

03-375-CD
DEBORA C. NOVAKOWSKI, ETAL. VS. CHARLES SMITH, ETAL.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 03-375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFFS. 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.

LAWYERS REFERRAL SERVICE
302 WEST NINTH STREET
ERIE, PENNSYLVANIA 16502
(814) 459-4411

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

FILED

MAR 17 2003

William A. Shaw
Prothonotary

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No.

**CHARLES SMITH and HAMPTON INN,
*Defendants***

CIVIL COMPLAINT

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, P.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

**IN THE COURT OF COMMON PLEAS OF
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**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No.

CHARLES SMITH and HAMPTON INN,
Defendants

CIVIL COMPLAINT

NOW COME the Plaintiffs, Debora C. Novakowski and Stephen G. Novakowski, her husband, by and through their attorneys, Murphy Taylor, P.C., who complain as follows:

1. Plaintiffs Debora C. Novakowski and Stephen G. Novakowski, are married adult individuals who reside at 11192 Townline Road, North East, Erie County, Pennsylvania.

2. Defendant Hampton Inn is a corporation that conducts business in the Commonwealth of Pennsylvania, and operates a hotel in DuBois, Pennsylvania.

3. Defendant Charles Smith is an individual who resides at 16033 Westly Highway, Philadelphia, Tennessee 37846.

4. Plaintiff Debora Novakowski was a paying guest of the Hampton Inn on April 10, 2001.

5. Defendant Charles Smith is believed to have been a guest of the Hampton Inn on April 10, 2001.

6. Plaintiff Novakowski was bit by a terrier dog owned by Defendant Smith on April 10, 2001, as she walked through a hotel corridor.

7. Defendant Smith's terrier dog bit Ms. Novakowski without any provocation. She sustained a 1.5 cm avulsive, bleeding wound, with ecchymosis and swelling to her left knee. The

wound is healed, but has left a reddish scar on the outside of Ms. Novakowski's left knee in a visible location.

8. The Defendants knew or should have known that the dog had a ferocious and vicious temperament, or mischievous nature, and had the capacity to bite and injure Ms. Novakowski.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendants Charles Smith and Hampton Inn, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

COUNT I
NOVAKOWSKI v. SMITH

9. Plaintiffs hereby incorporate by reference as if set forth in full all of ¶¶1-8, above.

10. On the aforesaid date, Defendant Smith was negligent, careless and reckless in the following respects:

- a. In failing to properly attend and/or secure his dog;
- b. In failing to watch and supervise activity of his dog;
- c. In failing to warn Ms. Novakowski of the vicious and/or mischievous propensities of the dog;
- d. In failing to properly secure or confine the dog;
- e. In having the dog on the premises of the Hampton Inn, in apparent violation of guest lodging rules;
- f. In choosing to walk the dog in a common area, in which other paying guests would come into contact with the dog;

g. In failing to properly muzzle the dog; and

h. In violating Pennsylvania's Dog Law.

11. After the dog bite occurred, Defendant Smith immediately left the Hampton Inn, and left no forwarding address for Ms. Novakowski. As a result of this conduct, Ms. Novakowski experienced extreme anxiety and distress, including the prospect of the possible need for treatment of rabies.

12. Ms. Novakowski underwent emergency medical treatment for the injury, and has been left with a permanent and visible scar.

13. As a direct and proximate cause of Defendant Smith's negligence, Plaintiff Novakowski incurred medical expenses.

14. As a direct and proximate cause of Defendant Smith's negligence, Ms. Novakowski experienced physical pain and suffering, anxiety, emotional distress, embarrassment, and has sustained a disfiguring scar.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendant Charles Smith, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

COUNT II
NOVAKOWSKI v. HAMPTON INN

15. Plaintiffs hereby incorporate by reference as if set forth in full ¶¶1-14, above.

16. Defendant Hampton Inn was negligent, careless and reckless, and proximately caused and contributed to the injuries sustained by Debora Novakowski, in the following respects:

- a. In failing to provide a secure hotel and hallway for paying guests;
- b. In failing to enforce any policy against dogs and pets on the premises;
- c. In failing to detect the Smiths' dog on the premises;
- d. In failing to order the Smiths to remove their dog from the premises; and
- e. In allowing the Smiths to possess their dog on the premises, when the dog posed a potential threat to other paying guests.

17. The aforesaid negligence of Defendant Hampton Inn is the actual and proximate cause of the injury sustained by Ms. Novakowski, as referenced above.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendant Hampton Inn, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

COUNT III
STEPHEN G. NOVAKOWSKI v. HAMPTON INN AND SMITH

18. Plaintiff Stephen G. Novakowski incorporates by reference as if set forth in full ¶¶1-17, above.

19. The Plaintiff Stephen G. Novakowski sustained a loss of his wife's consortium as a direct and proximate result of the negligence of Defendant Hampton Inn and Defendant Smith.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendants Hampton Inn and Charles Smith, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

JURY TRIAL OF TWELVE DEMANDED

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.

900 State Street, Suite 202

Erie, Pennsylvania 16501

(814) 459-0234

I.D. #38520

Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

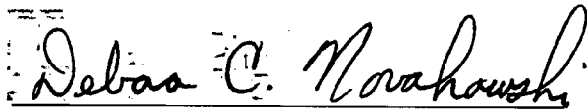
vs.

No.

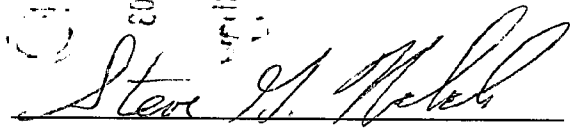
CHARLES SMITH and HAMPTON INN,
Defendants

VERIFICATION

We, Debora C. Novakowski and Stephen G. Novakowski, do verify that the averments contained in the foregoing Complaint are true and correct according to the best of our personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.



Debora C. Novakowski



Stephen G. Novakowski

Dated: 3/5/03

FILED

179

MAR 17 2003

Att. pd.
85.00
2 cc SHH

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiffs' Civil Complaint was served upon
the following by Certified U.S. mail, return receipt requested, this 20th day of March, 2003:

Charles Smith
16033 Westly Highway
Philadelphia, TN 37846

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

FILED

MAR 24 2003

William A. Shaw
Prothonotary

FILED

MAR 11 5 18 PM '03

NO CC

William A. Shaw
Prothonotary

FILED

MAR 11 5 18 PM '03

Prothonotary
William A. Shaw

**IN THE COURT OF COMMON PLEAS OF
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**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

**AFFIDAVIT OF RETURN OF
SERVICE BY MAIL**

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, P.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

FILED

APR 14 2003

**William A. Shaw
Prothonetary**

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

AFFIDAVIT OF RETURN OF SERVICE BY MAIL

On March 20, 2003, the undersigned affiant mailed a true and correct copy of the Complaint by certified mail, return receipt requested, to Defendant Charles Smith at his address of 16033 Westly Highway, Philadelphia, Tennessee 37846. The return receipt was signed upon delivery and the receipt, attached hereto as Exhibit A, was returned to the post office on March 24, 2003.

I make these statements pursuant to 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities, and understand that false statements may subject me to criminal penalties under that statute.

By: Patricia A. Cochran
Patricia A. Cochran

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Charles Smith
16033 Westly Highway
Philadelphia, TN
37846

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

JoAnn Smith

B. Date of Delivery

3-24-03

C. Signature

X John Smith

☐ Agent☐ Addressee

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

2. Article Number (Copy from service)

7001 2510 0008 8645 7596

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiffs' Affidavit of Return of Service
by Mail was served upon the following by U.S. mail, this 3rd day of April, 2003:

Charles Smith
16033 Westly Highway
Philadelphia, TN 37846

Hampton Inn
Rural Route #8, Box 38
DuBois, PA 15801

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

FILED

3 11:20 AM
APR 14 2003

William A. Shaw
Prothonotary

NO CC
C/

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

AFFIDAVIT OF RETURN OF
SERVICE BY MAIL

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, P.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

FILED

APR 16 2003

M/11:35/ m

William A. Shaw
Prothonotary

Bed
no c/c

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

AFFIDAVIT OF RETURN OF SERVICE BY MAIL

On April 3, 2003, the undersigned affiant mailed a true and correct copy of the Complaint by certified mail, return receipt requested, to Defendant Charles Smith at his address of 16033 Westly Highway, Philadelphia, Tennessee 37846. The return receipt was signed upon delivery and the receipt, attached hereto as Exhibit A, was returned to the post office on April 8, 2003

I make these statements pursuant to 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities, and understand that false statements may subject me to criminal penalties under that statute.

By: Patricia A. Cochran
Patricia A. Cochran

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No. 2003-00375-CD

**CHARLES SMITH and HAMPTON INN,
*Defendants***

AFFIDAVIT OF RETURN OF SERVICE BY MAIL

On April 3, 2003, the undersigned affiant mailed a true and correct copy of the Complaint by certified mail, return receipt requested, to Defendant Charles Smith at his address of 16033 Westly Highway, Philadelphia, Tennessee 37846. The return receipt was signed upon delivery and the receipt, attached hereto as Exhibit A, was returned to the post office on April 8, 2003

I make these statements pursuant to 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities, and understand that false statements may subject me to criminal penalties under that statute.

By: Patricia A. Cochran
Patricia A. Cochran

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Charles Smith
16033 Westly Highway
Philadelphia, TN
37846

2. Article Number (Copy from service label)

7001 2510 0008 8645 7428

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

Charles Smith 4/8/83

C. Signature

☐ Agent
☐ AddresseeD. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☒ Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

**IN THE COURT OF COMMON PLEAS OF
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STEPHEN G. NOVAKOWSKI, her
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vs.

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CHARLES SMITH and HAMPTON INN,
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiffs' Affidavit of Return of Service
by Mail was served upon the following by U.S. mail, this 14th day of April, 2003:

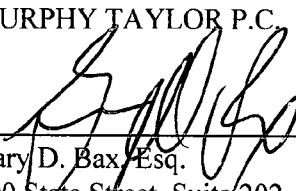
Charles Smith
16033 Westly Highway
Philadelphia, TN 37846

Hampton Inn
Rural Route #8, Box 38
DuBois, PA 15801

Respectfully submitted,

MURPHY TAYLOR P.C.

By: _____


Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband

Plaintiffs

vs.

CHARLES SMITH and HAMPTON
INN,

Defendants

No. 2003-375 CD

ANSWER, NEW MATTER and
NEW MATTER UNDER 2252(d)
Counsel of record for this party:
Dennis J. Stofko, Esquire
P.O. Box 5500
Johnstown, Pennsylvania 15904
814 262-0064
ID 27638

FILED

APR 17 2003

William A. Shaw
Prothonotary

ANSWER, NEW MATTER AND NEW MATTER UNDER 2252(d)

NOW COMES the Defendant, Charles Smith by and through counsel, Dennis J. Stofko and files the following Answer, New Matter and New Matter under 2252(d).

1. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

2. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

3. Admitted.

4. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

5. Admitted.

6. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

7. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

8. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendant requests Plaintiffs' complaint be dismissed.

9. Denied. See previous Answers.

10. Denied. Paragraph 10 contains a conclusion of law to which no responsive pleading is required.

11. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

12. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

13. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

14. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendant requests Plaintiffs' complaint be dismissed.

15. Denied. See previous Answers.

16. Paragraph 16 contains allegations directed to other defendants for which no responsive pleading is necessary.

17. Denied. Paragraph 17 contains allegations directed to other defendants for which no responsive pleading is necessary.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

18. Denied. See previous Answers.

19. Denied. After reasonable investigation, Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment and proof thereof is required at the time of trial.

WHEREFORE, Defendant requests Plaintiffs' Complaint be dismissed.

NEW MATTER

20. The Defendant is informed, believes and therefore avers that the Plaintiff is contributorily negligent and/or comparatively negligent and Plaintiff is thus barred from recovery of any damages under the terms of the

Pennsylvania Comparative Negligence Act. Act No. July 9, 1976 Pl. 855 No. 152 and the Act of April 28, 1978, Pl. 202 No. 53 Section 10 (89), 42 Pa. CSA Section 7102A, effective as to the causes of action arising on or after April 10, 2001 as the Plaintiffs' causal negligence is greater than the negligence, if any, of the Defendant.

21. In the alternative pursuant to the aforesaid provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. CSA Section 7102A any damage which the Plaintiff may have legally suffered and can prove at trial and which are not otherwise barred by any of the defenses asserted in this Answer and New Matter should be diminished in proportion to the amount of negligence attributed to the Plaintiff.

WHEREFORE, Defendant requests judgment on his behalf.

NEW MATTER UNDER 2252(d)

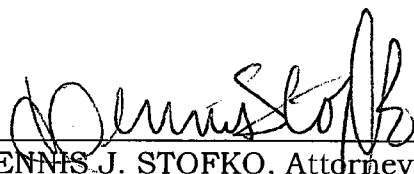
22. The Defendant, Charles Smith joins Hampton Inn as additional defendant pursuant to Pa. RCP 2252(d).

23. The Defendant, Charles Smith incorporates by reference the allegations of Plaintiffs' Complaint as if the same were here set forth at length.

24. If it is determined at the trial of this action that Plaintiffs have sustained any injury as a result of the alleged accident, said injuries or

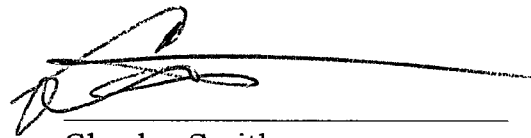
damages were the result of the negligence of Hampton Inn and therefore they are liable to the Plaintiffs jointly and severally.

WHEREFORE, the Defendant, Charles Smith requests that Hampton Inn be joined as additional defendant in the original suit because they are solely responsible for the damages alleged in the complaint or in the alternative so as to protect Defendant Smith's right of contribution and/or indemnity, if on the trial of the action it should be found that the Plaintiffs, original Defendants and Additional Defendant are jointly negligent in causing the accident which resulted in the damages alleged.


DENNIS J. STOFKO, Attorney for
Defendant, Charles Smith

I, Charles Smith, do hereby swear or affirm that the facts set forth in the Answer, New Matter and New Matter under 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that these averments of fact are made subject to the penalties of 18 Pa. CSA 4904 relating to unsworn falsification to authorities.

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

Charles Smith

Dated: 4-14-2003

FILED

11:07 AM
APR 17 2003

William A. Shaw
Prothonotary

NR
cc
6/25

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

PLAINTIFFS' REPLY TO
DEFENDANT SMITH'S NEW
MATTER

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, P.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

FILED

APR 30 2003

William A. Shaw
Prothonotary

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

**PLAINTIFFS' REPLY TO
DEFENDANT SMITH'S NEW MATTER**

NOW COME the Plaintiffs, Debora C. Novakowski and Stephen G. Novakowski, her husband, by and through their attorneys, Murphy Taylor, P.C., and reply as follows to the New Matter of Defendant Smith:

20. This averment is denied as containing conclusions of law. In further answer, this allegation is denied pursuant to Pa.R.C.P. 1029(e).

21. This averment is denied as containing conclusions of law. In further answer, this allegation is denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendant Charles Smith for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania with costs, attorneys' fees and such other relief that this Court deems appropriate.

PLAINTIFFS' REPLY TO NEW MATTER UNDER 2252(d)

22. This averment is denied as containing conclusions of law.

23. No response is required from these Plaintiffs.

24. It is admitted that the damages sustained by the Plaintiff resulted from the negligence

of both Defendant Smith and Defendant Hampton Inn.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendant Charles Smith for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania with costs, attorneys' fees and such other relief that this Court deems appropriate.

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.

900 State Street, Suite 202

Erie, Pennsylvania 16501

(814) 459-0234

I.D. #38520

Attorney for Plaintiffs

**IN THE COURT OF COMMON PLEAS OF
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vs.

No.

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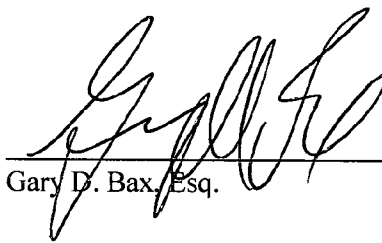
VERIFICATION

Gary D. Bax, Esquire, counsel for Plaintiffs Debora C. Novakowski and Stephen G. Novakowski, in the above matter, deposes and says that he is authorized to make this Verification on behalf of said Plaintiffs; that the averments set forth in the foregoing Plaintiffs' Reply to Defendant Smith's New Matter are true and correct, not of his own knowledge, but from information supplied to him by said Plaintiffs, that the purpose of this Verification is to expedite the litigation; and that a Verification by Plaintiffs will be furnished if requested. This statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: _____

4/26/03

Gary D. Bax, Esq.



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiffs' Reply to Defendant Smith's New
Matter was served upon the following this 28th day of April, 2003:

Dennis J. Stofko, Esq.
P.O. Box 5500
Johnstown, PA 15904

Mary Anne Ragoza, SCLA, AIC
Fireman's Fund Insurance Company
P.O. Box 340561
Tampa, FL 33694-0561

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

FILED
m11:39-61
APR 30 2003

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13807

NOVAKOWSKI, DEBORA C. & STEPHEN G.

03-375-CD

VS.

SMITH, CHARLES and HAMPTON INN

COMPLAINT

SHERIFF RETURNS

NOW APRIL 1, 2003 AT 10:32 AM SERVED THE WITHIN COMPLAINT ON HAMPTON INN,
DEFENDANT AT RR 8, BOX 3A, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO
BARB PORRIN, FRONT DESK SUPERVISOR, A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/RYEN

FILED

dk MAY 19 2003

0/2:40/1

William A. Shaw
Prothonotary/Clerk of Courts

Return Costs

Cost	Description
35.72	SHERIFF HAWKINS PAID BY: ATTY CK# 1695
10.00	SURCHARGE PAID BY: ATTY CK# 1696

Sworn to Before Me This

19 Day Of May 2003

William A. Shaw

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

So Answers,

Chester A. Hawkins
Sgt. Marilyn Harris

Chester A. Hawkins
Sheriff

COPY

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 03-375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFFS. 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.

LAWYERS REFERRAL SERVICE
302 WEST NINTH STREET
ERIE, PENNSYLVANIA 16502
(814) 459-4411

Respectfully submitted,

MURPHY TAYLOR P.C.

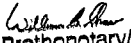
By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

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

MAR 17 2003

Attest.


Prothonotary/
Clerk of Courts

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No.

CHARLES SMITH and HAMPTON INN,
Defendants

CIVIL COMPLAINT

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, P.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No.

CHARLES SMITH and HAMPTON INN,
Defendants

CIVIL COMPLAINT

NOW COME the Plaintiffs, Debora C. Novakowski and Stephen G. Novakowski, her husband, by and through their attorneys, Murphy Taylor, P.C., who complain as follows:

1. Plaintiffs Debora C. Novakowski and Stephen G. Novakowski, are married adult individuals who reside at 11192 Townline Road, North East, Erie County, Pennsylvania.
2. Defendant Hampton Inn is a corporation that conducts business in the Commonwealth of Pennsylvania, and operates a hotel in DuBois, Pennsylvania.
3. Defendant Charles Smith is an individual who resides at 16033 Westly Highway, Philadelphia, Tennessee 37846.
4. Plaintiff Debora Novakowski was a paying guest of the Hampton Inn on April 10, 2001.
5. Defendant Charles Smith is believed to have been a guest of the Hampton Inn on April 10, 2001.
6. Plaintiff Novakowski was bit by a terrier dog owned by Defendant Smith on April 10, 2001, as she walked through a hotel corridor.
7. Defendant Smith's terrier dog bit Ms. Novakowski without any provocation. She sustained a 1.5 cm avulsive, bleeding wound, with ecchymosis and swelling to her left knee. The

wound is healed, but has left a reddish scar on the outside of Ms. Novakowski's left knee in a visible location.

8. The Defendants knew or should have known that the dog had a ferocious and vicious temperament, or mischievous nature, and had the capacity to bite and injure Ms. Novakowski.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendants Charles Smith and Hampton Inn, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

COUNT I
NOVAKOWSKI v. SMITH

9. Plaintiffs hereby incorporate by reference as if set forth in full all of ¶¶1-8, above.

10. On the aforesaid date, Defendant Smith was negligent, careless and reckless in the following respects:

- a. In failing to properly attend and/or secure his dog;
- b. In failing to watch and supervise activity of his dog;
- c. In failing to warn Ms. Novakowski of the vicious and/or mischievous propensities of the dog;
- d. In failing to properly secure or confine the dog;
- e. In having the dog on the premises of the Hampton Inn, in apparent violation of guest lodging rules;
- f. In choosing to walk the dog in a common area, in which other paying guests would come into contact with the dog;

g. In failing to properly muzzle the dog; and

h. In violating Pennsylvania's Dog Law.

11. After the dog bite occurred, Defendant Smith immediately left the Hampton Inn, and left no forwarding address for Ms. Novakowski. As a result of this conduct, Ms. Novakowski experienced extreme anxiety and distress, including the prospect of the possible need for treatment of rabies.

12. Ms. Novakowski underwent emergency medical treatment for the injury, and has been left with a permanent and visible scar.

13. As a direct and proximate cause of Defendant Smith's negligence, Plaintiff Novakowski incurred medical expenses.

14. As a direct and proximate cause of Defendant Smith's negligence, Ms. Novakowski experienced physical pain and suffering, anxiety, emotional distress, embarrassment, and has sustained a disfiguring scar.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendant Charles Smith, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

COUNT II
NOVAKOWSKI v. HAMPTON INN

15. Plaintiffs hereby incorporate by reference as if set forth in full ¶¶1-14, above.

16. Defendant Hampton Inn was negligent, careless and reckless, and proximately caused and contributed to the injuries sustained by Debora Novakowski, in the following respects:

- a. In failing to provide a secure hotel and hallway for paying guests;
- b. In failing to enforce any policy against dogs and pets on the premises;
- c. In failing to detect the Smiths' dog on the premises;
- d. In failing to order the Smiths to remove their dog from the premises; and
- e. In allowing the Smiths to possess their dog on the premises, when the dog posed a potential threat to other paying guests.

17. The aforesaid negligence of Defendant Hampton Inn is the actual and proximate cause of the injury sustained by Ms. Novakowski, as referenced above.

WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendant Hampton Inn, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

COUNT III
STEPHEN G. NOVAKOWSKI v. HAMPTON INN AND SMITH

18. Plaintiff Stephen G. Novakowski incorporates by reference as if set forth in full ¶¶1-17, above.

19. The Plaintiff Stephen G. Novakowski sustained a loss of his wife's consortium as a direct and proximate result of the negligence of Defendant Hampton Inn and Defendant Smith.

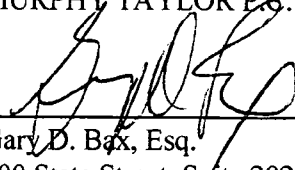
WHEREFORE, Plaintiffs Debora C. Novakowski and Stephen G. Novakowski demand damages in their favor and against the Defendants Hampton Inn and Charles Smith, for an amount within the arbitral limit of the Court of Common Pleas of Clearfield County, Pennsylvania, with costs, attorneys' fees and such other relief that this Court deems appropriate.

JURY TRIAL OF TWELVE DEMANDED

Respectfully submitted,

MURPHY TAYLOR P.G.

By: _____


Gary D. Box, Esq.

900 State Street, Suite 202

Erie, Pennsylvania 16501

(814) 459-0234

I.D. #38520

Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs


vs.

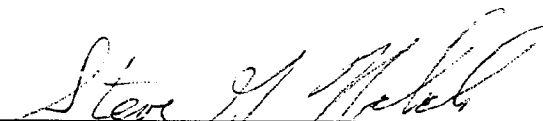
No.

CHARLES SMITH and HAMPTON INN,
Defendants

VERIFICATION

We, Debora C. Novakowski and Stephen G. Novakowski, do verify that the averments contained in the foregoing Complaint are true and correct according to the best of our personal knowledge, information and belief. I understand that this Verification is made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.


Debora C. Novakowski


Stephen G. Novakowski

Dated: 3/5/03.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and STEPHEN
G. NOVAKOWSKI,

Plaintiffs,

vs.

CHARLES SMITH and HAMPTON INN,

Defendants.

CIVIL DIVISION

No. 2003-00375-CD

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant, Hampton Inn

Counsel of Record:

Rosemary Marchesani, Esquire
PA I.D. #50066

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4592

Firm I.D. #763

FILED

JUN 26 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

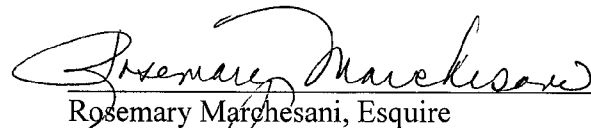
DEBORA C. NOVAKOWSKI and STEPHEN)	CIVIL DIVISION
G. NOVAKOWSKI,)	
)	No. 2003-00375-CD
Plaintiffs,)	
)	
vs.)	
)	
CHARLES SMITH and HAMPTON INN,)	
)	
Defendants.)	

PRAECIPE FOR APPEARANCE

TO: WILLIAM SHAW, PROTHONOTARY:

Kindly enter my appearance in the above-captioned case on behalf of Hampton
Inn, Defendant.

Respectfully Submitted,



Rosemary Marchesani, Esquire
Attorney for Defendant, Hampton Inn

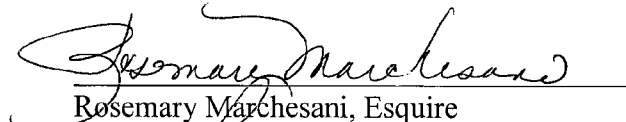
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR
APPEARANCE was sent to the following by regular first class mail this 24th day of June, 2003:

Gary D. Bax, Esquire
Murphy Taylor
Suite 202
900 Sate Street
Erie, PA 16501

Dennis J. Stofko, Esquire
969 Eisenhower Blvd.
P.O. Box 5500
Johnstown, PA 15904

Respectfully Submitted,


Rosemary Marchesani, Esquire
Attorney for Defendant, Hampton Inn

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4592

FILED

M 11:45 AM
JUN 26 2003

NO
cc
[Signature]

William A. Shaw
Prothonetary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and STEPHEN
G. NOVAKOWSKI,

Plaintiffs,

vs.

CHARLES SMITH and HAMPTON INN,

Defendants.

CIVIL DIVISION

No. 2003-00375-CD

REPLY TO NEW MATTER PURSUANT
TO RULE 2252(d) OF CHARLES SMITH

Filed on behalf of Defendant, Hampton Inn

Counsel of Record:

Rosemary Marchesani, Esquire
PA I.D. #50066

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4592

Firm I.D. #763

FILED

M 3:28 PM JUL 21 2003

JUL 21 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and STEPHEN)	CIVIL DIVISION
G. NOVAKOWSKI,)	
)	No. 2003-00375-CD
Plaintiffs,)	
)	
vs.)	
)	
CHARLES SMITH and HAMPTON INN,)	
)	
Defendants.)	

REPLY TO NEW MATTER PURSUANT TO RULE 2252(d) OF CO-DEFENDANT,
CHARLES SMITH

AND NOW, comes the Defendant, Hampton Inn, by its attorneys and files the following
Reply to New Matter of defendant Charles Smith, and in support thereof avers as follows:


22. Paragraph 22 contains conclusions of law to which no response is required.

23. This defendant, Hampton Inn, incorporates its Answer and New Matter as if the
same were set forth at length.

24. Paragraph 24 contains conclusions of law to which no response is required. To
the extent that a response is required, it is denied that the Hampton Inn was negligent in any
manner. Strict proof to the contrary is demanded at the time of trial.

WHEREFORE, defendant, Hampton Inn, demands judgment in its favor and against all
other parties.

Respectfully Submitted,




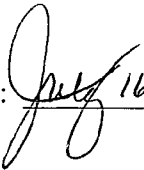
Rosemary Marchesani, Esquire
Attorney for Defendant, Hampton Inn

VERIFICATION

I, Rosemary Marchesani, Esquire, hereby state that I am the attorney for Hampton Inn, and being authorized to do so, state the facts contained in the within Reply to New Matter Pursuant to Rule 2252(d) of Charles Smith are true and correct, not from my own information, but from information supplied to me by Hampton Inn.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities, which provides that if I knowingly make false averments I may be subject to criminal penalties.


Rosemary Marchesani

Date:  July 16, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Reply to New Matter of Charles Smith was sent to the following by regular first class mail this 17th day of July, 2003:

Gary D. Bax, Esquire
Murphy Taylor
Suite 202
900 Sate Street
Erie, PA 16501

Dennis J. Stofko, Esquire
969 Eisenhower Blvd.
P.O. Box 5500
Johnstown, PA 15904

Respectfully Submitted,

A handwritten signature in cursive script, reading "Rosemary Marchesani", written over a horizontal line.

Rosemary Marchesani, Esquire
Attorney for Defendant, Hampton Inn

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4592

FILED

JUL 21 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and STEPHEN
G. NOVAKOWSKI,

Plaintiffs,

vs.

CHARLES SMITH and HAMPTON INN,

Defendants.

CIVIL DIVISION

No. 2003-00375-CD

ANSWER AND NEW MATTER

Filed on behalf of Defendant, Hampton Inn

Counsel of Record:

Rosemary Marchesani, Esquire
PA I.D. #50066

CAMPBELL, NOLAN & DALY
350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4592

Firm I.D. #763

TO: All Parties

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

Rosemary Marchesani
Attorney for Hampton Inn

FILED

AUG 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and STEPHEN)	CIVIL DIVISION
G. NOVAKOWSKI,)	
)	No. 2003-00375-CD
Plaintiffs,)	
)	
vs.)	
)	
CHARLES SMITH and HAMPTON INN,)	
)	
Defendants.)	

ANSWER AND NEW MATTER

AND NOW, comes the defendant, Hampton Inn, by its attorneys Campbell, Nolan & Daly and files the following Answer and New Matter to the plaintiff's Complaint and in support thereof avers as follows:

1. Is denied in that after reasonable investigation this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph one.

2. Paragraph 2 is admitted.

3. Paragraph 3 is denied in that after reasonable investigation this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3. The same are therefore denied.

4. Paragraph 4 is admitted.

5. After reasonable investigation this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 5. The same are therefore denied and strict proof is demanded at the time of trial.

6. After reasonable investigation this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 6. The same are therefore denied and strict proof is demanded at the time of trial.

7. After reasonable investigation this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 7. The same are therefore denied and strict proof is demanded at the time of trial.

8. After reasonable investigation this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 8. The same are therefore denied and strict proof is demanded at the time of trial.

WHEREFORE, this defendant demands judgment in its favor and against all other parties.

COUNT I

Novakowski v. Smith

9-14. Count I is directed at another defendant and as such no response is required by this defendant.

COUNT II

Novakowski v. Hampton Inn

15. This defendant incorporates by reference its responses to paragraphs 1 through 14 as if the same were set forth at length.

16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

WHEREFORE, this defendant demands judgment in its favor and against all other parties.

COUNT III

Stephen G. Novakowski v. Hampton Inn and Smith

18. This defendant incorporates by reference its responses to paragraphs 1 through 17 as if the same were set forth at length.

19. Paragraph 19 is denied.

WHEREFORE, this defendant demands judgment in its favor and against all other parties.


NEW MATTER

20. The Complaint fails to state a cause of action upon which relief can be granted as to this defendant Hampton Inn.

21. This defendant sets forth as an affirmative defense and as a complete barred any proceedings against it the release signed by the plaintiffs in favor of this defendant Hampton Inn, a copy of which is attached hereto as "Exhibit A".

WHEREFORE, this defendant demands judgment in its favor and against all other parties.

Respectfully Submitted,



Rosemary Marchesani, Esquire
Attorney for Defendant, Hampton Inn

EXHIBIT “A”

**RELEASE UNDER UNIFORM CONTRIBUTION AMONG
JOINT TORTFEASORS ACT**

KNOW ALL MEN BY THESE PRESENTS, that I, Debora C. Novakowski and Stephen G. Novakowski, being of full legal age and sound mind, for and in consideration of the sum of One Thousand Five Hundred Dollars (\$1,500.00) to me in hand paid by Hampton Inn and Fireman's Fund Insurance Company, the receipt whereof is hereby acknowledged, do hereby release and forever discharge and by these presents do for myself and my heirs, successors and assigns hereby release and discharge the said Hampton Inn and Fireman's Fund Insurance Company, their heirs, successors and assigns from any and all liability, claims, causes of action, joinders for sole liability, contribution, indemnity or otherwise, damages, costs, expenses or demands of any kind whatsoever in law or in equity, which against the said Hampton Inn and Fireman's Fund Insurance Company I ever had, now have or which I may have in the future or which my heirs, successors and assigns, hereinafter can or may have by reason of any bodily or personal injury, property damage or the consequences thereof, known or unknown, foreseen or unforeseen, arising out of or in any way connected with the incident which occurred on or about 04-10-2001 at the Hampton Inn in DuBois, Pennsylvania which is the subject of the lawsuit filed at No. 2003-00375-CD in the Court of Common Pleas of Clearfield County.

It is expressly understood that this release is executed pursuant to the provisions of the "Uniform Contribution Among Joint Tortfeasors Act", 42 Pa. C.S.A. §8321, et seq. and that I am not releasing my rights or causes of action against any other person or parties other than Hampton Inn and Fireman's Fund Insurance Company, arising out of the accident above mentioned, but I am agreeing to reduce my right of recovery in the event that other parties are held responsible, in accordance with the percentages and responsibilities established by the Pennsylvania Comparative Negligence law, 42 Pa. C.S.A. §7102. In the event that other parties

are held responsible to me for damages as a result of the above mentioned incident, this Release shall operate as a satisfaction of the greater of:

(i) that proportion of the total dollar amount awarded as damages in the ratio of the amount of causal negligence of the parties herein released to the amount of the causal negligence attributed to all parties against whom recovery is allowed; or

(ii) the amount paid as consideration for this release.

As further consideration for said payment, I agree to satisfy any decree, judgment, verdict or award in which there is such finding or adjudication involving Hampton Inn and Fireman's Fund Insurance Company on their behalf and to the extent of their liability for contribution, if it is held that there is any liability of Hampton Inn and Fireman's Fund Insurance Company for contribution.

It is expressly understood that by the execution of this release, Hampton Inn and Fireman's Fund Insurance Company shall not be required to make any further payment to me or to any other person, by reason of the aforesaid incident.

It is expressly warranted by me that no promise or inducement has been offered except as herein set forth; that this release is executed without reliance upon any statement or representation of the person or parties released, or their representatives, concerning the nature and the extent of legal liability therefore; and that the acceptance of the consideration set forth is in full accord and satisfaction of the disputed claim against the said Hampton Inn and Fireman's Fund Insurance Company, for which liability is expressly denied. It is also expressly understood and agreed that this Release and settlement are intended to cover and do cover all now known claims, injuries, losses and damages as well as any future claims, injuries, losses and damages of the plaintiffs on their loss of consortium and loss of consortium claims.

It is expressly understood that by execution of this Release, Hampton Inn and Fireman's Fund Insurance Company shall not waive any right to contribution from any other parties held responsible for their injuries sustained by plaintiff.

It is further understood and agreed that this is the complete release agreement, and that there is no written or oral understanding or agreement, directly or indirectly connected with this release and settlement that is not incorporated herein.

This agreement shall be construed that wherever applicable, the use of the singular number shall include the plural number, the masculine gender shall be construed to include the feminine or neuter gender, and shall be binding upon and enure to the successors, assigns, heirs, executors, administrators, and legal representatives of the respective parties hereto.

I HAVE READ THE ABOVE, HAVE CONSULTED WITH MY COUNSEL,
UNDERSTAND THIS AGREEMENT, AND AGREE TO BE LEGALLY BOUND BY ALL
THE TERMS OF THIS RELEASE AGREEMENT.

WITNESSES:

Debora C. Novakowski (SEAL)
Debora C. Novakowski
Stephen G. Novakowski (SEAL)
Stephen G. Novakowski

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21 day of July, 2003.

Sworn to and subscribed before me this 21 day of July, 2003.

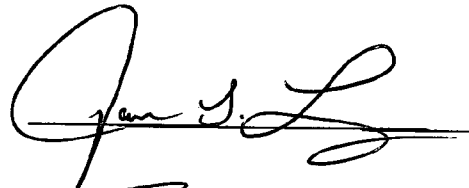
G. D. Bax
Notary Public

NOTARIAL SEAL
Gary D. Bax, Notary Public
City of Erie, County of Erie
My Commission Expires Jan. 9, 2005

VERIFICATION

I, JAMES G. LONG, General Manager of
Hampton Inn, do hereby verify that I have read the foregoing Answer and New Matter and state
that the averments therein are true and correct to the best of my knowledge, information and
belief.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to
unsworn falsification to authorities, which provides that if I knowingly make false averments I
may be subject to criminal penalties.


JAMES G. LONG
General Manager

Date:

7/21/03

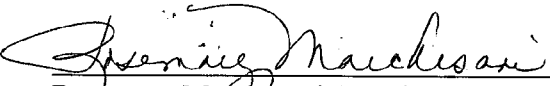
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer and New Matter was sent to the following by regular first class mail this 6th day of August, 2003:

Gary D. Bax, Esquire
Murphy Taylor
Suite 202
900 Sate Street
Erie, PA 16501

Dennis J. Stofko, Esquire
969 Eisenhower Blvd.
P.O. Box 5500
Johnstown, PA 15904

Respectfully Submitted,


Rosemary Marchesani, Esquire
Attorney for Defendant, Hampton Inn

350 Two Chatham Center
Pittsburgh, PA 15219
(412) 263-4592

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

**DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,**

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

**PLAINTIFFS' REPLY TO NEW
MATTER OF DEFENDANT
HAMPTON INN**

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, L.L.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

FILED

AUG 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

PLAINTIFFS' REPLY TO NEW MATTER
OF DEFENDANT HAMPTON INN

NOW COME the Plaintiffs, Debora C. Novakowski and Stephen G. Novakowski, her husband, by and through their attorneys, Murphy Taylor, L.L.C., and reply to the New Matter of Defendant Hampton Inn as follows:

20. Denied pursuant to Pa.R.C.P. 1029(e).

21. Admitted that the Release attached as Exhibit A was executed by the Plaintiffs.

WHEREFORE, Plaintiffs, Debra C. Novakowski and Stephen G. Novakowski, demand judgment against the Defendant, Charles Smith, with costs, attorneys' fees, and such other relief that the Court deems appropriate.

Respectfully submitted,

MURPHY TAYLOR L.L.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

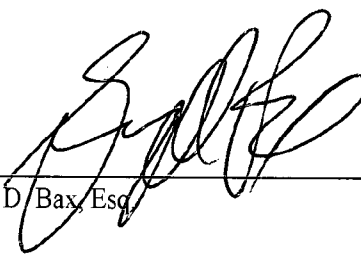
No.

CHARLES SMITH and HAMPTON INN,
Defendants

VERIFICATION

Gary D. Bax, Esquire, counsel for Plaintiffs Debora C. Novakowski and Stephen G. Novakowski, in the above matter, deposes and says that he is authorized to make this Verification on behalf of said Plaintiffs; that the averments set forth in the foregoing Plaintiffs' Reply to New Matter of Defendant Hampton Inn are true and correct, not of his own knowledge, but from information supplied to him by said Plaintiffs, that the purpose of this Verification is to expedite the litigation; and that a Verification by Plaintiffs will be furnished if requested. This statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: 8/19/05



Gary D. Bax, Esq.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiffs' Reply to New Matter of
Defendant Hampton Inn was served upon the following this 19th day of August, 2003:

Dennis J. Stofko, Esq.
P.O. Box 5500
Johnstown, PA 15904

Rosemary Marchesani, Esq.
Campbell, Nolan & Daly
Suite 350
Two Chatham Center
Pittsburgh, PA 15219

Respectfully submitted,

MURPHY TAYLOR L.L.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

FILED ^{NO}
MAY 15 2003
AUG 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

**PRAECIPE TO SETTLE AND
DISCONTINUE**

Filed on behalf of the Plaintiffs Debora
C. Novakowski and Stephen G.
Novakowski

Counsel of Record for these parties:

Gary D. Bax, Esq.

MURPHY TAYLOR, L.L.C.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. No. 38520

FILED

SEP 17 2003

m/11:45/m
William A. Shaw
Prothonotary/Clerk of Courts

No Comm

CONF - Disc. to ATTY & BIL OF COT.
COPY TO 4A

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Please settle and discontinue the above-captioned matter and mark the docket accordingly.

Please provide a Certificate of Discontinuance and Bill of Costs.

Respectfully submitted,

MURPHY TAYLOR L.L.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DEBORA C. NOVAKOWSKI and
STEPHEN G. NOVAKOWSKI, her
husband,

Plaintiffs

vs.

No. 2003-00375-CD

CHARLES SMITH and HAMPTON INN,
Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Plaintiffs' Praecipe to Settle and
Discontinue was served upon the following, this 15th day of September, 2003:

Dennis J. Stofko, Esq.
Stofko Law Offices
969 Eisenhower Blvd., Suite E
Johnstown, PA 15904

Rosemary Marchesani, Esq.
Campbell, Nolan & Daly
Suite 350
Two Chatham Center
Pittsburgh, PA 15219

Respectfully submitted,

MURPHY TAYLOR P.C.

By: 

Gary D. Bax, Esq.
900 State Street, Suite 202
Erie, Pennsylvania 16501
(814) 459-0234
I.D. #38520
Attorney for Plaintiffs

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

CIVIL DIVISION

**Debora C. Novakowski
Stephen G. Novakowski**

**Vs.
Charles Smith
Hampton Inn**

No. 2003-00375-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 17, 2003, marked:

Settle and Discontinue

Record costs in the sum of \$130.72 have been paid in full by Attorney Bax.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 17th day of September A.D. 2003.

William A. Shaw, Prothonotary