

DOCKET NO. 174

NUMBER	TERM	YEAR
<u>74</u>	<u>September</u>	<u>1961</u>

Russel D. Marsh, a minor by

Delbert W. Marsh, his Guardian

VERSUS

James C. Walker and

Ray S. Walker

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSEL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian

-vs-

No. 74 September Term, 1961

JAMES C. WALKER and RAY S.
WALKER, Bigler, Pennsylvania

COMPLAINT

AND NOW, to wit, this 12th day of February, 1962, comes the Plaintiff, Russel D. Marsh, a minor, by Delbert W. Marsh, his guardian, and by his attorneys, Belin & Belin and Donald R. Mikesell, and brings this action of trespass against the Defendants, James C. Walker and Ray S. Walker, to recover a sum of money which is justly due and payable to the Plaintiff because of the said action of trespass, the following of which is a statement:

(1). The Plaintiff, Russel D. Marsh, is a minor nine (9) years of age and by his father, Delbert W. Marsh, his guardian, brings this action. Both are residents of the Village of Bigler, Bradford Township, Clearfield County, Pennsylvania.

(2). The Defendants, James C. Walker and Ray S. Walker, both resided in the Village of Bigler, Bradford Township, Clearfield County, Pennsylvania.

(3). That on September 17, 1959 at or about 3:05 P.M., E.S.T., the Plaintiff, Russel D. Marsh, who was at that time an infant of the age of seven (7), left his house which is situated along the western side of Legislative Route 970, and as there were

no sidewalks along the western side of said highway, he proceeded along the western edge of said highway in a southerly direction for a distance of about 500 feet.

(4). That the Plaintiff, Russel D. Marsh, in the exercise of due and proper care of an infant of his age, began walking across Legislative Route 970, a black-topped road and approximately eighteen (18) feet in width, from the western edge of said highway at a point approximately thirty (30) feet north of the intersection of Route 970 on Legislative Route 17121 and approximately 625 feet south of the intersection of Legislative Routes 970 and 68, which area is a built-up area in that there are approximately nine (9) houses in the vicinity along the western side of said highway, but there are no sidewalks along the western side of said highway, and there is a large coal cleaning plant on the eastern side of said highway into and out of which trucks are constantly moving from the eastern to the western side of said highway.

(5). That the Plaintiff, Russel D. Marsh, using due care, walked across the western lane of Legislative Route 970, which was approximately nine (9) feet wide, and the Plaintiff further walked three (3) feet six (6) inches into the eastern lane of said side or over three-fourths (3/4) of the way across said road when the accident herein described occurred.

(6). That the Plaintiff while he proceeded from his home across said highway stated in Paragraphs (3), (4) and (5), was at all times in view of the motorists travelling north on Legislative Route 970, as said highway was straight from the point where said boy was struck to his home, a distance of 500 feet, and from the point where he was struck in a southerly

direction, the direction from where the defendant came, for a distance of over 1000 feet, and at the time he was struck by the truck as hereinafter stated, it was a clear and dry day and the visibility was very good.

(7). That the operator of the vehicle, James C. Walker, was a servant and agent of the other defendant, Ray S. Walker, and said agent and servant was acting in the scope of his employment and was actually engaged in pursuing the business of said master at the time hereinafter more specifically described.

(8). That the defendant, James C. Walker, was employed in and about the tippie and cleaning plant of the defendant, Ray S. Walker, which was on the eastern edge of said route at the spot described in Paragraphs (3) and (4) where the hereinafter described accident occurred and said master and servant knew that children walked along the side of said road as there were no sidewalks, and children crossed said road described in Paragraphs (3) and (4) to go to and from the store.

(9). That the defendant, James C. Walker, saw the plaintiff, Russel D. Marsh in the vicinity off the western edge of Route 970 before Russel started to cross to the point stated in Paragraphs (3) and (4) and the defendant truck driver was bound to maintain a proper lookout and was bound to know that a very young boy, the plaintiff, Russel D. Marsh, who was seven (7) years old on September, 1959, was in the vicinity of said highway, and was bound to expect that such a boy would not act as an adult under the circumstances, and was bound to expect that such a boy would do the unexpected and would cross the highway in face of oncoming traffic. Said truck driver did not have the legal right

to expect such a young boy to conduct himself as an adult and he owed a special duty of care to the infant to bring his truck under such control that he would stop said truck before doing any harm to said boy, regardless of what unexpected act the boy might perform.

(10). The Plaintiff, Russel D. Marsh, was in full view of the defendant, James C. Walker, as he was travelling along the highway and from the time he left the western edge of said road until he reached the spot on said road described in Paragraphs (3) and (4), and that the defendant, James C. Walker, failed to use due care to save the young boy from harm, but struck him as he swerved off the road and travelled a distance of over 120 feet before he could bring the truck to a stop. The plaintiffs infer that from the circumstances the defendants were travelling at a speed of over fifty-five (55) miles an hour when the truck came in contact with the aforesaid young boy.

(11). That the defendants were guilty of the following negligence and recklessness which was the approximate cause of the plaintiff, Russel D. Marsh's injuries as hereinafter stated:

(1). The defendant servant failed to maintain a proper lookout and to keep his truck under proper control.

(2). We plead in the alternative that the defendant servant saw or should have seen the young boy, Russel D. Marsh, who on September 17, 1959, was seven (7) years old in the vicinity of said highway and he owed a positive duty to operate his vehicle to save said young boy from harm, and

that he was charged to know that young boys do not act as adults and will pass into the streets in front of oncoming traffic, and that the defendant servant breached said duty.

(3). That the defendant servant violated the Motor Vehicle Code Law of 1929 Public Law 805, Section 1001, Article 10 as amended and set forth in 75 Purdon Statute, Section 481 and supplements thereto in that he drove said truck along the highway carelessly disregarding the rights of safety of others in a manner so as to endanger the person, the aforesaid young boy.

(4). That the defendant servant violated the Motor Vehicle Code Law of 1929 Public Law, 905 Article 10, Section 1002, and amendments thereto as set forth in 75 Purdon Statute, Section 501, and supplements thereto as follows, in that he was not operating at a careful and prudent speed and was travelling greater than it was reasonable and proper having due regard to the dangerous area into which he was entering as before stated, and in disregard of the conditions then and there existing, and he did not drive his vehicle at such a speed as not to endanger the life and limb of any person or at a speed that would permit him to bring the vehicle to a stop within the assured clear distance ahead.

(5). The defendants were negligent and careless and failed to use due care under all the circumstances of this case.

(12). By the reason of the above-described occurrence the plaintiff, Russel D. Marsh, sustained serious injuries consisting of a severe cerebral concussion which rendered him unconscious for a period of twenty-one (21) days following the accident; severe and permanent injuries to his right eye; severe lacerations of the head and face; multiple lacerations and deep brush burns on the left arm, left side and left leg; and the lacerations of his face and the operations necessary to sustain his life and vision caused permanent scars and disfigurements to his face and head; together with a severe shock to his nerves and nervous system; by reason he was sick, sore, lame, prostrate, disordered and was made to undergo great mental anguish and physical pain as a result of which he has suffered, yet suffers, and will continue to suffer for an indefinite time in the future.

(13). Plaintiff has been compelled, in order to effect a treatment and care of the aforesaid injuries, to expend the following sums for doctor and medical attention:

(a). Clearfield Hospital 9-17-59	\$ 14.55
(b). Doctor Andrew Waterworth	25.00
(c). Children's Hospital, Pittsburgh 9-17-59 to 10-28-59	1145.29
(d). Ambulance Service	112.50
(e). Doctor Anthony S. Susen	250.00
(f). Dr. Herbert J. Bacharach, Office Call	10.00
(g). Dr. Herbert J. Bacharach, Eye Operation	75.00
(h). Clearfield Hospital, Operation	100.15
(i). Trip to Pittsburgh and Telephone Toll Calls	280.03

(j).	Nursing service and care	628.18
(k).	Dr. P. C. Gaffney 7-28-61	10.00
(l).	Children's Hospital 7-29-61 to 7-31-61	305.14
(m).	Doctor Anthony S. Susen 7-21-61	250.00

(14). Wherefore plaintiff claims liquidated damages as set out above and unliquidated damages in excess of Five Thousand (\$5000.00) Dollars, from the defendants as follows:

- (a). Plaintiff claims liquidating damages for a total of \$3205.84 as set out in Paragraph (13) and for expenses that will be incurred in the future.
- (b). A reasonable sum for pain and suffering for operations.
- (c). A reasonable sum for permanent damage to eye and face.
- (d). A reasonable sum for permanent injuries to left side arm and leg.
- (e). A reasonable sum for permanent scars and disfigurements of face.
- (f). A reasonable sum for interest on the liquidating damages in the nature of damages from the delay in payment ~~xxx~~ from 10-17-59.

WHEREFORE, Plaintiff claims all damages allowed by law for the aforesaid injuries of Russel D. Marsh.

Donald R. Mikesell & Belin & Belin
Attorneys for Plaintiff

Carla Belin Jr.
Donald R. Mikesell

STATE OF PENNSYLVANIA :
 : SS
COUNTY OF CLEARFIELD :

Personally appeared before me, DELBERT W. MARSH, who after being duly sworn according to law, deposes and says that all the facts stated in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Robert H. Marsh

SWORN and SUBSCRIBED before me
this 16th day of February, 1962.

Carl E. Walker.

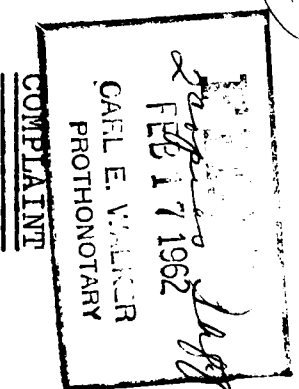
PROTHONOTARY
My Commission Expires
1st Monday Jan. 1966

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 74 September Term, 1961

In Re: RUSSEL D. MARSH, a minor,
by DELBERT W. MARSH, his
guardian

-VS-

JAMES C. WALKER and RAY S.
WALKER, Bigler, Penna.



TO: JAMES C. WALKER and RAY S.
WALKER, Bigler, Penna.,
defendants,

"You are hereby notified to
plead to the enclosed Complaint
within twenty (20) days from service
hereof"

By *Donald R. Mikesell*
Attorney for Plaintiff

BELIN & BELIN and DONALD R. MIKESELL
Attorneys for Plaintiff
Clearfield, Pennsylvania

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian,
Plaintiffs,

vs.

JAMES C. WALKER and RAY S.
WALKER,
Defendants.

No. 74 September Term, 1961

ANSWERS TO CROSS-INTERROGATORIES

NOW COME the defendants, JAMES C. WALKER and RAY S. WALKER, by their attorneys, Dan P. Arnold and Dickie, McCamey, Chilcote & Robinson, and make answer to Cross-Interrogatories propounded by the plaintiffs as follows:

1. State the names and present addresses of all witnesses to the events immediately preceding the alleged accident, which are known to the defendants, their attorneys, agents, investigators or other representatives.

ANSWER: James Walker, Bigler, Pennsylvania.

David Bock, Bigler, Pennsylvania.

Fred Albert, Bigler, Pennsylvania.

2. State the names and present addresses of all witnesses to the alleged accident which are known to the defendants, their attorneys, agents, investigators or other representatives.

ANSWER: See answer to Interrogatory No. 1.

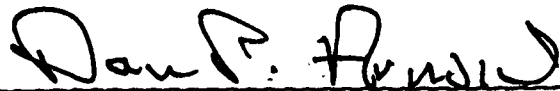
3. State the names and present addresses of all witnesses to the events immediately subsequent to the alleged accident which are known to the defendants, their attorneys, agents, investigators or other representatives.

ANSWER: See answer to Interrogatory No. 1 and

Police Officer Andrew Harchack,
Trooper, Philipsburg, Pennsylvania.

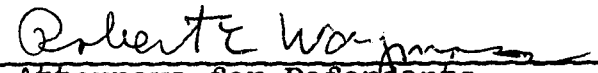
James A. Smith, 206 Water Street,
Mt. Union, Pennsylvania.

Alvin G. Smith, Smith Milling Company,
Mt. Union, Pennsylvania.



Dan P. Arnold, Attorney
for Defendants.

DICKIE, McCAMEY, CHILCOTE & ROBINSON

By 
Attorneys for Defendants.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CLEARFIELD } SS:

JAMES C. WALKER and RAY S. WALKER, being duly sworn according to law, depose and say that they are the defendants in this action and that the averments of fact set forth in the foregoing Answers to Cross-Interrogatories are true and correct to the best of their knowledge, information and belief.

James C. Walker

Ray S. Walker

SWORN to and subscribed
before me this _____ day
of _____, 1962.

Notary Public

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA	
No. 74 September Term, 1961	
RUSSELL D. MARSH, a minor, by DELBERT W. MARSH, his guardian, Plaintiffs,	
vs.	
JAMES C. WALKER and RAY S. WALKER, Defendants.	
ANSWERS TO CROSS- Interrogatories	
Dan P. Arnold, Esquire Clearfield, Pennsylvania and Robert E. Wayman, Esquire LAW OFFICES OF Dickie, McCarney, Chilcote & Robinson SUITE 820 GRANT BUILDING PITTSBURGH 19, PA.	

Service of a copy of the within
Answers to Cross-Interrogatories
accepted this _____ day of _____,
1962.

Attorney for Plaintiffs

Subscribed and sworn to before me this _____ day of _____, 1962.

Dan P. Arnold

Notary Public for Pennsylvania

PKO 100

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian,
Plaintiffs,

-vs-

No. 74 September Term, 1961

JAMES C. WALKER and RAY S.
WALKER,
Defendants.

CROSS-INTERROGATORIES

Plaintiffs, RUSSELL D. MARSH and DELBERT W. MARSH, his guardian, pursuant to Rules 4005, et seq. of the Pennsylvania Rules of Civil Procedure, demand that the Defendants make full and complete answers under their oaths to the following Interrogatories within twenty (20) days after service thereof upon them:

(1). State the names and present addresses of all witnesses to the events immediately preceding the alleged accident, which are known to the defendants, their attorneys, agents, investigators or other representatives.

(2). State the names and present addresses of all witnesses to the alleged accident which are known to the defendants, their attorneys, agents, investigators or other representatives.

(3). State the names and present addresses of all witnesses to the events immediately subsequent to the alleged accident, which are known to the defendants, their attorneys, agents, investigators or other representatives.

BELIN & BELIN and DONALD R. MIKESELL

By Carl A. Belin Jr.
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 74, September Term, 1961

Re: RUSSELL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian

-VS-

JAMES C. WALKER and RAY S.
WALKER

CROSS-INTERROGATORIES

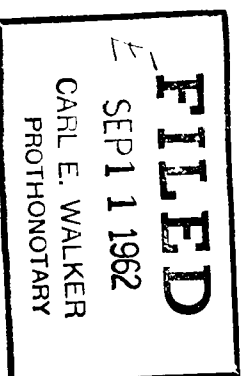
To the Defendants:

You are hereby required to answer the within Cross-Interrogatories within twenty (20) days after the date of service hereof.

BELIN & BELIN and DONALD R. MIKESELL

By Carl E. Walker

BELIN & BELIN and DONALD R. MIKESELL
Attorneys for Plaintiffs
Clearfield, Penna.



7-16-62 10:30 AM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian,
Plaintiffs,

vs.

JAMES C. WALKER and RAY S.
WALKER,
Defendants.

No. 74 September Term, 1961

INTERROGATORIES

Defendants, JAMES C. WALKER and RAY S. WALKER, pursuant to Rules 4005, et seq. of the Pennsylvania Rules of Civil Procedure, demand that the plaintiffs make full and complete answers under their oaths to the following Interrogatories within twenty (20) days after service thereof upon them:

1. State the names and present addresses of all witnesses to the events immediately preceding the alleged accident, which are known to the plaintiffs, their attorneys, agents, investigators or other representatives.

2. State the names and present addresses of all witnesses to the alleged accident which are known to the plaintiffs, their attorneys, agents, investigators or other representatives.

3. State the names and present addresses of all witnesses to the events immediately subsequent to the alleged accident, which are known to the plaintiffs, their attorneys, agents, investigators or other representatives.


Dan P. Arnold, Attorney for Defendants.

DICKIE, McCAMEY, CHILCOTE & ROBINSON

By 
Attorneys for Defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA No. 74 September Term, 1961	
RUSSELL D. MARSH, a minor, by DELBERT W. MARSH, his guardian, Plaintiffs, vs. JAMES C. WALKER and RAY S. WALKER, Defendants.	
<u>INTERROGATORIES</u>	
To the Plaintiffs: You are hereby required to answer the within Interroga- tories within twenty (20) days after the date of service hereof. DICKIE, McCAMEY, CHILCOTE & ROBINSON <i>Robert Hanger</i> <i>David Hanger</i> Attorneys for Defendants.	
Robert E. May LAWYER DICKIE, McCAMEY, CHILCOTE & ROBINSON SUGAR GRANT BUILDING PITTSBURGH, PA. PROTHONOTARY FILED 40028192 40028192	

Service of a copy of the within
Interrogatories accepted this
day of _____, 1962.

Attorney for Plaintiffs

Served the within Interrogatories on

Plaintiffs attorney by leaving a true

and correct copy with the Secretary

at his office on Locust St Clearfield Pa

on Aug 28, 1962.

Cliff P. Hunsell atty for Defs.

In the Court of Common Pleas of Clearfield County, Pennsylvania,

RUSSELL MARSH, et al

versus

JAMES C. WALKER and RAY S. WALKER

No. 74, September Term, 1946

To Prothonotary of said Court, Sir:

Enter my appearance for the defendants.

Date March 2, 1946

Dan T. Arnold
Attorney~~x~~**for** Defendants

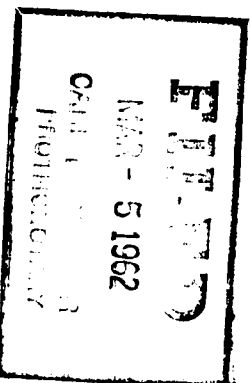
IN THE
Court of Common Pleas
OF
Clearfield County, Pennsylvania

No. 74, September Term, 1946

RUSSELL D. MARSH, et al

versus

JAMES C. WALKER and RAY S.
WALKER



DAN P. ARNOLD
ATTORNEY AT LAW
CLEARFIELD, PA.

In the Court of Common Pleas of Clearfield County, Pa.

Russell D. Marsh a Minor No 74 Sept Term 1961
by Delbert W. Marsh his
guardien

vs

James C. Walker and
Ray S. Walker

Summons

* * * * *
(Sheriffs Return)

Now, Sept 19, 1961 at 10:20 O'Clock A.M. served the with-
in Summons on James C. Walker at place of residence, Big-
ler, Pa., by handing to Mrs Walker an adult member of the
family, being the mother of James C. Walker personally a
true and attested copy of the original Summons and made
known to her the contents thereof.

Now, Sept 19, 1961 at 10:20 O'Clock A.M. served the with-
in Summons on Ray S. Walker at place of residence Big-
ler, Pa., by handing to Mrs Walker, and adult member of
the family, being the wife of Ray S. Walker personally
a true and attested copy of the original Summons and made
known to her the contents thereof.

Costs Sheriff Ammerman \$10.80
(Paid by Attys Urey & Mikesell)

So answers,

Charles G. Ammerman
Charles G. Ammerman
Sheriff

Sworn to before me this 19th
day of Sept 1961 A.D.

Wm T. Hayentz
Prothonotary.

SUMMONS

Commonwealth of Pennsylvania
County of Clearfield

To James C. Walker and Ray S. Walker

You are notified that Russel D. Marsh, a minor by Delbert W. Marsh,
his Guardian

the plaintiff s , have commenced an action in Summons in Trespass
..... against you which you are
required to defend:

Date September 13, 1961

Howe T. Hagerly
Prothonotary.

No. 74 September Term 19 61

Russel D. Marsh, a minor
by Delbert W. Marsh, his
Guardian
versus

James C. Walker and
Ray S. Walker

SUMMONS

Urey & Mikesell
Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Russell D. Marsh a Minor
Delbert W. Marsh his Guardian

No. 74 September Term, 1961

vs
James C. Walker and
Ray S. Walker

at 4:00PM o'clock

Now, February 19, 1962, served the within Complaint in Trespass on Ray S. Walker at his residence, Bradford Township, Bigler, Pa. by handing to him personally a true and attested copy of the original Complaint in trespass and made know to him the contents thereof.

Now, February 19, 1962 at 4:00PM o'clock, served the within Complaint in Trespass on James C. Walker by handing to Ray S. Walker, father of James C. Walker a true and attested copy of the original Complaint in Trespass and made known to him the contents thereof.

Sheriff Costs. \$10.80

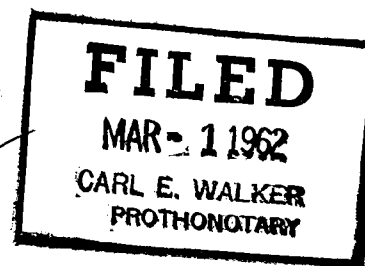
(Paid by Atty B. B. + Marshall)

So Answers,

Sworn to before me this 20th
day of February A.D. 1962

Carl E. Walker
Prothonotary

James B. Reese
James B. Reese
Sheriff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSEL D. MARSH, a minor,
by Delbert W. Marsh,
his Guardian

vs

JAMES C. WALKER and
RAY S. WALKER

:
: No. 74 September Term, 1961
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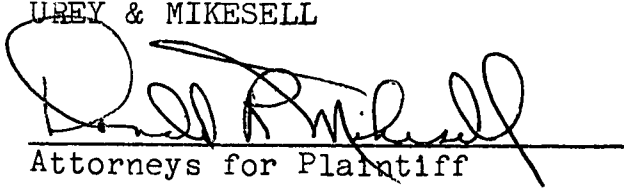
PRAECIPE FOR SUMMONS IN TRESPASS

To: William T. Hagerty, Prothonotary

Sir ;

Please issue a Summons in Trespass against the defendants
in the above stated case.

UREY & MIKESELL


Attorneys for Plaintiff

Dated at Clearfield,
September 13, 1961

160

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

84
24
RUSSEL D. MARSH, a minor, by :
DELBERT W. MARSH, his guardian : No. 74 September Term 1961
:
-vs- :
:
JAMES C. WALKER and RAY S. : IN TRESPASS
WALKER, Bigler, Pennsylvania :
:


PRAECIPE FOR DISCONTINUANCE

TO CARL E. WALKER, PROTHONOTARY:

SIR:

Mark the records in the above case Settled and
Discontinued upon payment of costs by the Defendant.

UREY & MIKESELL

By 
Attorney for Plaintiff

DOCKET No. 174

✓
Russel D. Marsh, a minor by

Delbert W. Marsh, his guardian

VERSUS

James C. Walker

Ray S. Walker

In the Court of Common Pleas of
Clearfield County, Pa.

No. 74 September Term, 19 61

Debt \$

Interest

Judg't Entered

Urey and Mikesell

\$31.10

Prothonotary

17.00

\$48.10

Certified from the records this 5th

day of February, A. D. 19 63

Paul E. Walker Prothonotary

COSTS MUST BE PAID PROMPTLY

No. **74 September 61** Term, 19

Russel D. Marsh, a minor by
Delbert W. Marsh, his Guardian

SI VERSUS

James C. Walker

Ray C. Walker

STATEMENT

174.
for in Robert D. Walker
and settled in 1944.
March 1944

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSEL D. MARSH, a minor,
by DELBERT W. MARSH, his
guardian,

Plaintiffs

-vs-

JAMES C. WALKER and RAY S.
WALKER,

Defendants

No. 74 September Term, 1961

PETITION FOR LEAVE TO COMPROMISE MINOR'S ACTION

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

The petition of Delbert W. Marsh and Janet H. Marsh respectfully represents:

1. That they are the parents of Russel D. Marsh, a minor, age 9, who was injured on September 17, 1959 when he was struck by an automobile owned by the defendant, Ray S. Walker, and operated by the defendant, James C. Walker, on Legislative Route 970 in Bradford Township, Clearfield County, Pennsylvania.

2. The injuries sustained by said minor was a concussion of the brain, a subdural hematoma, and general injuries to the right side with a resulting right third nerve paralysis. That surgery was performed on Russel D. Marsh to correct the subdural hematoma and to correct fault in the eye, from which he has made a recovery insofar as is possible. The injury has left him with a weakness of the right side.

3. That they have incurred the following expenses for the treatment of said child:

\$500.00 - Doctor Anthony F. Susen

4. That Belin & Belin and Donald R. Mikesell were retained upon a contingent fee of 33 1/3% of the recovery by your petitioners; that they have made no other charge other than

investigation charge.

5. That counsel and your petitioners recommend an approval of settlement in the gross amount of Sixty-five Hundred (\$6500.00) Dollars negotiated with the defendants because of the contested liability question in the case; minor plaintiff was crossing said Legislative Route 970 between intersections when struck by defendant's vehicle, and there were no witnesses except the defendant driver and his passengers, and they claim the child darted into the side of the truck.

6. That the County National Bank at Clearfield has been appointed guardian of the Estate of Russel D. Marsh by Order of Court dated the day of January, 1963.

7. This Petition is presented under Rule 2039 of the Pennsylvania Rules of Civil Procedure, wherein it is provided that no action to which a minor is a party shall be compromised, settled or discontinued until after approval of the Court pursuant to the guardian of the minor.

WHEREFORE, plaintiffs pray that an Order be entered approving the compromise, allowing counsel fees and making distribution.


Delbert W. Marsh


Janet H. Marsh

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

Before me, the undersigned, personally appeared
Delbert W. Marsh, being duly sworn, according to law, deposes
and says that the facts set forth in the foregoing Petition for
Leave to Compromise Minor's Action are true and correct to the
best of his knowledge, information and belief.

Delbert W. Marsh

SWORN and SUBSCRIBED before me
this 17 day of January, 1963.

Dick Reed

CLERK OF THE ORPHANS' COURT

MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 1964

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

Before me, the undersigned, personally appeared
Janet H. Marsh, being duly sworn, according to law, deposes
and says that the facts set forth in the foregoing Petition for
Leave to Compromise Minor's Action are true and correct to the
best of her knowledge, information and belief.

Janet H. Marsh

SWORN and SUBSCRIBED before me
this 17 day of January, 1963.

Dick Reed

CLERK OF THE ORPHANS' COURT

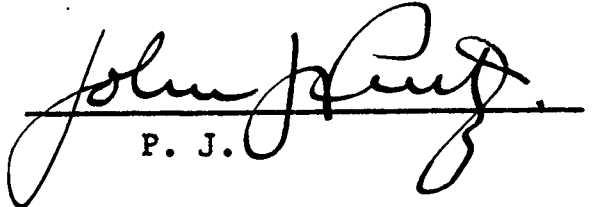
MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 1964

O R D E R

NOW, this 21st day of January, 1963, upon consideration of the foregoing Petition for Leave to Compromise Minor's Action and a Deposition of the Doctor, as to the condition of Russel Marsh attached hereto, and upon exhibition of the minor, it is hereby Ordered that the settlement for this action for the gross sum of Sixty-five Hundred (\$6500.00) Dollars be and is hereby approved, counsel fees allowed, and expenses and distribution be made as follows:

Deblert W. Marsh and Janet H. Marsh (Parents)	\$ 500.00
County National Bank at Clearfield, Guardian of the Estate of Russel D. Marsh, Minor	3833.33
Belin & Belin, Counsel Fees	1097.96
Urey & Mikesell, Counsel Fees	<u>1068.71</u>
TOTAL	\$6500.00

BY THE COURT,


P. J.

RUSSELL D. MARSH, a minor,
by DELBERT W. MARSH, his
guardian,
Plaintiffs,
vs.
JAMES C. WALKER and RAY S.
WALKER,
Defendants.

No. 74 September Term, 1961

For the Plaintiffs: Messrs. Belin & Belin

For the Defendants: Messrs. Dickie, McCamey, Chilcote &
Robinson by Robert E. Wayman, Esquire

DEPOSITION OF ANTHONY F. SUSEN, called for examination pursuant to agreement of counsel and in accordance with Rules 4007, et seq. of the Pennsylvania Rules of Civil Procedure, as amended, taken before Arlene B. Kiger, Notary Public, within and for the Commonwealth of Pennsylvania, at the law offices of Dickie, McCamey, Chilcote & Robinson, 820 Grant Building, Pittsburgh, Pa., on December 6, 1962, at 4:00 o'clock p.m.

STIPULATION

It is stipulated that this deposition is taken pursuant to agreement of counsel and in accordance with Rules of Procedure for use at trial; that signature is waived.

ANTHONY F. SUSEN, a witness, having been first duly sworn according to law, was examined and testified as follows:

BY MR. BELIN:

Q Doctor, give us your full name and your qualifications, just generally.

MR. WAYMAN: I'll stipulate to them that the doctor is a neurosurgeon.

THE WITNESS: Correct.

MR. WAYMAN: Certified by the American Board and on the staff of Children's Hospital here in Pittsburgh.

THE WITNESS: Correct.

Q Doctor, give us your full name.

A Anthony F. Susen -- S-u-s-e-n.

Q Doctor, you live over 100 miles from Clearfield?

A Yes, I do.

Q Doctor, did you treat Russell Marsh?

A Yes, I did.

Q Doctor, what date did you first see him?

A September 17, 1959.

Q Doctor, will you just give us a full and complete history of this patient from the time you saw him, what treatment you gave him, and from the date he was discharged?

A He was admitted to the Children's Hospital at Pittsburgh late on the evening of the 17th of September, after being referred to us by Dr. Fred Pease of the Clearfield Hospital. We received the history that he was struck by an automobile at around 4:00 or 4:30 on the same day; was rendered unconscious; was taken to the Clearfield Hospital; and then because of this critical condition was transferred to our hospital for surgery. At the time of admission, he was a boy of approximately seven years of age; he was deeply comatose with failing vital signs -- that is his pulse and blood pressure were beginning to fail. We made X-rays of his skull which revealed a rather severe fracture on both sides. Because of his failing vital signs, because of his unconsciousness, because he had a dilated fixed pupil in the right side, we felt that he most likely had a blood clot in his intracranial cavity and accordingly carried out surgery the same evening; found and removed a blood clot from the right surface of the brain; found the brain to be severely bruised in all aspects. Following surgery, his condition improved slowly but steadily over the course of the next almost six weeks. He gradually awakened after a period of

approximately two weeks and became moderately oriented, but as he awakened we found that he was completely paralyzed on the right side of his body and had a complete right third nerve paralysis, which means that his right eye did not function normally in motion. We obtained psychological evaluation on him the day before discharge, which was 10/27/59 -- approximately forty days. At that time, he was still paralyzed on the right side of his body; he was unable to walk; his psychological testings revealed that his I. Q. at that time, to the best of our knowledge, using several different methods of testing, was within normal limits. With respect to his ability to carry out certain tests, he was, of course, handicapped by the fact that he couldn't use his right arm and he was penalized on this, but taking this into consideration, we felt that his intellect was within normal limits, and he was discharged at that time on 10/28/59, with a hole in the right side of his head where we had operated, with paralysis of the right side of his body, with a right third nerve paralysis that I referred to earlier which affected the movements of his right eye and gave him double vision. We sent him out with alternate patching -- that is we patched one eye and the opposite eye. Several days before discharge, we carried out a brain wave, or an electroencephalogram, on this boy and it was definitely abnormal, showing considerable injury to the entire right side of the brain as compared to the left, although the left was still not normal due to the original bruising. We followed this boy

along at regular intervals and he seemed to improve. The right side total paralysis became less and less and he was able to walk, although he was unable to perform fine functions with the right hand. We readmitted him to the hospital almost two years later on July 20, 1961, at which time we put a plastic plate in the bony defect that we had created almost two years earlier. At the time of admission, we noted that he still had a mild right side weakness, a right third nerve paralysis, but other than this seemed to be quite well, and at that time obtained a history that he was getting along reasonably well in school. He was discharged on July 29, 1961. He has been seen since that time on regular follow-up visits, the last time being January 26, 1962, at which time he still had a partial right third nerve paralysis and a minimal right sided weakness with impairment of fine motions of his right hand; in other words, I doubt if he'll ever be able to typewrite or play the piano with his right hand, but he'll certainly be able to carry on activity with his right arm. He was able to walk with a very minimal limp, but did wear his shoe out because of the so-called hemiplegic gait. At that time, I suggested to Dr. Pease that an ophthalmologist, or eye surgeon, see him for correction of the right eye problem as much as possible, insofar as I felt that he made a maximum recovery as far as nature is concerned, and I felt that the muscles would have to be tightened up and loosened up in order to try to get him away from this double vision. Dr. Herbert J. Bachrach of Clearfield was consulted

in this -- he's an ophthalmologist -- and subsequently did carry out some surgery on the right eye in an effort to establish single vision, and I have not seen him since January 26, 1962.

Q Doctor, what will be the affect of these injuries on him in the future?

A In general, the main complication of a brain injury is the seizure or convulsion, and approximately 90% of the patients that are going to get seizures will have them within the first year -- the majority of these within the first six months. This boy has now been over three years without a history of convulsions and I would think his chances of developing a late convulsion would be insignificant. I think the main disability this boy is left with, and will be left with, is a minimal right weakness of the right side of his body, especially the hand, and secondly, I think he will always be bothered by double vision, inasmuch as once the third nerve paralysis has been present and usually does not clear in three to six weeks spontaneously, no surgery in the world is ever able to cure it completely. I think he will always have a little deficit to the right eye.

Q Doctor, this plate that you put in his head, does that disappear -- what is that?

A We put a plastic plate in to cover up the bony defect that was necessary to create at the time of surgery to remove the blood clot. The plate is rather small in diameter, measuring only approximately two inches in this boy, and I would not expect he

would have any late trouble from this. If people do get into trouble with plates in the head, it's usually within a period of six weeks to twelve weeks at which time a late infection will appear. This boy, I think, has gone long enough now that I don't think he's going to have any trouble with this.

Q Doctor, does it leave any weakness?

A No, this plate, if anything, is stronger than bone.

Q The permanent affects you say this boy will have is what you related to his right side?

A That's right. I do not think they would accept this boy in the Armed Service because of the history of his head injury, this right third nerve paresis and his right hemiparesis. I think they would accept him with a history of a plate in his head.

Q Was the boy co-operative with your treatment in every way?

A Yes. Of course, he was unconscious for the better part of a month, but at no time did we have the slightest bit of difficulty, and on the second admission he was a fine boy and seemed to be reasonably normal intellectually, fortunately.

Q Doctor, was the boy subject to much pain, or would that be relieved in the treatment?

A Yes, I don't think there's any question about it that the boy was pretty badly disabled for better than six weeks in the hospital and it was approximately three months before he could walk reasonably well.

Q Would that be painful to the boy?

A To a certain extent, yes.

MR. BELIN: That's all we have.

BY MR. WAYMAN:

Q Doctor, can you tell me whether or not this young man is in a position to recall how this accident occurred?

A No, I do not think so. I think without any question he has retrograde amnesia, and after such a severe injury I'm sure he has retrograde amnesia for days, maybe a month.

Q So that it would be your opinion that probably he has no recollection for several weeks or a month from the accident, is that correct?

A Prior to the accident, and I'm sure he has no recollection for at least six weeks following the accident.

Q So that he couldn't tell us how the accident happened?

A I'm sure he couldn't -- I don't believe he could.

BY MR. BELIN:

Q Doctor, aren't there cases where you get a lapse of memory and it does come back?

A Yes.

MR. WAYMAN: For the purpose of the record, Mr. Belin, I guess I'd better finish before you start.

BY MR. WAYMAN:

Q But it would be your opinion, Doctor, as I understand it, with

this type of injury the boy would have a retrograde amnesia?

A I believe he would, yes, although I have not asked about or checked on this, but I just assume he would.

Q Particularly with this type of injury?

A This severe type of an injury, yes. As a matter of fact, we didn't expect this boy to survive.

MR. WAYMAN: Doctor, that's all I have to ask.

BY MR. BELIN:

Q Doctor, when you state your views of this boy, you did not make any test of this character to determine whether he would be unable to remember?

MR. WAYMAN: I'll object to that question as leading.

Q I think you stated before that you had not made any test in this connection?

A I believe I stated that I did not ask him if he could remember.

Q And there are cases where their memory does come back?

MR. WAYMAN: I will have to object again because of a generality and I have reference only to this particular case, and also as a leading question.

Q Are there cases where their memories do come back, Doctor?

A Yes.

MR. BELIN: That's all.

BY MR. WAYMAN:

Q Doctor, is there any time limit to this as far as this amnesia disappearing?

A Usually if amnesia returns, it returns with complete recovery of brain function which is a period of perhaps three to six months -- six months at the outside.

Q With a complete recovery of brain function?

A That is intellectual function.

Q Has this boy ever had a complete recovery of intellectual function?

A Yes, I think he has.

Q At what time did they occur, can you tell?

A I don't know exactly what time but I would think within a period of six months.

Q However, it's your opinion with this type injury that you would expect he would have a retrograde amnesia?

A I would certainly expect so.

MR. WAYMAN: Doctor, that's all I have to ask.

(Deposition closed)

(Signature waived)


CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

I, Arlene B. Kiger, Notary Public, within and for the Commonwealth of Pennsylvania, duly commissioned and qualified, do hereby certify that the aforementioned witness, ANTHONY F. SUSEN, was by me first sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place set forth; that the foregoing transcript is a true record of the testimony given by said witness; and that the inspection, reading and signing of the transcript of the deposition were specifically waived by the witness and all parties attending the taking of the deposition.

I further certify that I am not a relative, employee or attorney of any of the parties, or a relative or employee of either counsel, or financially interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this 10th day of December, 1962.


Notary Public

My Commission expires:
May 29, 1963.

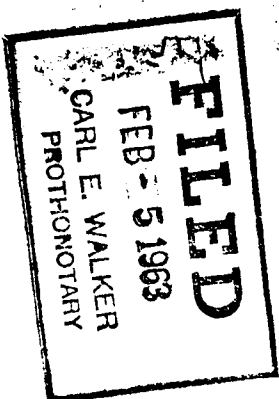
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 74 September Term, 1961

Re: RUSSELL D. MARSH, a minor,
by Delbert W. Marsh, his
Guardian

-vs-

JAMES C. WALKER and RAY S.
WALKER

PETITION FOR LEAVE TO COMPROMISE
MINOR'S ACTION



Urey & Mikesell
Belin & Belin
Attorneys at Law
Clearfield, Pa.

Now Jan 18, 1963
Service accepted
Dan P. Arnold
atty for debts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL D. MARSH, a minor, by :
DELBERT W. MARSH, his guardian :

vs. :

No. 74 September Term, 1961

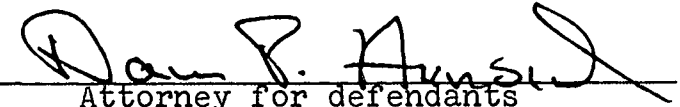
JAMES C. WALKER and RAY S. :
WALKER, Bigler, Pennsylvania :

DEFENDANTS' ANSWER

1. Paragraph 7 of the plaintiffs' Complaint is denied for the reason that at the time of the happening of the accident set forth in the Complaint, James C. Walker was not employed by, or working as the servant or agent of, Ray S. Walker, and on the contrary, it is averred that said James C. Walker at the time of the accident referred to in the Complaint, was engaged in business for his own purposes.

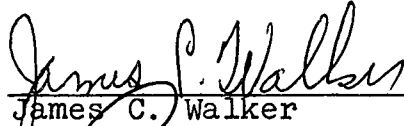
2. Paragraph 8 of the Complaint is denied for the reasons set forth in the foregoing paragraph.

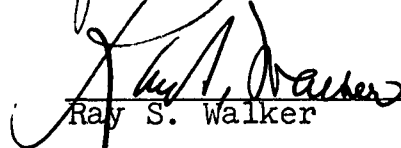
3. Paragraph 11 of the Complaint is denied, and in particular the five places where the words "defendant servant" appear are denied for the reasons set forth in paragraph 1 hereof.


Attorney for defendants

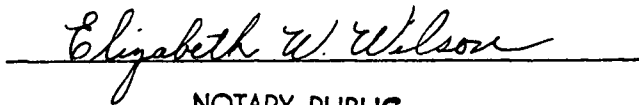
COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

JAMES C. WALKER and RAY S. WALKER, being duly sworn according to law, depose and say that the facts set forth in the foregoing Answer are true and correct to the best of their knowledge, information and belief.


James C. Walker


Ray S. Walker

Sworn to and subscribed
before me this /8th day
of May 1962.


NOTARY PUBLIC
My Commission Expires
September 15, 1965

Now this 24th day of May service of the
defendants answer is hereby accepted
Behr & Behr
by Carl Behr p

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA. No. 74 September Term, 1961
RUSSELL D. MARSH, a minor by DELBERT W. MARSH, his guardian
VS.
JAMES C. WALKER and RAY S. WALKER, Bigler, Pennsylvania
DEFENDANTS' ANSWER
<div>FILED MAY 22 1962 CARL E. WALKER PROTHONOTARY</div> <div>DAN P. ARNOLD ATTORNEY AT LAW CLEARFIELD, PA.</div>

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian

-vs-

No. 74 September Term, 1961

JAMES C. WALKER and RAY S.
WALKER, Bigler, Pennsylvania

PRAECIPE TO PUT CASE ON JURY TRIAL LIST

TO THE PROTHONOTARY, CARL E. WALKER:

SIR:

Place the above case on the trial list for jury trial
sec. reg.

Belin & Belin and Donald R. Mikesell
Attorneys for Plaintiff

By Carl A. Belin Jr.

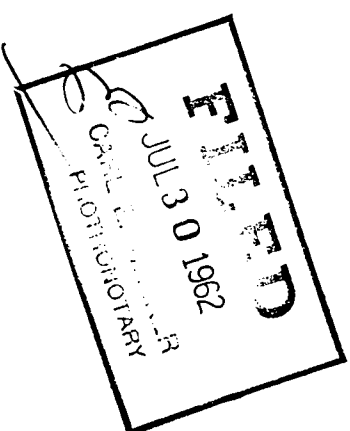
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 74 September Term 1961

Re: RUSSELL D. MARSH, a minor, by
DELBERT W. MARSH, his guardian

-vs-

JAMES C. WALKER and RAY S.
WALKER, Bigler, Pennsylvania

PRAECIPE TO PUT CASE ON JURY TRIAL
LIST



Belin & Belin
Attorneys at Law
115 East Locust Street
Clearfield, Penna.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RUSSELL D. MARSH, a minor by
DELBERT W. MARSH, his guardian,
Plaintiffs,

-vs-

JAMES C. WALKER and RAY S.
WALKER,
Defendants.

No. 74 September Term, 1961

ANSWER TO INTERROGATORIES

Plaintiffs, RUSSELL D. MARSH and DELBERT W. MARSH, his guardian, make Answer to the Interrogatories as follows:

(1). The names and present addresses of all witnesses to the events immediately preceding the alleged accident, which are known to the plaintiffs, their attorneys, agents, investigators or other representatives are: Janet Marsh, the mother; Delbert Marsh, the father; and Russell Marsh, the boy, all of the Village of Bigler, Bradford Township, Pennsylvania.

(2). The names and present addresses of all witnesses to the alleged accident which are known to the plaintiffs, their attorneys, agents, investigators or other representatives are: Janet Marsh, the mother; Delbert Marsh, the father; and Russell Marsh, the boy, all of the Village of Bigler, Bradford Township, Pennsylvania.

(3). The names and present addresses of all witnesses to the events immediately subsequent to the alleged accident, which are known to the plaintiffs, their attorneys, agents, investigators or other representatives are: Janet Marsh, the mother; Delbert Marsh, the father; Russell Marsh, the boy, all of the Village of Bigler, Bradford Township, Pennsylvania, and Trooper Andrew Harchak, Troop C-2, Philipsburg, Pennsylvania.

BELIN & BELIN and DONALD R. MIKESELL

By Charles Belin
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 74 September Term, 1961

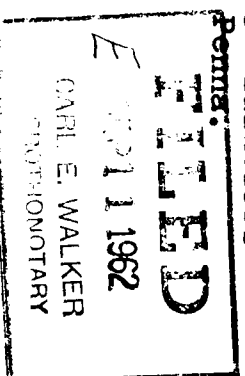
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-VS-

JAMES C. WALKER and RAY S.
WALKER

ANSWER TO INTERROGATORIES

BELIN & BELIN and DONALD R. MIKESELL
Attorneys for Plaintiffs
Clearfield, Penna.



FILED IN CLEARFIELD COUNTY, PENNSYLVANIA