance of No. 11 in that the other aspects of the building are not at issue in this action and are therefore not subject to discovery.




---



15. Detail all communications between Plaintiff and Defendant during the construction phase of the commercial structure, subject matter of this litigation, between Plaintiff and Defendant. Your response hereto shall specify as exactly as possible (i) what was said; (ii) by whom; (iii) when; and (iv) who was present during such conversation(s).

Answer

Objection. Defendant objects to the interrogatory as being overbroad and seeking information not relevant to the case at hand, as well as not being calculated to lead to the discovery of admissible evidence.




---

16. Detail all communications between Plaintiff and Defendant after completion of the construction phase of the commercial structure, subject matter of this litigation, between Plaintiff and Defendant. Your response hereto shall specify as exactly as possible (i) what was said; (ii) by whom; (iii) when; and (iv) who was present during such conversation(s).

Answer

Objection. Defendant objects to the interrogatory as being overbroad and seeking information not relevant to the case at hand, as well as not being calculated to lead to the discovery of admissible evidence.



---

22. Concerning the remedial measure proffered by Plaintiff's expert engineer as being necessary to remediate the defect in the slope of the floor, as alleged by Plaintiff, state all reasons why Defendant believes such remedial effort is not necessary, not economical or is imprudent for any reason what so ever. Your response hereto shall be detailed and shall also provide a detailed answer as to what, if any, remedial efforts Defendant believes necessary to correct the slope in the floor. Your response hereto shall also identify all witnesses who will testify on Defendant's behalf in support of Defendant's position herein stated.

Answer

See attached report from John C. Haas Associates, Inc., which in part addresses the remedial measures suggested by Plaintiff. The portion of said report containing suggested remedial measures by Haas is subject to the same objection as set forth in the answer to No. 8 herein above.

23. Specify exactly when Defendant became aware that either (i) Plaintiff had any concerns or (ii) there was a problem concerning the slope of the floor in the work or bay area of the garage area. Your answer hereto shall include a statement as to (i) what was said; (ii) to whom; (iii) who else was present during said conversation(s); (iv) the date, time and circumstances of such conversation(s); and (v) whether Defendant was aware of the problem prior to Plaintiff's complaint.


Answer

In mid to late May of 2002, Plaintiff advised Fred Lehman that he had a concern regarding the failure of water and other liquids to drain to the trench drain situated at the front doorway of the building. Prior to that time, Defendant was not aware of any "concern" on the part of Plaintiff. Defendant had previously advised Plaintiff that due to Plaintiff's insistence that the drain be located at the front of the building, as opposed to at the center of the floor, that water and other liquids would have to be pushed manually to the drain.

24. In the event you responses hereto acknowledges that a defect does exist in the slope of the floor in the garage or bay area, state in detail the remedial measures offered or suggested by Defendant to correct or lessen the effects of such defect. Your response hereto shall include when the same were offered or suggested; a statement as to whether Defendant believes the same would entirely correct the defect or merely lessen the impact of the defect; and any problems or concerns Defendant envisioned with its offer or suggestion.

Answer

Defendant objects to the question No. 24 as seeking discovery of information that is not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. The information requested represents evidence of settlement offers and/or negotiations which are inadmissible as evidence in this action. Subject to and without waiving those objections, Defendant did offer several proposals to remedy the low spot and to satisfy Plaintiff's concerns, none of which were acceptable to Plaintiff. The specifics of those proposals were supplied to counsel for Plaintiff previously.

  
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26. Identify any expert witness intended to be called by Defendant who will testify that (i) Defendant's offer or suggestion to remediate the slope of the floor was appropriate; and/or (ii) Plaintiff's expert's opinion as to the necessary remedial action is not correct or economical. In the event such an expert is so identified, you should also provide a detailed statement as to that expert's opinion regarding the subject matter of this litigation.

Answer

Defendant objects to the question No. 26 as seeking discovery of information that is not relevant to this action or reasonably calculated to lead to the discovery of admissible evidence. The information requested represents evidence of settlement offers and/or negotiations which are inadmissible as evidence in this action. Subject to and without waiving those objections, see the report from Walter G. M. Schneider, III. Mr. Schneider and/or John G. Manos of John C. Haas Associates, Inc. are expected to be called as expert witnesses. A supplemental report from Mr. Schneider is forthcoming and will be supplied in accordance with Defendant's duty to supplement these Answers.

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this  
26th day of January, 2004, that I did serve a true and correct copy of  
Plaintiff's MOTION TO COMPEL to the below indicated person, being counsel of record  
for the Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

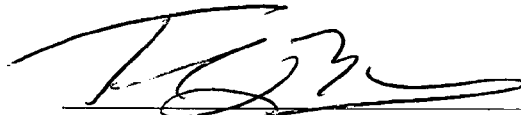
**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this  
22nd day of November, 2003, that I did serve a true and correct  
copy of Plaintiff's FIRST SET OF DISCOVERY MATERIALS to the below indicated  
person, being counsel of record for the Defendant, via United States Mail, postage  
prepaid, first class:

John R. Ryan, Esquire  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

FILED

NOV 24 2003

William A. Shaw  
Prothonotary Clerk of Courts

NOV 24 2003  
William A. Straw  
Prothonotary Clerk of Courts  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

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No. 03-<sup>135</sup>~~155~~-C.D.

**CERTIFICATE OF SERVICE**

I, JOHN R. RYAN, Attorney For Defendant, Morton Buildings, Inc., do hereby certify that a true and correct copy of the foregoing Notice of Deposition was served by first class, postage prepaid mail upon the following:

David J. Karcewski  
Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

Said Notice of Deposition was mailed this 23rd day of April, 2003.

BELIN & KUBISTA



John R. Ryan  
Attorney for Defendant

FILED

APR 23 2003

William A. Shaw  
Prothonotary

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APR 23 2003

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William A. Shaw  
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IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

**VERIFICATION**

I, David J. Karcewski, Plaintiff/Counter-Defendant, does hereby swear and affirm that I have read the foregoing and attached REPLY TO NEW MATTER and ANSWER TO COUNTER-CLAIM in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 14 day of March, 2003.

David J. Karcewski  
David J. Karcewski, Plaintiff/Counter-Defendant

FILED

MAR 19 2003  
11:40 AM  
William A. Shaw  
Prothonotary

cc/c

6/2/03

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

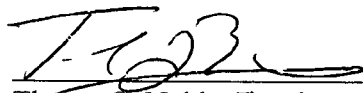
**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this  
18th day of March, 2003, that I did serve a true and correct copy  
of Plaintiff's VERIFICATION as to his REPLY TO NEW MATTER and ANSWER TO  
COUNTER-CLAIM to the below indicated person, being counsel of record for the  
Defendant, via United States Mail, postage prepaid, first class:

John R. Ryan, Esquire  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

**William A. Shaw**  
**Prothonotary**

25. Denied. Plaintiff did not take “occupancy” of the building until later than May 22, 2002. However, and more to the point, when Plaintiff did take such “occupancy”, Defendant had not timely nor properly performed its contracted obligations, which required the previously complained of remedial measures. As such, Defendant’s contracted work was and still is not completed as of this date. Furthermore, at the time such inspections were performed, although the project was not completed, said inspectors were satisfied that remedial measures would be effectuated which would result in a compliant structure. However, such measures have not been

performed in accordance with Defendant's obligations under the contract and the structure as it exists is not compliant. Strict proof of the same is demanded at time of trial.

26. The same is a legal conclusion for which no response is deemed necessary. To the extent such a response might be deemed necessary, Plaintiff relies on his previous averments.

27. It is admitted that Plaintiff was and is able to temporarily operate, and is economically forced to conduct business, while this matter is being resolved. However, Plaintiff was delayed in the opening of his business given the numerous remedial measures needed to be performed by the Defendant and will eventually need to close his business for sometime, and suffer losses as previously stated, to correct the improperly installed floor and drainage system. Strict proof of the same is demanded at time of trial.

28. It is agreed that as the structure now exists, Plaintiff received the lighting system that he contracted to receive. However, by way of further explanation, he did not receive anything "additional", he just insisted on receiving his contracted for structure. The additional "lighting fixtures", which are three "additional" not five, spoken of by Defendant are not "additional" just merely what was originally contracted to be provided. Strict proof of the same is demanded at time of trial.

29. Admitted. However, by way of further response, the problem created by Defendant's failure to install a properly sloped floor and one contracted to be installed, is not the manner of where oil and grime originate and are moved towards the drain, but that said oil and grime do not flow to the drain, as was contracted for and as is logical, but collect in the work area. Strict proof of the same is demanded at time of trial.

30. Admitted in part, Denied in part. Plaintiff did know of the "low spot" and did tell Defendant on numerous occasions about it. However, Defendant took remedial measures which they assured Plaintiff would correct the problem. Said measures failed to correct the problem and Defendant refused to perform such other remedial measures which would have eliminated the problem and has attempted to force Plaintiff to accept a less than bargained for structure. Strict proof of the same is demanded at time of trial.

31. Admitted in part, Denied in part. It is admitted that Defendant offered some remedial measures, none of which are reasonable or which would correct the defect, so they were rejected by the Plaintiff. Strict proof of the same is demanded at time of trial.

32. For the reasons herein and previously set forth, the same is DENIED and strict proof demanded at time of trial.

33. Admitted in part, Denied in part. It is ADMITTED that Plaintiff is unwilling to pay full

contract price for a structure which does not meet the contract terms and which is unsafe, dangerous, and not as economically feasible as the one contracted to be built. However, it is strictly DENIED that the issues herein raised are raised for any other purpose than to remedy what is an otherwise not satisfactory structure. Strict proof is demanded at time of trial.

34. The same is a legal conclusion for which no response is deemed necessary. However, to the extent such a response might be deemed necessary, the same is DENIED in that the totality of the circumstances, including Plaintiff's overall economic constraints, dictated that he commence operations while this issue was being resolved. Defendant was at all times aware that Plaintiff had a legitimate issue concerning the floor but failed, for reasons of Defendant's own finances, to correct the problem and provide to Plaintiff what Plaintiff had contracted to receive. Strict proof of the same is demanded at time of trial.

35. Averments 1 - 34, and responses thereto, are hereby incorporated as if again fully set forth at length.

36. Denied. For the reasons previously stated the same is strictly DENIED. Proof of the same is demanded at time of trial.

37. Denied. For the reasons previously stated the same is strictly DENIED. Proof of the same is demanded at time of trial.

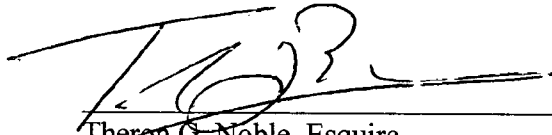
38. Denied. For the reasons previously stated the same is strictly DENIED. Furthermore, even if Defendant is entitled to any said money, it is DENIED under these circumstances that it is entitled to any such interest. Proof of the same is demanded at time of trial.

39. Denied. For the reasons previously stated the same is strictly DENIED. Furthermore, even if Defendant is entitled to any said money, it is DENIED under these circumstances that it is entitled to any such attorney's fees. Proof of the same is demanded at time of trial.



**WHEREFORE, Plaintiff/Counter-Defendant demands JUDGMENT in his favor as per his CIVIL COMPLAINT, together with costs, interest and reasonable attorney's fees.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', is written over a horizontal line.

Theron G. Noble, Esquire

Ferraraccio & Noble

Attorney for Plaintiff/Counter-Defendant

301 E. Pine Street

Clearfield, PA 16830

(814)-375-2221

PA I.D.No.: 55942

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

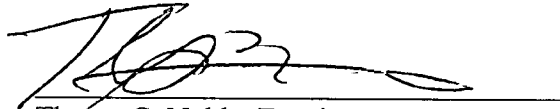
**NOTICE OF SERVICE**

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify this  
12th day of March, 2003, that I did serve a true and correct copy  
of Plaintiff's REPLY TO NEW MATTER and ANSWER TO COUNTER-CLAIM to  
the below indicated person, being counsel of record for the Defendant, via United States  
Mail, postage prepaid, first class:

John R. Ryan, Esquire  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

FILED

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MAR 14 2003

William A. Shaw  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

135  
NO. 03-155-C.D.

ANSWER, NEW MATTER  
AND COUNTERCLAIM

Filed on Behalf of: Plaintiff

Counsel of Record for  
This Party:

John R. Ryan, Esquire  
PA I.D. #38739

BELIN & KUBISTA  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

FILED

FEB 24 2003

William A. Shay  
Prothonotary

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

135  
NO. 03-155-C.D.

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 Counterclaim 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 Counterclaim or for any other claim or relief requested by the Defendants. 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.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Market & Second Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 1300

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois corporation,  
Defendant

135  
NO. 03-155-C.D.

**ANSWER**

NOW COMES, Morton Buildings, Inc., Defendant above named, and by its Attorneys,  
Belin & Kubista, makes its Answer to the Complaint of Plaintiff as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is admitted that actual construction of the building commenced on March 22, 2002. It is denied that the construction of the building was not completed in a timely fashion in that the contract which is the subject of this action did not contain a completion date. Accordingly, Defendant denies that it contracted or otherwise agreed that construction would be completed by May 30, 2002.
5. Paragraphs 1 through and including Paragraph 4 of Defendant's Answer are incorporated herein by reference as if set forth at length.
6. Denied. Defendant did in fact complete all work in a workmanlike manner, and as alleged above, the contract did not contain a completion date. As to Subparagraphs (a) through (e), Defendant responds as follows:

- a. It is admitted that the toilet installed by Defendant's plumbing subcontractor had a small leak upon installation. Repairs were made and completed, at no cost to Plaintiff, on June 14, 2002.
  - b. Denied as alleged. The interior doors were incorrectly installed with the wrong height threshold. The problem was corrected at no cost to Plaintiff and the proper doors and thresholds were installed on May 28, 2002. The subcontractor returned to the job site to install trim on the garage side door on June 29, 2002.
  - c. Denied as alleged. Defendant admits that the lighting subcontractor did order the wrong light fixtures, which were immediately reordered and replace with the correct fixtures. Any inference that Defendant attempted to force Plaintiff to accept fixtures not contracted for is denied and strict proof thereof is demanded at time of trial.
  - d. Denied as alleged. Defendant's overhead door subcontractor did utilize three different remote control transmitters before the range requested by the Plaintiff was obtained. However, at all times after installation of the overhead doors, they were operable by push button controls.
  - e. Admitted. Defendant believes and therefore avers that the supplier of the portable toilet failed to remove the unit from the site when requested by Defendant to do so.
7. Denied as alleged. Defendant admits that it was aware of Plaintiff's intended use for the building which was the subject of the plans supplied by Plaintiff, however, the contract itself is silent as to any intended use.

8. Admitted.
9. Denied as alleged. Defendant was asked by Plaintiff to provide an oil interceptor system which would accommodate the layout designed by Plaintiff, and did so.
10. Admitted, however the entire layout of the system and the trench was done in accordance with the instructions of Plaintiff.
11. Admitted.
12. Admitted.
13. Denied. On the contrary, the floor was sloped as needed to accommodate Plaintiff's layout. There remained one "low spot" on the floor which was shown to Plaintiff prior to his painting of the floor and installation of lifts.
14. Denied. It is believed and therefore averred that the building, including the floor, was inspected by the Pennsylvania Department of Transportation prior to Plaintiff opening for business as a repair shop and inspection station. Strict proof of the Plaintiff's allegation that the "low spot" on the floor created an unsafe and hazardous environment is demanded at the time of trial.
15. Denied for the reasons set forth in Paragraphs 13 and 14 herein above. Strict proof is demanded at the time of trial.
16. Denied. On the contrary, Plaintiff was advised prior to construction of the floor that the layout designed by him would require water and other liquids to be broomed or brushed to the trench. Further, as designed by Plaintiff, the layout required that water and other liquids would by necessity have to run across the work area to reach the drainage trench and the oil separator system. Strict proof of all the allegations of Paragraph 16 is demanded at time of trial.



17. Denied for the reasons set forth herein above.
18. Admitted.
19. Admitted that the grates initially installed were insufficient and were replaced with suitable grates at no cost to Plaintiff.
20. Admitted as stated in Paragraph 19. Defendant is without knowledge as to whether the replacement grates are unsuitable; as it has received no information or complaint about said grates from Plaintiff until the filing of this Complaint.
21. Admitted.
22. Admitted.

WHEREFORE, Defendant demands that Plaintiff's Complaint be dismissed and that judgment be entered in its favor and against the Plaintiff.

#### **NEW MATTER**

NOW COMES, Morton Buildings, Defendant above named, and by its Attorneys, Belin & Kubista, files its New Matter and avers as follows:

23. Paragraphs 1 through and including Paragraph 22 of Defendant's Answer are incorporated herein by reference as if set forth at length.
24. As set forth herein above, the contract between Plaintiff and Defendant contains no provision for a completion date. Therefore, Plaintiff has no cause of action for an alleged breach of contract on the basis that the project was not completed in a timely fashion, and any allegations to that end are irrelevant.
25. In fact, Plaintiff commenced construction of the building on March 28, 2002 and Plaintiff took occupancy on May 22, 2002. It is believed and therefore averred that the building was inspected by the Pennsylvania Department of Labor and

Industry on May 30, 2002 and was also inspected by the Pennsylvania Department of Transportation prior to Plaintiff opening for business as a state inspection station.

26. All of the alleged "breaches" of contract set forth by Plaintiff in Paragraph 6 (a-e) were remedied by Defendant in a prompt fashion and at no cost whatsoever to Plaintiff. As such, none of the said alleged "breaches" gives rise to a cause of action for breach of contract. Further, Plaintiff does not allege that he incurred any damage whatsoever as the result of the alleged "breaches" set forth at Paragraph 6 (a-e).
27. None of the alleged "breaches" set forth at Paragraph 6 (a-e) prevented Plaintiff from opening and operating his business in the building constructed by Defendant.
28. With respect to the lighting fixture, Defendant actually installed five (5) additional fixtures and two (2) additional receptacles at Plaintiff's request and at no additional cost to Plaintiff.
29. With respect to the floor, Plaintiff provided Defendant with a floor layout, which included the location of the drainage trench and oil separator. As a result of the manner in which Plaintiff wanted the floor to be constructed, and the location of the drainage trench and oil separator, Plaintiff at all times knew that water and other liquids would have to drain across the work area to the trench, and further knew that he would have to push water and other liquids to the trench by broom or other method.

30. Further, Plaintiff knew of the existence of the "low spot" prior to taking possession of the building. With this knowledge, Plaintiff proceeded to paint the floor, install the lifts in the repair bays, and open for business.
31. Defendant and its subcontractor who installed the floor have repeatedly offered Plaintiff various alternatives to remedy the "low spot", all of which remedies have been rejected by Plaintiff.
32. It is believed and therefore averred that the existence of the "low spot" does not render the entire floor in any way unsafe or dangerous, and it certainly has not prevented Plaintiff from operating his business. Again, Plaintiff knew he would have to push materials across the floor in any event due to the nature of his layout and floor plan.
33. It is further believed and therefore averred that Plaintiff is unwilling to pay Defendant certain monies due and owing to Defendant under the terms of the contract, and is attempting to rely upon the condition of the floor as an excuse to withhold payment.
34. Under the express terms of the contract, Plaintiff was entitled to occupy the building upon acknowledging satisfactory completion of the building, which Plaintiff did in this case. Plaintiff is therefore estopped from now claiming that Defendant failed to perform under the terms of the contract.

WHEREFORE, Defendant demands that judgment be entered in its favor and against the Plaintiff.

**COUNTERCLAIM**

NOW COMES, Morton Buildings, Inc, and by its attorneys, Belin & Kubista, files its Counterclaim against the Plaintiff as follows:

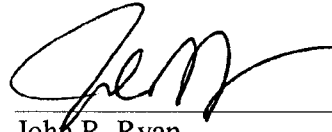
35. Paragraphs 1 through and including Paragraph 33 of Defendant's Answer and New Matter are incorporated herein by reference as if set forth at length.
36. Defendant has completed its performance under the terms of the contract and has furnished certain labor and materials for the construction of the building which is the subject of this action.
37. There is due and owing to the Defendant the sum of Thirty Eight Thousand Dollars (\$38,000.00) under the terms of the said contract, which Plaintiff has failed and refused to pay.
38. Further, under the express terms of the contract, Defendant is entitled to a 1 ½% service charge (18% annual rate) or the maximum rate allowed in Pennsylvania, whichever is less, on the unpaid and outstanding balance.
39. In addition, under the express terms of the contract, Defendant is entitled to costs and reasonable attorney's fees expended to enforce the terms of the contract.

WHEREFORE, Defendant demands that judgment be entered in its favor and against Plaintiff in the amount of Thirty Eight Thousand Dollars (\$38,000.00), together with interest at

the contracted rate, costs and counsel fees.

Respectfully submitted,

BELIN & KUBISTA

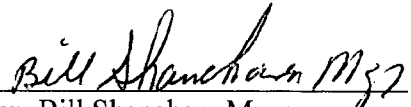
A handwritten signature in black ink, appearing to read 'J. Ryan', is written over a horizontal line.

John R. Ryan  
Attorney for Defendant

## VERIFICATION

I verify that the statements made in this Answer, New Matter and Counterclaim 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.

MORTON BUILDINGS, INC.

  
By: Bill Shanahan, Manager

BELIN & KUBISTA  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P.O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

**FILED**  
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6/3/13  
FEB 24 2003  
Shaw  
Prothonotary

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
an Illinois Corporation,  
Defendant

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:  
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:  
:

No. 03-135-CD

ACCEPTANCE OF SERVICE

Filed on behalf of

Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law  
Pa. I.D. 38379

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

W. J. Shaw  
Prothonotary



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

DAVID J. KARCEWSKI,	)	
an adult individual,	)	
	)	
PLAINTIFF,	)	
	)	No. 03- <u>135</u> -CD
v.	)	
	)	
MORTON BUILDINGS, INC.,	)	
an Illinois Corporation;	)	
	)	
DEFENDANT.	)	

**ACCEPTANCE OF SERVICE**

I accept service of process, pursuant to Pa.R.Civ.P. 402(b), of the CIVIL COMPLAINT on behalf of Defendant Morton Buildings, Inc., and certify that I am authorized to do so.

Date: FEB. 6, 2003

Respectfully Submitted,



John R. Ryan, Esquire  
Attorney for the Defendant  
Belin & Kubista  
P.O. Box 1  
Clearfield, PA 16830

**BELIN & KUBISTA**  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P.O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

*Handwritten signature*

*01/01/92*

*cc*

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

DAVID J. KARCEWSKI,  
an adult individual,

PLAINTIFF,

v.

MORTON BUILDINGS, INC.,  
an Illinois Corporation;

DEFENDANT.

No. 03- 135 -CD

Type of Pleading:

**CIVIL COMPLAINT**

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire

Ferraraccio & Noble

301 East Pine Street

Clearfield, PA 16830

(814)-375-2221

PA I.D.No.: 55942

03-135

Shaw  
Notary

David Meholick, Court Administrator  
Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, PA 16830  
(814)-765-2641

3. On, or about, December 18, 2001, the parties entered into a contract, prepared by Defendant, concerning the construction of a commercial building situated on land located in Morris Township, Clearfield County, Pennsylvania, with address of 4225 Morrisdale/Allport Highway. A True correct copy of such documentation is attached hereto as Exhibit "A".

4. Said construction work was to commence on or about March 28, 2002 and was to be completed by the Defendant by May 30, 2002.

Count I: Breach of Contract

5. The averments of paragraphs 1 - 4, inclusive, are hereby incorporated as if again fully set forth at length.

6. That Defendant did not complete the contracted work in a timely or workmanlike manner which included as follows:

(a) The toilet leaked which required the Defendant to take remedial measures on three separate occasions, the last of which occurred about Mid-July, 2002;

(b) Doors attempted to be installed were not those purchased by the Mr. Karcewski and were not handicap accessible, as needed and contracted. As a result, to install the appropriate doors, Defendant performed numerous remedial measures through June, 2002;

(c) The Defendant attempted to install four (4) feet long indoor lighting whereas Mr. Karcewski contracted for eight (8) feet long lighting. Four (4) feet long indoor lighting would have resulted in impractical lighting for Mr. Karcewski, was rejected, and not readied until the beginning of June, 2002;

(d) The garage doors to the "bay" areas were to be operated by remote control. The remote control was not operable until mid-July; and

(e) Defendant did not remove its portable toilet until mid-August, 2002.

7. That the intent of the contract between the subject parties was for the construction of a building to be used as a transmission repair and state inspection facility.

8. That as part of the contract, Defendant was to construct two "bays" or "work" areas in the garage portion of the building where said repair work would be performed.

9. That in accordance with standards set forth by Pennsylvania's Department of Environmental Resources, as well as those of Morris Township Sewer Authority, Defendant recommended to Mr. Karcewski, and based upon Defendant's recommendation Mr. Karcewski agreed for the installation of a Zurn Oil Interceptor system.

10. As part of said Zurn Oil Interceptor system, a trench was to be installed in the rear of the building, by the garage doors, which would collect the runoff water, oil and grime from the bay areas and which would then be fed into the Zurn Oil Interceptor system.

11. To facilitate such drainage into the trench, the cement floor installed by the Defendant needed to be sloped such that "it ran" from the front of the building to the rear where the trench and Zurn Oil Interceptor System are located.

12. That in accordance with Pennsylvania Department of Transportation (Penn DOT) standards, the floor could not be sloped more than one percent (1%) from front to rear.

13. In fact, the cement floor is not sloped as designed and agreed upon in that it drains not in the rear of the building but gathers in the middle of the floor, being the center of the work area.

14. That as a result of the improperly installed floor, water, oil and grime collect in the center of the work area. Not only did Mr. Karcewski not contract for this condition, the same actually creates an unsafe and hazardous work environment as well as one which requires an inordinate amount of time to clean the oil and grime created in the normal course of Mr. Karcewski's normal and intended commercial activities.

15. As installed, upon information and belief, the cement floor actually exceeds the one percent (1%) slope permitted by Penn DOT.

16. To remedy this unsafe, dangerous and not contracted for situation, the following remedial measures must be taken:

(a) The two hydraulic lifts must be removed and re-installed at an approximate cost of \$2,300, to be more fully determined at time of trial;

(b) Likewise, the air compressor, cabinets, benches, sink solvent tank and the like need to be removed then re-installed, at an approximate cost of \$2,000, to be more fully determined at time of trial;

(c) The improperly installed cement floor needs to be removed, disposed and a cement floor properly installed to drain as designed and contracted, all at an approximate cost of \$18,000, in an amount to be more fully determined at time of trial;

(d) The office, bathroom, and lobby areas need to be removed and re-installed after the cement floor has been remedied at an approximate cost of \$8,000, in an amount to be more fully determined at time of trial;

(e) It is believed, and therefore averred, that the process to do items (a) - (d) would take 10 weeks to remedy the situation which would result in the loss of revenue of approximately \$30,000 to the counter-plaintiff, in an amount to be more fully determined at time of trial;

(f) That Mr. Karcewski would incur additional miscellaneous expenses such as permit fees, inspections and the like, as well as to again seal in the new cement floor, at an expense of approximately \$2,000, in an amount to be more fully determined at time of trial; and

(g) That for Mr. Karcewski to shut down his newly started business for a period of 10 weeks would result in the loss of "good will" to his business, in an amount to be more fully determined at time of trial.

17. That items (a) - (g) are the direct and proximate result of Defendant's breach of the construction contract and are reasonable and foreseeable damages suffered by Mr. Karcewski as a result of such breach.

18. Likewise, the Counter-Defendant was to provide grates to cover the trench which it built.

19. That the grates which were initially placed over the trench opening, bent and needed to be replaced as soon as a vehicle crossed over them.

20. That Defendant replaced these four (4) original grates however, said replacements are not of sufficient size and need to be again replaced at a cost to be determined at time of trial.

#### Miscellaneous Averments

21. That jurisdiction is proper.

22. That venue is proper.



PRIMARY CREW FOREMAN: YES ☒ NO ☐CUSTOMER Dave Karcewski SALESMAN & NO. Lehman 96-2 JOB NO. 96-2665FOREMAN & NO. BRIAN PHILLIPS #14096095 DATE 03-28-02 04-22-02

(Started) (Last Day Crew Worked)

HOURS ALLOWED \_\_\_\_\_ HOURS TAKEN 307.5 ESTIMATOR Ken Parker

DATE	NAMES OF CREW MEMBERS (D-DIGGER)(S-SCISSORS)					TOTAL	MEAL MONEY
	BRIAN	KARL	BUD	NICK	JIM W		
3/28	9	9		9	D 3	30	
29	9	9		9		27	
4/01	5	7	7	7		26	
02	9	9	9	9	JEFF K	36	
03	6	9	9	9	S 10	43	
04	10	10	10	10		40	
05	9	9	9	9	5.5	41.5	
08	10	10	10	10		40	
09	7	7				14	
22	5		5			10	
					TOTAL	307.5	
(Manager's Signature)					MEAL MONEY RETURNED		

Form 12 Serial Numbers:

38851, 71821

Type of Repair: \_\_\_\_\_

No. PA'S \_\_\_\_\_ No. Inv. \_\_\_\_\_

Total Paid \_\_\_\_\_

SEQ. NO.	INVOICES USED
1	Invoiced By estimator
2	Invoiced By estimator
3	Crew Error
4	Crew Error
5	Needed to Finish Bldg
6	Replace Damaged Material
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

P.A. NUMBER	PURPOSE	AMOUNT	P.A. NUMBER	PURPOSE	AMOUNT
DIGGER TRUCK USED	3 HRS		069552	Readimix	\$232.14
SCISSOR TRUCK USED	15.5 HRS		96-14	Set Trusses	\$318.75
			96-15	Portapot	\$79.50
065964	Courier Fee	\$100.00	96-19	Portapot	\$79.50
065965	Dept. of L&I	\$180.00			
044321	Conc/Footers	\$294.68			
069551	Sackrete	\$16.92			
065970	Drafting Paper	\$8.56			

P.O. NUMBER	VENDOR/MATERIALS AUTHORIZED TO PURCHASE	ALLOWED ON FORM 37	AMOUNT PAID	INVOICE TRANS. NO
SUB. NUMBER	SUBCONTRACTORS/ADDITIONAL BILLS			
233137	Bowman Masonry PAID 05-07-02	7,470.00	7470.00	96-18
218887	Milroy Door, Inc. PAID 05-07-02	5,008.00	5008.00	96-18
188571	Cambria Glass & Insulation Inc PAID 06-11-02	1,200.00	1200.00	96-23
233139	Gmerek Construction PAID 05-28-02	6,080.00	6080.00	96-21
09047	Peno Building Company PAID 05-07-02	21,700.0	2600.00	96-18
	PAID 05-14-02		9550.00	96-19
	PAID 07-09-02		9550.00	96-27

Exhibit

"A"

Site - MORTON HOME OFFICE  
Job - MORTON/CREW  
Gold - MORTON HOME OFFICE  
Canary - CONSTRUCTION CENTER  
Pink - OWNER'S COPY

38851

# MORTON BUILDINGS, INC.

252 W. Adams, P.O. Box 399 • Morton, Illinois 61550-0399

76-265 P

JOB NUMBER

DAVE KARCEWSKI

Sold To

Phone

(814) 342-4347

Date

12-18-91

Address

230 N 10th St

Phillipsburg

PA

AREA CODE

16866

Sales Consultant

96-2 F Lehman

Deliver To

DAVE KARCEWSKI

STATE

Phone

(814) 342-4347

1.

Address

Rte 53

Morrisdale

PA

AREA CODE

2.

STREET, RD., P.O. BOX

CITY

STATE

ZIP CODE

Directions to job site:

Rte. 80 West to Exit 21 Kylertown. Take Rte 53 South + 4

Miles on Right.

SITE PREPARED DATE

APPROX. DELIVERY DATE

BID JOB Yes/No (CIRCLE ONE)

PREVAILING WAGE Yes/No (CIRCLE ONE)

BUILDING USE						REPAIR SHOP		CLASS NO 341		HI RIB STEEL PANEL USE, PAINT TYPE & COLOR				
BUILDING SPECIFICATION (all dimensions are nominal)								ROOF	SIDE/END	SLIDE/DOOR	OVERHEAD DOOR	WAINS		
QTY.	STYLE	WIDTH	HEIGHT	LENGTH	TRUSS SPACING	PAINT		FFII	KYNAR		KYNAR	KYNA		
1	E372	42'	16'	45'	7'-6"	COLOR								
This order is a rewrite of previously cancelled Job 96-2611P, which was written on Form #09296 and Form 12's #63475. Transferred from the previous contract to this new order on the following items.														
Down Payment \$9,500.00														
Form 86														
Form 153														
Form 142														
All Form 40 Subcontracts														
2	12' x 14' Paycor Tri-Cote II Overhead Doors w/Operator (3) Windows													
3	9100 J060 Entrance Doors (2 with Panic Hardware) Closers													
2	4' x 3' 9-1/2" Hayfield Windows													
-	2'-0" Overhang Around Entire Building													
-	Cutters and Downspouts													

Exhibit "A"

Contract Price excluding subsequent change orders \$ 95,000.00

\$ 9,500.00	Down Payment (CHECK #: )	\$ 9,500.00
\$ 47,500.00	Delivery Payment due upon delivery of materials.	\$ 47,500.00
\$	Progress Payment due upon	
\$ 38,000.00	Final Payment is to be paid to Morton Salesman upon completion of this contract.	\$ 38,000.00

LEAD SOURCE

NO.

No representation, warranty, condition or agreement of any kind or nature whatsoever shall be binding upon Morton Buildings, Inc. unless incorporated in this Agreement. It is understood by the parties hereto that the terms and conditions of this contract and the financial ability of the purchaser are subject to acceptance at the Morton, Illinois office of Morton Buildings, Inc., that prior to such acceptance an investigative report may be obtained, and that prior to such acceptance the entire liability of Morton Buildings, Inc. under the contract may be discharged by the return of any monies which the purchaser may have deposited in connection with this contract. It is agreed by the parties hereto that the Company assumes no liability for failure for any reason to deliver the merchandise on any requested or tentatively set shipping date, and the purchaser agrees to accept delivery of the merchandise at any reasonable time, thereafter, Builders' Risk Insurance coverage will be provided by Morton Buildings, Inc. until construction is completed and accepted by the owner. Owner can occupy building upon acknowledging satisfactory completion of the building and making payment in full. If occupancy must take place before completion of the project, final payment and insurance is required. It is agreed that labor other than Morton Buildings, Inc. employees and its subcontractors is not anticipated, and that if other labor or supervision is required the contract will be renegotiated. In the event of default by the Buyer, Morton Buildings, Inc. shall be entitled to 1 1/2% per month service charge from the date of default (18% annual rate) or the maximum rate allowed in the customer's state and whichever is less; and the reasonable amount of costs and attorney's fees expended to enforce the terms of this contract.

The items described on this Form 12, and on any accompanying Form 12S's, with Serial numbers 71921, Form 86, and Form-153, Form 3 constitute our agreement in its entirety. Additions and/or changes to this agreement must be in writing with necessary charges and credits stated. Warning Forms and Warranty No. apply.

Owner's initial

BANK

The undersigned hereby warrants and represents that he/she is the owner of record of the premises upon which this building is to be erected.

Owner's Signature x

(Make all checks payable to Morton Buildings, Inc.)

NOTE: YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE.

White - MORTON HOME OFFICE  
Green - MORTON CREW  
Gold - MORTON HOME OFFICE  
Canary - CONSTRUCTION CENTER  
Pink - OWNER'S COPY

71821

# MORTON BUILDINGS, INC.

252 W. Adams, P.O. Box 399, Morton, Illinois 61550-0399

96-2665 F

JOB NUMBER

Sold To DAVE KAFCEWSKI

Phone (814) 342-4347

Date 12-18-01

Address 230 N 10th St  
STREET, RD., P.O. BOX

Philipsburg  
CITY

PA  
STATE

AREA CODE  
16865  
ZIP CODE

Sales Consultant

1. 96-2 F Lehman

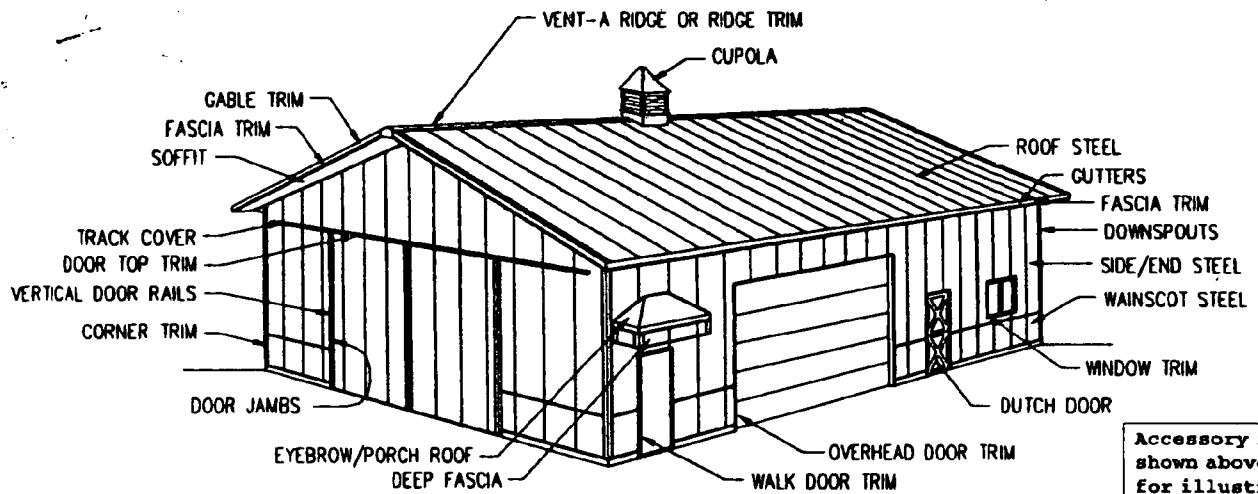
2. \_\_\_\_\_

## QTY. BUILDING ACCESSORIES & COMPONENTS CONTINUED

- W1-Rib Steel Wainscot w/7/16 Protective Liner Board
- R-19 Wall Insulation w/Steel Liner (Top ±8' to be Acoustical Steel)
- R-38 Ceiling Insulation w/Steel Liner
- 6 Inch Concrete Floor w/2" Horizontal Perimeter Insulation 2' Wide, ± 32'
- Trench Drain Concrete Specs per Form 222
- Interior Room Layout per Plan and Room Finish Schedule; Storage Deck Above These Rooms for Mechanical Equipment. See Room Finish Schedule for Finishes.
- Heating to Include: (1) York 80 Plus LP Gas Furnace. Once Central Ducted System to Meet Space Heating Requirements for Building. System will Utilize One Zone Control w/1" Duct board Construction and Sidewall Supply and Return Registers. Thermostat to be Located in Garage Area.
- Plumbing to Include: Sanitary Waster-Vent and Domestic Water Piping for One Handicap Accessible Toilet Room, One Water Closet and Lavatory. One Diberglass Service Basin Located Outside of Toilet Room Next to Toilet Room (2) Honey Bibb. Oil Separator for T Drain. Water Supply 60 Parts Washer. 40 Gallon Hot Water Heater (Electric). All Sanitary and Domestic Water Piping to 3' Outside Building.
- Electric to Include: 400 AMP 3 Phase Overhead Service Entrance to (2) "Sq. D" Breaker Panels (200 AMP 5A) (50) Electrical Openings, (3) Phone Openings, (1) Compressor Circ Parts Washer Circuit, (2) Hydraulic Lift Circuits, (2 HP), (1) Water Heater Circuit (1) Furnace Circuit, (2) Overhead Door Operator Circuits, (14) High Output Fluorescent Fixtures (8' - 2 Lamp) (?) Metal Halide Wall Packs Fixtures and All Inspections.
- All Utilities, Water, Sanitary Sewer, Electric, Phone to be Brought to Building by Owner.
- (1) 30" x 30" Exhaust Fan Above Man Door Between Overhead Doors
- Concrete Floor at 12' x 30' Area to be 8" Thick for Both Bays
- If Order is Cancelled Prior to Delivery Confirmation, Money for Plan Services (\$2,000 and PA Labor and Industry Permit (\$400.00) will be Retained from Down Payment

Terms and conditions pertaining to this Agreement are specified on Form 12, Serial No. 38251. This form is invalid unless it is used as a supplement to a Form 12, and is accompanied by a Form 12.

Owner's Signature x \_\_\_\_\_



Accessory items shown above are for illustration purposes only.

## TRIM & ACCESSORY COLOR IDENTIFICATION

Denote color desired by placing an "X" in the appropriate box for each trim and accessory.

		Denote color desired by placing an "X" in the appropriate box for each trim and accessory.													
		R E D	T A N	W H I T E	G R E E N	N A V Y	B R O W N	B L A C K	S I L V E R	C H A R C	I V O R Y	B E I G E	E V G R E E N	B U R G	CORAL TUBQ. BLUE GOLD
RIDGES	VENT-A-RIDGE	+	+		+	+		+	+					X	+
	T#5 RIDGECAP (1)		+		+	+			+						+
	T#5/T#30 (1)		+		+	+		+	+			+			+
SOFFIT														X	
GABLE (1)			+		+	+			+					X	+
FASCIA (2)			+		+	+		+	+						+
HI-RIB DEEP FASCIA															+
GUTTER														X	
DOWNSPOUTS												X			
CORNER TRIM ABOVE WAINSCOT (1)												X			+
WAINS. (BASE, CORNER, HI-RIB) (3)														X	+
BASE W/O WAINS. (1)						+			+						+
OHD DOOR (4) TRIMS			+	X	+	+		+	+						+
COIL-UP DOOR (1) TRIM															+
T#143 BETWEEN COILUP DRS. (1)															+
SLIDING DOOR TRIM	VERT. RAILS (2)		+		+	+			+						+
	TRACK COVER (1)		+		+	+			+	+					+
	JAMB (1 or 2)		+		+	+		+	+					+	+
	DOOR TOP (2)		+		+	+		+	+					+	+
DIAM. M SLIDING DOOR	GRILL INSERTS						BROWN								
	PANEL INSERTS														+
9100 WALKDOOR				X											
PMW WALKDOOR															
PMW WALKDOOR TRIM (2)		+	+		+	+		+	+	+	+		+	+	+
WINDOWS				X											
WINDOW TRIM (3)		+	+	X	+	+		+	+	+	+		+	+	+
SHUTTERS															
DIAM. M HEADER	HI-RIB														
	TRIM (2)	+	+		+	+		+	+			+	+	+	+
	BOX (3)	+	+		+	+		+	+			+	+	+	+
PORCH COLUMN COVERS (1)		+	+		+	+		+	+					+	+
PORCH/EYEBROW SOFFIT															
CUPOLA	ROOF (1)		+		+				+		+				+
	SIDES (1)				+	+	+	+		+			+	+	+
DUTCH DOORS	CROSSBUCKS*			+											
	INSERTS*														
	TRIMS (3)	+	+		+	+		+	+			+		+	+

OPEN BOX = NO EXTRA CHARGE

+ = AVAILABLE WITH APPLICABLE SET-UP CHARGE

**■ = NOT AVAILABLE**

\* = SEE PRICE BOOK FOR AVAILABLE COMBINATIONS

| ) = NO. OF TRIM SHAPES REQUIRING SET-UP CHARGES

**White** - Morton Home Office, **Green** - Morton/Crew, **Gold** - Morton Home Office, **Canary** - Construction Center, **Pink** - Owner's Copy

Owner's Signature:

**Date:**

# SITE CONDITIONS AT TIME OF SALE

2665P

Owner's Name DAVE KARCOWSKI

Job Number 96-2611P

Before Morton Buildings, Inc. employees or subcontractors receive permission from Morton Buildings, Inc., Morton, Illinois to work on this site, the following conditions must be satisfied:

1. Site must be prepared to Morton Buildings, Inc. BUILDING SITE SPECIFICATIONS, Form 153A, dated 5/98. Owner must acknowledge receiving a copy and insure that his excavating contractor will follow these specifications by initialing this space X SK  
(Owner's Initials)
2. Digging clearances must be on hand from authorities who have jurisdiction over this site. The local dig number is 920-242-1776
3. Private lines (electric, telephone, cable, water or sewer lines) must be identified and marked by Owner. Damages incurred by severing private lines must be repaired at Owner's expense if lines were not marked.
4. Tire ruts of construction equipment and delivery trucks are, in most cases, unavoidable. Fixing tire ruts will be at Owner's expense.

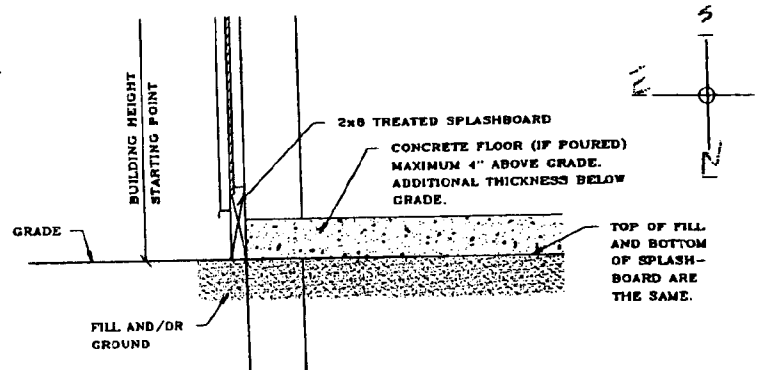
The site was inspected on 4-5-01 by Frank Coleman, Bob Bullock  
(Date) (List all people present: Sales Consultant, Owner, Subcontractor, etc.)

Building locator flags were placed on the lot aligning the building with EXISTING BURN

Owner designated Grade Line as shown in detail below on a grade stake or bench mark located Next To Burn

SHOW BUILDERS LEVEL READING IN EACH CORNER

62"	62"
60"	61"



Describe the site and work that needs to be done: Removal of existing trees. Level 5.  
To REFINISH GRADE.

RESPONSIBILITY DIVISION. Identify required services that will be provided and paid for by the party checked.

SERVICE	OWNER	MORTON	SERVICE	OWNER	MORTON
Site engineering (survey, water, soil bearing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Gas Service hookup	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Environmental impact study	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Water & Sewer Service hookup	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Percolation test	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Permanent Electrical service	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Earth moving	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Telephone, cable TV service & hookup	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Obstruction removal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Toilets will be provided by	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Buying, placing & compacting fill	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Construction trash will be removed in the following manner:		
Covering or disconnecting electrical lines	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>DUMPED ON SITE</u>		
Special digging equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	at <u>MORTON</u> expense.		
Zoning Permit (Plans not required)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Building Permit (Plans Provided by MBI)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

HOSPITAL PHONE 911

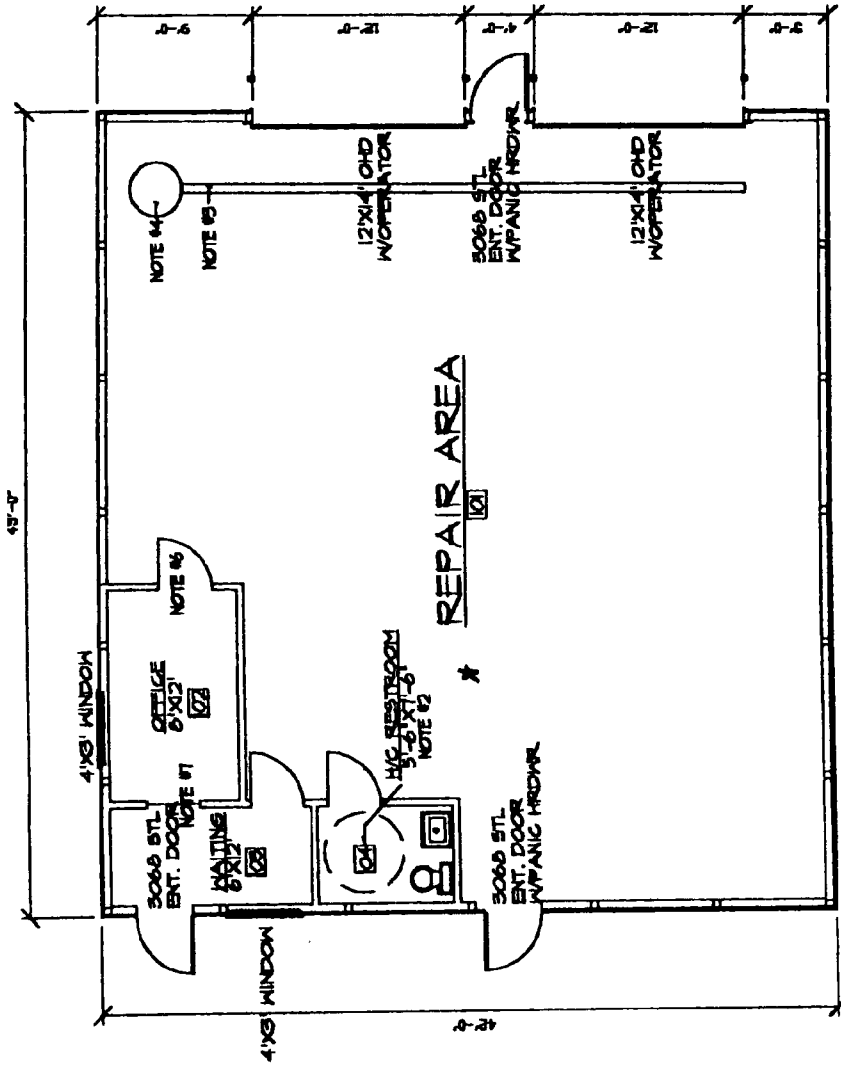
AMBULANCE PHONE 911

FIRE DEPT. PHONE 911

Daniel Karcowski  
(Owner's Signature)

6-12-01  
(Date)

[Signature]  
(Morton Sales Consultant's Signature)



## FLOOR PLAN

NOT FOR CONSTRUCTION DO NOT SCALE  
ALL DIMENSIONS ARE NOMINAL

## ROOM FINISH SCHEDULE

ROOM	DESCRIPTION	SIZE (NORMAL)	FLOOR FINISH	WALL FINISH	CEILING FINISH	HEIGHT (NORMAL)
101	REPAIR AREA	42'x5'	CONCRETE	WOOD	STEEL	8'
102	OFFICE	8'x12'	CONCRETE	WOOD	STEEL LINER TOP OF ACoustICAL	8'
103	WAITING AREA	8'x12'	CONCRETE	WOOD	1/2" PAINTED DISTALL	8'
104	RESTROOM	5'x6'	CONCRETE	WOOD	1/2" PAINTED DISTALL	8'

- NOTES:
1. OPEN FLOOR DECK ABOVE ROOMS 101, 103, 104 FOR FURNACE AND HOT WATER HEATER
  2. RESTROOM TO BE PA. LABOR AND INDUSTRY HANDICAP ACCESSIBLE
  3. APPROX. 32 LIN. FT. TROUGH DRAIN
  4. OIL SEPARATOR
  5. WATER, SEWER, ELECTRIC AND ALL DRAINS TO BE TAKEN TO 5' OUTSIDE BUILDING
  6. ALL INTERIOR DOORS TO BE 30x60 WOOD
  7. 5'x8' INTERIOR CUSTOMER SERVICE WINDOW

9 6 - 2 6 1 1 P

6-12-01

Steel & Kneel

**BUILDING PLAN & PERMIT TRANSMITTAL**  
REQUIRED FOR ALL COMMERCIAL BUILDINGS AND OTHER BUILDINGS NEEDING PERMITS OR PLANS

96-~~26332~~x

WHITE - GREEN - PINK - GOLDENROD - TO MORTON WITH NEW ORDER YELLOW - TO OFFICE FILE  
WHITE - GREEN - TO OFFICE WITH STAMPED PLANS (RETURN WITH COPY OF PERMIT TO MORTON)  
GREEN - TO CREW FOREMAN WITH CONSTRUCTION PLANS

# SITE CONDITIONS AT TIME OF SALE

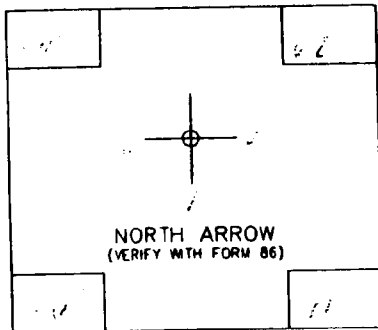
Owner's Name John K. Anderson Job Number 96-1005P

Before Morton Buildings, Inc. employees or subcontractors receive permission from Morton Buildings, Inc., Morton, Illinois office to work on this site, the following conditions must be satisfied:

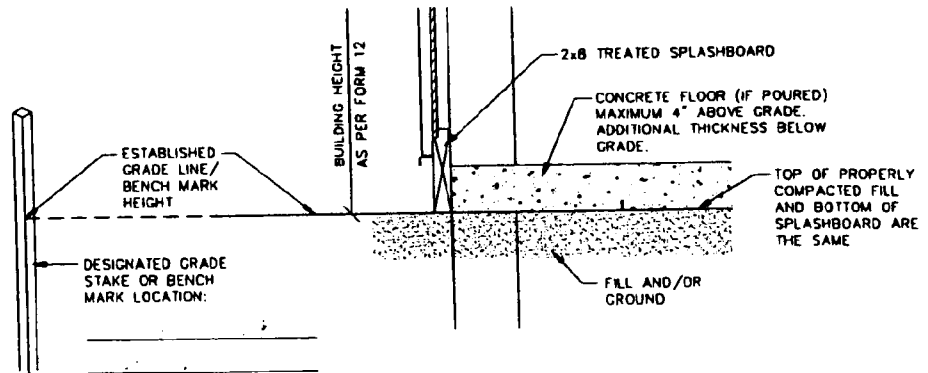
- ▶ Digging clearances must be on hand from authorities who have jurisdiction over this site.  
Phone number to obtain local dig clearance: 508-242-1716
- ▶ Private lines (electric, telephone, cable, water or sewer lines) must be identified and marked by Owner. Damages incurred by severing private lines must be repaired at Owner's expense if lines were not marked.
- ▶ Tire ruts of construction equipment and delivery trucks are, in most cases, unavoidable. Repairing tire ruts will be at Owner's expense.

The site was inspected on 4/15/01 by Fred L. Smith, Sales Consultant, John K. Anderson  
(Date) (List all people present: Sales Consultant, Owner, Subcontractor, etc.)

Building locator flags were placed on the lot aligning the building with the center line



SHOW BUILDER'S LEVEL  
READING IN EACH CORNER



Describe the site as it appears when taking above grade readings and the site preparation work that needs to be done: \_\_\_\_\_

RESPONSIBILITY DIVISION. Identify required services that will be provided and paid for by the party initialed in each blank.					
SERVICE	OWNER	MORTON	SERVICE	OWNER	MORTON
Site Engineering (Survey, Water, Soil Bearing)	<u>AK</u>		Gas Service Hookup		
Environmental Impact Study	<u>AK</u>		Water & Sewer Service Hookup		
Percolation Test	<u>AK</u>		Temporary Electrical Service For Construction		
Site Preparation Including:			Telephone, Cable TV Service & Hookup		
Earth Moving			Permanent Electrical Service		
Obstruction Removal			If special digging equipment and/or additional labor is required, it will be charged to the owner at cost plus 15%.		
Buying, Placing & Compacting Fill			Owner's initials: _____		
Snow Removal			Construction Trash Removal and Portable Toilet Facilities will be provided by Morton Buildings, Inc. for above job site.		
Covering or Disconnecting Electrical Lines					
Building/Zoning Permit (Plans Provided by MBI)					

If site is to be prepared by owner, preparation must meet Morton Buildings, Inc. BUILDING SITE SPECIFICATIONS, Form 153A. Owner must acknowledge receiving a copy and insure that his/her excavating contractor will follow these specifications by initialing the space \_\_\_\_\_.

Owner's Initials \_\_\_\_\_  
HOSPITAL PHONE \_\_\_\_\_ AMBULANCE PHONE \_\_\_\_\_ FIRE DEPT. PHONE \_\_\_\_\_  
(Owner's Signature) (Date) (Morton Sales Consultant's Signature)



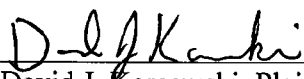
**IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA**  
(CIVIL DIVISION)

DAVID J. KARCEWSKI,	)	
an adult individual,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	No. 03- _____ -CD
	)	
MORTON BUILDINGS, INC.,	)	
an Illinois Corporation;	)	
	)	
DEFENDANT.	)	

**VERIFICATION**

I, David J. Karcewski, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached CIVIL COMPLAINT in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 28 day of January, 2003.

  
\_\_\_\_\_  
David J. Karcewski, Plaintiff

Excess

Atty pd.

8500

01/10/45

3cc Atty 16/12/22

April 20, 2006

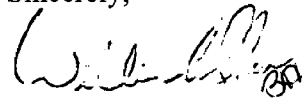
Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

Re: David Karcewski  
Vs.  
Morton Buildings, Inc.  
No. 03-135-CD  
Superior Court No. 44 WDA 2006

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. It is being re-sent per your order of March 31, 2006. Please also find enclosed two transcripts, which were completed and filed April 17, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Shaw", with a stylized flourish at the end.

William A. Shaw  
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Theron G. Noble, Esq.  
301 E. Pine Street  
Clearfield, PA 16830

John R. Ryan, Esq.  
PO Box 1  
15 N. Front Street  
Clearfield, PA 16830


David Karcewski  
Vs.  
Morton Buildings, Inc.

Court No. 03-135-CD; Superior Court No. 44 WDA 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on April 20, 2006.

Sincerely,

  
William A. Shaw  
Prothonotary/Clerk of Courts

## Civil Other

Date		Judge
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karcewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge
03/19/2003	Verification. s/David J. Karcewski Notice of Service no cc	No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc	No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman

## Civil Other

Date		Judge
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike matter, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Ryan	Fredric Joseph Ammerman
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
	Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praecipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praecipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karcewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman

Date: 04/29/2006

Time: 02:38 PM

Page 3 of 3

Clearfield County Court of Common Pleas

ROA Report

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

User: BHUDSON

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

David J Karcewski vs. Morton Buildings, Inc.

APR 20 2006

Date	Civil Other	Attest.	Judge
		Prothonotary/ Clerk of Courts	
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check)		Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. for \$60.00 to Superior Crt.		Fredric Joseph Ammerman
	Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan		Fredric Joseph Ammerman
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.		Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan		Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.		Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed. 44 WDA 2006		Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library		Fredric Joseph Ammerman
03/17/2006	Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record.		Fredric Joseph Ammerman
	Certified Mail Receipt, filed. Record mail to Superior Court.		Fredric Joseph Ammerman
03/22/2006	Certified Mail Receipt, filed. To Superior Court of PA, received 3-20-2006		Fredric Joseph Ammerman
04/13/2006	Order, Certified From the Record, In The Superior Court of Penna., Ordered that the record is Remanded to the trial court for a period of time not to exceed 40 days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is Suspended and shall be reset following the return of the record to this court. Jurisdiction of this court is retained pending compliance with this Court's Order. Prothonotary is Directed to transmit a copy of the instant application to the trial court along with a copy of this order. Per Curiam, dated 4/10/06. copy to Judge Ammerman		Fredric Joseph Ammerman
	Certificate of Contents of Remanded Record and Notice of Remand, Record to be returned to Superior Court on or before May 22, 2006 Record is remanded April 12, 2006		Fredric Joseph Ammerman
04/17/2006	Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005, filed.		Fredric Joseph Ammerman
	Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005, filed.		Fredric Joseph Ammerman
04/20/2006	Mailed record with transcripts to Superior Court April 20, 2006. Letters to Attorneys of record.		Fredric Joseph Ammerman

FILED

APR 20 2006

William A. Shaw  
Prthonatary/Clerk of Courts

03-135-CD

7002 2030 0004 5014 8064

U.S. Postal Service™	
<b>CERTIFIED MAIL™ RECEIPT</b>	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
Postage	\$
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 11.40

Sent To: Superior Court of PA - Office of Prthonatary  
Street, Apt. No., or PO Box No.: 600 Grant Building  
City, State, ZIP+4: Pittsburgh, PA 15219

Postmark Here  
APR 20 06  
03-135-CD

Form 3800, June 2002



03-135-CD

**SENDER: COMPLETE THIS SECTION**

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

1. Article Addressed to:

Superior Court of Pennsylvania  
Office of the Prothonotary  
Wood Grant Building  
Pittsburgh, PA 15219

03-135-CD

2. Article Number

(Transfer from service label)

7002 2030 0004 5014 8064

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

DEL SOLE

C. Date of Delivery

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

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

10:23 AM

APR 24 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

No. 03 – 135 – C.D.

**PRAECIPE TO SETTLE,  
DISCONTINUE AND END**

Filed on behalf of  
Plaintiff and Defendant

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

0/3.46 cm (uiv) 3CC + 3 Cert of  
disc issued to  
APR 28 2000 Atty Ryan  
Copy to CIA

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

DAVID J. KARCEWSKI,  
an adult individual,  
Plaintiff

vs.

MORTON BUILDINGS, INC.,  
Defendant

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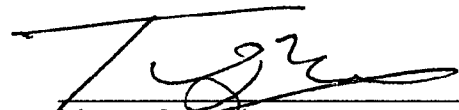
No. 03 – 135 – C.D.

**PRAECIPE**

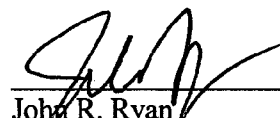
TO: WILLIAM SHAW, PROTHONOTARY

Please mark the above-captioned case settled, discontinued and ended.

FERRARACCIO & NOBLE

  
Theron G. Noble  
Attorney for Plaintiff

BELIN & KUBISTA

  
John R. Ryan  
Attorney for Defendant

**BELIN & KUBISTA**  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P.O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

David J Karcewski

Vs.  
Morton Buildings, Inc.

No. 2003-00135-CD

CERTIFICATE OF DISCONTINUATION

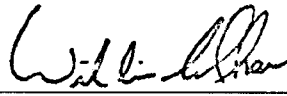
Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 28, 2006, marked:

Settled, discontinued and ended

\$105.00 paid by Theron G. Noble Esq  
\$20.00 paid by John R Ryan Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of April A.D. 2006.



William A. Shaw, Prothonotary

IN THE SUPERIOR COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOCKET NO. 44 WDA 2006

DAVID J. KARCEWSKI  
Appellee

vs.

MORTON BUILDINGS, INC.  
Appellant

FILED  
MAR 31 2006

PITTSBURGH  
SUPERIOR COURT OF

APPLICATION FOR RELIEF – EXTENSION OF TIME

Appeal from the Order of the Court of Common Pleas of  
Clearfield County, Pennsylvania, dated December 16, 2005,  
filed to No. 03-135-C.D.

John R. Ryan, Esquire  
Pa. I.D. No. 38739  
Belin & Kubista  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972  
Attorney for Appellant

**APPLICATION FOR RELIEF—EXTENSION OF TIME**

NOW COMES, Morton Buildings, Inc, Appellant above named, and by its Attorneys, Belin & Kubista, files its Application for Relief pursuant to Pennsylvania Rule of Appellate Procedure 123 and avers as follows:

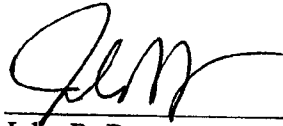
1. Appellant filed the above captioned appeal on January 3, 2006, and on the same date filed and submitted a Request for Transcript to the Court Reporter for Clearfield County.
2. As of the time this Application is prepared, the transcript of the trial in the lower court has not been completed and filed.
3. Despite the fact that the transcript has not been completed and filed, the Clearfield County Prothonotary sent the lower court record to this Court, which resulted in the issuance of a briefing schedule requiring Appellant to file its brief and reproduced record on or before May 1, 2006.
4. Appellant is unable to properly prepare the reproduced record and its brief without the transcript.
5. Appellant has no knowledge as to when the transcript will be completed and filed.

WHEREFORE, Appellant respectfully requests that the Court rescind the briefing schedule and issue an order directing that the Appellant's brief be filed forty (40) days after

completion and filing of the transcript.

Respectfully submitted,

BELIN & KUBISTA

A handwritten signature in dark ink, appearing to read 'JRM', is written over a horizontal line.

John R. Ryan  
Attorney for Appellant



IN THE SUPERIOR COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID J. KARCEWSKI,  
Appellee

vs.

MORTON BUILDINGS, INC.,  
Appellant

DOCKET NO. 44 WDA 2006

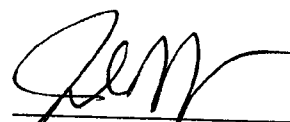
**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

Theron G. Noble, Esq. (814) 765- 4990  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16930  
(Counsel for David J. Karcewski, Appellee)

Dated: 3/29/06

  
\_\_\_\_\_  
John R. Ryan, Esq.

Attorney ID No. 38739  
Belin & Kubista  
15 North Front Street  
P.O. Box 1  
Clearfield, PA 16930  
Counsel for Morton Buildings, Inc., Appellant  
(814) 765- 8972

Date: 04/19/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:54 PM

ROA Report

Page 1 of 1

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karcewski vs. Morton Buildings, Inc.

Civil Other

Date	Selected Items	Judge
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
03/17/2006	X Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record.	Fredric Joseph Ammerman
	34 Certified Mail Receipt, filed. Record mail to Superior Court.	Fredric Joseph Ammerman
03/22/2006	35 Certified Mail Receipt, filed. To Superior Court of PA, received 3-20-2006	Fredric Joseph Ammerman
04/13/2006	36 Order, Certified From the Record, In The Superior Court of Penna., Ordered that the record is Remanded to the trial court for a period of time not to exceed 40 days during which time the trial court shall insure that all transcripts ordered and paid for by appellant have been included in the record. The briefing schedule is Suspended and shall be reset following the return of the record to this court. Jurisdiction of this court is retained pending compliance with this Court's Order. Prothonotary is Directed to transmit a copy of the instant application to the trial court along with a copy of this order. Per Curiam, dated 4/10/06. copy to Judge Ammerman	Fredric Joseph Ammerman
	37 Certificate of Contents of Remanded Record and Notice of Remand, Record to be returned to Superior Court on or before May 22, 2006 Record is remanded April 12, 2006	Fredric Joseph Ammerman
04/17/2006	38 Transcript of Proceedings, Civil Non-Jury Trial August 2, 2005, filed.	Fredric Joseph Ammerman
	39 Transcript of Proceedings, Civil Non-Jury Trial August 3, 2005, filed.	Fredric Joseph Ammerman

Date: 04/19/2006

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 11:21 AM

ROA Report

Page 1 of 1

Case: 2005-00001-CD

Current Judge: No Judge

Commonwealth of Pennsylvania vs. Richard D. Heberling

**Judgment**

Date		Judge
01/03/2005	<p data-bbox="272 420 462 457">New Case Filed.</p> <p data-bbox="272 462 1098 562">Filing: Commonwealth Lien Paid by: Commonwealth of Pennsylvania (plaintiff) Receipt number: 1893069 Dated: 01/03/2005 Amount: \$25.00 (Check) 1 cc to Plff. Lien entered against Def. inthe amount \$1691.84</p>	No Judge No Judge

March 17, 2006

Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

Re: David Karcewski, an adult individual  
Vs.  
Morton Buildings, Inc., an Illinois corporation  
No. 03-135-CD  
Superior Court No. 44 WDA 2006

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

Fredric J. Ammerman, P.J.  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Theron G. Noble  
301 East Pine Street  
Clearfield, PA 16830

John R. Ryan  
PO Box 1  
Clearfield, PA 16830

David Karcewski  
Vs.  
Morton Buildings, Inc.

Court No. 03-135-CD; Superior Court No. 44 WDA 2006

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on March 17, 2006.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

## Civil Other

Date		Judge
02/03/2003	Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karcewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge
02/07/2003	Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge
02/24/2003	Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge
03/14/2003	Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge
03/19/2003	Verification. s/David J. Karcewski Notice of Service no cc	No Judge
04/23/2003	Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge
11/24/2003	Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc	No Judge
01/28/2004	Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge
02/02/2004	RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman
02/09/2004	Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman
02/13/2004	Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman
	Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman
02/25/2004	ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman
03/08/2005	Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman
04/27/2005	Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman
07/21/2005	Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman

## Civil Other

Date		Judge
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike matter, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Ryan	Fredric Joseph Ammerman
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
	Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praecipe for Entry of Judgment Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praecipe To Enter Judgment Paid by: Noble, Theron G. (attorney for Karcewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check)	Fredric Joseph Ammerman
	Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. for \$60.00 to Superior Ct.	Fredric Joseph Ammerman
	Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan	Fredric Joseph Ammerman

Date: 03/17/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:19 AM

ROA Report

Page 3 of 3

Case: 2003-00135-CD

Current Judge: Fredric Joseph Ammerman

David J Karcewski vs. Morton Buildings, Inc.

Civil Other

Date		Judge
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed.	Fredric Joseph Ammerman
03/16/2006	Opinion, March 16, 2006, filed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attys Ryan, Noble One CC D. Mikesell and Law Library	Fredric Joseph Ammerman
03/17/2006	Appeal mailed to Superior Court March 17, 2006. Letters to counsel of record.	Fredric Joseph Ammerman

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APPS

COURTS



## Civil Other

Date	Selected Items	Judge
12/15/2005	Order AND NOW, this 9th day of December, 2005, counsel for both parties having indicated that they wish to waive oral argument on the Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that the Argument scheduled for December 16, 2005 at 11:00 a.m. be and is hereby cancelled. The Court will issue its ruling on Motion for Post-Trial without argument. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble, and Ryan.	Fredric Joseph Ammerman
12/19/2005	Order NOW, this 16th day of December, 2005, it is the ORDER of this Court that the Defendant's Motion for Post Trial Relief filed November 17, 2005 be and is hereby DISMISSED. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
12/28/2005	Filing: Praecept for Entry of Judgment Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911832 Dated: 12/28/2005 Amount: \$20.00 (Check) Judgment is entered in favor of the Plaintiff and against the Defendant. Two CC Attorney Ryan Notice to Attorneys Ryan and Noble	Fredric Joseph Ammerman
12/29/2005	Filing: Praecept To Enter Judgment Paid by: Noble, Theron G. (attorney for Karcewski, David J) Receipt number: 1911857 Dated: 12/29/2005 Amount: \$20.00 (Check) Judgment in favor of Plaintiff and against Defendant in the amount of \$26,175. Filed by s/ Theron G. Noble, Esquire. No CC, Notice to Atty Ryan Judgment entered against the Defendant in the amount \$26,175.00 plus interest and costs Notice to Atty. Ryan.	Fredric Joseph Ammerman
01/03/2006	Filing: Appeal to High Court Paid by: Ryan, John R. (attorney for Morton Buildings, Inc.) Receipt number: 1911915 Dated: 01/03/2006 Amount: \$45.00 (Check) Notice of Appeal, filed by s/ John R. Ryan, Esquire. 6CC Atty., 1CC & Ck. Request For Transcript, filed by s/ John R. Ryan, Esquire. 7CC Atty. Ryan	Fredric Joseph Ammerman
01/06/2006	Order NOW, this 5th day of January, 2006, the Court Having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter, it is the ORDER of this Court that Morton Buildings, Inc., Appellant, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in RULE 1925 (b) of the Rules of Appellate Procedure. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Noble and Ryan.	Fredric Joseph Ammerman
01/09/2006	Statement of Matters Complained of Pursuant to Pa. R.A.P. Rule 1025(b). Filed by s/ John R. Ryan, Esquire. 5CC Atty. Ryan	Fredric Joseph Ammerman
01/10/2006	Certificate of Service, filed. Served a certified copy of the Statement of Matters Complained of filed on behalf of Defendant, MORTON BUILDINGS, INC., in the above-captioned matter on the 10th day of January 2006 to The Honorable Fredric J. Ammerman and Theron G. Noble Esq., filed by s/ John R Ryan Esq. No CC.	Fredric Joseph Ammerman
01/11/2006	Appeal Docket Sheet filed.	Fredric Joseph Ammerman

## Civil Other

Date		Judge
02/03/2003	1 <input checked="" type="checkbox"/> Filing: Civil Complaint Paid by: Noble, Theron G. (attorney for Karcewski, David J.) Receipt number: 1854931 Dated: 02/03/2003 Amount: \$85.00 (Check) 3 Cert. to Atty.	No Judge 16
02/07/2003	2 <input checked="" type="checkbox"/> Acceptance of Service, Complaint accepted on behalf of Defendant Morton Buildings, Inc., filed by s/John R. Ryan, Esq. No CC	No Judge 2
02/24/2003	3 <input checked="" type="checkbox"/> Answer, New Matter and Counterclaim. filed by s/John R. Ryan, Esquire Verification s/Bill Shanahan, Manager 2 cc Atty Ryan	No Judge 11
03/14/2003	4 <input checked="" type="checkbox"/> Reply To New Matter and Answer To Counter-Claim. filed by s/Theron G. Noble, Esquire Notice of Service no cc	No Judge 6
03/19/2003	5 <input checked="" type="checkbox"/> Verification. s/David J. Karcewski Notice of Service no cc	No Judge 2
04/23/2003	6 <input checked="" type="checkbox"/> Certificate of Service, Notice of Deposition upon: Defendant via Defendant's Attorney. filed by s/John R. Ryan, Esq. no cc	No Judge 1
11/24/2003	7 <input checked="" type="checkbox"/> Notice of Service, Plaintiff's First Set Of Discovery Materials upon: JOHN R. RYAN, ESQUIRE filed by, s/THERON G. NOBLE, ESQUIRE no cc	No Judge 1
01/28/2004	8 <input checked="" type="checkbox"/> Motion to Compel, filed by Atty. Noble no cert. copies.	No Judge 14
02/02/2004	9 <input checked="" type="checkbox"/> RULE TO SHOW CAUSE, NOW, this 27th day of January, 2004, issued upon the DEFENDANT. RULE RETURNABLE, for filing Written Response, is set for the 19th day of Feb. 2004 and Argument on the Petition set for the 23rd day of February, 2004, at 1:30 p.m., in Courtroom No. 1. by the Court, s/FJA,P.J. 2 cc to Atty Noble	Fredric Joseph Ammerman 1
02/09/2004	10 <input checked="" type="checkbox"/> Notice of Service, Rule To Show Cause upon John R. Ryan, Esquire filed by, s/Theron G. Noble, Esq. no cc	Fredric Joseph Ammerman 1
02/13/2004	11 <input checked="" type="checkbox"/> Answer of Defendant to Motion to Compel, filed by Atty. Ryan 3 Cert. to Atty.	Fredric Joseph Ammerman 7
	12 <input checked="" type="checkbox"/> Certificate of Service, filed by Atty. Ryan Served copy of Defendant's Answer to Plaintiff's Motion to Compel on Atty. Noble	Fredric Joseph Ammerman 2
02/25/2004	13 <input checked="" type="checkbox"/> ORDER, NOW, this 23rd day of February, 2004, following Argument on Plaintiff's Motion to Compel, the Motion is DENIED in regard to Interrogatories 8,9,10,15,16,22,23,24, and 26. The Motion to Compel is GRANTED in regard to Interrogatory 11. Defendant shall have no more than 45 days from this date to provide a more specific response to Interrogatory 11. by the Court, s/FJA, P.J. 1 cc Atty Noble, Ryan	Fredric Joseph Ammerman 1
03/08/2005	14 <input checked="" type="checkbox"/> Certificate of Readiness For Non-Jury Trial, filed by s/ John R. Ryan Esquire. no CC	Fredric Joseph Ammerman 1
04/27/2005	15 <input checked="" type="checkbox"/> Order, AND NOW, this 26th day of April, 2005, it is the ORDER of the Court that a Pre-Trial Conference shall be held on the 13th day of May, 2005, in Chambers at 2:00 p.m. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. CC to Attys Noble & Ryan	Fredric Joseph Ammerman 1
07/21/2005	16 <input checked="" type="checkbox"/> Order, this 20th day of July, 2005, it is the Order of the Court that Civil Non-Jury Trial has been scheduled for Tuesday, August 2, 2005 and Wednesday, August 3, 2005 at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman 1

## Civil Other

Date		Judge
08/04/2005	Order, this 3rd day of August, 2005, following conclusion of civil nonjury trial, it is the Order of this Court that counsel for Plaintiff provide the Court with brief within no more than 20 days from today's date; and upon receipt of Plaintiff's brief, counsel for Defendant shall have 20 days thereafter to respond in kind. By The Court, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, Ryan	Fredric Joseph Ammerman 1
11/09/2005	Order NOW, this 8th day of November 2005, following nonjury trial and the receipt of the parties briefs, it is the finding and ORDER of this Court as follows: 1. the Court finds that the Defendant has breached the contract entered into between the parties by not constructing the cement floor in a good and workmanlike matter, see original for details. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Noble and Ryan.	Fredric Joseph Ammerman 3
11/17/2005	Motion For Post-Trial Relief, filed by s/ John R. Ryan, Esquire. 4CC Atty. Ryan	Fredric Joseph Ammerman 7
11/21/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief filed on behalf of Defendant, MORTON BUILDINGS, INC. in the above captioned matter on the following party on the 18th day of November 2005 to Theron G. Noble Esq. filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman 2
	Order AND NOW, this 18th day of November, 2005, upon consideration of the foregoing Motion for Post-Trial Relief filed by the Defendant, it is the ORDER of this Court that said Motion be scheduled for Argument the 16th day of December, 2005, at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 3CC Atty Ryan.	Fredric Joseph Ammerman 2
11/23/2005	Certificate of Service, filed. Served a certified copy of Motion for Post-Trial Relief on behalf of Defendant, MORTON BUILDINGS, INC., in the above captioned matter on Theron G. Noble Esq on the 18th day of November, 2005 filed by s/ John R. Ryan Esq. No CC.	Fredric Joseph Ammerman 2