

03-348-CD
GREGG L. BARRETT -vs- MACK TRUCKS, INC.

William A. Shaw
Prothonotary

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

GREGG L. BARRETT, an	*		
individual,	*		
Plaintiff,	*		
	*		
vs.	*	No. 03 -	- CD
	*		
MACK TRUCKS, INC., a	*		
corporation,	*		
Defendant.	*		

N O T I C E

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

GREGG L. BARRETT, an	*	
individual,	*	
Plaintiff,	*	
	*	
vs.	*	No. 03 - - CD
	*	
MACK TRUCKS, INC., a	*	
corporation,	*	
Defendant.	*	

C O M P L A I N T

NOW COMES the Plaintiff, GREGG L. BARRETT, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Gregg L. Barrett, an adult individual, who resides at 5 Capricorn Court, Clearfield, Pennsylvania 16830.

2. That the Defendant is Mack Trucks, Inc., a corporation believed to have its principal place of business in the Commonwealth of Pennsylvania located at 2100 Mack Blvd., Allentown, Pennsylvania 18103.

3. That at all times referred to herein, W.W. Engine & Supply, Inc., was an authorized dealer for the Defendant, Mack Trucks, Inc.

4. That on October 24, 1997, the Plaintiff purchased a new 1998 Mack Truck, Model #C1713, Serial #1M2AD62C2WW006080, Engine #E7 460 701499 (hereinafter referred to as the "Truck")

for the sum of \$103,295.85 from W.W. Engine & Supply, Inc., DuBois, Pennsylvania, as appears from the invoice attached hereto as Exhibit "A".

5. That contemporaneously with the purchased of the Truck referred to in Paragraph 4 hereof which is incorporated herein by reference, Plaintiff received an express warranty from the Defendant titled "Pedigreed Protection Plan No. TS46897". A copy of said warranty is attached hereto as Exhibit "B".

6. That in accordance with the Pedigreed Protection Plan referred to in Paragraph 5 hereof which is incorporated herein by reference, the Truck purchased by Plaintiff provided warranty coverages and limitations in part as follows:

	<u>Months</u>	<u>Miles</u>	<u>Kilometers</u>
SCHEDULE 3. MACK TRANSMISSIONS 5,6,9, 10, 13, 18 Speed Only	60	500,000	805,000
SCHEDULE 4. MACK AXLES			
Rear Carriers and Housing	60	500,000	805,000

7. That in December 2000 the front rear end housing of Plaintiff's Truck cracked.

8. That Plaintiff took the Truck to Defendant's authorized dealer, W.W. Engine & Supply, Inc., DuBois, Pennsylvania, which dealer informed Plaintiff that the housing was not warranted and refused to repair the crack.

9. That Plaintiff at his own expense was required to have the front rear end housing welded by Vince Centra Truck

Repair at a cost of \$866.90 as appears from the invoice attached hereto as Exhibit "C".

10. That on or about February 10, 2002, the front rear end housing cracked a second time necessitating a second repair by Vince Centra Truck Repair at a cost of \$437.90, which repair was also paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "D".

11. That on or about June 10, 2002, the Truck's front rear end housing cracked a third time.

12. That Plaintiff contacted the Defendant and demanded that the housing be replaced at which time he was informed by Defendant's representative that Defendant would not honor its warranty because Plaintiff had failed to go through the proper procedures.

13. That on June 10, 2002, the front rear end housing was replaced by Vince Centra Truck Repair at a total cost of \$1,865.79, which amount was paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "E".

14. That on or about July 12, 2002, the back rear end of the vehicle malfunctioned.

15. That Plaintiff contacted the Defendant as well as its authorized dealer, W.W. Engine & Supply, Inc., DuBois, Pennsylvania, and was informed that W.W. Engine & Supply, Inc., would repair the back rear end of the vehicle under warranty if

they deemed the failure to be under warranty but would not return the vehicle to Plaintiff unless Plaintiff paid W.W. Engine & Supply, Inc., to repair the front rear end which Plaintiff believes and therefore avers was under warranty in December 2000 at which time the front rear end was repaired by W.W. Engine & Supply, Inc.

16. That Defendant's response as well as that of its authorized dealer, W.W. Engine & Supply, Inc., caused Plaintiff to have the back rear end repaired by Vince Centra Truck Repair at a cost of \$1,780.25, which amount has been paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "F".

17. That in addition to the failure of the rear rear end, the transmission of the Truck also failed in July 2002.

18. That Plaintiff contacted the Defendant as well as its authorized dealer, W.W. Engine & Supply, Inc., concerning the failure of the Truck's transmission and was informed by W.W. Engine & Supply, Inc., as well as the Defendant, Mack Trucks, Inc., that the transmission would be repaired under warranty provided Defendant believed the failure was covered by its warranty and further informed Plaintiff that his Truck would not be repaired unless he paid for the earlier repair done to the front rear end of the Truck by W.W. Engine & Supply, Inc., which repair Plaintiff believes and therefore avers was under warranty

in December 2000 at which time the front rear end was repaired by W.W. Engine & Supply, Inc.

19. That Defendant's response as well as that of its authorized dealer, W.W. Engine & Supply, Inc., caused Plaintiff to have the transmission repaired by Vince Centra Truck Repair at a cost of \$4,726.27, which amount has been paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "G".

20. That on or about January 24, 2002, the rear rear housing of the vehicle cracked.

21. That the rear rear housing has not been repaired.

22. That an estimate to repair the rear rear housing has been prepared by Vince Centra Truck Repair at a cost of \$3,488.34. A copy of said estimate is attached hereto as Exhibit "H".

23. That on each occasion referred to herein when components of the Truck failed, said Truck was less than 60 months old and the mileage was less than 500,000.

24. That Defendant's failure to comply with the express warranty given to Plaintiff has caused Plaintiff to incur repair costs in the total amount of \$9,677.11.

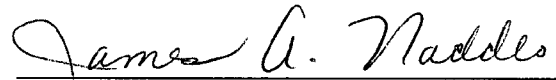
25. That the total down time of the vehicle occasioned by the repairs identified herein was 39 days.

26. That net earnings of said Truck per day averaged \$300.00.

27. That Plaintiff lost the sum of \$11,700.00 for the Truck's down time.

WHEREFORE, Plaintiff claims damage against Defendant in the amount of 21,377.11.

Respectfully submitted,


James A. Naddeo, Esquire
Attorney for Plaintiff

W.W. ENGINE

& SUPPLY, INC. Five Locations: Bedford • Dubois • Kylertown • Shipperville • Somerset



SOLD TO: GREGG BARRETT
ADDRESS: P.O. BOX 23
KERRMORE ROAD
NEW MILLPORT, PA 16861
DATE: OCTOBER 24, 1997

SHIP TO:

NO. 1415

	Year	Make	New or Used	Model or Series	Serial Number	Engine Number
Vehicle Sold	1998	MACK	NEW	CL713	1M2AD62C2WW006080	E7 460 701499
Trade In	NONE					
Vehicle Sold						
Trade In						
Vehicle Sold						
Trade In						

CONDITIONS OF SALES & DELIVERY

DEALER'S WARRANTIES AND-OR REPRESENTATIONS:

We, the Dealer, shall not be liable to you, the purchaser, for any consequential damages, damages to property, damages for loss of time, loss of profits, or income or any other incidental damages arising out of the sale or use of this vehicle.

We are not a party to any manufacturer's or other third party warranty applicable to this vehicle but may be a representative for purposes of service or repairs under such warranty.

IF THIS IS A USED VEHICLE:

This vehicle is sold "as is" by us. We hereby expressly disclaim all warranties, either express or implied, including any implied warranties or merchantability or fitness for a particular purpose and neither assume nor authorize any other person to assume for us any warranty liability in connection with the sale of the vehicle. Except for any manufacturer's or other express warranty which may exist on the vehicle, the entire risk as to the quality and performance of the vehicle is with you, the buyer, and should the vehicle prove defective following purchase, you will assume the entire cost of all servicing and repair.

VEHICLE ACCEPTED BY:
COPY OF INVOICE-BILL OF SALE RECEIVED BY:

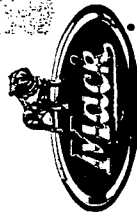
x Gregg Barrett

Selling Price	103,295.85
FRET	11,765.74
Other	
SUBTOTAL (1)	115,061.59
Document Fees	40.00
Tire Tax	10.00
License & Title	861.50
Sales Tax	EXEMPT
Other	
SUBTOTAL (2)	911.50
TOTAL (1+2)	115,973.09
Trade Allowance (Less Payoff)	
Deposit	3,000.00
Amount Financed	112,061.59
Cash Due	911.50

EXHIBIT "A"

PEDIGREED PROTECTION PLAN

PEDIGREED PROTECTION PLAN



TS46897

TS46897 25M 6/96

WARRANTY COVERAGES AND LIMITATIONS: All Coverage is 100% Parts and Labor

VEHICLE APPLICATIONS: A, B		Hours	Months	Miles	Kilometers
SCHEDULE 1. BASIC VEHICLE* (Includes Roadside Assistance and Towing for warrantable failures.**)		-	12	100,000	161 000
*Clutch Lining, Brake Lining and Brake Drums are covered for 12 months or 25,000 miles/40 000 kilometers only. ** Roadside Assistance and Towing coverage does not apply to vendor engines, transmissions and axles.					
SCHEDULE 2. MACK DIESEL ENGINE					
Standard Warranty					
Major Components:		10,800	36	300,000	483 000
Cylinder Block Casting Main Bearing Bolts Cylinder Head Castings Cylinder Head Capscrews Crankshaft Forging Con-Rod & Cap Forging Con-Rod Capscrews		12,500	60	500,000	805 000
Camshaft Forging Valve Lifters Intake Manifold Casting Flywheel Housing Gear Cover Engine Gears					
Coverage also applies to consumables such as lubricant, antifreeze, filter elements, belts, hoses and similar maintenance items not reusable and replaced directly as result of warrantable engine, carrier or transmission failure.					
Components not manufactured by Mack Trucks, Inc., but used on Mack diesel engine assemblies are excluded from the coverage in Schedule 2. These components are covered by the component manufacturer's warranty in effect at the time of delivery. Consult your local Mack service facility for details.					
SCHEDULE 3. MACK TRANSMISSIONS					
5, 6, 9, 10, 13, 18 Speed Only		-	60	500,000	805 000
All Others		-	36	300,000	483 000
SCHEDULE 4. MACK AXLES					
Rear Carriers and Housing		-	60	500,000	805 000
Rear Carrier Seals, Gaskets and Front I-Beam		-	36	300,000	483 000
S65 Bogle and Carrier, Regardless of Carrier Model		-	12	100,000	161 000
SCHEDULE 5. Trunnion Bracket and Spindle, Suspension Trunnion (except Bushings).		-	36	300,000	483 000
SCHEDULE 6. FRAMES: SIDE RAILS AND CROSSMEMBERS		-	60	500,000	805 000
SCHEDULE 7. CAB STRUCTURE		-	60	500,000	805 000
SCHEDULE 8. CAB CORROSION		-	60	500,000	805 000
Coverage applies to perforation (an actual hole in the cab panel) due to corrosion. Coverage does not apply to corrosion caused by damage to paint finish.					
SCHEDULE 9. Components not manufactured by Mack Trucks, Inc. may have warranty coverage different from the above as they are covered by the manufacturer's warranty. Consult your local Mack sales facility for details.		-	60	500,000	805 000

DEF EX #1

HCO-1 BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991

Address Carpenter G. Lot 5 C. H. H.

Odometer Reading	Vin No.
	006080

MOTOR NO.

ESTIMATES FOR LABOR ONLY-
MATERIAL ADDITIONAL

ARO-666-3
PRINTED IN U.S.A.

VINCE CENTRA TRUCK REPAIR

HCO-1 BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991

Name Cress, Barith

Address Carpenter's Lot 5 C16A

Phone No. _____ Date 6/10/02

Odometer Reading _____ Vin No. 006030

MAKE AND MODEL _____ LICENSE NO. AND STATE _____ MOTOR NO. _____

OPERATION NUMBER 98mmck INSTRUCTIONS _____ AMOUNT _____

LUBR. OIL ☐ CHANGE ☐ TRANS. ☐ DIFF. ☐ WASH ☐ POLISH ☐

ESTIMATES FOR LABOR ONLY-
MATERIAL ADDITIONAL

REPAIR ORDER

QTY	PART NO.	NAME OF PART	SALE AMT.	OPERATION NUMBER	INSTRUCTIONS	AMOUNT
1	19084434	mkc 1159	3476.45			
2	42672	5001	89.17			
1	110516444	B19	53.17			
1	110516440	B19	44.87			
1	47673	B19	50.40			
1	47620	B19	40.15			
1	36419	B0H	15.74			
1	36801	1st Nut	8.42			
1	39707	1st Washer	6.72			
1	652018	STAMP KIT	11.13			
1	70221744	SEALING CHIP	94.83			
5		110Washer	1.00			
8	204X406	NUT	23.52			
4	7651539	SHROVE	23.56			
1	3.1	1st Nut	1.35			
		TOTAL PARTS	3941.45			
		Gals. Gas/Oil @	45.89			
		Qts. Oil @				
		Lbs. Grease @				
		Total Gas-Oil-Grease	45.89			
		Total Accessories:	50.00			
		Accessories				
		Tires, Tubes				
		Sublet Repairs				
		Shop/Misc.				
		TOTAL	4542.24			
		Subtotal	2672.15			
		TOTAL AMOUNT	1865.79			

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

Work Authorized by _____ Date Promised _____

Delivered to _____ Date Delivered _____

ARO-666-3
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VINCE CENTRA TRUCK REPAIR

HCO-1 BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991

Name George Burnett

Address Capricorn 6505 C142

Phone No. Date 7/12/02

Odometer Reading Vin No. 006080

MAKE AND MODEL 98 Mack LICENSE NO AND STATE MOTOR NO.

QTY	PART NO.	NAME OF PART	SALE AMT.
11	373 x 2	Bolts	22.85
4		wire ties	1.45

OPERATION NUMBER	INSTRUCTIONS	AMOUNT
LUBR. <input type="checkbox"/> CHANGE OIL <input type="checkbox"/> TRANS. <input type="checkbox"/> DIFF. <input type="checkbox"/> WASH <input type="checkbox"/> POLISH <input type="checkbox"/>		

Remove, get rebuilt and reassemble Rear end
Replace leveling valve (transferred)

ACCESSORIES	AMOUNT	TOTAL LABOR
Rebuild Rear	1980.00	183.60
TOTAL PARTS	22.85	22.85
Gas <u>Gas</u> @ <u> </u>	37.95	37.95
Qts. Oil @ <u> </u>		
Lbs. Grease @ <u> </u>		
Total Gas-Oil-Grease	37.95	
Total Accessories:	1980.00	

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

Work Authorized by Date Promised

Delivered to Date Delivered

Total Labor	183.60
Total Parts	22.85
Environmental Charges	
Gas, Oil, Grease	37.95
Accessories	
Tires, Tubes	
Sublet Repairs	1980.00
Shop/Misc.	
TOTAL	2224.40
Taxes <u> </u>	1744.15
TOTAL AMOUNT	1780.25

REPAIR ORDER

ESTIMATES FOR LABOR ONLY-
MATERIAL ADDITIONAL

REPAIR ORDER

VINCE CENTRA TRUCK REPAIR

**HCO-1 BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991**

[illegible]

HCO-1 BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991

Name Gregg Barrett
Address Capicorn Ct Lot 5 C/F
Phone No. _____ Date _____
Odometer Reading _____ Vin No. _____

[illegible]

AFD-666-3
PRINTED IN U.S.A.

REPAIR ORDER

ESTIMATES FOR LABOR ONLY.
MATERIAL ADDITIONAL.

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared GREGG L. BARRETT, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing COMPLAINT are true and correct to the best of his knowledge, information and belief.

Gregg L. Barrett

SWORN and SUBSCRIBED before me this 24th day of January, 2003.

Jennifer L. Royer

NOTARIAL SEAL
JENNIFER L. ROYER, Notary Public
Clearfield Twp., Clearfield County
My Commission Expires May 17, 2016

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

FILED

013:34-6N
MAR 12 2003

1 cc Atty Maddox

Atty pd 85.00

William A. Shaw
Prothonotary

William A. Shaw
Prothonotary

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

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*
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*
*

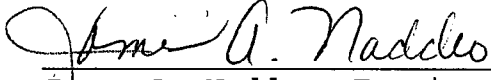
No. 03 - 348 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default filed in the above-captioned action was served on the following person and in the following manner on the 21st day of April, 2003:

First-Class Mail, Postage Prepaid

Mack Trucks, Inc.
2100 Mack Blvd.
Allentown, PA 18103


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

:
:
:
:
:
:

Civil Division

Docket No. 03-348-CD

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter our appearance on behalf of the Defendant Mack Trucks, Inc. in the
above-captioned action.

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY:



C. Edward S. Mitchell

ID#07222

Attorney for Defendant

10 West Third Street

Williamsport, PA 17701

Telephone: 570-323-8404

Facsimile: 570-323-8585

FILED

APR 28 2003

William A. Shaw
Prothonotary

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

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served a copy of the foregoing Entry of Appearance on the following, via U.S. First Class Mail, postage prepaid, this 24th day of April, 2003:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY: _____



C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

Civil Division

Docket No. 03-348-CD

NOTICE TO PLEAD

TO: Plaintiff
c/o James A. Naddeo, Esquire
211 ½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830

You are hereby required to plead to the within New Matter within twenty (20) days from the date of service hereof.

NOTE: You are hereby warned that if you fail to plead as notified and required the action will proceed without you and you will be liable to have a judgment entered against you in your absence.

MITCHELL, MITCHELL, GRAY & GALLAGHER
A professional corporation



C. Edward S. Mitchell - I.D. #07222
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: (570) 323-8404
Fax: (570) 323-8585

FILED

MAY 27 2003

William A. Shaw
Prothonotary

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

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant.	:	

ANSWER AND NEW MATTER OF MACK TRUCKS, INC.

1. After reasonable investigation, Defendant is without knowledge of information sufficient to form a belief as to the truth of the averments contained in paragraph one.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. By way of further answer, records of Defendant indicate that on October 24, 1997, a 1998 Mack Truck, chassis model number CL713, serial number 1M2AD62C2WW006080, engine model number E7-460, serial number E701499 was delivered to Greg Barrett. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph four.
5. Denied. On the contrary, upon information and belief an express warranty titled "Pedigreed Protection Plan Number TS46898" was delivered to Plaintiff in connection with the sale of the vehicle which is the subject of this litigation. A true and correct copy of the language of the Pedigreed Protection Plan TS46898 is attached hereto, marked Exhibit "Defendant A" and incorporated herein by

reference.

6. Denied. On the contrary, the language of the applicable warranty is contained in Exhibit "Defendant A", attached hereto and incorporated herein by reference.
- 7-8. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs seven and eight. By way of further answer, Defendant has no record indicating a warranty claim has been made to Defendant for a December 2000 front rear end housing crack.
9. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 9.
10. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 10. By way of further answer, Defendant has no record indicating a warranty claim has been made to Defendant for a February 10, 2002, front rear end housing crack.
11. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 11.
12. Denied. By way of further answer, Defendant has no record of a warranty claim to Defendant for a June 10, 2002, front rear end housing crack, no record of being contacted by Plaintiff at such time and no knowledge of the identification of Defendant's representative who addressed warranty information with Plaintiff.
13. After reasonable investigation, Defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments contained in paragraph 13.

14. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 14.

15-16. Denied. Defendant has no record of a warranty claim to Defendant for a July 12, 2002, back rear end malfunction and no record of being contacted by or responding to Plaintiff at that time. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraphs 15 and 16.

17. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 17.

18-19. Denied. Defendant has no record of a warranty claim to Defendant for a July 2002 transmission failure and no record of being contacted by or responding to Plaintiff at that time. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraphs 18-19.

20-22. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 20-22. By way of further answer, Defendant has no record of a warranty claim to Defendant for a January 24, 2002, rear rear housing crack.

23. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph

23.

24. Denied. By way of further answer, Defendant has no record of warranty claims to Defendant for the failures claimed by Plaintiff herein.

25-27. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 25-27. By way of further answer, said damages would be beyond those covered by the express warranty as set forth in Exhibit "Defendant A" attached hereto and incorporated herein by reference.

WHEREFORE, Defendant requests judgment in its favor.

NEW MATTER

28. The terms and conditions of the express warranty between Plaintiff and Defendant are set forth in Exhibit "Defendant A", pages one through fifteen, a true and correct copy of which is attached hereto and incorporated herein by reference.

29. Said warranty provides in part inter alia as follows:

"Mack Trucks, Inc. (the "Manufacturer") warrants each new Mack motor vehicle (the "Vehicle") sold by it or by any of its authorized new truck sales facilities to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to repairing or replacing, as hereinafter provided, at its option, at the Manufacturer's authorized truck repair facility any part or parts of the Vehicle found to the Manufacturer's satisfaction to be defective upon examination by it, provided that such part or parts be returned to the Manufacturer's factor or to its nearest authorized truck repair facility. In accordance with the

Manufacturer's published policies, the Manufacturer's authorized truck repair facility is authorized to use only Genuine Mack or Mack Approved parts, purchased from the Manufacturer, in performance of warranted repairs, except where such parts are not available."

30. All or portions of Plaintiff's claim are outside the language of the warranty because they go beyond repairing or replacing alleged defective parts and/or because warranty claims have not been made in accordance with the requirements of the warranty language.
31. A list of items not covered by warranty appears on page 12 of the warranty language contained in Defendant A attached hereto and incorporated herein by reference.
32. Upon information and belief, all or portions of Plaintiff's claims are not covered by the warranty because they do not result from normal use and service and/or because they are items not covered by the warranty.
33. Based upon records of Defendant, Plaintiff has not given Defendant notice of the claims which Plaintiff makes in this litigation.
34. The damages which Plaintiff may recover, assuming a breach of warranty, which is denied, have been limited and/or excluded by the terms of the warranty in accordance with Pa.C.S.A. § 2719.
35. Assuming recovery, which is denied, Plaintiff's damages are limited and/or excluded to those permitted by the language of the express warranty.
36. Plaintiff's claims may be limited by the language of page seven of the warranty pertaining to misuse, negligence or accident and/or alterations or repairs outside

of the factory.

37. All or portions of Plaintiff's claims may be barred by applicable statutes of limitations contained in the sales documents, warranty documents and/or applicable statutes.

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY:



C. Edward S. Mitchell

ID#07222

Attorney for Defendant

10 West Third Street

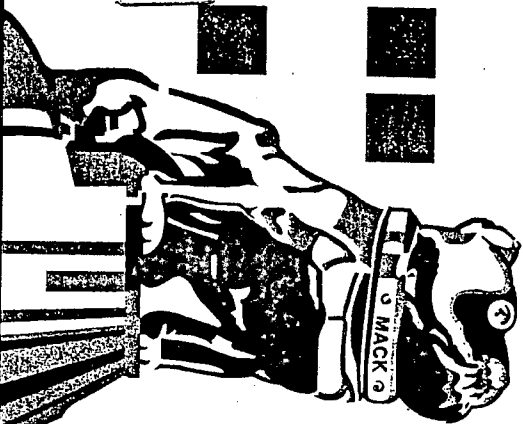
Williamsport, PA 17701

Telephone: 570-323-8404

Facsimile: 570-323-8585

PEDIGREED
PROTECTION
PLAN

PEDIGREED
PROTECTION
PLAN



TS46898 25M 7/97

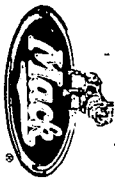
TS46898

DEFENDANT'S
EXHIBIT
NO. **A**

PETICAD-Bayonne, N. J.

**PEDIGREED
PROTECTION
PLAN
TS46898**

REVISED 7/97 25M



WARRANTY REGISTRATION INFORMATION

Before the vehicle is delivered to the customer, the selling dealer should fill in the information below.

Vehicle Model: _____

Vehicle Identification Number (VIN): _____

In-Service Date: _____

Mack Dealer's Name/Address: _____

Customer's Name/Address: _____

VEHICLE APPLICATION: * (Check Only One)

- ☐ Class A: On Highway
- ☐ Class C: Vocational, On/Off Highway
- ☐ Class D: Off Road (Sales Engineering approval required)

*The vehicle application determines the length of the Mack Standard Warranty. If additional axles are installed following the sale of this vehicle, the finished vehicle configuration will be used to assess the vehicle application for warranty purposes.



Your New Chassis...

Your new Mack truck has been quality built, inspected, lubricated, and final adjustments have been performed by the Mack Trucks assembly plant. However, as moving parts "wear in" or as gaskets "take a set," an occasional oil, air or coolant leak may develop. Quick action to correct these minor mechanical items will prevent a major repair later. Refer to the following "break-in" recommendations, and take your vehicle to the nearest Mack service center as soon as any abnormal condition becomes evident.

During First 3,000 Miles (5 000 Kilometers)

- After first 125 miles/200 km, retorque the wheel nuts using an accurately calibrated torque wrench. Recheck this torque again after 500 miles/800 km.
- Check engine oil and coolant levels frequently.
- Observe instruments often and shut down at first sign of any abnormal readings.
- Report all leaks, loose fasteners, unusual noises, etc., so they may be quickly checked and corrected.
- Check brake and clutch adjustment per recommended schedule and adjust as needed.
- Check spring clip nut torque. On Reyco suspensions, also check the equalizer nut torque.
- Check the U-bolt nut torque on the Mack Air suspension at the end of the first 1,000 miles (1 600 km).
- At the End of First 3,000 miles/5 000 km or before 4,000 Miles/6 400 km, or 3 to 4 months (whichever comes first)

- Retorque front and rear spring clips. On Reyco suspensions, also check the equalizer nut torque.

NOTE: Lubricate the chassis, and change the following lubricants and filters according to the Mack Preventive Maintenance Schedules shown in the TS494 – Maintenance and Lubrication Manual:

- Gear oils – transmission, rear axle carrier(s), front drive axle carrier(s), transfer case, flywheel PTO
- Engine oil, oil filters, fuel filters and coolant conditioner

Always service your vehicle regularly according to the Mack Preventive Maintenance Schedules in your TS494 – Maintenance and Lubrication Manual. Your service manager will be glad to help you establish the right Preventive Maintenance Schedule for your truck and type of operation.

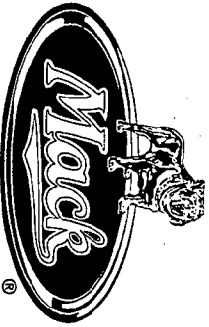
P E D - I - G R E E D P P R O T E C T I O N

P E D - I - G R E E D P P R O T E C T I O N



BULLDOG PROTECTION PLANS (EXTENDED WARRANTIES)

The warranty coverage on your new Mack truck can easily be extended if you desire. Just ask your dealer for details on a Bulldog Protection Plan.



During the first year of ownership, the original purchaser of a new Mack vehicle may elect to extend the warranty term by signing up for a Bulldog Protection Plan at his or her Mack dealer.

The extended warranties which are offered through Bulldog Protection Plans are available to owners of all Mack vehicles with the exception of those that will be used in Vehicle Application D "Off Road." Your Mack dealer and the Mack Warranty Department reserve the right to investigate actual vehicle usage before accepting registration in a Bulldog Protection Plan. Mack Trucks, Inc. may also refuse to honor a warranty claim if it is determined that damage claimed has resulted from vehicle usage other than that described in the registered Vehicle Application.

Mack Trucks, Inc. may make changes in models, design, specifications and equipment at any time without incurring any obligations. The specifications contained herein are subject to change without notice.

P E D I G R E E D P R O T E C T I O N



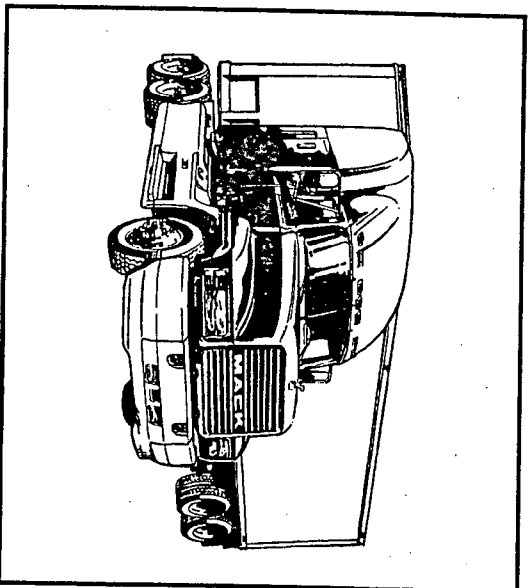
TRANSFER OF WARRANTY

The balance of the Mack Standard Warranty is transferable to each subsequent vehicle owner with the approval of Mack Trucks, Inc. This transfer must be performed by an authorized Mack facility within 30 days of the date of sale. The vehicle must be operated in the same vehicle application as originally sold. Further details and forms required to perform the transfer are available from your local Mack authorized new truck sales facility.

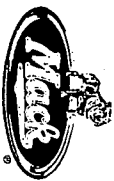
INJECTION PUMP AND GOVERNOR SETTING

Do not attempt to increase engine power by adjusting injection pump and governor settings beyond standard specifications.

In the event that damage results from such improper adjustments, the cost of repairing such damage will not be covered under the Warranty.



P E D I G R E E D P R O T E C T I O N



MAC K STANDARD WARRANTY

1998 and Later Model Years

Mack Trucks, Inc. (the "Manufacturer") warrants each new Mack motor vehicle (the "Vehicle") sold by it or by any of its authorized new truck sales facilities to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to repairing or replacing, as hereinafter provided, at its option, at the Manufacturer's authorized truck repair facility any part or parts of the Vehicle found to be the Manufacturer's satisfaction to be defective upon examination by it, provided that such part or parts be returned to the Manufacturer's factory or to its nearest authorized truck repair facility. In accordance with the Manufacturer's published policies, the Manufacturer's authorized truck repair facility is authorized to use only Genuine Mack or Mack Approved parts, purchased from the Manufacturer, in performance of warranted repairs, except where such parts are not available.

1. Component parts of the Vehicle as listed in the Warranty Schedules on Forms FO34.1, FO34.2 and FO34.3 are warranted for the time period specified commencing the date of delivery of the Vehicle to the original purchaser or before the Vehicle has been operated by such original purchaser the number of miles, kilometers or hours specified on such schedules, whichever first occurs. The repairs or replacement of such parts will be made in accordance with the terms of each schedule.

2. All other parts or components, except as hereinafter provided, are warranted for twelve months or 100,000 miles (161,000 kilometers), commencing the date of delivery of the Vehicle to the original purchaser. The repair or replacement of such parts will be made without charge for parts or labor.

NOTE: WARRANTY COVERAGE MAY VARY BASED ON THE TYPE OF USAGE OF THE VEHICLE. VEHICLE APPLICATION AT TIME OF SALE DETERMINES APPLICABLE WARRANTY COVERAGE. CONSULT YOUR MACK AUTHORIZED NEW TRUCK SALES FACILITY FOR THE APPLICATION CLASS OF THE VEHICLE. THE MANUFACTURER RESERVES THE RIGHT

TO VERIFY THAT THE APPLICATION FOR WHICH THE VEHICLE IS REGISTERED DOES MATCH THE ACTUAL APPLICATION CLASS.

This warranty shall not apply to any Vehicle which has been subject to misuse, negligence or accident or which shall have been altered or repaired outside of the factory in any way which in the Manufacturer's judgement might affect the Vehicle's stability or reliability, nor to normal maintenance services (such as engine tune-up, fuel system cleaning, wheel alignment and balancing, brake and clutch adjustments) and the replacement of service items (such as filter elements and lubricants) made in connection with such services.

The Manufacturer makes no warranty whatever with respect to the engines and transmissions not of its manufacture, nor to winches, power take-offs, dumper, mixer and refuse assemblies, hoists and bodies or other special equipment made by other manufacturers and installed outside of the Manufacturer's factory, nor to non-Mack brand batteries, tires and tubes. Said engines, transmissions, special equipment, accessories, tires and tubes usually are typically warranted separately by their respective manufacturers.

THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF THE MANUFACTURER INCLUDING, WITHOUT LIMITATION OF THE FOREGOING, CONSEQUENTIAL AND INCIDENTAL DAMAGES. The Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of the Vehicle. This warranty may be transferred by the original retail purchaser to the subsequent retail purchaser (purchasing the Vehicle directly from the original retail purchaser) with the prior approval of the Manufacturer and otherwise, in accord with the Manufacturer's Warranty Administration Instructions. The Manufacturer offers various customer purchasable extended warranty plans. Contact the Manufacturer's authorized new truck sales facility for details.

This warranty shall not apply to used motor vehicles, the same being sold "as is - where is".

WARRANTY COVERAGES AND LIMITATIONS: All Coverage is 100% Parts and Labor

VEHICLE APPLICATION: A (HIGHWAY)		Hours	Months	Miles	Kilometers
SCHEDULE 1. BASIC VEHICLE* (Includes Roadside Assistance and Towing for warrantable failures.**) *Clutch Lining, Brake Lining and Brake Drums are covered for 12 months or 25,000 miles/40 000 kilometers only. **Roadside Assistance and Towing coverage does not apply to vendor engines, transmissions and axles.		—	12	100,000	161 000
SCHEDULE 2. MACK DIESEL ENGINE Standard Warranty Major Components: <div> Cylinder Block Casting Main Bearing Bolts Cylinder Head Castings Cylinder Head Capscrews Crankshaft Forging Con-Rod & Cap Forging Con-Rod Capscrews </div> Camshaft Forging Valve Lifters Intake Manifold Casting Flywheel Housing Gear Cover Engine Gears		10,800 12,500	36 60	300,000 500,000	483 000 805 000
Coverage also applies to consumables such as lubricant, antifreeze, filter elements, belts, hoses and similar maintenance items not reusable and replaced directly as result of warrantable engine, carrier or transmission failure. Components not manufactured by Mack Trucks, Inc., but used on Mack diesel engine assemblies are excluded from the coverage in Schedule 2. These components are covered by the component manufacturer's warranty in effect at the time of delivery. Consult your local Mack service facility for details.					
SCHEDULE 3. MACK TRANSMISSIONS 5, 6, 9, 10, 13, 18 Speed Only All Others		—	60 36	500,000 300,000	805 000 483 000
SCHEDULE 4. MACK AXLES Rear Carriers and Housing Rear Carrier Seals, Gaskets and Front I-Beam S65 Bogie and Carrier, Regardless of Carrier Model		—	60 36 12	500,000 300,000 100,000	805 000 483 000 161 000
SCHEDULE 5. Trunion Bracket and Spindle, Suspension Trunion (except Bushings).		—	36	300,000	483 000
SCHEDULE 6. FRAMES: SIDE RAILS AND CROSSMEMBERS		—	60	500,000	805 000
SCHEDULE 7. CAB STRUCTURE		—	60	500,000	805 000
SCHEDULE 8. CAB CORROSION Coverage applies to perforation (an actual hole in the cab panel) due to corrosion. Coverage does not apply to corrosion caused by damage to paint finish.		—	60	500,000	805 000
SCHEDULE 9. Components not manufactured by Mack Trucks, Inc may have warranty coverage different from the above as they are covered by the manufacturer's warranty. Consult your local Mack sales facility for details.					



WARRANTY COVERAGE AND LIMITATIONS

APPLICATION: C

(VOCATIONAL, ON/OFF HIGHWAY)

The following warranty applies to vehicles used in the above applications. Refer to the preceding A schedule for additional details.

Schedule 1 — BASIC VEHICLE:

Same as A Schedule.

Schedule 2 — MACK DIESEL ENGINE:

Same as A Schedule.

Schedule 3 — MACK TRANSMISSIONS:

All Mack transmissions are warranted for 36 months, or 300,000 miles/483 000 kilometers.

Schedule 4 — MACK AXLES: REAR CARRIERS AND HOUSINGS, FRONT I-BEAM:

These components are warranted for 36 months or 300,000 miles/483 000 kilometers, with the exception of the S65 Bogie and Carrier (regardless of carrier model) which is warranted for 12 months or 100,000 miles/161 000 km.

Schedule 5 — TRUNNION BRACKET, SPINDLE, SUSPENSION TRUNNION:

Same as A Schedule.

Schedule 6 — FRAMES: SIDE RAILS AND CROSSMEMBERS:

The warranty for these components is 36 months or 300,000 miles/483 000 kilometers.

Schedule 7 — CAB STRUCTURE:

The warranty for these components is 24 months or 200,000 miles/322 000 kilometers.

Schedule 8 — CAB CORROSION:

Same as A Schedule.

Schedule 9:

Same as A Schedule.



WARRANTY COVERAGE AND LIMITATIONS

APPLICATION: D (OFF ROAD)

The following warranty applies to vehicles used in application D. Refer to the A schedule for additional details. Towing and roadside assistance are not covered under the warranty for application D vehicles.

Schedule 1 — BASIC VEHICLE:

Same as A Schedule.

Schedule 2 — MACK DIESEL ENGINE:

Mack engines are warranted for 6,250 hours, 24 months, or 200,000 miles/322 000 kilometers.

Schedule 3 — MACK TRANSMISSIONS:

All Mack transmissions are warranted for 12 months, or 100,000 miles/161 000 kilometers.

Schedule 4 — MACK AXLES: REAR CARRIERS AND HOUSINGS, FRONT I-BEAMS:

These components are warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 5 — TRUNNION BRACKET, SPINDLE, SUSPENSION TRUNNION:

These components are warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 6 — FRAMES: SIDE RAILS AND CROSSMEMBERS:

The warranty for these components is 12 months or 100,000 miles/161 000 kilometers.

Schedule 7 — CAB STRUCTURE:

The cab structure is warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 8 — CAB CORROSION:

Same as A Schedule.

Schedule 9:

Same as A Schedule.



ITEMS NOT COVERED BY WARRANTY

- Abuse, accident or negligence
- Adjustment of brakes, clutches and controls
- Brake and clutch lining replacement for normal wear
- Specification changes or error in specifications
- Damage in transit
- Deterioration of batteries, paint and trim from improper storage or industrial fallout
- Duplication of repairs from faulty diagnosis/workmanship
- Engine tune-up
- Downtime and driver layover expense
- Headlight adjustment; sealed beam or bulb replacement
- Filter elements and lubricants, except as provided in Warranty Schedule applicable to Mack built engines and transmissions in on-highway vehicles
- Fuel system cleaning
- Injection tip service/replacement for normal use and wear
- Major components/parts replaced without prior authorization from Mack Warranty Department
- Overtime and holiday labor without prior authorization
- Preparation for Delivery inspection
- Shortage of factory-installed parts
- Telephone, Fax and other communication expenses
- Tires and tubes
- Transportation expense for obtaining replacement parts
- Failures resulting from unauthorized alteration or non-Mack parts
- Wheel alignment, wheel and tire balancing, tire rotation
- Windshield wiper blades
- Rattles, squeaks, vibrations, and unusual noises. Up to 90 days after delivery, the necessary adjustments or corrections will be covered by warranty. Such adjustments or corrections after this period are usually the result of use; and therefore, are not covered under warranty.
- Misapplication – failure of any kind resulting from using the vehicle in a type of service for which the vehicle was not designed or built

P E D I G R E E D P R O T E C T I O N



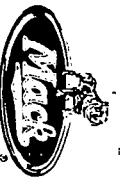
TOWING AND ROAD ASSISTANCE

Towing and road assistance charges are reimbursable on 1998 and later model year Mack manufactured class 8 vehicles when towing becomes necessary to properly service a vehicle due to a warrantable failure.

The following criteria must be met to qualify for payment:

- A. The vehicle must be disabled on the highway due to a warrantable failure.
- B. The vehicle must not be in service more than twelve months, 100,000 miles/161 000 kilometers from the original in-service date.
- C. Towing will be reimbursed when it is not feasible to repair at the point of failure.
- D. Towing reimbursement is limited to normal retail towing charges to the nearest authorized Mack repair facility.
- E. The vehicle must be registered for highway service.

P E D I G R E E D P R O T E C T I O N



FEDERAL REGULATIONS

Gaseous Emission Control Systems Warranty and Noise Control Systems Warranty are printed in the Emission Control Systems Handbook (TS505). California Engine Gaseous Emission Control Systems and Devices warranty and maintenance information is also included.

OPERATOR'S HANDBOOK

Mack vehicles are designed to give many years of reliable service. Excellent information is provided in the Operator's Handbook in each new Mack truck. Refer to it for operation instructions and other important data.

MAINTENANCE AND LUBRICATION

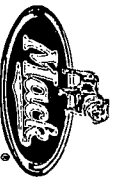
This TS494 manual lists recommended maintenance schedules and indicates in detail just what is to be covered in a bumper-to-bumper preventive maintenance program. Detailed lubricant specifications and capacities are listed for ready reference.

SERVICE MANUAL

For those Mack vehicle owners who need service information, a Mack Components Service Manual (TS576) or a Custom Truck Service Manual (TS473) can be purchased through your local Mack facility.

PARTS AND SERVICE DIRECTORY

To assist in locating Mack facilities, a Directory of Mack Sales, Parts and Service Centers (TS524) is placed in each vehicle. This directory can be used to locate and contact all Mack Truck Sales Facilities and Service Centers.



■ PEDIGREED PROTECTION IS...

Genuine Mack "Performance Counts®" Parts – made to the same high standards as the original equipment parts. They always incorporate the latest design and manufacturing improvements to make them even better than the originals.

■ PEDIGREED PROTECTION IS...

That important extra advantage – Mack "Pedigreed Protection" Service when you need it, where you need it by skilled factory trained mechanical technicians. There are Mack Authorized Service facilities in all major cities.

■ PEDIGREED PROTECTION IS...

Technical Advice – as you need it. Mack experts stand ready to help you select the correct truck for your job and prepare the right maintenance program for low operating costs.

■ PEDIGREED PROTECTION IS...

Warranty – While you have received a copy of the Mack Standard Warranty, and its terms were discussed with you when you purchased your truck, the Warranty has been reprinted in this booklet for easy reference.


PEDIGREED PROTECTION

PEDIGREED PROTECTION

TS46898 25M 7/97

VERIFICATION

Kenneth A. Blythe hereby verifies that he is Associate General Counsel of Mack Trucks, Inc., and in that capacity is authorized to execute this verification and that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge or information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Kenneth A. Blythe", is written over a horizontal line.

Kenneth A. Blythe

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

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served a copy of the foregoing Answer and New Matter on the following, via U.S. First Class Mail, postage prepaid, this 22ND day of May, 2003:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY: _____



C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

Civil Division

Docket No. 03-348-CD

PRAECIPE FOR WRIT TO JOIN ADDITIONAL DEFENDANT

TO THE PROTHONOTARY:

Kindly issue as of course, pursuant to Pa.R.C.P. No. 2252(b), a writ to join
additional defendant against W.W. Engine & Supply, Inc. in the above captioned action.

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY:



C. Edward S. Mitchell

ID#07222

Attorney for Defendant Mack Trucks, Inc.

10 West Third Street

Williamsport, PA 17701

Telephone: 570-323-8404

Facsimile: 570-323-8585

FILED

MAY 27 2003

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

COPY

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

:
:
:
:
:
:
:

Civil Division

Docket No. 03-348-CD

WRIT OF SUMMONS

TO: W.W. Engine & Supply, Inc.
P.O. Box 645
RD#3 Rockton Road
DuBois, PA 15801

You are notified that Mack Trucks, Inc. has joined you as an additional
defendant in this action, which you are required to defend.

Date: _____

William A. Shaw, Prothonotary

By: _____

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

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant.	:	

CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served a copy of the foregoing Praecipe for Writ on the following, via U.S. First Class Mail, postage prepaid, this 22nd day of May, 2003:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY: _____



C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

In The Court of Common Pleas of Clearfield County, Pennsylvania

BARRETT, GREGG L.

Sheriff Docket #

13789

VS.

03-348-CD

MACK TRUCKS, INC.

COMPLAINT

SHERIFF RETURNS

NOW MARCH 9, 2003 RONALD ROSSI, SHERIFF OF LEHIGH COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MACK TRUCKS INC., DEFENDANT.

NOW MARCH 27, 2003 SERVED THE WITHIN COMPLAINT ON MACK TRUCKS, INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF LEHIGH COUNTY. THE RETURN OF SHERIFF ROSSI IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED RICHARD L. DERR, SENIOR COUNSEL.

FILED

DO 9:55 BA

MAY 28 2003

William A. Shaw
Prothonotary

Return Costs

Cost	Description
33.20	SHERIFF HAWKINS PAID BY: ATTY CK# 8586
10.00	SURCHARGE PAID BY: ATTY CK# 8587
30.00	LEHIGH CO. SHFF. PAID BY: ATTY

Sworn to Before Me This

28 Day Of May 2003

William A. Shaw

So Answers,

Chester A. Hawkins
by Maury Harn

Chester A. Hawkins

Sheriff

3-27A

13789

SHERIFF OFFICE COURTHOUSE - 5TH & HAMILTON STREETS
455 W HAMILTON ST
ROOM 106 ALLENTOWN PA 18101-1614

PAID

GREGG L BARRETT
VS
MACK TRUCKS, INC
(CLEARFIELD CO--03-348-CD)

DOC#: 2003-CV-1301
CASE: 2003-NC-1204
EXPIR: 11-Apr-2003
DEPOSIT: 30.00
ENTRY: 25-Mar-2003

WRIT : COMPLAINT IN CIVIL ACTION
AND NOTICE
SERVE: MACK TRUCKS, INC
AT : 2100 MACK BLVD. ALLENTOWN, PA

RETURN OF SERVICE

1. NAME OF INDIVIDUAL SERVED: Richard L. Derr
2. RELATIONSHIP TO DEFENDANT: Senior Counsel
3. DATE: 3-27 20 03 TIME: 1327 HOURS: _____
4. LOCATION OF SERVICE: 2100 Mack Blvd. Allentown, Pa

5. UNABLE TO LOCATE:

() NUMBER OF ATTEMPTS TO LOCATE DEFENDANT AT LAST KNOWN ADDRESS:

1. DATE & TIME _____ 2. DATE & TIME _____
3. DATE & TIME _____ 4. DATE & TIME _____
5. DATE & TIME _____ 6. DATE & TIME _____

ACCEPTANCE OF SERVICE

I HEREBY ACCEPT SERVICE OF THE LEGAL PROCESS AS OUTLINED ON THE FRONT OF THE
DOCUMENT. THIS SERVICE IS ACCEPTED ON BEHALF OF THE LISTED DEFENDANT(S) AND
I HEREBY CERTIFY THAT I AM AUTHORIZED TO DO SO.

PRINTED NAME OF AUTHORIZED AGENT

SIGNATURE OF AUTHORIZED AGENT

DATE: _____

TIME: _____

SO ANSWERS

Whody BC
DEPUTY SHERIFF

Ronald W. Low
SHERIFF OF LEHIGH COUNTY

William A. Shaw
Prothonotary

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

GREGG L. BARRETT, an	*	
individual,	*	
Plaintiff,	*	
	*	
vs.	*	No. 03 - 348 - CD
	*	
MACK TRUCKS, INC., a	*	
corporation,	*	
Defendant.	*	

ANSWER TO NEW MATTER

NOW COMES the Plaintiff, GREGG L. BARRETT, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

28. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

29. Said allegation is neither admitted nor denied in that the warranty speaks for itself.

30. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied. In further answer thereto, it is alleged that Defendant breached the warranty given to Plaintiff who is therefore not bound by the terms and conditions of said warranty.

31. Said allegation is neither admitted nor denied in that the warranty speaks for itself.

32. States a conclusion to which no answer is required. To the extent that an answer may be required, said allegation is denied. On the contrary, it is alleged that any defects in the vehicle purchased by Plaintiff were the result of normal use and service and are covered by warranty. In further answer thereto, it is alleged that it was determined in an ancillary proceeding that the defects to Plaintiff's vehicle were the result of normal use and service and were covered by warranty so that Defendant is collaterally estopped from claiming otherwise.

33. Denied. On the contrary, it is alleged that Defendant's designated dealer, W.W. Engine & Supply, Inc., DuBois, Pennsylvania, had notice of Plaintiff's claims. In further answer thereto, it is alleged that Plaintiff, through his agent Vince Centra, contacted the Defendant and requested that Defendant honor the warranty given to Plaintiff.

34. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is alleged that Defendant breached its warranty to Plaintiff and that Plaintiff is therefore not bound by the provisions of Pa.C.S.A. §2719.

35. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied. In further answer thereto, Plaintiff

incorporates his answer to Paragraph 34 of Defendant's New Matter by reference and makes it a part hereof.

36. States a conclusion to which no answer is required. To the extent that an answer may be required, said allegation is denied. In further answer thereto, Plaintiff incorporates his answer to Paragraph 32 of Defendant's New Matter by reference and makes it a part hereof.

37. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is denied that Plaintiff's claims are barred for the reasons set forth in Paragraph 37 of Defendant's New Matter.

Respectfully submitted,

A handwritten signature in cursive script, reading "James A. Naddeo". The signature is written in dark ink and is positioned above a horizontal line.

James A. Naddeo, Esquire
Attorney for Plaintiff

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

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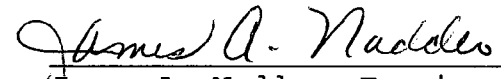
No. 03 - 348 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct certified copy of Answer to New Matter filed in the above-captioned action was served on the following person and in the following manner on the 4th day of June, 2003:

First-Class Mail, Postage Prepaid

C. Edward S. Mitchell, Esquire
MITCHELL, MITCHELL, GRAY & GALLAHER
10 West Third Street
Williamsport, PA 17701


James A. Naddeo, Esquire
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)

SS.

COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared GREGG L. BARRETT, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of his knowledge, information and belief.

Gregg L. Barrett
Gregg L. Barrett

SWORN and SUBSCRIBED before me this 3rd day of June, 2003.

Jennifer L. Royer

Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

BARRETT, GREGG L.

VS.

MACK TRUCKS, INC. AI

Sheriff Docket #

14101

03-348-CD

PRAECIPE FOR WRIT TO JOIN ADDITIONAL DEFENDANT & WRI

SHERIFF RETURNS

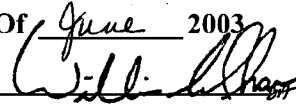
NOW MAY 29, 2003 AT 2:45 PM SERVED THE WITHIN PRAECIPE FOR WRIT TO JOIN ADDITIONAL DEFENDANT & WRIT OF SUMMONS ON W.W. ENGINE & SUPPLY, INC., DEFENDANT AT EMPLOYMENT, PO BOX 645, RD 3, ROCKTON ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BECKY O'LEARY, OFFICE MANAGER A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE FOR WRIT TO JOIN ADDITIONAL DEFENDANT & WRIT OF SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

Return Costs

Cost	Description
32.05	SHERIFF HAWKINS PAID BY: ATTY CK# 29138
10.00	SURCHARGE PAID BY: ATTY CK# 29139

Sworn to Before Me This

10 Day Of June 2003


So Answers,


Chester A. Hawkins
Sheriff

FILED
JUN 10 2003
1:41 PM

William A. Shaw
Prothonotary

William A. Shaw
Prothonotary/Clerk of Courts

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

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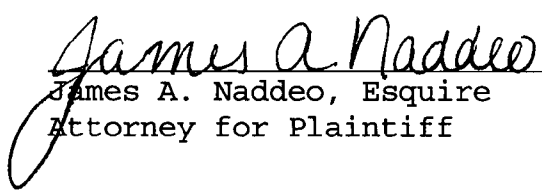
No. 03 - 348 - CD

PRAECIPE TO LIST FOR TRIAL

TO THE PROTHONOTARY:

Please place the above-captioned matter on the next list
for trial. In support thereof I certify the following:

1. There are no Motions outstanding.
2. Discovery has been completed and the case is ready
for trial.
3. The case is to be heard by jury.
4. Notice of the Praecipe has been given to opposing
counsel.
5. The time for trial is estimated at one (1) day


James A. Naddeo, Esquire
Attorney for Plaintiff

Date: January 15, 2004

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

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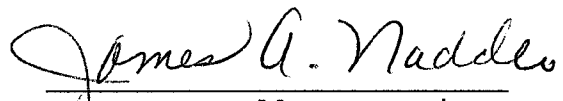
No. 03 - 348 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Praecipe to List for Trial filed in the above-captioned action was served on the following person and in the following manner on the 15th day of January, 2004:

First-Class Mail, Postage Prepaid

C. Edward S. Mitchell, Esquire
MITCHELL, MITCHELL, GRAY & GALLAHER
10 West Third Street
Williamsport, PA 17701


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

FILED

JAN 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

GREGG L. BARRETT, an individual

Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,

Defendant,

vs.

W.W. Engine & Supply, Inc.,

Additional Defendant

Civil Division

Docket No. 03-348-CD

**MOTION OF MACK TRUCKS, INC. PURSUANT TO CLEARFIELD COUNTY RULE
212.2(B) TO STRIKE CASE FROM TRIAL LIST**

1. Plaintiff's Praecipe to List for Trial was received by counsel for Mack on January 20, 2004.
2. A writ to join W.W. Engine & Supply, Inc., as an additional defendant has previously been filed and served.
3. No one has entered an appearance for W.W. Engine & Supply, Inc.
4. Based upon the Certificate of Service of Plaintiff's Praecipe to List for Trial, Plaintiff did not serve the Praecipe on W.W. Engine & Supply, Inc.
5. Other than this motion, there are no motions outstanding.
6. Discovery has not been completed; Mack desires discovery on Plaintiff pertaining to Plaintiff's claims of liability and damages.
7. No party has requested a jury trial.
8. The case has not been previously listed for trial.

WHEREFORE, Mack requests case be stricken from the trial list and that a

period of time of ninety (90) days be permitted for completion of discovery.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:

A handwritten signature in cursive script, appearing to read "C. Mitchell", written over a horizontal line.

C. Edward S. Mitchell

ID#07222

Attorney for Defendant Mack Trucks

10 West Third Street

Williamsport, PA 17701

Telephone: 570-323-8404

Facsimile: 570-323-8585

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant,

vs.

W.W. Engine & Supply, Inc.,
Additional Defendant

Civil Division

Docket No. 03-348-CD

CERTIFICATE OF SERVICE

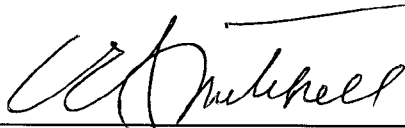
C. EDWARD S. MITCHELL hereby certifies that he served a copy of the
foregoing Motion to Strike on the following, via U.S. First Class Mail, postage prepaid,
this 23rd day of January, 2004:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

W.W. Engine & Supply, Inc.
P.O. Box 645
RD#3 Rockton Road
DuBois, PA 15801

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:



C. Edward S. Mitchell ID#07222
Attorney for Defendant Mack Trucks
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

GA

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

GREGG L. BARRETT

vs.

MACK TRUCKS, INC.

vs.

W.W. ENGINE & SUPPLY, INC.

No. 03-348-CD

FILED

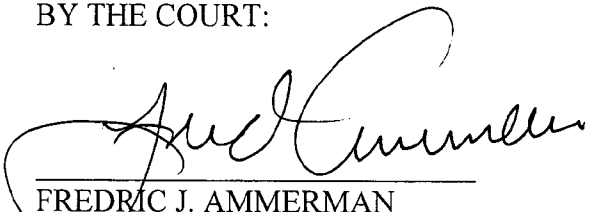
JAN 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 28 day of January, 2004, it is the ORDER of the Court that argument on Attorney Mitchell's Motion to Strike Case from Trial List and a status conference in the above matter has been scheduled for **Thursday, February 19, 2004 at 10:30 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

William A. Shaw
Prothonotary/Clerk of Courts

FILED
JAN 28 2004

ICC
Atty's Madder, M. T. Chell,
ICC WIO Engine- Po Box 645, Dubois, PA 15801

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

GREGG L. BARRETT :
-VS- :
MACK TRUCKS, INC. : No. 03-348-CD
-VS- :
W.W. ENGINE & SUPPLY, INC. :

O R D E R

NOW, this 19th day of February, 2004, following argument on the Motion to Strike Case from Trial List filed on behalf of Defendant Mack Trucks, Inc., it is the ORDER of this Court that said Motion be and is hereby denied. In addition, Defendant Mack Trucks, Inc. shall file a complaint against the additional Defendant W.W. Engine & Supply, Inc. within no more than twenty (20) days from this date. The case shall remain on the trial list, and in the event that counsel would believe that there would be additional problems relative trying the case, the issue can be raised either at the call of the list or pre-trial conference or through the filing of some additional motion or petition.

BY THE COURT,



President Judge

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

NOTICE TO PLEAD

FILED

MAR 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

TO: W.W. Engine & Supply, Inc.
P.O. Box 645
RD#3 Rockton Road
DuBois, PA 15801

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND BY 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 BY THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE THIRD PARTY PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

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

IF YOU DO NOT HAVE A LAWYER, CONTACT:

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
SECOND & MARKET STREETS
CLEARFIELD, PA 16830
(814)765-2641, EXT. 50-51

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:



C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

**COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD**

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

COMPLAINT TO JOIN ADDITIONAL DEFENDANT

1. Plaintiff, according to Plaintiff's Complaint, is an adult individual residing at 5 Capricorn Court, Clearfield, Pennsylvania.
2. Defendant Mack Trucks, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania having its principal place of business at 2100 Mack Boulevard, Allentown, Pennsylvania.
3. Additional Defendant, W.W. Engine & Supply, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania having a place of business located at R.D. #3, Rocktown Road, Dubois, Clearfield County, Pennsylvania.
4. Plaintiff filed a Complaint against Defendant Mack Trucks, Inc., claiming inter alia that Additional Defendant W.W. Engine & Supply, Inc., was an authorized Mack dealer who sold a 1998 Mack Truck, Model No. C1713 to Plaintiff on 10/24/1997, that an express warranty was provided in connection with the sale, that said express warranty had a duration of sixty (60) months or 500,000 miles,

whichever first occurs, for the transmission and axles, that Plaintiff has returned the truck to Additional Defendant on six different occasions beginning in December, 2000, for repairs or replacements of rear end housings, rear ends and/or the transmission, that on each occasion in breach of the express warranty the repairs were not performed under warranty and/or that Additional Defendant refused to perform the work unless Plaintiff made payment to Additional Defendant for prior work, and that Plaintiff has as a result thereof suffered damages for repair bills and lost profits. A true and correct copy of Plaintiff's Complaint and attached Exhibits is attached hereto, marked Exhibit 1.

5. Defendant Mack Trucks, Inc. has filed an Answer and New Matter denying the express warranty claimed by Plaintiff and denying liability for Plaintiff's alleged damages. A true and correct copy of the Answer and New Matter and attached Exhibits is attached hereto, marked Exhibit 2.
6. Plaintiff filed an Answer to the New Matter contained in the Answer and New Matter of Defendant Mack Trucks, Inc. A true and correct copy of Plaintiff's Answer to New Matter is attached hereto, marked Exhibit 3.
7. A Writ to Join Additional Defendant W.W. Engine & Supply, Inc., was timely filed and served.
8. The warranty documents were provided to Plaintiff by Additional Defendants.
9. The warranty should have had a duration for transmission and axles of thirty-six (36) months or 300,000 miles, whichever first occurs.
10. If the warranty claimed by Plaintiff was provided by Additional Defendant, said warranty was in violation of instructions from Defendant and not authorized by

Defendant.

11. If the correct warranty was provided by Additional Defendant to Plaintiff, none of the repairs claimed by Plaintiff would be covered because the vehicle was outside the warranty period.
12. If repairs claimed by Plaintiff were within the warranty period because Additional Defendant provided to Plaintiff an unauthorized warranty and if Plaintiff is entitled to recover thereon, which is denied, then Additional Defendant is solely liable to Plaintiff for said repairs or liable over to Defendant in indemnity for any liability adjudicated against Defendant.
13. If Plaintiff was entitled to have the repairs performed under warranty, which is denied, and said repairs were refused by Additional Defendant, then Additional Defendant is solely liable to Plaintiff or liable over to Defendant for any liability adjudicated against Defendant.
14. If Plaintiff was entitled to have his vehicle repaired under warranty, which is denied, and said warranty repairs were improperly refused by Additional Defendant because of money owed by Plaintiff to Additional Defendant, then any recovery to which Plaintiff would be entitled is the sole liability of Additional Defendant and/or Additional Defendant is liable over to Defendant for any liability adjudicated against Defendant.
15. If there is any liability adjudicated in favor of Plaintiff and against Defendant, all such liability being denied, then Additional Defendant is liable over to Plaintiff for all or portions of said liability and/or is jointly and/or severally liable with Defendant for all or portions of said liability.

16. Defendant has joined Additional Defendant to protect its right of indemnity and/or contribution from Additional Defendant.

WHEREFORE, Defendant claims indemnity and/or contribution from Additional Defendant for any liability which is adjudicated in favor of Plaintiff and against Defendant.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

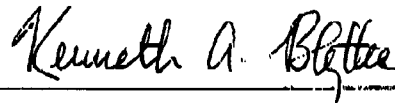
BY: 

C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

VERIFICATION

Kenneth A. Blythe hereby verifies that he is Associate General Counsel of Mack Trucks, Inc., and in that capacity is authorized to execute this verification and that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge or information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



Kenneth A. Blythe

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

No. 03 -348 - CD

Type of Pleading:

COMPLAINT

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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

MAR 12 2003

Attest. -

William L. H.
Prothonotary/
Clerk of Courts

EXHIBIT

tabbles

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

GREGG L. BARRETT, an
individual,

Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,

Defendant.

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No. 03 - - CD

N O T I C E

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

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

No. 03 - - CD

C O M P L A I N T

NOW COMES the Plaintiff, GREGG L. BARRETT, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is Gregg L. Barrett, an adult individual, who resides at 5 Capricorn Court, Clearfield, Pennsylvania 16830.
2. That the Defendant is Mack Trucks, Inc., a corporation believed to have its principal place of business in the Commonwealth of Pennsylvania located at 2100 Mack Blvd., Allentown, Pennsylvania 18103.
3. That at all times referred to herein, W.W. Engine & Supply, Inc., was an authorized dealer for the Defendant, Mack Trucks, Inc.
4. That on October 24, 1997, the Plaintiff purchased a new 1998 Mack Truck, Model #C1713, Serial #1M2AD62C2WW006080, Engine #E7 460 701499 (hereinafter referred to as the "Truck")

for the sum of \$103,295.85 from W.W. Engine & Supply, Inc., DuBois, Pennsylvania, as appears from the invoice attached hereto as Exhibit "A".

5. That contemporaneously with the purchased of the Truck referred to in Paragraph 4 hereof which is incorporated herein by reference, Plaintiff received an express warranty from the Defendant titled "Pedigreed Protection Plan No. TS46897". A copy of said warranty is attached hereto as Exhibit "B".

6. That in accordance with the Pedigreed Protection Plan referred to in Paragraph 5 hereof which is incorporated herein by reference, the Truck purchased by Plaintiff provided warranty coverages and limitations in part as follows:

	<u>Months</u>	<u>Miles</u>	<u>Kilometers</u>
SCHEDULE 3. MACK TRANSMISSIONS 5,6,9, 10, 13, 18 Speed Only	60	500,000	805,000
SCHEDULE 4. MACK AXLES Rear Carriers and Housing	60	500,000	805,000

7. That in December 2000 the front rear end housing of Plaintiff's Truck cracked.

8. That Plaintiff took the Truck to Defendant's authorized dealer, W.W. Engine & Supply, Inc., DuBois, Pennsylvania, which dealer informed Plaintiff that the housing was not warranted and refused to repair the crack.

9. That Plaintiff at his own expense was required to have the front rear end housing welded by Vince Centra Truck

Repair at a cost of \$866.90 as appears from the invoice attached hereto as Exhibit "C".

10. That on or about February 10, 2002, the front rear end housing cracked a second time necessitating a second repair by Vince Centra Truck Repair at a cost of \$437.90, which repair was also paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "D".

11. That on or about June 10, 2002, the Truck's front rear end housing cracked a third time.

12. That Plaintiff contacted the Defendant and demanded that the housing be replaced at which time he was informed by Defendant's representative that Defendant would not honor its warranty because Plaintiff had failed to go through the proper procedures.

13. That on June 10, 2002, the front rear end housing was replaced by Vince Centra Truck Repair at a total cost of \$1,865.79, which amount was paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "E".

14. That on or about July 12, 2002, the back rear end of the vehicle malfunctioned.

15. That Plaintiff contacted the Defendant as well as its authorized dealer, W.W. Engine & Supply, Inc., DuBois, Pennsylvania, and was informed that W.W. Engine & Supply, Inc., would repair the back rear end of the vehicle under warranty if

they deemed the failure to be under warranty but would not return the vehicle to Plaintiff unless Plaintiff paid W.W. Engine & Supply, Inc., to repair the front rear end which Plaintiff believes and therefore avers was under warranty in December 2000 at which time the front rear end was repaired by W.W. Engine & Supply, Inc.

16. That Defendant's response as well as that of its authorized dealer, W.W. Engine & Supply, Inc., caused Plaintiff to have the back rear end repaired by Vince Centra Truck Repair at a cost of \$1,780.25, which amount has been paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "F".

17. That in addition to the failure of the rear rear end, the transmission of the Truck also failed in July 2002.

18. That Plaintiff contacted the Defendant as well as its authorized dealer, W.W. Engine & Supply, Inc., concerning the failure of the Truck's transmission and was informed by W.W. Engine & Supply, Inc., as well as the Defendant, Mack Trucks, Inc., that the transmission would be repaired under warranty provided Defendant believed the failure was covered by its warranty and further informed Plaintiff that his Truck would not be repaired unless he paid for the earlier repair done to the front rear end of the Truck by W.W. Engine & Supply, Inc., which repair Plaintiff believes and therefore avers was under warranty

in December 2000 at which time the front rear end was repaired by W.W. Engine & Supply, Inc.

19. That Defendant's response as well as that of its authorized dealer, W.W. Engine & Supply, Inc., caused Plaintiff to have the transmission repaired by Vince Centra Truck Repair at a cost of \$4,726.27, which amount has been paid by Plaintiff. A copy of said invoice is attached hereto as Exhibit "G".

20. That on or about January 24, 2002, the rear rear housing of the vehicle cracked.

21. That the rear rear housing has not been repaired.

22. That an estimate to repair the rear rear housing has been prepared by Vince Centra Truck Repair at a cost of \$3,488.34. A copy of said estimate is attached hereto as Exhibit "H".

23. That on each occasion referred to herein when components of the Truck failed, said Truck was less than 60 months old and the mileage was less than 500,000.

24. That Defendant's failure to comply with the express warranty given to Plaintiff has caused Plaintiff to incur repair costs in the total amount of \$9,677.11.

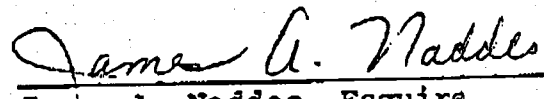
25. That the total down time of the vehicle occasioned by the repairs identified herein was 39 days.

26. That net earnings of said Truck per day averaged \$300.00.

27. That Plaintiff lost the sum of \$11,700.00 for the Truck's down time.

WHEREFORE, Plaintiff claims damage against Defendant in the amount of 21,377.11.

Respectfully submitted,


James A. Naddeo, Esquire
Attorney for Plaintiff

W.W. ENGINE

& SUPPLY, INC.



Five Locations: Bedford - Dubois - Kylertown - Shippenville - Somerset

SOLD TO: GREGG BARRETT
ADDRESS: P.O. BOX 23
KERRMORE ROAD
NEW MILLPORT, PA 16861
DATE: OCTOBER 24, 1997

SHIP TO:

NO. 1415

	Year	Make	New or Used	Model or Series	Serial Number	Engine Number
Vehicle Sold	1998	MACK	NEW	CL713	1M2AD62CZAW006080	E7 460 701499
Trade In	NONE					
Vehicle Sold						
Trade In						
Vehicle Sold						
Trade In						

CONDITIONS OF SALES & DELIVERY

DEALER'S WARRANTIES AND/OR REPRESENTATIONS:

We, the Dealer, shall not be liable to you, the purchaser, for any consequential damages, damages to property, damages for loss of time, loss of profits, or income or any other incidental damages arising out of the sale or use of this vehicle.

We are not a party to any manufacturer's or other third party warranty applicable to this vehicle but may be a representative for purposes of service or repairs under such warranty.

IF THIS IS A USED VEHICLE:

This vehicle is sold "as is" by us. We hereby expressly disclaim all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose and neither assume nor authorize any other person to assume for us any warranty liability in connection with the sale of the vehicle. Except for any manufacturer's or other express warranty which may exist on the vehicle, the entire risk as to the quality and performance of the vehicle is with you, the buyer, and should the vehicle prove defective following purchase, you will assume the entire cost of all servicing and repair.

VEHICLE ACCEPTED BY:
COPY OF INVOICE-BILL OF SALE RECEIVED BY:

Gregg Barrett

Selling Price	103,295.85
FRET	11,765.74
Other	
SUBTOTAL (1)	115,061.59
Document Fees	40.00
Tire Tax	10.00
License & Title	861.50
Sales Tax	EXEMPT
Other	
SUBTOTAL (2)	911.50
TOTAL (1+2)	115,973.09
Trade Allowance (Less Payoff)	
Deposit	3,000.00
Amount Financed	112,061.59
Cash Due	911.50

EXHIBIT "A"

PEDIGREED PROTECTION PLAN



PEDIGREED PROTECTION PLAN



TS46897

TS46897 25M 5/96

WARRANTY COVERAGES AND LIMITATIONS: All Coverage Is 100% Parts and Labor

APR. 23 '2003 15:47 336 393 2009

VOLVO LEGAL

#0155 P.004/006

VEHICLE APPLICATIONS: A, B		Hours	Months	Miles	Kilometers
SCHEDULE 1. BASIC VEHICLE* (Includes Roadside Assistance and Towing for warrantable failures.**) *Clutch Lining, Brake Lining and Brake Drums are covered for 12 months or 25,000 miles/40,000 kilometers only. ** Roadside Assistance and Towing coverage does not apply to vendor engines, transmissions and axles.		-	12	100,000	161,000
SCHEDULE 2. MACK DIESEL ENGINE Standard Warranty Major Components: Cylinder Block Casting Main Bearing Bolts Cylinder Head Castings Cylinder Head Capscrews Crankshaft Forging Con-Rod & Cap Forging Con-Rod Capscrews Camshaft Forging Valve Lifters Intake Manifold Casting Flywheel Housing Gear Cover Engine Gears		10,000 12,500	36 60	300,000 500,000	483,000 805,000
Coverage also applies to consumables such as lubricant, antifreeze, filter elements, belts, hoses and similar maintenance items not reusable and replaced directly as result of warrantable engine, carrier or transmission failure. Components not manufactured by Mack Trucks, Inc., but used on Mack diesel engine assemblies are excluded from the coverage in Schedule 2. These components are covered by the component manufacturer's warranty in effect at the time of delivery. Consult your local Mack service facility for details.		-	60 36	500,000 300,000	805,000 483,000
SCHEDULE 3. MACK TRANSMISSIONS 5, 8, 9, 10, 13, 18 Speed Only All Others		-	60 36	500,000 300,000	805,000 483,000
SCHEDULE 4. MACK AXLES Rear Carriers and Housing Rear Carrier Seals, Gaskets and Front I-Beam S65 Bogle and Carrier, Regardless of Carrier Model		-	60 36 12	500,000 300,000 100,000	805,000 483,000 161,000
SCHEDULE 5. Turnion Bracket and Spindle, Suspension Turnion (except Bushings).		-	36	300,000	483,000
SCHEDULE 6. FRAMES: SIDE RAILS AND CROSSMEMBERS		-	60	500,000	805,000
SCHEDULE 7. CAB STRUCTURE		-	60	500,000	805,000
SCHEDULE 8. CAB CORROSION Coverage applies to perforation (an actual hole in the cab panel) due to corrosion. Coverage does not apply to corrosion caused by damage to paint finish.		-	60	500,000	805,000
SCHEDULE 9. Components not manufactured by Mack Trucks, Inc. may have warranty coverage different from the above as they are covered by the manufacturer's warranty. Consult your local Mack sales facility for details.		-	60	500,000	805,000

DEF EX #1

ESTIMATES FOR LABOR ONLY.
MATERIAL ADDITIONAL

REPAIR ORDER

VINCE CENTRA TRUCK REPAIR

HCO-1 BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991

Name <u>Guegg Burnett</u>		Address <u>Caproni Co-5</u>		City <u>PA</u>	
Phone No. _____		Odometer Reading _____		Date <u>7/12/02</u>	
VIN No. _____		License No. and State _____		Motor No. _____	
Operation Number <u>98 Mack</u>		Instructions		Amount	
USE <input type="checkbox"/>	OR <input type="checkbox"/>	TOYS <input type="checkbox"/>	OTV <input type="checkbox"/>	WASH <input type="checkbox"/>	FOUSH <input type="checkbox"/>
<p>Remove, get rid of and remove Rear ends Replace fronting valve (flange)</p>					
QTY	PART NO.	NAME OF PART	SALE AMT.	AMOUNT	
11	373-2	Bottle	22.85	183.60	
4		Washers	1.45	22.85	
TOTAL PARTS			22.85	22.85	
3	Gas, 68wt		37.95	37.95	
	Gas Oil				
	Lbs. Grease				
Total Gas-Oil-Grease			37.95	19.80	
Accessories				19.80	
Amount				183.60	
Total Labor				22.85	
Total Parts				37.95	
Estimated					
Gas, Oil, Grease					
Accessories					
Tires, Tubes					
Sublet Repairs				19.80	
Shop/Misc.					
TOTAL				222.40	
Less Paid				(44.15)	
TOTAL AMOUNT				178.25	

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

Work Authorized by _____ Date Promised _____

Delivered to _____ Date Delivered _____

ESTIMATES FOR LABOR ONLY.
MATERIAL ADDITIONAL

REPAIR ORDER

VINCE CENTRA TRUCK REPAIR

HCO-1 BOX 53A
CURWENSVILLE, PA 16633
(814) 236-0991

QTY	PART NO.	NAME OF PART	SALE AMT	DATE	REMARKS	AMOUNT
1	108391748	CLUTCH	487.18			
1	12774050	CLUTCH PLY	12.04			
1	630671	ALST BLY	31.09			
4		ALST GRTS	4.56			
1		TOR TRANS GRT	95			
TOTAL PARTS			533.82			
5	Gas. Grease		38.00			
	Q.S. Oil					
	Lbs. Grease		38.00			
TOTAL GAS-OIL-GREASE			38.00			
ACCESSORIES						
	Rebuild Trans		3575.00			
	Clutch & Flywheel		66.00			
TOTAL ACCESSORIES			3641.00			
TOTAL LABOR			511.43			
TOTAL PARTS			533.82			
ENVIRONMENTAL CHARGES						
GAS, OIL, GREASE			38.00			
ACCESSORIES						
TIRES, TUBES						
SALES TAX			36.41			
TOTAL AMOUNT			4726.27			

Name: Gregg Baretta
 Address: Lapicon Ct. Lot 5
 Phone No: 715/602
 Date: 7/15/02
 Odometer Reading: 006080
 VIN: 006080
 MAKE, MODEL, YEAR: 98 MACC
 LICENSE NO AND STATE: PA
 MOTORIST: CLH

HCO-1, BOX 53A
CURWENSVILLE, PA 16833
(814) 236-0991

NAME AND ADDRESS	LICENSE NO. AND STATE	VEHICLE NO.
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COMMONWEALTH OF PENNSYLVANIA)

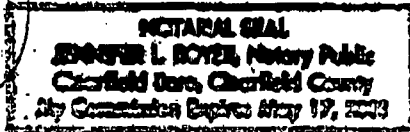
SS.

COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared GREGG L. BARRETT, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing COMPLAINT are true and correct to the best of his knowledge, information and belief.

Gregg L. Barrett
Gregg L. Barrett

SWORN and SUBSCRIBED before me this 24th day of January, 2003.

Jennifer L. Royer


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

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

Civil Division

Docket No. 03-348-CD

NOTICE TO PLEAD

TO: Plaintiff
c/o James A. Naddeo, Esquire
211 ½ E. Locust Street
P.O. Box 552
Clearfield, PA 16830

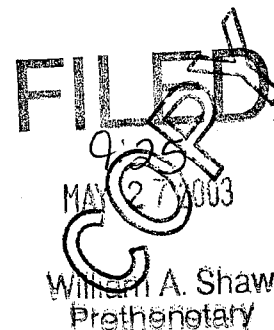
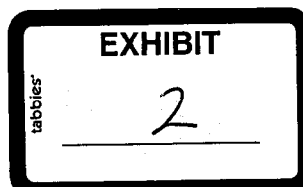
You are hereby required to plead to the within New Matter within twenty (20) days from the date of service hereof.

NOTE: You are hereby warned that if you fail to plead as notified and required the action will proceed without you and you will be liable to have a judgment entered against you in your absence.

MITCHELL, MITCHELL, GRAY & GALLAGHER
A professional corporation



C. Edward S. Mitchell - I.D. #07222
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: (570) 323-8404
Fax: (570) 323-8585



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

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

:
:
:
:
:
:

Civil Division

Docket No. 03-348-CD

ANSWER AND NEW MATTER OF MACK TRUCKS, INC.

1. After reasonable investigation, Defendant is without knowledge of information sufficient to form a belief as to the truth of the averments contained in paragraph one.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. By way of further answer, records of Defendant indicate that on October 24, 1997, a 1998 Mack Truck, chassis model number CL713, serial number 1M2AD62C2WW006080, engine model number E7-460, serial number E701499 was delivered to Greg Barrett. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph four.
5. Denied. On the contrary, upon information and belief an express warranty titled "Pedigreed Protection Plan Number TS46898" was delivered to Plaintiff in connection with the sale of the vehicle which is the subject of this litigation. A true and correct copy of the language of the Pedigreed Protection Plan TS46898 is attached hereto, marked Exhibit "Defendant A" and incorporated herein by

reference.

6. Denied. On the contrary, the language of the applicable warranty is contained in Exhibit "Defendant A", attached hereto and incorporated herein by reference.
- 7-8. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs seven and eight. By way of further answer, Defendant has no record indicating a warranty claim has been made to Defendant for a December 2000 front rear end housing crack.
9. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 9.
10. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 10. By way of further answer, Defendant has no record indicating a warranty claim has been made to Defendant for a February 10, 2002, front rear end housing crack.
11. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 11.
12. Denied. By way of further answer, Defendant has no record of a warranty claim to Defendant for a June 10, 2002, front rear end housing crack, no record of being contacted by Plaintiff at such time and no knowledge of the identification of Defendant's representative who addressed warranty information with Plaintiff.
13. After reasonable investigation, Defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments contained in paragraph 13.

14. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 14.

15-16. Denied. Defendant has no record of a warranty claim to Defendant for a July 12, 2002, back rear end malfunction and no record of being contacted by or responding to Plaintiff at that time. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraphs 15 and 16.

17. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 17.

18-19. Denied. Defendant has no record of a warranty claim to Defendant for a July 2002 transmission failure and no record of being contacted by or responding to Plaintiff at that time. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraphs 18-19.

20-22. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 20-22. By way of further answer, Defendant has no record of a warranty claim to Defendant for a January 24, 2002, rear rear housing crack.

23. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph

23.

24. Denied. By way of further answer, Defendant has no record of warranty claims to Defendant for the failures claimed by Plaintiff herein.

25-27. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 25-27. By way of further answer, said damages would be beyond those covered by the express warranty as set forth in Exhibit "Defendant A" attached hereto and incorporated herein by reference.

WHEREFORE, Defendant requests judgment in its favor.

NEW MATTER

28. The terms and conditions of the express warranty between Plaintiff and Defendant are set forth in Exhibit "Defendant A", pages one through fifteen, a true and correct copy of which is attached hereto and incorporated herein by reference.

29. Said warranty provides in part inter alia as follows:

"Mack Trucks, Inc. (the "Manufacturer") warrants each new Mack motor vehicle (the "Vehicle") sold by it or by any of its authorized new truck sales facilities to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to repairing or replacing, as hereinafter provided, at its option, at the Manufacturer's authorized truck repair facility any part or parts of the Vehicle found to the Manufacturer's satisfaction to be defective upon examination by it, provided that such part or parts be returned to the Manufacturer's factor or to its nearest authorized truck repair facility. In accordance with the

Manufacturer's published policies, the Manufacturer's authorized truck repair facility is authorized to use only Genuine Mack or Mack Approved parts, purchased from the Manufacturer, in performance of warranted repairs, except where such parts are not available."

30. All or portions of Plaintiff's claim are outside the language of the warranty because they go beyond repairing or replacing alleged defective parts and/or because warranty claims have not been made in accordance with the requirements of the warranty language.
31. A list of items not covered by warranty appears on page 12 of the warranty language contained in Defendant A attached hereto and incorporated herein by reference.
32. Upon information and belief, all or portions of Plaintiff's claims are not covered by the warranty because they do not result from normal use and service and/or because they are items not covered by the warranty.
33. Based upon records of Defendant, Plaintiff has not given Defendant notice of the claims which Plaintiff makes in this litigation.
34. The damages which Plaintiff may recover, assuming a breach of warranty, which is denied, have been limited and/or excluded by the terms of the warranty in accordance with Pa.C.S.A. § 2719.
35. Assuming recovery, which is denied, Plaintiff's damages are limited and/or excluded to those permitted by the language of the express warranty.
36. Plaintiff's claims may be limited by the language of page seven of the warranty pertaining to misuse, negligence or accident and/or alterations or repairs outside

of the factory.

37. All or portions of Plaintiff's claims may be barred by applicable statutes of limitations contained in the sales documents, warranty documents and/or applicable statutes.

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY:



C. Edward S. Mitchell

ID#07222

Attorney for Defendant

10 West Third Street

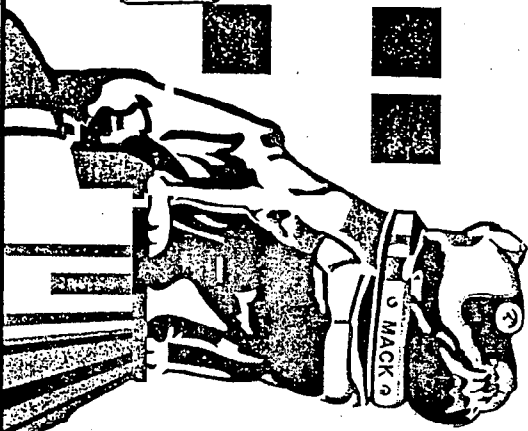
Williamsport, PA 17701

Telephone: 570-323-8404

Facsimile: 570-323-8585

PEDIGREED
PROTECTION
PLAN

PEDIGREED
PROTECTION
PLAN



TS46898 25M 7/97

TS46898

PEDIGREED

PROTECTION

PLAN

TS46898

REVISED 7/97 25M



WARRANTY REGISTRATION INFORMATION

Before the vehicle is delivered to the customer, the selling dealer should fill in the information below.

Vehicle Model: _____

Vehicle Identification Number (VIN): _____

In-Service Date: _____

Mack Dealer's Name/Address: _____

Customer's Name/Address: _____

VEHICLE APPLICATION:* (Check Only One)

- ☐ Class A: On Highway
- ☐ Class C: Vocational, On/Off Highway
- ☐ Class D: Off Road (Sales Engineering approval required)

*The vehicle application determines the length of the Mack Standard Warranty. If additional axles are installed following the sale of this vehicle, the finished vehicle configuration will be used to assess the vehicle application for warranty purposes.

P E D I G R E E D P R O T E C T I O N



Your New Chassis...

Your new Mack truck has been quality built, inspected, lubricated, and final adjustments have been performed by the Mack Trucks assembly plant. However, as moving parts "wear in" or as gaskets "take a set," an occasional oil, air or coolant leak may develop. Quick action to correct these minor mechanical items will prevent a major repair later. Refer to the following "break-in" recommendations, and take your vehicle to the nearest Mack service center as soon as any abnormal condition becomes evident.

During First 3,000 Miles (5 000 Kilometers)

- After first 125 miles/200 km, retorque the wheel nuts using an accurately calibrated torque wrench. Recheck this torque again after 500 miles/800 km.
- Check engine oil and coolant levels frequently.
- Observe instruments often and shut down at first sign of any abnormal readings.
- Report all leaks, loose fasteners, unusual noises, etc., so they may be quickly checked and corrected.
- Check brake and clutch adjustment per recommended schedule and adjust as needed.
- Check spring clip nut torque. On Reycos suspensions, also check the equalizer nut torque.
- Check the U-bolt nut torque on the Mack Air suspension at the end of the first 1,000 miles (1 600 km).
- At the End of First 3,000 miles/5 000 km or before 4,000 Miles/6 400 km, or 3 to 4 months (whichever comes first)
- Retorque front and rear spring clips. On Reycos suspensions, also check the equalizer nut torque.

NOTE: Lubricate the chassis, and change the following lubricants and filters according to the Mack Preventive Maintenance Schedules shown in the TS494 - Maintenance and Lubrication Manual:

- Gear oils - transmission, rear axle carrier(s), front drive axle carrier(s), transfer case, flywheel PTO
 - Engine oil, oil filters, fuel filters and coolant conditioner
- Always service your vehicle regularly according to the Mack Preventive Maintenance Schedules in your TS494 - Maintenance and Lubrication Manual. Your service manager will be glad to help you establish the right Preventive Maintenance Schedule for your truck and type of operation.

P E D I G R E E D P R O T E C T I O N



BULLDOG PROTECTION PLANS (EXTENDED WARRANTIES)

The warranty coverage on your new Mack truck can easily be extended if you desire. Just ask your dealer for details on a Bulldog Protection Plan.

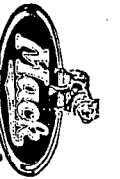


During the first year of ownership, the original purchaser of a new Mack vehicle may elect to extend the warranty term by signing up for a Bulldog Protection Plan at his or her Mack dealer.

The extended warranties which are offered through Bulldog Protection Plans are available to owners of all Mack vehicles with the exception of those that will be used in Vehicle Application D "Off Road." Your Mack dealer and the Mack Warranty Department reserve the right to investigate actual vehicle usage before accepting registration in a Bulldog Protection Plan. Mack Trucks, Inc. may also refuse to honor a warranty claim if it is determined that damage claimed has resulted from vehicle usage other than that described in the registered Vehicle Application.

Mack Trucks, Inc. may make changes in models, design, specifications and equipment at any time without incurring any obligations. The specifications contained herein are subject to change without notice.

PEDIGREE PROTECTION



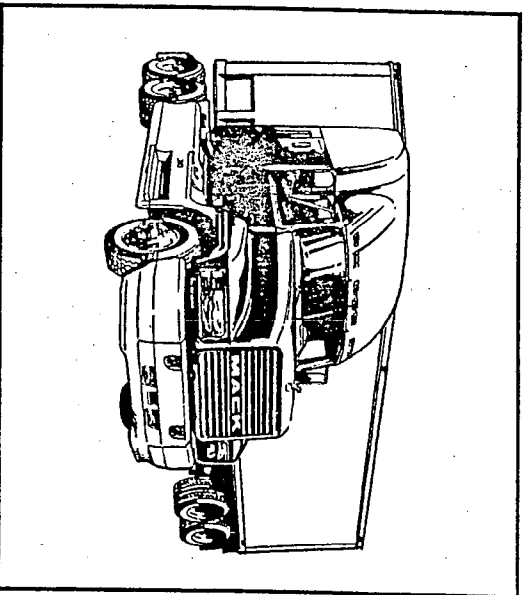
TRANSFER OF WARRANTY

The balance of the Mack Standard Warranty is transferable to each subsequent vehicle owner with the approval of Mack Trucks, Inc. This transfer must be performed by an authorized Mack facility within 30 days of the date of sale. The vehicle must be operated in the same vehicle application as originally sold. Further details and forms required to perform the transfer are available from your local Mack authorized new truck sales facility.

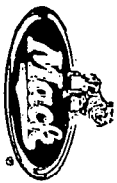
INJECTION PUMP AND GOVERNOR SETTING

Do not attempt to increase engine power by adjusting injection pump and governor settings beyond standard specifications.

In the event that damage results from such improper adjustments, the cost of repairing such damage will not be covered under the Warranty.



PEDIGREE PROTECTION



MACK STANDARD WARRANTY

1998 and Later Model Years

Mack Trucks, Inc. (the "Manufacturer") warrants each new Mack motor vehicle (the "Vehicle") sold by it or by any of its authorized new truck sales facilities to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to repairing or replacing, as hereinafter provided, at its option, at the Manufacturer's authorized truck repair facility any part or parts of the Vehicle found to the Manufacturer's satisfaction to be defective upon examination by it, provided that such part or parts be returned to the Manufacturer's factory or to its nearest authorized truck repair facility. In accordance with the Manufacturer's published policies, the Manufacturer's authorized truck repair facility is authorized to use only Genuine Mack or Mack Approved parts, purchased from the Manufacturer, in performance of warranted repairs, except where such parts are not available.

1. Component parts of the Vehicle as listed in the Warranty Schedules on Forms FO34.1, FO34.2 and FO34.3 are warranted for the time period specified commencing the date of delivery of the Vehicle to the original purchaser or before the Vehicle has been operated by such original purchaser the number of miles, kilometers or hours specified on such schedules, whichever first occurs. The repairs or replacement of such parts will be made in accordance with the terms of each schedule.

2. All other parts or components, except as hereinafter provided, are warranted for twelve months or 100,000 miles (161,000 kilometers), commencing the date of delivery of the Vehicle to the original purchaser. The repair or replacement of such parts will be made without charge for parts or labor.

NOTE: WARRANTY COVERAGE MAY VARY BASED ON THE TYPE OF USAGE OF THE VEHICLE. VEHICLE APPLICATION AT TIME OF SALE DETERMINES APPLICABLE WARRANTY COVERAGE. CONSULT YOUR MACK AUTHORIZED NEW TRUCK SALES FACILITY FOR THE APPLICATION CLASS OF THE VEHICLE. THE MANUFACTURER RESERVES THE RIGHT

TO VERIFY THAT THE APPLICATION FOR WHICH THE VEHICLE IS REGISTERED DOES MATCH THE ACTUAL APPLICATION CLASS.

This warranty shall not apply to any Vehicle which has been subject to misuse, negligence or accident or which shall have been altered or repaired outside of the factory in any way which in the Manufacturer's judgement might affect the Vehicle's stability or reliability, nor to normal maintenance services (such as engine tune-up, fuel system cleaning, wheel alignment and balancing, brake and clutch adjustments) and the replacement of service items (such as filter elements and lubricants) made in connection with such services.

The Manufacturer makes no warranty whatever with respect to the engines and transmissions not of its manufacture, nor to winches, power take-offs, dumper, mixer and refuse assemblies, hoists and bodies or other special equipment made by other manufacturers and installed outside of the Manufacturer's factory, nor to non-Mack brand batteries, tires and tubes. Said engines, transmissions, special equipment, accessories, tires and tubes usually are typically warranted separately by their respective manufacturers.

THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF THE MANUFACTURER INCLUDING, WITHOUT LIMITATION OF THE FOREGOING, CONSEQUENTIAL AND INCIDENTAL DAMAGES. The Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of the Vehicle. This warranty may be transferred by the original retail purchaser to the subsequent retail purchaser (purchasing the Vehicle directly from the original retail purchaser) with the prior approval of the Manufacturer and otherwise, in accord with the Manufacturer's Warranty Administration Instructions. The Manufacturer offers various customer purchasable extended warranty plans. Contact the Manufacturer's authorized new truck sales facility for details.

This warranty shall not apply to used motor vehicles, the same being sold "as is - where is".

WARRANTY COVERAGES AND LIMITATIONS: All Coverage is 100% Parts and Labor

VEHICLE APPLICATION: A (HIGHWAY)		Hours	Months	Miles	Kilometers
SCHEDULE 1. BASIC VEHICLE* (Includes Roadside Assistance and Towing for warrantable failures,**) *Clutch Lining, Brake Lining and Brake Drums are covered for 12 months or 25,000 miles/40 000 kilometers only. **Roadside Assistance and Towing coverage does not apply to vendor engines, transmissions and axles.		—	12	100,000	161 000
SCHEDULE 2: MACK DIESEL ENGINE Standard Warranty Major Components: <div> Cylinder Block Casting Main Bearing Bolts Cylinder Head Castings Cylinder Head Capscrews Crankshaft Forging Con-Rod & Cap Forging Con-Rod Capscrews </div> Camshaft Forging Valve Lifters Intake Manifold Casting Flywheel Housing Gear Cover Engine Gears		10,800 12,500	36 60	300,000 500,000	483 000 805 000
Coverage also applies to consumables such as lubricant, antifreeze, filter elements, belts, hoses and similar maintenance items not reusable and replaced directly as result of warrantable engine, carrier or transmission failure. Components not manufactured by Mack Trucks, Inc., but used on Mack diesel engine assemblies are excluded from the coverage in Schedule 2. These components are covered by the component manufacturer's warranty in effect at the time of delivery. Consult your local Mack service facility for details.					
SCHEDULE 3. MACK TRANSMISSIONS 5, 6, 9, 10, 13, 18 Speed Only All Others		—	60 36	500,000 300,000	805 000 483 000
SCHEDULE 4. MACK AXLES Rear Carriers and Housing Rear Carrier Seals, Gaskets and Front I-Beam S65 Bogie and Carrier, Regardless of Carrier Model		—	60 36 12	500,000 300,000 100,000	805 000 483 000 161 000
SCHEDULE 5. Trunnion Bracket and Spindle, Suspension Trunnion (except Bushings).		—	36	300,000	483 000
SCHEDULE 6. FRAMES: SIDE RAILS AND CROSSMEMBERS		—	60	500,000	805 000
SCHEDULE 7. CAB STRUCTURE		—	60	500,000	805 000
SCHEDULE 8. CAB CORROSION Coverage applies to perforation (an actual hole in the cab panel) due to corrosion. Coverage does not apply to corrosion caused by damage to paint finish.		—	60	500,000	805 000
SCHEDULE 9. Components not manufactured by Mack Trucks, Inc may have warranty coverage different from the above as they are covered by the manufacturer's warranty. Consult your local Mack sales facility for details.					



WARRANTY COVERAGE AND LIMITATIONS

APPLICATION: C (VOCATIONAL, ON/OFF HIGHWAY)

The following warranty applies to vehicles used in the above applications. Refer to the preceding A schedule for additional details.

Schedule 1 — BASIC VEHICLE:

Same as A Schedule.

Schedule 2 — MACK DIESEL ENGINE:

Same as A Schedule.

Schedule 3 — MACK TRANSMISSIONS:

All Mack transmissions are warranted for 36 months, or 300,000 miles/483 000 kilometers.

Schedule 4 — MACK AXLES: REAR CARRIERS AND HOUSINGS, FRONT I-BEAM:

These components are warranted for 36 months or 300,000 miles/483 000 kilometers, with the exception of the S65 Bogie and Carrier (regardless of carrier model) which is warranted for 12 months or 100,000 miles/161 000 km.

Schedule 5 — TRUNNION BRACKET, SPINDLE, SUSPENSION TRUNNION:

Same as A Schedule.

Schedule 6 — FRAMES: SIDE RAILS AND CROSSMEMBERS:

The warranty for these components is 36 months or 300,000 miles/483 000 kilometers.

Schedule 7 — CAB STRUCTURE:

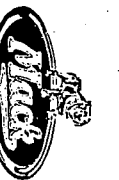
The warranty for these components is 24 months or 200,000 miles/322 000 kilometers.

Schedule 8 — CAB CORROSION:

Same as A Schedule.

Schedule 9:

Same as A Schedule.



WARRANTY COVERAGE AND LIMITATIONS

APPLICATION: D (OFF ROAD)

The following warranty applies to vehicles used in application D. Refer to the A schedule for additional details. Towing and roadside assistance are not covered under the warranty for application D vehicles.

Schedule 1 — BASIC VEHICLE:

Same as A Schedule.

Schedule 2 — MACK DIESEL ENGINE:

Mack engines are warranted for 6,250 hours, 24 months, or 200,000 miles/322 000 kilometers.

Schedule 3 — MACK TRANSMISSIONS:

All Mack transmissions are warranted for 12 months, or 100,000 miles/161 000 kilometers.

Schedule 4 — MACK AXLES: REAR CARRIERS AND HOUSINGS, FRONT I-BEAMS:

These components are warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 5 — TRUNNION BRACKET, SPINDLE, SUSPENSION TRUNNION:

These components are warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 6 — FRAMES: SIDE RAILS AND CROSSMEMBERS:

The warranty for these components is 12 months or 100,000 miles/161 000 kilometers.

Schedule 7 — CAB STRUCTURE:

The cab structure is warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 8 — CAB CORROSION:

Same as A Schedule.

Schedule 9:

Same as A Schedule.

P E D I G R E E D P R O T E C T I O N

P E D I G R E E D P R O T E C T I O N



ITEMS NOT COVERED BY WARRANTY

- Abuse, accident or negligence
- Adjustment of brakes, clutches and controls
- Brake and clutch lining replacement for normal wear
- Specification changes or error in specifications
- Damage in transit
- Deterioration of batteries, paint and trim from improper storage or industrial fallout
- Duplication of repairs from faulty diagnosis/workmanship
- Engine tune-up
- Downtime and driver layover expense
- Headlight adjustment; sealed beam or bulb replacement
- Filter elements and lubricants, except as provided in Warranty Schedule applicable to Mack built engines and transmissions in on-highway vehicles
- Fuel system cleaning
- Injection tip service/replacement for normal use and wear
- Major components/parts replaced without prior authorization from Mack Warranty Department
- Overtime and holiday labor without prior authorization
- Preparation for Delivery Inspection
- Shortage of factory-installed parts
- Telephone, Fax and other communication expenses
- Tires and tubes
- Transportation expense for obtaining replacement parts
- Failures resulting from unauthorized alteration or non-Mack parts
- Wheel alignment, wheel and tire balancing, tire rotation
- Windshield wiper blades
- Rattles, squeaks, vibrations, and unusual noises. Up to 90 days after delivery, the necessary adjustments or corrections will be covered by warranty. Such adjustments or corrections after this period are usually the result of use; and therefore, are not covered under warranty.
- Misapplication – failure of any kind resulting from using the vehicle in a type of service for which the vehicle was not designed or built

P E D I G R E E D P R O T E C T I O N



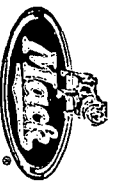
TOWING AND ROAD ASSISTANCE

Towing and road assistance charges are reimbursable on 1998 and later model year Mack manufactured class 8 vehicles when towing becomes necessary to properly service a vehicle due to a warrantable failure.

The following criteria must be met to qualify for payment:

- A. The vehicle must be disabled on the highway due to a warrantable failure.
- B. The vehicle must not be in service more than twelve months, 100,000 miles/161 000 kilometers from the original in-service date.
- C. Towing will be reimbursed when it is not feasible to repair at the point of failure.
- D. Towing reimbursement is limited to normal retail towing charges to the nearest authorized Mack repair facility.
- E. The vehicle must be registered for highway service.

P E D I G R E E D P R O T E C T I O N



FEDERAL REGULATIONS

Gaseous Emission Control Systems Warranty and Noise Control Systems Warranty are printed in the Emission Control Systems Handbook (TS505). California Engine Gaseous Emission Control Systems and Devices warranty and maintenance information is also included.

OPERATOR'S HANDBOOK

Mack vehicles are designed to give many years of reliable service. Excellent information is provided in the Operator's Handbook in each new Mack truck. Refer to it for operation instructions and other important data.

MAINTENANCE AND LUBRICATION

This TS494 manual lists recommended maintenance schedules and indicates in detail just what is to be covered in a bumper-to-bumper preventive maintenance program. Detailed lubricant specifications and capacities are listed for ready reference.

SERVICE MANUAL

For those Mack vehicle owners who need service information, a Mack Components Service Manual (TS576) or a Custom Truck Service Manual (TS473) can be purchased through your local Mack facility.

PARTS AND SERVICE DIRECTORY

To assist in locating Mack facilities, a Directory of Mack Sales, Parts and Service Centers (TS524) is placed in each vehicle. This directory can be used to locate and contact all Mack Truck Sales Facilities and Service Centers.

■ PEDIGREED PROTECTION IS...

Genuine Mack "Performance Counts®" Parts – made to the same high standards as the original equipment parts. They always incorporate the latest design and manufacturing improvements to make them even better than the originals.

■ PEDIGREED PROTECTION IS...

That important extra advantage – Mack "Pedigreed Protection" Service when you need it, where you need it by skilled factory trained mechanical technicians. There are Mack Authorized Service facilities in all major cities.

■ PEDIGREED PROTECTION IS...

Technical Advice – as you need it. Mack experts stand ready to help you select the correct truck for your job and prepare the right maintenance program for low operating costs.

■ PEDIGREED PROTECTION IS...

Warranty – While you have received a copy of the Mack Standard Warranty, and its terms were discussed with you when you purchased your truck, the Warranty has been reprinted in this booklet for easy reference.

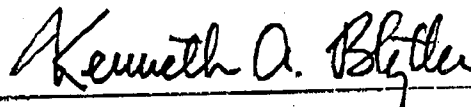
PEDIGREED PROTECTION

PEDIGREED PROTECTION

TS46898 25M 7/97

VERIFICATION

Kenneth A. Blythe hereby verifies that he is Associate General Counsel of Mack Trucks, Inc., and in that capacity is authorized to execute this verification and that the facts set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge or information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Kenneth A. Blythe", is written over a horizontal line.

Kenneth A. Blythe

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant.

Civil Division

Docket No. 03-348-CD

CERTIFICATE OF SERVICE

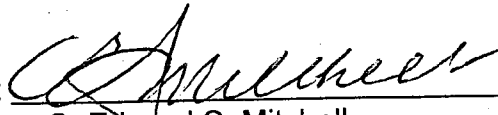
C. EDWARD S. MITCHELL hereby certifies that he served a copy of the
foregoing Answer and New Matter on the following, via U.S. First Class Mail, postage
prepaid, this 22nd day of May, 2003:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

MITCHELL, MITCHELL, GRAY & GALLAGHER

A professional corporation.

BY:



C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

No. 03 - 348 - CD

Type of Pleading:

ANSWER TO NEW MATTER

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

211 1/2 E. Locust Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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



JUN 04 2003

Attest.

William D. Hines
Prothonotary/
Clerk of Courts

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

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No. 03 - 348 - CD

ANSWER TO NEW MATTER

NOW COMES the Plaintiff, GREGG L. BARRETT, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

28. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

29. Said allegation is neither admitted nor denied in that the warranty speaks for itself.

30. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied. In further answer thereto, it is alleged that Defendant breached the warranty given to Plaintiff who is therefore not bound by the terms and conditions of said warranty.

31. Said allegation is neither admitted nor denied in that the warranty speaks for itself.

32. States a conclusion to which no answer is required. To the extent that an answer may be required, said allegation is denied. On the contrary, it is alleged that any defects in the vehicle purchased by Plaintiff were the result of normal use and service and are covered by warranty. In further answer thereto, it is alleged that it was determined in an ancillary proceeding that the defects to Plaintiff's vehicle were the result of normal use and service and were covered by warranty so that Defendant is collaterally estopped from claiming otherwise.

33. Denied. On the contrary, it is alleged that Defendant's designated dealer, W.W. Engine & Supply, Inc., DuBois, Pennsylvania, had notice of Plaintiff's claims. In further answer thereto, it is alleged that Plaintiff, through his agent Vince Centra, contacted the Defendant and requested that Defendant honor the warranty given to Plaintiff.

34. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is alleged that Defendant breached its warranty to Plaintiff and that Plaintiff is therefore not bound by the provisions of Pa.C.S.A. §2719.


35. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied. In further answer thereto, Plaintiff

incorporates his answer to Paragraph 34 of Defendant's New Matter by reference and makes it a part hereof.

36. States a conclusion to which no answer is required. To the extent that an answer may be required, said allegation is denied. In further answer thereto, Plaintiff incorporates his answer to Paragraph 32 of Defendant's New Matter by reference and makes it a part hereof.

37. States a conclusion of law to which no answer is required. To the extent that an answer may be required, it is denied that Plaintiff's claims are barred for the reasons set forth in Paragraph 37 of Defendant's New Matter.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)

ss.

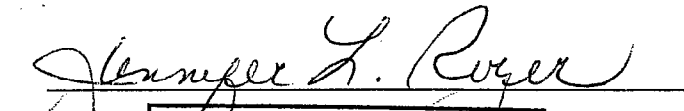
COUNTY OF CLEARFIELD)

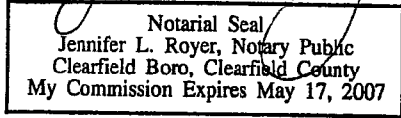
Before me, the undersigned officer, personally appeared
GREGG L. BARRETT, who being duly sworn according to law, deposes
and states that the facts set forth in the foregoing
Answer to New Matter are true and correct to the best of his
knowledge, information and belief.



Gregg L. Barrett

SWORN and SUBSCRIBED before me this 3rd day of June, 2003.




Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served a copy of the
foregoing Complaint to Join, on the following, via U.S. First Class Mail, postage prepaid,

MM this 2nd day of ~~February~~ ^{March}, 2004:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

W.W. Engine & Supply, Inc. (Certified)
P.O. Box 645
RD#3 Rockton Road
DuBois, PA 15801

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:


C. Edward S. Mitchell ID#07222
Attorney for Defendant Mack Trucks
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

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

GREGG BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation
Defendant,

vs.

W. W. ENGINE AND SUPPLY, INC.
Additional Defendant

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Docket No. 03-348-CD

Type of Pleading:
PRAECIPE TO ENTER
APPEARANCE

Filed on Behalf of:
ADDITIONAL DEFENDANT:
W.W. Engine & Supply, Inc.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

LAW OFFICES OF
DWIGHT L. KOERBER, JR.

FILED

MAR 31 2004

William A. Shary
Prothonotary/Clerk of Court

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

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

GREGG BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation
Defendant,

vs.

W. W. ENGINE AND SUPPLY, INC.
Additional Defendant

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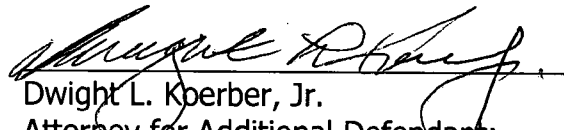
Docket No. 03-348-CD

PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of Additional Defendant, W.W.

Engine & Supply, Inc. in the above-captioned matter.

Respectfully submitted:


Dwight L. Koerber, Jr.
Attorney for Additional Defendant:
W.W. Engine & Supply, Inc.

Dwight L. Koerber, Jr., Esquire
LAW OFFICES OF
DWIGHT L. KOERBER, JR.
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

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

GREGG BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation
Defendant,

vs.

W. W. ENGINE AND SUPPLY, INC.
Additional Defendant

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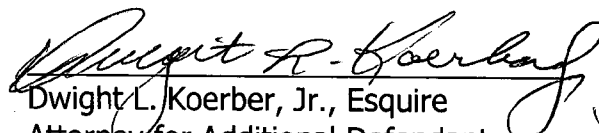
Docket No. 03-348-CD

CERTIFICATE OF SERVICE

I certify that on the 31st day of March, 2004, the undersigned served
certified copies of the Praecipe to Enter Appearance in the above-captioned
matter by United States First Class Mail upon the following:

James A. Naddeo, Esquire
211 1/2 East Locust Street
P. O. Box 552
Clearfield, PA 16830

C. Edward S. Mitchell, Esquire
10 West Third Street
Williamsport, PA 17701



Dwight L. Koerber, Jr., Esquire
Attorney for Additional Defendant:
W. W. Engine and Supply, Inc.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO. 03-348-CD

GREGG BARRETT, an individual
Plaintiff

vs.

MACK TRUCKS, INC., a corporation
Defendant

vs.

W. W. ENGINE AND SUPPLY, INC.
Additional Defendant

PRECEIPE TO ENTER APPEARANCE

FILED
MAR 31 2004

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICE
DWIGHT KOERBER, JR.
ATTORNEY AT LAW
110 NORTH SECOND STREET
P. O. BOX 4520
CLEARFIELD, PENNSYLVANIA 16830

CA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GREGG L. BARRETT :
-VS- :
MACK TRUCKS, INC. : No. 03-348-CD
-VS- :
W.W. ENGINE & SUPPLY, INC. :

O R D E R

NOW, this 1st day of April, 2004, this being the date set for civil call; counsel, Dwight Koerber, having requested a continuance until civil call for the fall Term of Court, it is the ORDER of this Court that the matter be and is hereby continued until the fall Term of Court.

BY THE COURT,



President Judge

FILED

APR 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

GREGG BARRETT, an individual *
Plaintiff, *

vs. *

MACK TRUCKS, INC., a corporation *
Defendant, *

vs. *

W. W. ENGINE & SUPPLY, INC. *
Additional Defendant *

Docket No. 03-348-CD

Type of Pleading:
ANSWER AND NEW MATTER OF
ADDITIONAL DEFENDANT TO
COMPLAINT TO JOIN ADDITIONAL
DEFENDANT

Filed on Behalf of:
ADDITIONAL DEFENDANT:
W.W. Engine & Supply, Inc.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

LAW OFFICES OF
DWIGHT L. KOERBER, JR.

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

GREGG BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation
Defendant,

vs.

W. W. ENGINE & SUPPLY, INC.
Additional Defendant

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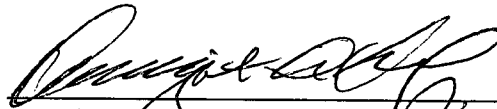
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Docket No. 03-348-CD

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE
ENCLOSED ANSWER AND NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE
HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.



Dwight L. Koerber, Jr., Esquire
Attorney for Additional Defendant:
W. W. Engine & Supply, Inc.

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

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

GREGG BARRETT, an individual	*	
Plaintiff,	*	
vs.	*	
MACK TRUCKS, INC., a corporation	*	Docket No. 03-348-CD
Defendant,	*	
vs.	*	
W. W. ENGINE & SUPPLY, INC.	*	
Additional Defendant	*	

**ANSWER AND NEW MATTER OF ADDITIONAL DEFENDANT TO
COMPLAINT TO JOIN ADDITIONAL DEFENDANT**

COMES NOW, Additional Defendant, W. W. Engine & Supply, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Answer and New Matter to the Complaint to Join Additional Defendant. In support thereof, Additional Defendant avers and shows as follows:

- (1) Admitted.
- (2) Admitted.
- (3) Admitted.
- (4) It is admitted that such an allegation was made, but Additional Defendant denies them, and requires strict proof of same at trial.
- (5) It is admitted that such pleading has been filed.
- (6) It is admitted that such pleading has been filed.

(7) Legal conclusion, no answer required.

(8) Admitted.

(9) Denied, to the contrary, Additional Defendant was of the understanding that the appropriate warranty for the vehicle in question was a five (5) year, 500,000 mile warranty, but in presenting this response, Additional Defendant would point out that the warranty was directly between Plaintiff and Defendant, and not a warranty which Additional Defendant itself issued.

(10) Denied. Defendant is not aware of any instructions that it violated and requires a strict proof of same at trial.

(11) Denied, legal conclusion. Moreover, see Additional Defendant's answers to paragraphs 9 and 10, above.

(12) Denied, legal conclusion. In so far as any facts are alleged, Additional Defendant denies these facts and requires strict proof of same at trial.

(13) Denied, legal conclusion. See answers to paragraphs 9-12 above.

(14) Denied, legal conclusion. See answers to paragraphs 9 and 10 above. Furthermore, to the extent that facts are alleged, Additional Defendant denies them and requires strict proof of same at trial.

(15) Denied, legal conclusion. See answers to paragraphs 9 and 10 above. Furthermore, to the extent that facts are alleged, Additional Defendant denies them and required strict proof of same at trial.

(16) Denied, legal conclusion.

NEW MATTER

In further support of its position herein, Additional Defendant offers the following New Matter.

(17) Additional Defendant denies that it presented the incorrect warranty, and denies that it failed to follow in the instructions of Defendant. However, to the extent that Defendant is able to establish any culpability on the part of Additional Defendant, it should be pointed out that there has been a lengthy delay in presenting such a position and Additional Defendant has relied to its detriment upon the absence of any notification that it extended an incorrect warranty. Additional Defendant therefore requests that Defendant be estopped from raising such a claim at this late date.

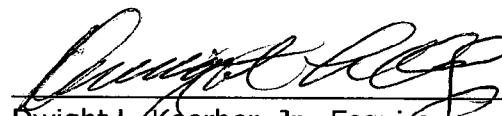
(18) Additional Defendant would also point out that during the processing of the claim in question, there was never an issue raised as to the duration of the warranty or the classification of the warranty, but instead the reason for not paying the claim was because of the unwarrantable failure by the Plaintiff, as it relates to his operation of the vehicle in question.

(19) To the extent that there is any recovery against Additional Defendant, it should be reduced by the amount of the payment that Additional Defendant would have otherwise received if the warranty in question had been honored. Additional Defendant should have been paid the sum of \$3,788.23 directly by the Plaintiff, but it was not paid because of Plaintiff's position that services were covered by the warranty of Defendant. If this position is proven to be correct, then Additional Defendant is entitled to payment

for the warranty services that it provided, in the form of a direct payment or a set off against Defendant.

WHEREFORE, Additional Defendant prays that the Complaint filed against it as Additional Defendant be denied and that judgment be entered in its favor in this matter.

Respectfully submitted,

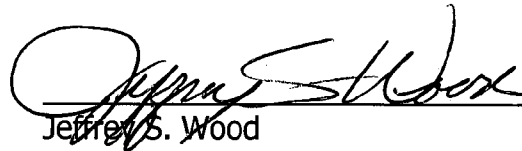
A handwritten signature in cursive script, appearing to read "Dwight L. Koerber, Jr.", is written over a horizontal line.

Dwight L. Koerber, Jr., Esquire
Attorney for Additional Defendant:
W. W. ENGINE & SUPPLY, INC.

Law Offices of Dwight L. Koerber, Jr.
110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

VERIFICATION

I certify that the statements made in the foregoing document 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.



Jeffrey S. Wood

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

GREGG BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation
Defendant,

vs.

W. W. ENGINE AND SUPPLY, INC.
Additional Defendant

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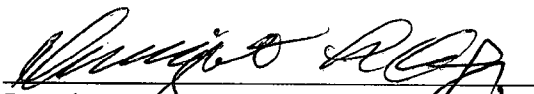
Docket No. 03-348-CD

CERTIFICATE OF SERVICE

I certify that on the 23rd day of April, 2004 the undersigned served
certified copies of the Answer and New Matter of Additional Defendant to
Complaint to Join Additional Defendant in the above-captioned matter via United
States First Class Mail upon the following:

James A. Naddeo, Esquire
211 1/2 East Locust Street
P. O. Box 552
Clearfield, PA 16830

C. Edward S. Mitchell, Esquire
MITCHELL, MITCHELL, GALLAGHER,
WEBER, SOUTHARD & WISHARD, P.C.
10 West Third Street
Williamsport, PA 17701


Dwight L. Koerber, Jr., Esquire
Attorney for Additional Defendant:
W. W. Engine & Supply, Inc.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET NO. 03-348-CD

GREGG BARRETT,
Plaintiff

vs.

MACK TRUCKS, INC.
Defendant

vs.

W. W. ENGINE & SUPPLY, INC.
Additional Defendant

ANSWER AND NEW MATTER OF ADDITIONAL
DEFPDANT TO COMPLAINT TO JOIN
ADDITIONAL DEFENDANT

FILED

APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICE

DWIGHT KOERBER, JR.

ATTORNEY-AT-LAW

110 NORTH SECOND STREET

P.O. BOX 1320

CLEARFIELD, PENNSYLVANIA 16830

William A. Shaw
Prothonotary

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant,

vs.

W.W. ENGINE & SUPPLY, INC.,
Additional Defendant

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No. 03 - 348 - CD

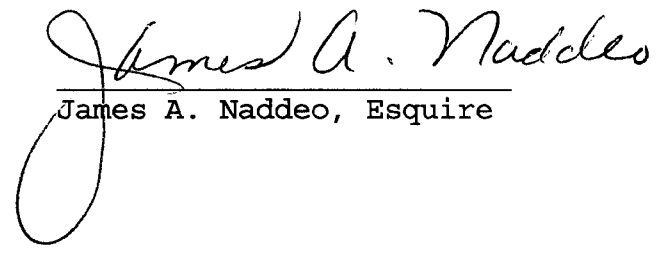
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that true and correct copies of Plaintiff's Answers to Interrogatories and Plaintiff's Answers to Defendant's First Request for Production of Documents in the above-captioned action were served on the following persons and in the following manner on the 5th day of May, 2004:

First-Class Mail, Postage Prepaid

C. Edward S. Mitchell, Esquire
MITCHELL, MITCHELL, GRAY & GALLAHER
10 West Third Street
Williamsport, PA 17701

Dwight L. Koerber, Jr., Esquire
110 North Second Street
Clearfield, PA 16830


James A. Naddeo, Esquire

JAMES A. NADDEO

ATTORNEY AT LAW

P.O. BOX 552

CLEARFIELD, PENNSYLVANIA 16830

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant,

vs.

W.W. Engine & Supply, Inc.,
Additional Defendant

Civil Division

Docket No. 03-348-CD

FILED

MAY 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

**REPLY OF MACK TRUCKS, INC. TO
NEW MATTER OF W.W. ENGINE & SUPPLY, INC.**

17. Denied that Defendant is estopped from raising the issue of incorrect warranty.
18. Denied. By way of further answer, as pleaded in Defendant's Answer to Plaintiff's Complaint, Defendant's records indicate no warranty claim was ever submitted to Defendant.
19. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that Additional Defendant should have been paid the sum of \$3788.23 by Plaintiff. Denied that Additional Defendant is entitled to a setoff from Defendant.

WHEREFORE, Defendant requests judgment in its favor on Plaintiff's claim or, in the alternative, a judgment of indemnity against Additional Defendant for any liability adjudicated against it in behalf of Plaintiff.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:

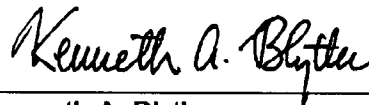


C. Edward S. Mitchell
Attorney for Defendant
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

ID#07222

VERIFICATION

Kenneth A. Blythe hereby verifies that he is Associate General Counsel of Mack Trucks, Inc., and in that capacity is authorized to execute this verification and that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of his knowledge or information and belief and that this verification is made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



Kenneth A. Blythe

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

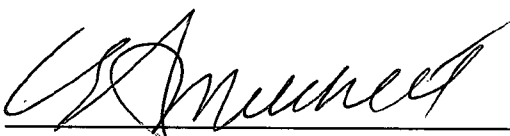
CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served a copy of the foregoing Reply to New Matter on the following, via U.S. First Class Mail, postage prepaid, this 20th day of May, 2004:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

Dwight L. Koerber, Jr., Esquire
Law Office of Dwight L. Koerber, Jr.
110 North Second Street
PO Box 1320
Clearfield, PA 16830
Attorney for W.W. Engine & Supply, Inc.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY: 
C. Edward S. Mitchell ID#07222
Attorney for Defendant Mack Trucks
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

CA

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served the foregoing Pretrial
Memorandum on the following, via U.S. First Class Mail, postage prepaid, this 4th
day of August, 2004:

James A. Naddeo, Esquire
211 1/2 E. Locust Street
PO Box 552
Clearfield, PA 16830

Dwight L. Koerber, Jr., Esquire
Law Office of Dwight L. Koerber, Jr.
PO Box 1320
Clearfield, PA 16830

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:


C. Edward S. Mitchell ID#07222
Attorney for Defendant Mack Trucks
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

FILED NO
01311101 CC
AUG 06 2004
EAS

William A. Shaw
Prothonotary/Clerk of Courts

GA

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

Gregg Barrett, an individual
Plaintiff

*

*

-VS-

*

MACK TRUCKS, INC., a corporation
Defendant

*

Docket No. 03-348-CD

*

-VS-

*

W.W. ENGINE & SUPPLY, INC.
Additional Defendant

*

FILED NO
0135481 CC
AUG 06 2004
EPB

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

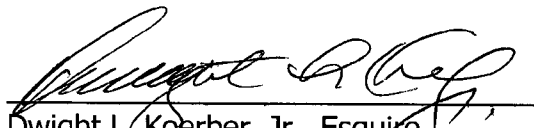
This is to certify that on the 6th day of August, 2004 the undersigned served a true and correct copy of the PRE-TRIAL STATEMENT OF W.W. ENGINE & SUPPLY, INC., ADDITIONAL DEFENDANT in the above-captioned matter upon counsel for Plaintiff and counsel for Defendant. Such documents were served via United States First Class Mail and Facsimile upon the following:

C. Edward S. Mitchell, Esquire
MITCHELL, MITCHELL, GALLAGHER,
WEBER, SOUTHARD & WISHARD P.C.
10 West Third Street
Williamsport, PA 17701

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

Fax: (570) 323-8585

Fax: (814) 765-8142


Dwight L. Koerber, Jr., Esquire
Attorney for Additional Defendant:
W.W. Engine & Supply, Inc.

GA

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

GREGG L. BARRETT, an	*	
individual,	*	
Plaintiff,	*	
	*	
vs.	*	No. 03 - 348 - CD
	*	
MACK TRUCKS, INC., a	*	
corporation,	*	
Defendant,	*	
	*	
vs.	*	
	*	
W.W. ENGINE & SUPPLY, INC.,	*	
Additional Defendant	*	

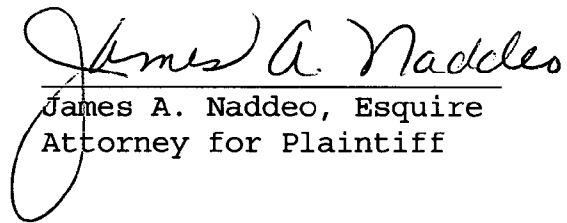
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Pre-Trial Statement filed in the above-captioned action was served on the following persons and in the following manner on the 4th day of August, 2004:

First-Class Mail, Postage Prepaid

C. Edward S. Mitchell, Esquire
MITCHELL, MITCHELL, GRAY & GALLAHER
10 West Third Street
Williamsport, PA 17701

Dwight L. Koerber, Jr., Esquire
110 North Second Street
Clearfield, PA 16830


James A. Naddeo, Esquire
Attorney for Plaintiff

FILED No CC
013:08/01
AUG 06 2004
E/B
William A. Shaw
Prothonotary/Clerk of Courts

C/A

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

CIVIL DIVISION

Gregg L. Barrett, Plaintiff

Vs.

No. 2003-00348-CD

Mack Trucks, Inc., Defendant

Vs

W. W. Engine & Supply, Inc.

Additional Defendant

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 September 13, 2004, marked:

Settled and Discontinued with prejudice

Record costs in the sum of \$190.25 have been paid in full by Atty. James Naddeo.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of September A.D. 2004.

William A. Shaw, Prothonotary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual
Plaintiff,

vs.

MACK TRUCKS, INC., a corporation,
Defendant,

vs.

W.W. Engine & Supply, Inc.,
Additional Defendant

Civil Division

Docket No. 03-348-CD

PRAECIPE

TO THE PROTHONOTARY:

Kindly mark the docket in the above captioned action as to the claim of Defendant Mack Trucks against Additional Defendant W.W. Engine & Supply, Inc., SETTLED and DISCONTINUED with prejudice.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:



C. Edward S. Mitchell ID#07222
Attorney for Defendant Mack Trucks
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

FILED

SEP 16 2004

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	Civil Division
vs.	:	
	:	Docket No. 03-348-CD
MACK TRUCKS, INC., a corporation,	:	
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

CERTIFICATE OF SERVICE

C. EDWARD S. MITCHELL hereby certifies that he served the foregoing
Preacipe on the following, via U.S. First Class Mail, postage prepaid, this 15 day of
September, 2004:

James A. Naddeo, Esquire
211 ½ E. Locust Street
PO Box 552
Clearfield, PA 16830

Dwight L. Koerber, Jr., Esquire
Law Office of Dwight L. Koeber, Jr.
PO Box 1320
Clearfield, PA 16830

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY: 

C. Edward S. Mitchell ID#07222
Attorney for Defendant Mack Trucks
10 West Third Street
Williamsport, PA 17701
Telephone: 570-323-8404
Facsimile: 570-323-8585

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

CIVIL DIVISION

COPY

Gregg L. Barrett

Vs.

No. 2003-00348-CD

Mack Trucks, Inc.

W. W. Engine & Supply, Inc.

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 September 16, 2004, marked:

SETTLED, DISCONTINUED AND ENDED against Additional Defendant W. W. Engine & Supply, Inc. with prejudice.

Record costs in the sum of \$190.25 have been paid in full by Atty. James Naddeo.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 16th day of September A.D. 2004.

William A. Shaw, Prothonotary

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

ASSOCIATE
LINDA C. LEWIS

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@charterinternet.com

August 10, 2004

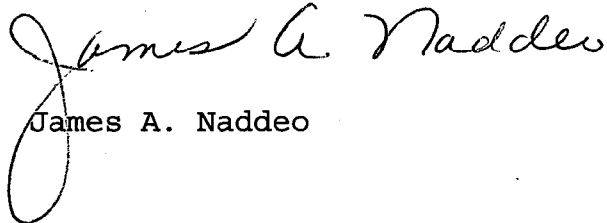
Honorable Fredric J. Ammerman
President Judge
Clearfield County Courthouse
Clearfield, PA 16830

Re: Barrett vs. Mack Trucks, et al.
No. 03-348-CD

Dear Judge Ammerman:

The parties have agreed to settle Plaintiff's claim for the sum of \$8,500.00. You will receive confirmation of this settlement from defense counsel. There is no need for the Pre-Trial Conference scheduled on Friday, August 13, 2004. I will have this action marked settled and discontinued as soon as counsel have completed the mechanics of settlement.

Sincerely,



James A. Naddeo

JAN/jlr

cc: C. Edward S. Mitchell, Esquire (via fax 570/323-8585)
Dwight L. Koerber, Jr., Esquire (via fax 765-9503)
Mr. Gregg L. Barrett

(D)

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

ASSOCIATE
LINDA C. LEWIS

(814) 765-1601
FAX: (814) 765-8142
naddeolaw@charterinternet.com

August 4, 2004


Marcy Kelley
Deputy Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

RE: Gregg L. Barrett vs.
Mack Trucks, Inc., et al.
No. 03-348-CD

Dear Ms. Kelley:

Enclosed is Plaintiff's Pre-Trial Statement. By copy of this letter, I am forwarding same to counsel of record.

Sincerely,


James A. Naddeo

JAN/jlr

Enclosure

cc: C. Edward Mitchell, Esquire (w/ enc.)
Dwight L. Koerber, Jr., Esquire

RECEIVED

AUG 04 2004

**COURT ADMINISTRATORS
OFFICE**

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

GREGG L. BARRETT, an
individual,
Plaintiff,

vs.

MACK TRUCKS, INC., a
corporation,
Defendant.

vs.

W.W. ENGINE & SUPPLY, INC.,
Additional Defendant

RECEIVED

AUG 04 2004

COURT ADMINISTRATOR'S
OFFICE

No. 03 - 348 - CD

Type of Pleading:

**PLAINTIFF'S PRE-TRIAL
STATEMENT**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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

GREGG L. BARRETT, an	*	
individual,	*	
Plaintiff,	*	
	*	
vs.	*	No. 03 - 348 - CD
	*	
MACK TRUCKS, INC., a	*	
corporation,	*	
Defendant,	*	
	*	
vs.	*	
	*	
W.W. ENGINE & SUPPLY, INC.,	*	
Additional Defendant	*	

PLAINTIFF'S PRE-TRIAL STATEMENT

NOW COMES the Plaintiff, GREGG L. BARRETT, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

I. Factual Statement.

Plaintiff purchased a new 1998 Mack Truck, Model #C1713 from W.W. Engine & Supply, Inc., on October 24, 1997. The truck was to be equipped as a tri-axle, which equipment was included in the purchase price. At the time of purchase, Plaintiff received an express warranty titled "Pedigreed Protection Plan No. Ts46897". This plan provided transmission warranty for 60 months or 500,000 miles and a warranty for rear carriers and housing for 60 months or 500,000 miles. The truck was utilized by Plaintiff primarily for highway use.

In December 2000 the front rear end housing of Plaintiff's truck cracked. Plaintiff took the truck to Defendant's authorized dealer, W.W. Engine & Supply, Inc., and requested warranty repair. The dealer refused to make the repair. Plaintiff was required to have the front rear end housing welded on two separate occasions at his expense and ultimately had to have the front rear end housing replaced. Plaintiff continued to have various problems with the truck which he believed were covered by the express warranty given to him at the time of purchase. Despite efforts to have these malfunctions repaired by W.W. Engine & Supply, Inc., and/or Mack Trucks, Inc., Plaintiff was consistently rebuffed and informed that the malfunctions were not covered by warranty. All breakdowns in the drive train of Plaintiff's vehicle occurred within 60 months from the date of purchase and while the vehicle had less than 500,000 miles.

II. Exhibits.

- A. Copy of Bill of Sale for subject vehicle.
- B. Copies of warranty documents.
- C. Copies of repair invoices paid by Plaintiff.
- D. Records of Waroquier Coal Company to whom vehicles was leased evidencing dates and times that vehicle worked as well as the amounts earned by said vehicle.

E. Copies of Plaintiff's tax returns.

III. Witnesses.

A. Gregg L. Barrett, 288 Watts Road, Curwensville, PA
- damage/liability.

B. Vince Centra, Vince Centra Truck Repair, Lash's
Road, Curwensville, PA 16833 - damage/liability.

C. Representative of Waroquier Coal Company, RD3,
Clearfield, PA 16830 - damage.

IV. Legal Theory.

Plaintiff contends that Defendant breached the express warranty given to Plaintiff with the purchase of the 1998 Mack truck. Plaintiff seeks to recover the cost of all repairs that should have been warranted under the terms and conditions of the express warranty provided by Defendant, Mack Trucks, Inc.

Plaintiff also seeks to recover for down time. While Plaintiff concedes that he would not be entitled to recover for loss of use of the vehicle under the terms of warranty, Defendant by breaching the warranty opens the door for Plaintiff's claim. When a contract calls for performance by a party and the party fails to perform, the other party is entitled to consider the agreement to be breached. (Pritchard v. Liggett, 723 A2 1053).

V. Damages.

A. Cost of repairs totaling - \$9,677.11

B. Down time totaling - 11,700.00

VI. Extraordinary Evidentiary Problems.

None.

VII. Stipulations.

A. Authenticity of Waroquier Coal Company records.


VIII. Special Points for Charge.

None.

IX. Estimated Time for Trial.

Two (2) days.

Respectfully submitted,


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

*Mitchell
Gallagher
Attorneys at Law*

J. Neafie Mitchell (1919-1996)

(A)
C. Edward S. Mitchell
Robert A. Gallagher
Gary L. Weber
Bret J. Southard
Darryl R. Wishard

Email: cesm@mngsw.com

August 4, 2004

David S. Meholick, Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Re: **Barrett v. Mack Trucks, Inc. v. W.W. Engine & Supply, Inc.**
Clearfield County Docket No. 03-348-CD

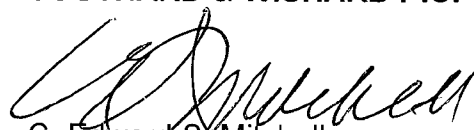
Dear Mr. Meholick:

Enclosed herewith is the original Pretrial Memorandum on behalf of Defendant Mack Trucks, Inc., in the above-referenced matter.

By copy of this correspondence, I am serving copies on all counsel.

Very truly yours,

**MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.**


C. Edward S. Mitchell

klm

Enclosures

cc: James Naddeo, Esquire
Dwight Koerber, Esquire

RECEIVED

AUG 06 2004

**COURT ADMINISTRATOR'S
OFFICE**

Mitchell Mitchell Gallagher Weber Southard & Wishard P.C.

www.mmgsw.com

10 West Third Street, Williamsport, Pa. 17701-6513

(570) 323-8404 Fax (570) 323-8585

GREGG L. BARRETT, an individual	:	
Plaintiff,	:	
vs.	:	Civil Division
	:	
MACK TRUCKS, INC., a corporation,	:	Docket No. 03-348-CD
Defendant,	:	
vs.	:	
	:	
W.W. Engine & Supply, Inc.,	:	
Additional Defendant	:	

**COURT ADMINISTRATOR'S
OFFICE**

informed Vince Centra that Plaintiff's vehicle would not be released if it came into W.W. Engine's possession unless Plaintiff paid a preexisting debt.

The total amount of Plaintiff's claim is \$21,377.11. Plaintiff's own testimony reduces the amount of his damages to a figure within the jurisdiction's limits requiring referral to a board of arbitration. Accordingly, Defendants request the matter be stricken from the trial list.

No party has demanded a jury trial. Accordingly, Defendants request the matter be removed from the jury trial list.

II. LIST OF EXHIBITS

1. Plaintiff's purchase invoice.
2. Express warranty issued to Plaintiff in connection with purchase;
3. Invoices from Vince Centra for repairs for which Plaintiff seeks recovery;
4. Transcript of Plaintiff's deposition;
5. Plaintiff's complaint;
6. Plaintiff's Answers to Interrogatories;
7. Plaintiff's Response to Request for Production;
8. Plaintiff's income tax returns;
9. Plaintiff's records of loads and receipts from truck lessee

III. NAMES AND ADDRESSES OF WITNESSES EXPECTED TO BE CALLED

David Reed, 1079 Treasure Lake, Dubois, PA – liability and damages

Mike Lytel, 142 Water Works Road, Somerset, PA – liability and damages

Rich Walk, 2100 Mack Boulevard, Allentown, PA – liability and damages

Appropriate representative of W.W. Engine & Supply, Inc., to respond to Plaintiff's testimony about conversations in which W.W. Engine & Supply informed Plaintiff the vehicle would not be released unless the previous bill were paid.

IV. LEGAL THEORY UPON WHICH DEFENSE IS PREDICATED

Factual defense that Plaintiff never made a warranty claim to Mack or its authorized representative for the repairs for which Plaintiff seeks recovery.

Legal defense that Plaintiff's claim for lost profits is excluded by the express terms of the warranty.

Plaintiff's invoices include repairs which are not covered by warranty.

V. DESCRIPTION OF DAMAGES CLAIMED

Plaintiff claims the following damages:

Repair to front rear housing made 12/14/01	\$866.90
Repair to front rear housing made 2/10/02	\$437.90
Replace front rear housing 6/10/02	\$1,865.79
Replace front rear end 6/12/02	\$2,224.40
Replace transmission 7/15/02	\$4,726.27
Replace back rear end (repair not done)	\$3,488.34
Down time	\$11,700.00

Defendant denies liability for all damages as set forth in the factual statement and legal theory of defense.

VI. EXTRAORDINARY EVIDENTIARY PROBLEMS

The Uniform Commercial Code adopted in Pennsylvania applies to this claim. 13 Pa.C.S.A. § 1101 et seq.

The express warranty specifically excludes claims for consequential damage. The express warranty also specifically excludes claims for down time. The meaning of the warranty is a question of law for the court. The court cannot submit to the jury a claim which cannot be recovered under the terms of the warranty. Accordingly, the court cannot submit to the jury Plaintiff's claim for downtime.

VII. STIPULATIONS

None requested.

VIII. SPECIAL POINTS FOR CHARGE

This should be a non jury trial so that points for charge should be unnecessary.

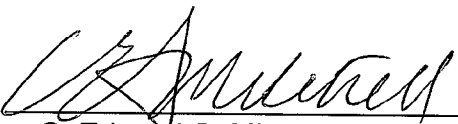
If the case is tried to a jury, points for charge and the applicable sections of the Uniform Commercial Code will be submitted.

IX. ESTIMATED TIME FOR TRIAL

One day if non-jury. Two days if jury.

MITCHELL MITCHELL GALLAGHER WEBER
SOUTHARD & WISHARD P.C.

BY:



C. Edward S. Mitchell

ID#07222

Attorney for Defendant Mack Trucks, Inc.

10 West Third Street

Williamsport, PA 17701

Telephone: 570-323-8404

Facsimile: 570-323-8585

PEDIGREED PROTECTION PLAN



TS46897



WARRANTY REGISTRATION INFORMATION

Before the vehicle is delivered to the customer, the selling dealer should fill in the information below.

Vehicle Model: _____

Vehicle Identification Number (VIN): _____

In-Service Date: _____

Mack Dealer's Name/Address: _____

Customer's Name/Address: _____

VEHICLE APPLICATION:* (Check Only One)

- ☐ Class A: On Highway – Standard Duty
- ☐ Class AA: On Highway – Severe Duty
- ☐ Class B: On Highway Inner City – Standard Duty
- ☐ Class BB: On Highway Inner City – Severe Duty
- ☐ Class C: On/Off Highway – Standard Duty
- ☐ Class CC: On/Off Highway – Severe Duty
- ☐ Class D: Off Highway (Mack Engineering approval required)

* The vehicle application determines the length of the Mack Standard Warranty. If additional axles are installed following the sale of this vehicle, the finished vehicle configuration will be used to assess the vehicle application for warranty purposes.



Your New Chassis...

Your new Mack truck has been quality built, inspected, lubricated, and final adjustments have been performed by the Mack Trucks assembly plant. However, as moving parts "wear in" or as gaskets "take a set," an occasional oil, air or coolant leak may develop. Quick action to correct these minor mechanical items will prevent a major repair later. Refer to the following "break-in" recommendations, and take your vehicle to the nearest Mack service center as soon as any abnormal condition becomes evident.

During First 3,000 Miles (5 000 Kilometers)

- After first 125 miles/200 km, retorque the wheel nuts using an accurately calibrated torque wrench. Recheck this torque again after 500 miles/800 km.
- Check engine oil and coolant levels frequently.
- Observe instruments often and shut down at first sign of any abnormal readings.
- Report all leaks, loose fasteners, unusual noises, etc., so they may be quickly checked and corrected.
- Check brake and clutch adjustment per recommended schedule and adjust as needed.
- Check spring clip nut torque. On Freyco suspensions, also check the equalizer nut torque.
- Check the U-bolt nut torque on the Mack Air suspension at the end of the first 1,000 miles (1 600 km).

At the End of First 3,000 miles/5 000 km or before 4,000 Miles/6 400 km, or 3 to 4 months (whichever comes first)

- Retorque front and rear spring clips. On Freyco suspensions, also check the equalizer nut torque.

NOTE: Lubricate the chassis, and change the following lubricants and filters according to the Mack Preventive Maintenance Schedules shown in the TS494 – Maintenance and Lubrication Manual:

- Gear oils – transmission, rear axle carrier(s), front drive axle carrier(s), transfer case, flywheel PTO
- Engine oil, oil filters, fuel filters and coolant conditioner

Always service your vehicle regularly according to the Mack Preventive Maintenance Schedules in your TS494 – Maintenance and Lubrication Manual. Your service manager will be glad to help you establish the right Preventive Maintenance Schedule for your truck and type of operation.

P E D - I G R E E D P R O T E C T I O N

P E D - I G R E E D P R O T E C T I O N





P E D I - G R E E D P R O T E C T I O N

CUSTOM BULLDOG PROTECTION PLANS (EXTENDED WARRANTIES)

The warranty coverage on your new Mack truck can easily be extended if you desire. Just ask your dealer for details on a Custom Bulldog Protection Plan.



During the first year of ownership, the original purchaser of a new Mack vehicle may elect to extend the warranty term by signing up for a custom Bulldog Protection Plan at his or her Mack dealer.

The extended warranties which are offered through custom Bulldog Protection Plans are available to owners of all Mack vehicles with the exception of those that will be used in Vehicle Application D "Off Highway." Your Mack dealer and the Mack Warranty Department reserve the right to investigate actual vehicle usage before accepting registration in a custom Bulldog Protection Plan. Mack Trucks, Inc. may also refuse to honor a warranty claim if it is determined that damage claimed has resulted from vehicle usage other than that described in the registered Vehicle Application.

Mack Trucks, Inc. may make changes in models, design, specifications and equipment at any time without incurring any obligations. The specifications contained herein are subject to change without notice.



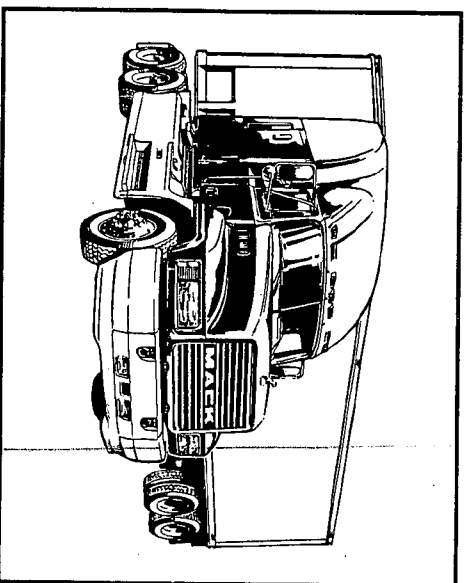
TRANSFER OF WARRANTY

The balance of the Mack Standard Warranty is transferable to each subsequent vehicle owner with the approval of Mack Trucks, Inc. This transfer must be performed by an authorized Mack facility within 30 days of the date of sale. The vehicle must be operated in the same vehicle application as originally sold. Further details and forms required to perform the transfer are available from your local Mack authorized new truck sales facility.

INJECTION PUMP AND GOVERNOR SETTING

Do not attempt to increase engine power by adjusting injection pump and governor settings beyond standard specifications.

In the event that damage results from such improper adjustments, the cost of repairing such damage will not be covered under the Warranty.



P E D I - G R E E D P R O T E C T I O N





MACK STANDARD WARRANTY

1995 and Later Model Years

Mack Trucks, Inc. (the "Manufacturer") warrants each new Mack motor vehicle (the "Vehicle") sold by it or by any of its authorized new truck sales facilities to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to repairing or replacing, as hereinafter provided, at its option, at the Manufacturer's authorized truck repair facility any part or parts of the Vehicle found to the Manufacturer's satisfaction to be defective upon examination by it, provided that such part or parts be returned to the Manufacturer's factory or to its nearest authorized truck repair facility. In accordance with the Manufacturer's published policies, the Manufacturer's authorized truck repair facility is authorized to use only Genuine Mack or Mack Approved parts, purchased from the Manufacturer, in performance of warranted repairs, except where such parts are not available.

1. Component parts of the Vehicle as listed in the Warranty Schedules on Forms FO34.1, FO34.2 and FO34.3 are warranted for the time period specified commencing the date of delivery of the Vehicle to the original purchaser or before the Vehicle has been operated by such original purchaser the number of miles, kilometers or hours specified on such schedules, whichever first occurs. The repair or replacement of such parts will be made in accordance with the terms of each schedule.

2. All other parts or components, except as hereinafter provided, are warranted for twelve months or 100,000 miles (161 000 kilometers), commencing the date of delivery of the Vehicle to the original purchaser. The repair or replacement of such parts will be made without charge for parts or labor.

NOTE: WARRANTY COVERAGE MAY VARY BASED ON THE TYPE OF USAGE OF THE VEHICLE. VEHICLE APPLICATION AT TIME OF SALE DETERMINES APPLICABLE WARRANTY COVERAGE. CONSULT YOUR MACK AUTHORIZED NEW TRUCK SALES FACILITY FOR THE APPLICATION CLASS OF THE VEHICLE. THE MANUFACTURER RESERVES THE RIGHT

TO VERIFY THAT THE APPLICATION FOR WHICH THE VEHICLE IS REGISTERED DOES MATCH THE ACTUAL APPLICATION CLASS.

This warranty shall not apply to any Vehicle which has been subject to misuse, negligence or accident or which shall have been altered or repaired outside of the factory in any way which in the Manufacturer's judgement might affect the Vehicle's stability or reliability, nor to normal maintenance services (such as engine tune-up, fuel system cleaning, wheel alignment and balancing, brake and clutch adjustments) and the replacement of service items (such as filter elements and lubricants) made in connection with such services.

The Manufacturer makes no warranty whatever with respect to the engines and transmissions not of its manufacture, nor to winches, power take-offs, dumper, mixer and refuse assemblies, hoists and bodies or other similar equipment made by other manufacturers and installed outside of the Manufacturer's factory, nor to non-Mack brand batteries, tires and tubes. Said engines, transmissions, special equipment, accessories, tires and tubes usually are typically warranted separately by their respective manufacturers.

THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF THE MANUFACTURER INCLUDING, WITHOUT LIMITATION OF THE FOREGOING, CONSEQUENTIAL AND INCIDENTAL DAMAGES. The Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of the Vehicle. This warranty may be transferred by the original retail purchaser to the subsequent retail purchaser (purchasing the Vehicle directly from the original retail purchaser) with the prior approval of the Manufacturer and otherwise, in accord with the Manufacturer's Warranty Administration Instructions. The Manufacturer offers various customer purchasable extended warranty plans. Contact the Manufacturer's authorized new truck sales facility for details.

This warranty shall not apply to used motor vehicles, the same being sold "as is - where is".

WARRANTY COVERAGES AND LIMITATIONS: All Coverage is 100% Parts and Labor

VEHICLE APPLICATIONS: A, B		Hours	Months	Miles	Kilometers
SCHEDULE 1. BASIC VEHICLE* (Includes Roadside Assistance and Towing for warrantable failures.**) *Clutch Lining, Brake Lining and Brake Drums are covered for 12 months or 25,000 miles/40 000 kilometers only. ** Roadside Assistance and Towing coverage does not apply to vendor engines, transmissions and axles.		-	12	100,000	161 000
SCHEDULE 2. MACK DIESEL ENGINE Standard Warranty Major Components: <div> <div> Cylinder Block Casting Main Bearing Bolts Cylinder Head Castings Crankshaft Forging Con-Rod & Cap Forging Con-Rod Capscrews </div> <div> Carnshaft Forging Valve Lifters Intake Manifold Casting Flywheel Housing Gear Cover Engine Gears </div> </div>		10,800 12,500	36 60	300,000 500,000	483 000 805 000
Coverage also applies to consumables such as lubricant, antifreeze, filter elements, belts, hoses and similar maintenance items not reusable and replaced directly as result of warrantable engine, carrier or transmission failure. Components not manufactured by Mack Trucks, Inc., but used on Mack diesel engine assemblies are excluded from the coverage in Schedule 2. These components are covered by the component manufacturer's warranty in effect at the time of delivery. Consult your local Mack service facility for details.					
SCHEDULE 3. MACK TRANSMISSIONS 5, 6, 9, 10, 13, 18 Speed Only All Others		- -	60 36	500,000 300,000	805 000 483 000
SCHEDULE 4. MACK AXLES Rear Carriers and Housing Rear Carrier Seals, Gaskets and Front I-Beam S65 Bogle and Carrier, Regardless of Carrier Model		- - -	60 36 12	500,000 300,000 100,000	805 000 483 000 161 000
SCHEDULE 5. Trunnion Bracket and Spindle, Suspension Trunnion (except Bushings).		-	36	300,000	483 000
SCHEDULE 6. FRAMES, SIDE RAILS AND CROSSMEMBERS		-	60	500,000	805 000
SCHEDULE 7. CAB STRUCTURE		-	60	500,000	805 000
SCHEDULE 8. CAB CORROSION Coverage applies to perforation (an actual hole in the cab panel) due to corrosion. Coverage does not apply to corrosion caused by damage to paint finish.		-	60	500,000	805 000
SCHEDULE 9. Components not manufactured by Mack Trucks, Inc. may have warranty coverage different from the above as they are covered by the manufacturer's warranty. Consult your local Mack sales facility for details.					



WARRANTY COVERAGE AND LIMITATIONS

APPLICATIONS AA, BB, C, CC

The following warranty applies to vehicles used in the above applications. Refer to the preceding A and B schedules for additional details.

Schedule 1 – BASIC VEHICLE:

Same as A & B Schedule.

Schedule 2 – MACK DIESEL ENGINE:

Same as A & B Schedule.

Schedule 3 – MACK TRANSMISSIONS:

All Mack transmissions are warranted for 36 months, or 300,000 miles/483 000 kilometers.

Schedule 4 – MACK AXLES: REAR CARRIERS AND HOUSINGS, FRONT I-BEAM:

These components are warranted for 36 months or 300,000 miles/483 000 kilometers, with the exception of the S65 Bogie and Carrier (regardless of carrier model) which is warranted for 12 months or 100,000 miles/161 000 km.

Schedule 5 – TRUNNION BRACKET, SPINDLE, SUSPENSION TRUNNION:

Same as A & B Schedule.

Schedule 6 – FRAMES: SIDE RAILS AND CROSSMEMBERS:

The warranty for these components is 36 months or 300,000 miles/483 000 kilometers.

Schedule 7 – CAB STRUCTURE:

The warranty for these components is 24 months or 200,000 miles/322 000 kilometers.

Schedule 8 – CAB CORROSION:

Same as A & B Schedule.

Schedule 9:

Same as A & B Schedule.



WARRANTY COVERAGE AND LIMITATIONS

APPLICATION D

The following warranty applies to vehicles used in application D. Refer to the A and B schedules for additional details. Towing and roadside assistance are not covered under the warranty for application D vehicles.

Schedule 1 – BASIC VEHICLE:

Same as A & B Schedule.

Schedule 2 – MACK DIESEL ENGINE:

Mack engines are warranted for 6,250 hours, 24 months, or 200,000 miles/322 000 kilometers.

Schedule 3 – MACK TRANSMISSIONS:

All Mack transmissions are warranted for 12 months, or 100,000 miles/161 000 kilometers.

Schedule 4 – MACK AXLES: REAR CARRIERS AND HOUSINGS, FRONT I-BEAM:

These components are warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 5 – TRUNNION BRACKET, SPINDLE, SUSPENSION TRUNNION:

These components are warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 6 – FRAMES: SIDE RAILS AND CROSSMEMBERS:

The warranty for these components is 12 months or 100,000 miles/161 000 kilometers.

Schedule 7 – CAB STRUCTURE:

The cab structure is warranted for 12 months or 100,000 miles/161 000 kilometers.

Schedule 8 – CAB CORROSION:

Same as A & B Schedule.

Schedule 9:

Same as A & B Schedule.

P E D I G R E E D P R O T E C T I O N

P E D I G R E E D P R O T E C T I O N





ITEMS NOT COVERED BY WARRANTY

- Abuse, accident or negligence
- Adjustment of brakes, clutches and controls
- Brake and clutch lining replacement for normal wear
- Specification changes or error in specifications
- Damage in transit
- Deterioration of batteries, paint and trim from improper storage or industrial fallout
- Duplication of repairs from faulty diagnosis/workmanship
- Engine tune-up
- Downtime and driver layover expense
- Headlight adjustment; sealed beam or bulb replacement
- Filter elements and lubricants, except as provided in Warranty Schedule applicable to Mack built engines and transmissions in on-highway vehicles
- Fuel system cleaning
- Injection tip service/replacement for normal use and wear
- Major components/parts replaced without prior authorization from Mack Warranty Department
- Overtime and holiday labor without prior authorization
- Preparation for Delivery inspection
- Shortage of factory-installed parts
- Telephone, Fax and other communication expenses
- Tires and tubes
- Transportation expense for obtaining replacement parts
- Failures resulting from unauthorized alteration or non-Mack parts
- Wheel alignment, wheel and tire balancing, tire rotation
- Windshield wiper blades
- Rattles, squeaks, vibrations, and unusual noises. Up to 90 days after delivery, the necessary adjustments or corrections will be covered by warranty. Such adjustments or corrections after this period are usually the result of use, and therefore, are not covered under warranty.
- Misapplication – failure of any kind resulting from using the vehicle in a type of service for which the vehicle was not designed or built

P E D I G R E E D P R O T E C T I O N



TOWING AND ROAD ASSISTANCE

Towing and road assistance charges are reimbursable on 1995 and later model year Mack manufactured class 8 vehicles when towing becomes necessary to properly service a vehicle due to a warrantable failure.

The following criteria must be met to qualify for payment:

- A. The vehicle must be disabled on the highway due to a warrantable failure.
- B. The vehicle must not be in service more than twelve months, 100,000 miles/161 000 kilometers from the original in-service date.
- C. Towing will be reimbursed when it is not feasible to repair at the point of failure.
- D. Towing reimbursement is limited to normal retail towing charges to the nearest authorized Mack repair facility.
- E. The vehicle must be registered for highway service.

P E D I G R E E D P R O T E C T I O N





PEDIGREED PROTECTION

FEDERAL REGULATIONS

Gaseous Emission Control Systems Warranty and Noise Control Systems Warranty are printed in the Emission Control Systems Handbook (TS505). California Engine Gaseous Emission Control Systems and Devices warranty and maintenance information is also included.

OPERATOR'S HANDBOOK

Mack vehicles are designed to give many years of reliable service. Excellent information is provided in the Operator's Handbook in each new Mack truck. Refer to it for operation instructions and other important data.

MAINTENANCE AND LUBRICATION MANUAL

This TS494 manual lists recommended maintenance schedules and indicates in detail just what is to be covered in a bumper-to-bumper preventive maintenance program. Detailed lubricant specifications and capacities are listed for ready reference.

SERVICE MANUAL

For those Mack vehicle owners who need service information, a Mack Components Service Manual (TS576) or a Custom Truck Service Manual (TS473) can be purchased through your local Mack facility.

PARTS AND SERVICE DIRECTORY

To assist in locating Mack facilities, a Directory of Mack Sales, Parts and Service Centers (TS524) is placed in each vehicle. This directory can be used to locate and contact all Mack Truck Sales Facilities and Service Centers.



■ PEDIGREED PROTECTION IS...

Genuine Mack "Performance Counts®" Parts – made to the same high standards as the original equipment parts. They always incorporate the latest design and manufacturing improvements to make them even better than the originals.

■ PEDIGREED PROTECTION IS...

That important extra advantage – Mack "Pedigreed Protection" Service when you need it, where you need it by skilled factory trained mechanical technicians. There are Mack Authorized Service facilities in all major cities.

■ PEDIGREED PROTECTION IS...

Technical Advice – as you need it. Mack experts stand ready to help you select the correct truck for your job and prepare a maintenance program for low operating costs.

■ PEDIGREED PROTECTION IS...

Warranty – While you have received a copy of the Mack Standard Warranty, and its terms were discussed with you when you purchased your truck, the Warranty has been reprinted in this booklet for easy reference.



PEDIGREED PROTECTION

PEDIGREED PROTECTION PLAN



TS46897 25M 6/96

(A)

**LAW OFFICES
OF
DWIGHT L. KOERBER, JR.**

Attorney at Law
**110 North Second Street
P. O. Box 1320
Clearfield, PA 16830**

Dwight L. Koerber, Jr.

*Telephone (814) 765-9611
Facsimile (814) 765-9503*

August 6, 2004

David S. Meholick, Court Administrator
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

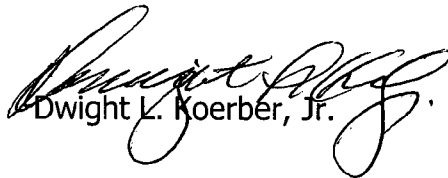
**Re: Gregg Barrett v. Mack Trucks, Inc. v.
W.W. Engine & Supply, Inc.
Docket No. 03-348-CD**

Dear Mr. Meholick:

Enclosed herewith is the Pre-Trial Statement of W.W. Engine & Supply, Inc., Additional Defendant in the above-referenced case. This case is scheduled for a Pre-Trial Conference before Judge Ammerman on August 13, 2004 at 1:30 p.m.

As shown be the Certificate of Service appended to the Pre-Trial Statement, I have served a copy, via fax and regular mail, upon counsel of record.

Very truly yours,


Dwight L. Koerber, Jr.

DLK/sah
Enclosure: Original Pre-Trial Statement
cc: C. Edward S. Mitchell, Esquire
James A. Naddeo, Esquire
Mr. Jeffrey S. Wood

RECEIVED

AUG 06 2004

COURT ADMINISTRATOR'S
OFFICE

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

Gregg Barrett, an individual
Plaintiff

*

*

-VS-

*

MACK TRUCKS, INC., a corporation
Defendant

*

Docket No. 03-348-CD

*

-VS-

*

W.W. ENGINE & SUPPLY, INC.
Additional Defendant

*

Type of Pleading:
PRE-TRIAL STATEMENT OF
W.W. ENGINE & SUPPLY, INC.,
ADDITIONAL DEFENDANT

Filed on behalf of:
Additional Defendant:
W.W. Engine & Supply, Inc.

Counsel of record for
this party:

Dwight L. Koerber, Jr., Esquire
PA I.D. No. 16332

RECEIVED

AUG 06 2004

COURT ADMINISTRATORS
OFFICE

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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Gregg Barrett, an individual
Plaintiff

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-VS-

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MACK TRUCKS, INC., a corporation
Defendant

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Docket No. 03-348-CD

*

-VS-

*

W.W. ENGINE AND SUPPLY, INC.
Additional Defendant

*

**PRE-TRIAL STATEMENT OF W.W. ENGINE & SUPPLY, INC.,
ADDITIONAL DEFENDANT**

COMES NOW, Additional Defendant, W.W. Engine & Supply, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and sets forth the following as its Pre-Trial Statement, pursuant to Clearfield County Local Rule 212.4.

**I.
NARRATIVE STATEMENT OF THE FACTS**

This case arises out of certain warranty claims that the Plaintiff has made for alleged damage to a 1998 Mack Truck (Triaxle Model) which the Plaintiff purchased from W.W. Engine & Supply, Inc. on October 24, 1997. The truck is covered by a 500,000, 5-year limited warranty that applies to transmissions and rear carriers and

housings. The warranty has certain exclusions that relate to abuse which are generally defined as unwarrantable failures, and requires procedures that must be followed for coverage.

On or about December 7, 2000, Plaintiff brought his triaxle to the W.W. Engine & Supply, Inc. facilities in DuBois, PA, which was known as Additional Defendant's Shaw Mack Division. After the rear end and transmission were torn down and examined, the District Service Manager for Mack Trucks determined that they were not covered by warranty because a review of the damaged parts showed that the damage was caused by abuse which was deemed to be an unwarrantable failure.

After it was determined that the rear end work performed for Plaintiff on or about December 7, 2000 was not covered by warranty, W.W. Engine & Supply, Inc. billed Plaintiff, and Plaintiff refused to make payment. This led to a falling out in the relationship between Plaintiff and W.W. Engine & Supply, Inc., as W.W. Engine & Supply, Inc. pointed out that for future work that it performed, it would not release the truck until full payment was made, for the future work, either by Mack Trucks through warranty, or if the warranty was denied, by the Plaintiff.

Plaintiff has alleged that there was subsequent work that should have been covered by warranty which W.W. Engine & Supply, Inc. refused to perform unless it was paid for the earlier work done. That allegation is not correct, however, as the service manager and the head mechanic for W.W. Engine & Supply, Inc., at the DuBois facility, are very familiar with the Mechanic's Liens Law and recognize that it is a

possessory lien only for work that is done when the vehicle is brought into the shop, not for prior work that is unpaid. These individuals are adamant in their position that they did not refuse to do warranty work, but instead said that they could not determine whether it was warranty work until they first examined the vehicle and, if it was shown that the work was not covered by warranty, these individuals did state that they would not release the vehicle until payment for those repairs was made.

In his Complaint, Plaintiff has alleged that he was forced to incur repair costs in the amount of \$9,677.11 that should have been covered by warranty but were not. In addition, he has made a claim for downtime pertaining to the warranty claims, in the amount of \$11,700.00. This claim has been made notwithstanding the fact that the warranty between Plaintiff and Mack Trucks specifically excludes any coverage for consequential damages, i.e., downtime.

Based upon the allegation made by Plaintiff that he was unable to have warranty work performed on his vehicle because W.W. Engine & Supply, Inc., refused to do the work, Mack Trucks joined W.W. Engine & Supply, Inc. as an Additional Defendant, alleging that Additional Defendant is liable to it by way of indemnity and contribution for any damages that are paid to Plaintiff, as it alleges that the improper actions of W.W. Engine & Supply gave rise to the litigation. As noted, W.W. Engine & Supply, Inc. has vigorously denied that it improperly refused to perform warranty work. While there is an important question of fact involved on this point, the well established past practices of W.W. Engine & Supply, Inc. offer strong corroboration that it did not refuse to do

additional work for Plaintiff, but instead only informed Plaintiff that he would be obligated to make payment for those repairs for which warranty coverage was not found applicable.

II. UNUSUAL QUESTIONS OF LAW

There is an important question of law as to whether Vince Centra, the expert witness for Plaintiff, will be permitted to state that he was told certain things by representatives of W.W. Engine & Supply, Inc., unless he establishes precisely who that individual is and establishes that such individual held the requisite authority and position to make such statements on behalf of his employer. In his deposition, as conducted on July 27, 2004, Plaintiff has acknowledged that he personally did not speak with any representatives of W.W. Engine & Supply, Inc. and did not take his vehicle to be worked on at W.W. Engine & Supply, Inc. after the episode involving work that was done on or about December 7, 2000 when Plaintiff did not pay for the work which Mack Trucks deemed not to be covered by warranty.

Because the question of fact, as outlined above, as to whether or not W.W. Engine & Supply, Inc. refused to work on Plaintiff's vehicle, is critical to this case, Additional Defendant needs to depose Vince Centra, to learn of exactly what his testimony would be on that factual point. It was not until the deposition of Plaintiff on July 27, 2004 that it became apparent that there was a need for this additional discovery. W.W. Engine & Supply, Inc. believes that this discovery is still timely, but

recognizes that there could be an issue concerning the entitlement to depose an expert witness. As noted, the deposition would deal with the expert's actual testimony concerning his alleged discussions with W.W. Engine & Supply, Inc., and for that reason it is submitted that a deposition of Vince Centra is proper.

An additional question of law is whether there are sufficient damages alleged so as to warrant a jury trial or even a non-jury trial in this case, as the maximum amount of damages that Plaintiff would be able to prove are below \$20,000.00. This would require compulsory arbitration. Damages as alleged would fall below the \$20,000.00 level because Plaintiff, through his deposition on July 27, 2004, has acknowledged that he has overstated his daily downtime which was alleged to be at \$300.00 for 39 days¹. Thus, Plaintiff's "best case" showing for damages would be less than \$20,000.00.

It is Additional Defendant's position that the issue of downtime should be totally excluded from this case, as the warranty specifically excludes consequential damages.

III. NAMES AND ADDRESSES OF WITNESSES

Defendant may call as witnesses the following individuals:

1. Jeffrey S. Wood, General Manager, SHAW MACK SALES & SERVICE,
P.O. Box 645, DuBois, PA 15801
2. Richard Mann, Head Mechanic, SHAW MACK SALES & SERVICE,
P.O. Box 645, DuBois, PA 15801

¹ There is also a question as to whether the downtime claim is causally related to the alleged breach of warranty, because even if the warranty payments had been paid, the downtime would have been the same as when Vince Centra did the work.

3. David Reed, Mack Trucks District Service Manager, c/o MACK TRUCKS,
2100 Mack Boulevard, Allentown, PA 18103

The witnesses listed above are both liability and damage witnesses.

**IV.
REPORTS OF EXPERTS**

None.

**V.
LIST OF SPECIAL DAMAGES**

N/A

**VI.
LIST OF EXHIBITS WHICH W.W. ENGINE & SUPPLY, INC. MAY USE AT TRIAL**

1. Sales Agreement dated October 24, 1997.
2. Documents identified by Plaintiff in its Complaint.

**VII.
PHOTOGRAPHS**

None.

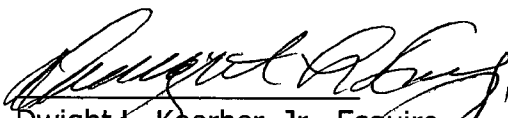
**VIII.
ESTIMATED LENGTH OF TIME FOR TRIAL**

One day.

IX.
PROPOSED STIPULATIONS

None at this time.

Respectfully Submitted,


Dwight L. Koerber, Jr., Esquire
Attorney for Additional Defendant:
W.W. Engine & Supply, Inc.

Law Offices of Dwight L. Koerber, Jr.
110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 03-348-CD

Gregg Barrett, an individual

-VS-

Mack Trucks, Inc., a corporation

-VS-

W.W. Engine & Supply, Inc.

PRE-TRIAL STATEMENT OF
W.W. ENGINE & SUPPLY, INC.,
ADDITIONAL DEFENDANT

LAW OFFICE
DWIGHT KOERBER, JR.
ATTORNEY AT LAW
110 NORTH SECOND STREET
P.O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830