

03-1868-CD
DAVID KOHLER, PTA. VS. KENNETH L. TEST, et al.

Date: 5/2/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 11:50 AM

ROA Report

Page 1 of 2

Case: 2003-01868-CD

Current Judge: Paul E. Cherry

David Kohler, Mitchell David Kohler vs. Kenneth L. Test, Roger Bressler, R. B. Contracting

Civil Other

Date	Judge
12/22/2003 ✓ Filing: Civil Complaint Paid by: Christopher M. Miller, Esq. Receipt number: 1870797 Dated: 12/22/2003 Amount: \$85.00 (Check) 2 CC to Shff.	No Judge
3/10/2004 ✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm no cc	No Judge
4/8/2004 ✓ Defendants' Response To Plaintiff's Complaint With New Matter. filed by, s/Roberta Binder Heath, Esquire Verification s/Kenneth Test s/Roger Bressler Certificate of Service no cc	No Judge
5/13/2004 ✓ Reply To New Matter. filed by, s/Christopher M. Miller, Esquire Certificate of Service no cc	No Judge
6/15/2004 ✓ Motion to Compel filed by Atty. Heath 1 CC to Atty.	No Judge
6/17/2004 ✓ Order, AND NOW, this 16th day of June, 2004, upon consideration of the Motion to Compel filed by defendants, hereby issued upon Plaintiff shall provide full and complete responses to Defendants' First Set of Interrogatories, Request for Documents, and First Set of Admissions, as set forth in the within Motion. Upon failure of the Plaintiffs to comply with this Order within fifteen (15) days, Defendants shall be permitted to seek direct and additional relief from the Court. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorney Heath	Fredric Joseph Ammerman
6/21/2004 ✓ Notice of Service of Plaintiffs' First Set of Interrogatories and Request for Production of Documents Directed to Defendant, Kenneth L. Test, upon Robert Binder Heath, Esq., filed by s/Christopher M. Miller, Esq. No CC	Fredric Joseph Ammerman
✓ Notice of Service of Plaintiffs' First Set of Interrogatories and Request for Production of Documents Directed to Defendant, Roger Bressler, individually and t/d/b/a R. B. Contracting, upon Roberta Binder Heath, Esq., filed by s/Christopher M. Miller, Esq. No CC	Fredric Joseph Ammerman
7/16/2004 ✓ Notice of Service of Plaintiff's Answers to Defendants' First Set of Interrogatories and Request for Production of Documents, mailed by First Class mail, Postage Prepaid to: Roberta Binder Health, Esq. Filed by: s/Christopher M Miller, Esq. No cc	Fredric Joseph Ammerman
4/15/2005 ✓ Motion to Compel, filed by s/Roberta Binder Heath, Esq. One CC Attorney Heath	Fredric Joseph Ammerman
4/19/2005 ✓ Order, AND NOW, this 19th day of April, 2005, upon consideration of the Motion to Compel Plaintiffs' Depositions filed by Defendant, it is ORDERED and DECREED that the Plaintiffs shall provide deposition dates to counsel within 20 days of this Order and appear for said deposition that is scheduled for a mutually convenient time or be subject to sanctions by this Court. Upon failure of the Plaintiffs to comply with this Order within the designated time frame, Defendants shall be permitted to seek direct and additional relief from the Court. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Heath	Fredric Joseph Ammerman
5/16/2005 ✓ Defendant's Motion for Non Pros, filed by Atty. Binder	Fredric Joseph Ammerman
5/17/2005 ✓ Plaintiffs' Reply to Defendant's Motion for Non Pros, filed by s/Christopher M. Miller, Esq. No CC	Fredric Joseph Ammerman
5/18/2005 ✓ Plaintiffs' Motion To Compel, filed by s/ Christopher M. Miller, Esquire. No CC	Fredric Joseph Ammerman

Date: 4/4/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:14 AM

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ROA Report

Case: 2003-01868-CD

Current Judge: Paul E. Cherry

David Kohler, Mitchell David Kohler vs. Kenneth L. Test, Roger Bressler, R. B. Contracting

Civil Other

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Date: 5/2/2007

Time: 11:50 AM

Page 2 of 2

Clearfield County Court of Common Pleas

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ROA Report

Case: 2003-01868-CD

Current Judge: Paul E. Cherry

David Kohler, Mitchell David Kohler vs. Kenneth L. Test, Roger Bressler, R. B. Contracting

Civil Other

Date	Judge
5/18/2005 XX Order, AND NOW, this 17th day of May, 2005, upon consideration of Defendants' Motion for Non Pros filed in the above matter, it is the Order of the Court that argument has been scheduled for the 10th day of June, 2005 at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty Heath w/memo Re: service	Fredric Joseph Ammerman
5/19/2005 XX Order, AND NOW, to-wit, this 19th day of May, 2005, it is hereby Ordered that Defendants shall produce the requested material and documentation in response to Plaintiffs' Request for Production numbers 2, 5 and 10 within 20 days of the date of this Order or defendant shall suffer sanctions as set forth in the Pennsylvania Rules of Civil Procedure, which shall be further imposed by this Court. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty. Miller	Fredric Joseph Ammerman
5/25/2005 XX Praeclipe To Withdraw Motion for Non Pros, filed by s/ Roberta Binder Heath, Esquire. No CC XX Responses to Plaintiff's Motion to Compel, filed by s/ Roberta Binder Heath, Esquire. 1CC Atty. Heath	Fredric Joseph Ammerman
8/2/2006 XX Certificate of Readiness for Jury Trial, filed by s/ Christopher M. Miller, Esquire. No CC	Fredric Joseph Ammerman
12/18/2006 XX Joint Motion for Continuance, filed. s/ Roberta B. Heath, Esq. One CC Attorney Heath	Fredric Joseph Ammerman
12/19/2006 XX Order, NOW, this 18th day of Dec., 2006, it is Ordered that the Trial currently scheduled for the Winter Term with a Civil Call scheduled for Jan. 2, 2007, is continued as discovery is ongoing and parties are currently seeking mediation. By The Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Heath	Paul E. Cherry
4/11/2007 not in file as of 4-23-07 Defendants' Pre-Trial Narrative Statement, filed by s/ Roberta Binder Heath	Paul E. Cherry
4/20/2007 XX Order, NOW, this 20th day of April, 2007, following Pre-Trial Conference, it is Ordered: Jury Selection is scheduled for May 1, 2007, at 9:00 a.m. in Courtroom 2. Trial is scheduled for July 30, 31, and August 1, 2007, beginning at 9:00 a.m. in Courtroom 2. (see original). By The Court, /s/ Paul E. Cherry, Judge. 1CC Atty: Miller, Heath	Paul E. Cherry

Date: 4/4/2007

Clearfield County Court of Common Pleas

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Time: 10:14 AM

Page 2 of 2

ROA Report

Case: 2003-01868-CD

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✓ 5/19/2005	<input checked="" type="checkbox"/> Order, AND NOW, to-wit, this 19th day of May, 2005, it is hereby Ordered that Defendants shall produce the requested material and documentation in response to Plaintiffs' Request for Production numbers 2, 5 and 10 within 20 days of the date of this Order or defendant shall suffer sanctions as set forth in the Pennsylvania Rules of Civil Procedure, which shall be further imposed by this Court. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty. Miller ✓ Fredric Joseph Ammerman
✓ 5/25/2005	<input checked="" type="checkbox"/> Praeclipe To Withdraw Motion for Non Pros, filed by s/ Roberta Binder Heath, Esquire. No CC ✓ Fredric Joseph Ammerman
✓ 6/2/2006	<input checked="" type="checkbox"/> Responses to Plaintiff's Motion to Compel, filed by s/ Roberta Binder Heath, Esquire. 1CC Atty. Heath ✓ Fredric Joseph Ammerman
✓ 12/18/2006	<input checked="" type="checkbox"/> Certificate of Readiness for Jury Trial, filed by s/ Christopher M. Miller, Esquire. No CC ✓ Fredric Joseph Ammerman
✓ 12/19/2006	<input checked="" type="checkbox"/> Joint Motion for Continuance, filed. s/ Roberta B. Heath, Esq. One CC Attorney Heath ✓ Fredric Joseph Ammerman
✓ 4-11-2007	<input checked="" type="checkbox"/> Order, NOW, this 18th day of Dec., 2006, it is Ordered that the Trial currently scheduled for the Winter Term with a Civil Call scheduled for Jan. 2, 2007, is continued as discovery is ongoing and parties are currently seeking mediation. By The Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Heath ✓ Paul E. Cherry
✓ 4-20-2007	<input checked="" type="checkbox"/> 4-11-2007 4-23-01 Defendant's Pre-Trial Narrative Statement Order, dated 4-20-2007 ✓

Date: 6/20/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:03 AM

ROA Report

Page 1 of 1

Case: 2003-01868-CD

Current Judge: Paul E. Cherry

David Kohler, Mitchell David Kohler vs. Kenneth L. Test, Roger Bressler, R. B. Contracting

Civil Other

Date	Selected Items	Judge
5/24/2007	<input checked="" type="checkbox"/> Defendants' Motion In Limine to Exclude Evidence of Photographs of Plaintiff in the Hospital and of His Scars, filed by s/ Roberta Binder Heath, Esquire. 1CC Atty. Heath	Paul E. Cherry
	<input checked="" type="checkbox"/> Defendants' Motion In Limine to Exclude Evidence of Testimony of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon and Plaintiff's Evidence of Photographs of Accident Scene, filed by s/ Roberta Binder Heath, Esquire. 1CC Atty. Heath	Paul E. Cherry
5/31/2007	<input checked="" type="checkbox"/> Rule Returnable, NOW, this 30th day of May, 2007, upon consideration of the Defendant's Motion In Limine to Exclude Evidence of Photographs of Plaintiff in the Hospital and of His Scar, a hearing is set for the 25th day of June, 2007 at 3:00 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Heath	Paul E. Cherry
	<input checked="" type="checkbox"/> Rule Returnable, this 30th day of May, 2007 upon consideration of the Motion In Limine to Exclude Evidence of Testimony of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon and Plaintiff's Evidence of Photographs of Accident, a hearing is set for the 25th day of June, 2007 at 3:00 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Heath	Paul E. Cherry
6/13/2007	<input checked="" type="checkbox"/> Plaintiff's Motion in Limine to Exclude Evidence and Testimony concerning Plaintiff's Prior Criminal Record and Pending Charges, filed by Christopher M. Miller Esq. No CC.	Paul E. Cherry
	<input checked="" type="checkbox"/> Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Testimony of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon and Plaintiff's Evidence of Photographs of Accident Scene, filed by s/ Christopher M. Miller Esq. No CC.	Paul E. Cherry
	<input checked="" type="checkbox"/> Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Photographs of Plaintiff in the Hospital and of His Scars, filed by s/ Christopher M. Miller Esq. No CC.	Paul E. Cherry

6-27-07 Order, dated 6-25-2007.

7-2-07 Motion to Strike

7-3-07 Order, dated 7-3-2007.

7-9-07 Plaintiff's Reply to defts motion to strike

7-13-07 Order, dated 7-10-2007.

10-1-07 Motion for site visit

10-1-07 defts motion in Limine to Exclude Evidence of Photographs and video of plaintiff Received Sept 27, 2007

10-25-07 Order, dated 10-3-07

10-11-07 Plaintiff's Reply to defts motion in Limine → not in file as of 11-8-07

10-26-07 Plaintiff's Motion in Limine to Exclude Evidence et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

COMPLAINT IN CIVIL ACTION

Defendants.

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

FILED

DEC 22 2003

William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No.
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)

Defendants.

NOTICE TO DEFEND

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 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]. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE -

Court Administrator's Office
1 North Second Street
Clearfield, PA 16830

Telephone (814) 765-2641, Ext: 50

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No.
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,
Defendants.

COMPLAINT IN CIVIL ACTION

AND NOW, come the Plaintiffs, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through their attorneys, EDGAR SNYDER & ASSOCIATES, LLC, and CHRISTOPHER M. MILLER, ESQUIRE, and files and serves the within Complaint In Civil Action, averring in support thereof as follows:

1. Plaintiff, DAVID KOHLER is an adult individual who currently resides at P.O. Box 52, Stump Creek, Jefferson County, Pennsylvania 15863. Plaintiff, DAVID KOHLER is the biological father of Plaintiff, MITCHELL D. KOHLER, a minor. Plaintiff, DAVID KOHLER shares joint custody of Plaintiff, MITCHELL D. KOHLER, a minor with his biological mother, Kim Kohler.

2. Plaintiff, MITCHELL D. KOHLER, a minor, currently resides with his biological mother, Kim Kohler, at RR 1, Box 5, 6456 Rocton Mt. Highway, Rockton, Clearfield County, Pennsylvania 15856. Plaintiff, MITCHELL D. KOHLER, a minor, (hereinafter "minor Plaintiff") currently seventeen (17) years of age, was born on January 7, 1987 and shall obtain the age of majority on January 7, 2005.

3. Defendant, KENNETH L. TEST is an adult individual whose last known address was 515 Filber Street, Curwensville, Clearfield County, Pennsylvania 16833.

4. Defendant, ROGER BRESSLER, individually and t/d/b/a R. B. Contracting is an adult individual whose last known address was 160 R. B. Contracting Lane, Curwensville, Clearfield County, Pennsylvania 16833.

5. The events hereinafter complained of occurred on or about July 21, 2002 at approximately 3:37 p.m., in or about Pine Township, Clearfield County, Pennsylvania.

6. At all times material thereto, there existed in said township a certain private thoroughfare known as Panther Road. Panther Road extends in generally east/west direction.

7. At all times material thereto, minor Plaintiff was the owner and operator of a certain 1983 Honda XR 500 dirt bike.

8. At all times material thereto, Defendant, ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, was the owner of a certain backhoe.

9. At all times material thereto, the Defendant, KENNETH L. TEST was the operator and was in exclusive possession and control of said backhoe which was owned by Defendant, ROGER BRESSLER, individually and t/d/b/a R.B. Contracting. Defendant, KENNETH L. TEST had permission from Defendant, ROGER BRESSLER, individually and t/d/b/a R.B. Contracting to operate the backhoe.

10. At all times material thereto, Defendant, KENNETH L. TEST was operating the backhoe within the course and scope of his employment with Defendant, ROGER BRESSLER, individually and t/d/b/a R. B. Contracting, and with the direct consent, authority and permission of the Defendant, ROGER BRESSLER, individually and t/d/b/a R. B. Contracting.

11. At all times material thereto, minor Plaintiff was lawfully and properly operating his dirt bike in a generally westerly direction on Panther Road.

12. At all times material thereto, Defendant, KENNETH L. TEST was operating the backhoe in a generally easterly direction on Panther Road.

13. At all times material thereto, minor Plaintiff was lawfully and properly operating his dirt bike on Panther Road and was operating his dirt bike on the proper side of Panther Road for vehicles which were traveling in a generally westerly direction.

14. At such time and place as aforementioned, minor Plaintiff rounded a curve in the road, still maintaining his dirt bike on the proper side of Panther road for vehicles which were traveling in a generally westerly direction.

15. At such time and place as aforementioned, Defendant, KENNETH L. TEST did so negligently, carelessly, recklessly, suddenly and without warning operate his backhoe around the aforementioned curve in Panther Road so as to cause the backhoe to cross over into the lane of travel for vehicles traveling in a generally westerly direction and directly into the course, path and travel of Plaintiff's moving dirt bike, thereby causing Defendant's backhoe to collide violently with the dirt bike being operated by the minor Plaintiff in the westbound lane of travel on Panther Road.

16. As a result of the hereinabove described negligent, careless and reckless actions of Defendant, KENNETH L. TEST, in the operation of his backhoe and in causing the hereinabove described collision, minor Plaintiff was caused to be thrown off of his dirt bike and strike the backhoe and then down onto the ground, thereby causing minor Plaintiff to suffer and sustain serious and severe injuries, hereinafter more fully set forth.

COUNT I

MITCHELL D. KOHLER, a minor v. KENNETH L. TEST

17. Plaintiffs hereby incorporate by reference all averments contained in paragraphs 1 through 16 as though more fully set forth at length herein.

18. The injuries and damages sustained by minor Plaintiff were caused solely by, and were the direct and proximate result of the negligent, careless and reckless actions of Defendant, KENNETH L. TEST in the following particulars:

- a. In attempting to bear directly into the lane of travel then and there being occupied by minor Plaintiff's moving dirt bike;
- b. In operating the backhoe in the westbound lane of travel while traveling in an easterly direction on Panther Road;
- c. In failing to yield the right-of-way to minor Plaintiff's moving dirt bike, which was entitled to the right-of-way under the circumstances then and there existing;
- d. In failing to maintain the assured clear distance ahead;
- e. In failing to observe and see minor Plaintiff's moving dirt bike prior to entering into the westbound lane of travel on Panther Road;
- f. In failing to keep and maintain a proper and adequate lookout for traffic which was traveling in a westerly direction on Panther Road;
- g. In failing to properly observe and heed the traffic conditions then and there existing, that being minor Plaintiff's moving dirt bike, which was traveling in a westerly direction on Panther Road and which had been lawfully and properly committed to the westbound lane of travel on Panther Road;
- h. In failing to allow and permit minor Plaintiff's dirt bike to pass completely by the backhoe before crossing into the westbound lane of travel on Panther Road;
- i. In knowingly exposing minor Plaintiff to a great risk of personal harm;
- j. In failing to keep the backhoe in Defendant's proper lane of travel that being the eastbound lane of travel on Panther Road;

- k. In failing to keep the backhoe under proper and adequate control at all times material hereto;
- l. In failing to warn minor Plaintiff of the pending collision;
- m. In failing to bring his vehicle to a stop prior to causing it to collide with minor Plaintiff's dirt bike, which had the right-of-way to proceed in the westbound lane of travel on Panther Road;
- n. In failing to take any evasive actions to avoid a collision with minor Plaintiff's dirt bike;
- o. In driving too fast for the conditions which were then and there present;
- p. In causing the backhoe to cross over from the eastbound lane of travel into the westbound lane of travel of Panther Road when Defendant's vehicle was traveling in an easterly direction; and
- q. Such other acts of negligence, carelessness and/or recklessness as may be revealed during the course of discovery and/or at the time of trial.

19. As a direct and proximate result of Defendant, KENNETH L. TEST'S negligence, carelessness and recklessness as aforesaid, minor Plaintiff has sustained the following serious and severe injuries, some or all of which may be permanent in nature:

- a. Bruising to his temple region;
- b. Transverse mid-shaft right femur fracture requiring open reduction/internal fixation;
- c. Laceration to the right tibia requiring debridement;
- d. Severely sprained right ankle; and
- e. Injuries and damages to the bones, muscles, nerves, nerve roots, ligaments, tendons, cartilages, soft tissues, and underlying organs in the various aforementioned areas of his body.

20. As a direct and proximate result of Defendant, KENNETH L. TEST'S negligence, carelessness and recklessness as aforesaid, minor Plaintiff has been damaged as follows:

- a. He has been, and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and services of nurses and doctors;

- b. He has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish, and loss of enjoyment of life's pleasures;
- c. His general strength, health and vitality have been impaired;
- d. His earning power has been reduced and permanently impaired; and
- e. He has been permanently disfigured.

WHEREFORE, minor Plaintiff, MITCHELL D. KOHLER respectfully requests that this Honorable Court enter judgment in his favor and against the Defendants, KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting in an amount in excess of Twenty Thousand Dollars (\$20,000.00), together with interest and associated costs.

COUNT II

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor v. KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting

21. Plaintiffs hereby incorporate by reference all averments contained in paragraphs 1 through 20 as though more fully set forth at length herein.

22. As a direct and proximate result of the negligent, careless and reckless conduct of the Defendants, KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Plaintiff, DAVID KOHLER has incurred the following damages:

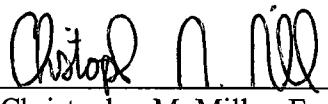
- a. He has been, and will be required in the future to expend large sums of money for the medical attention, medical supplies, medicines and hospitalization which minor Plaintiff, MITCHELL D. KOHLER required following this incident.

WHEREFORE, Plaintiff, DAVID KOHLER respectfully requests that this Honorable Court enter judgment in his favor and against the Defendants, KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting in an amount in excess of Twenty Thousand Dollars (\$20,000.00), together with interest and associated costs.

JURY TRIAL DEMANDED.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By 
Christopher M. Miller, Esquire
Attorney for Plaintiffs

VERIFICATION

I, David Kohler hereby verify that the foregoing averments of fact contained in Plaintiff's Complaint In Civil Action are true and correct and based upon my personal knowledge, information or belief. I understand that these averments of fact are made subject to the penalties of 18 Purdons Consolidated Statutes Section 4904, relating to unsworn falsification to authorities.



David Kohler, individually and as parent
and natural guardian of Mitchell D. Kohler,
a minor

Date: 12-16-03

FILED

Att'y pd
85.00

318.55
DEC 22 2003

2cc SAFF

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

KOHLER, DAVID ind & as parent & nat. guardian

VS.

TEST, KENNETH L. and ROGER BRESSLER l/a/t/d/b/a

COMPLAINT

Sheriff Docket # 14961

03-1868-CD

SHERIFF RETURNS

NOW JANUARY 5, 2004 AT 11:56 AM SERVED THE WITHIN COMPLAINT ON ROGER BRESSLER IND & t/d/b/a R.B. CONTRACTING, DEFENDANT AT RESIDENCE, 160 R.B. CONTRACTING LANE, CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ROGER BRESSLER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

NOW JANUARY 5, 2004 AT 12:05 PM SERVED THE WITHIN COMPLAINT ON KENNETH L. TEST, DEFENDANT AT RESIDENCE, 515 FILBERT ST., CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO KENNETH L. TEST A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
32.64	SHERIFF HAWKINS PAID BY: ATTY CK# 174640
20.00	SURCHARGE PAID BY: ATTY CK# 174641

Sworn to Before Me This

10th Day Of March 2004

W.A. Shaw

So Answers,

Chester A. Hawkins
Chester A. Hawkins

Sheriff

FILED

MAR 10 2004 ^{no}
cc

0/3:10 p.m. ⁸⁰
K20

William A. Shaw
Prothonotary

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

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff v. KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

DEFENDANTS' RESPONSE
TO PLAINTIFF'S COMPLAINT
WITH NEW MATTER

Counsel of Record for Defendants:
Roberta Binder Heath, Esquire
Pa. I.D. 50798

ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

FILED

APR 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
: v.
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

NOTICE TO PLEAD

TO: DAVID KOHLER and MITCHELL D. KOHLER

You are hereby notified to file a written response to the Defendants' New Matter and within twenty (20) days from service hereof or a judgment may be entered against you.

ANDREWS & BEARD


Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
: :
v. :
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

DEFENDANTS' ANSWER TO COMPLAINT WITH NEW MATTER

AND NOW, come the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R.B. Contracting, by and through the attorneys of record, Roberta Binder Heath, Esquire, of Andrews & Beard, and files the Answer to said Complaint with New Matter, and in support thereof, avers as follows:

1. Admitted upon information and belief.
2. Admitted upon information and belief.
3. Admitted.
4. Admitted.
5. Admitted.

6. Denied as stated. The roadway, which is the scene of the accident, is known as Panther Road. When going in opposite directions, it is bumpy, unfinished and has a great many S-curves. Therefore, it is not necessarily a road which can specifically be said to travel in a generally east/west direction.

7. Admitted in part; denied in part. It is admitted that the minor Plaintiff was the operator of a certain 1983 Honda XR 500 dirt bike. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment that the minor Plaintiff was the owner of said dirt bike, and consequently, denies same and demands strict proof thereof at the time of trial.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied. It is denied that minor Plaintiff was lawfully and properly operating his dirt bike along Panther Road. To the contrary, the minor Plaintiff was driving at an excessive rate of speed and too fast for the terrain and was unable to properly control his vehicle when, after coming around a blind curve, he was confronted with the oncoming backhoe, which was only traveling at a rate of speed of approximately 15 miles per hour or less. In addition, prior to the minor Plaintiff hitting the backhoe because of his recklessness and carelessness he had almost run Defendant, Roger Bressler, and his brother, Alan Bressler, off the run while they were operating their vehicle.

12. Denied as stated. It is admitted that Kenneth L. Test was operating coming the opposite direction from the minor Plaintiff.

13. Denied. It is denied that minor Plaintiff was lawfully and properly operating his dirt bike along Panther Road. To the contrary, the minor Plaintiff was driving at an excessive rate of speed and too fast for the terrain and was unable to properly control his vehicle when, after coming around a blind curve, he was confronted with the oncoming backhoe, which was only traveling at a rate of speed of approximately 15 miles per hour or less. In addition, prior to the minor Plaintiff hitting the backhoe because of his recklessness and carelessness he had almost run Defendant, Roger Bressler, and his brother, Alan Bressler, off the run while they were operating their vehicle. By way of further answer, the dimensions of Panther Road do not permit one to determine minor Plaintiff was riding a dirt bike that was too large for him to operate due to his age, size and experience.

14. Denied as stated. Plaintiff was speeding around a blind curve at an excessive rate of speed particularly for the condition of the roadway. When he saw the backhoe, minor Plaintiff then swerved into the lane of traffic of the backhoe. Kenneth L. Test, as the operator of the backhoe, in order to avoid a head-on collision then had to swerve to the left. In this regard, a head-on collision was avoided and the minor Plaintiff's dirt bike struck the extreme right side of the backhoe bucket.

15. Denied. The majority of the allegations contained in Paragraph 15 are conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary, it is denied that Kenneth L. Test was negligent, careless, or reckless

in any way so as to be a cause of the collision. To the contrary, Kenneth L. Test was operating at a safe rate of speed and utilizing due care at all times material hereto. In this regard, his swerving to the left saved the minor Plaintiff from being the victim of a head-on collision as minor Plaintiff was going too fast, not only for conditions, but also too fast to stop his vehicle prior to striking the backhoe.

16. Denied. The majority of the allegations contained in Paragraph 16 constitute conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary, it is denied that the Defendant, Kenneth L. Test, was negligent, careless or reckless in any way. To the contrary, Mr. Test operated the backhoe at all times material hereto with the utmost care and regard for the safety of others on the roadway. It is admitted that the minor Plaintiff was thrown off his dirt bike after he struck the backhoe due to his own reckless and careless behavior. It is denied that minor Plaintiff suffered and sustained serious and severe injuries. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of these averments. Thus, strict proof thereof if demanded at the time of trial

COUNT I
MITCHELL D. KOHLER, a minor v. KENNETH L. TEST

17. Defendants hereby incorporate by reference its responses to Paragraphs 1 through 16 of Plaintiff's Complaint as if fully set forth herein at length.

18. Denied. The allegations contained in Paragraph 18 constitute conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary, it is denied that Defendant, Kenneth L. Test, was negligent, careless or reckless in any way. To the contrary, Mr. Test operated the backhoe at a safe rate of speed and acted in a manner that was prudent and reasonable under the circumstances and acted in a careful and lawful manner at all time material hereto. Specifically, Defendants denied the following:

- a. Denied. It is denied that the Defendant, Kenneth L. Test, was at fault in swerving to the left to avoid a head-on collision. To the contrary, because the minor Plaintiff swerved into his lane of travel, Defendant Test reacted to minor Plaintiff's decision and in order to avoid a head-on collision swerved to the left so as to avoid a serious accident;
- b. Denied. It is denied that the Defendant, Kenneth L. Test, was at fault in swerving to the left to avoid a head-on collision. To the contrary, because the minor Plaintiff swerved into his lane of travel, Defendant Test reacted to minor Plaintiff's decision and in order to avoid a head-on collision swerved to the left so as to avoid a serious accident;
- c. Denied. It is denied that minor Plaintiff was entitled to the right-of-way. To the contrary, minor Plaintiff was traveling too fast for conditions and failed to have his vehicle under proper control so as to stop the vehicle prior to the collision;
- d. Denied. It was the minor Plaintiff who was speeding around a blind curve on a narrow dirt, bumpy roadway who failed to maintain the assured clear distance ahead and not Defendant Test who was operating within a very low rate of speed at all time material hereto;
- e. Denied. Defendant Test simply swerved to the left in order avoid a head-on collision with the minor Plaintiff, who had failed to keep his vehicle under proper control and was driving too fast for conditions;

- f. Denied. Defendant Test simply swerved to the left in order avoid a head-on collision with the minor Plaintiff, who had failed to keep his vehicle under proper control and was driving too fast for conditions;
- g. Denied. Defendant Test simply swerved to the left in order avoid a head-on collision with the minor Plaintiff, who had failed to keep his vehicle under proper control and was driving too fast for conditions;
- h. Denied. Defendant Test simply swerved to the left in order avoid a head-on collision with the minor Plaintiff, who had failed to keep his vehicle under proper control and was driving too fast for conditions;
- i. Denied. Defendants did nothing to expose minor Plaintiff to a great risk of person harm, but rather, it was minor Plaintiff who was not cognizant of his own safety by operating a dirt bike, failing to keep it under proper and driving too fast for conditions;
- j. Denied. Defendant Test simply swerved to the left in order avoid a head-on collision with the minor Plaintiff, who had failed to keep his vehicle under proper control and was driving too fast for conditions;
- k. Denied. The backhoe was under proper and adequate control at all times material hereto. To the contrary, it was minor Plaintiff who failed to have proper control of the dirt bike and was the cause of the collision;
- l. Denied. Minor Plaintiff was operating too fast for conditions, and consequently, it was not Defendants' obligation nor was it a possibility that minor Plaintiff could have been warned of the pending collision, as minor Plaintiff was the cause of the collision;
- m. Denied. It was minor Plaintiff that failed to keep his vehicle under proper control and was driving too fast for conditions, whereas the backhoe was only traveling at a maximum rate of 15 miles per hour. In this regard, there was no proper right-of-way to proceed on the narrow dirt roadway, and consequently, this is a non-issue;
- n. Denied. It was not Defendant Test who was driving too fast for conditions as he was only going a maximum speed of 15 miles per hour **in third gear**. Defendant Test was very cognizant of the road being bumpy and narrow, and consequently, could only operate the vehicle in third gear.

- o. Denied. To the contrary, it was the minor Plaintiff who was driving too fast for conditions and was the cause of the collision;
- p. Denied. Defendant Test simply swerved to the left in order avoid a head-on collision with the minor Plaintiff, who had failed to keep his vehicle under proper control and was driving too fast for conditions;
- q. Denied. The allegations contained in subparagraph 18(q) constitute conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary it is denied that Defendant Test was at all negligent, careless or reckless and, to the contrary, operated with due care under the circumstances at all times material hereto.

19. Denied. The allegations contained in Paragraph 19 constitute conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary it is denied that Defendant Test was negligent, careless or reckless in any manner so as to be approximate cause of any alleged injury suffered by the minor Plaintiff. To the contrary, Defendant Test acted with due care and caution at all times material hereto and operated in a lawful and prudent manner. Relative to the injuries alleged by the minor Plaintiff, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of these averments and demand strict proof thereof at the time of trial.

20. Denied. The allegations contained in Paragraph 20 constitute conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary it is denied that Defendant Test was negligent, careless or reckless in any manner so as to be a proximate or direct cause of any alleged injury damage suffered by the minor Plaintiff. To the contrary, Defendant Test acted with due care and caution at all times material hereto and operated in a lawful and prudent manner. Relative to the

damages alleged by the minor Plaintiff, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the damages alleged in Paragraph 20 and demand strict proof thereof at the time of trial.

WHEREFORE, Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R.B. Contracting, respectfully request this Honorable Court dismiss Plaintiff's Complaint.

COUNT II

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor v. KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting

21. Defendants hereby incorporate by reference its responses to Paragraphs 1 through 20 of Plaintiff's Complaint as if fully set forth herein at length.

22. Denied. The allegations contained in Paragraph 22 constitute conclusions of law to which no responsive pleading is required. If, however, a response is deemed necessary, it is denied that Defendants were negligent, careless or reckless in any respect so as to be a proximate or direct cause of any damages. To the contrary, the Defendants acted with due care and caution under the circumstances at all times material hereto. Relative to the alleged expenses incurred, Defendants are without knowledge or information sufficient to form a belief as to the truth of these averments and accordingly deny same and demand strict proof thereof at the time of trial.

WHEREFORE, Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R.B. Contracting, respectfully request this Honorable Court dismiss Plaintiff's Complaint.

NEW MATTER

23. Defendant hereby incorporates by reference its responses to Paragraphs 1 through 22 as if fully set forth herein at length.

24. Minor Plaintiff's claims are barred in part or in whole by the applicable statute of limitations.

25. Minor Plaintiff's claims are barred in part or in whole by the doctrine of contributory negligence.

26. Minor Plaintiff's claims are barred in part or in whole by the doctrine of comparative negligence.

27. Minor Plaintiff's claims are barred in part or in whole by the fact that they are attributable to pre-existing conditions and are not a direct and proximate result of the incident in question.

28. Minor Plaintiff's claims are barred in part or in whole by the Pennsylvania Motor Vehicle Code and Pennsylvania Financial Responsibility Act and any other applicable laws affecting the operation of motor vehicles.

29. Minor Plaintiff was the cause of the collision and was a 15 year old minor operating a dirt bike without a license, which vehicle was too large for his size, age and experience.

30. Minor Plaintiff was driving too fast for conditions.

31. Minor Plaintiff failed to yield the right-of-way to the backhoe.

32. Minor Plaintiff failed to use proper caution in coming around the blind curve.

33. Defendant hereby evokes any other applicable affirmative defenses which may be raised and are not yet discovered but will be delineated throughout the course of discovery.

ANDREWS & BEARD

Roberta B Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

VERIFICATION

I verify that the statements and averments of fact contained in Defendants' Answer and New Matter are true and correct to the best of my knowledge, information, and belief. I understand that my statements are made subject to 18 Pa. C.S. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

4-1-04
Date

Kenneth Test
Kenneth Test

VERIFICATION

I verify that the statements and averments of fact contained in Defendants' Answer and New Matter are true and correct to the best of my knowledge, information, and belief. I understand that my statements are made subject to 18 Pa. C.S. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

4-1-04
Date



Roger Bressler

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Defendants' Answer to Plaintiff's Complaint with New Matter on the following person by U.S. First Class Mail, postage pre-paid, on this 1st day of **APRIL 2004**:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta B. Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

FILED / NO
APR 12 2004
08 2004
APR 08 2004
ECC

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D.
KOHLER, a minor, CIVIL DIVISION
No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

REPLY TO NEW MATTER

Filed on behalf of:
DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED

MAY 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,

Defendants.

REPLY TO NEW MATTER

AND NOW, come the Plaintiffs, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through their attorneys, EDGAR SNYDER & ASSOCIATES, LLC, and CHRISTOPHER M. MILLER, ESQUIRE, and files and serves the within Reply To New Matter, averring in support thereof as follows:

23. In response to Defendants' incorporation, Plaintiffs hereby incorporate all averments contained within their Complaint In Civil Action as though more fully set forth at length herein.

24. Paragraph 24 of Defendants' New Matter contains various conclusions of law to which no response is required. To the extent that a response may be deemed to be required, it is specifically denied that Plaintiffs' claims are, in any manner, barred in part or in whole by any applicable statute of limitations, as Plaintiffs have fully complied with all applicable statute of limitations.

25. Paragraph 25 of Defendants' New Matter contains various conclusions of law to which no response is required. To the extent that a response may be deemed to be required, it is specifically denied that Plaintiffs' claims are, in any manner, barred in whole or in part by the doctrine of contributory negligence. To the contrary, Plaintiffs' injuries and damages were caused solely by the negligence of the named Defendants.

26. Paragraph 26 of Defendants' New Matter contains various conclusions of law to which no response is required. To the extent that a response may be deemed to be required, it is specifically denied that Plaintiffs' claims are, in any manner, barred in whole or in part by the doctrine of comparative negligence. To the contrary, Plaintiffs' injuries and damages were caused solely by the negligence of the named Defendants.

27. Denied. Plaintiffs' injuries and damages are a direct and proximate result of the incident in question. It is further asserted that minor Plaintiff did not have any pre-existing conditions which were present prior to the incident in question.

28. Paragraph 28 of Defendants' New Matter contains various conclusions of law to which no response is required. To the extent that a response may be deemed to be required, it is specifically denied that Plaintiffs' claims are barred in whole or in part by the Pennsylvania Motor Vehicle Code and/or the Pennsylvania Financial Responsibility Act, or any other applicable laws affecting the operation of motor vehicles.

29. Paragraph 29 of Defendants' New Matter contains various conclusions of law to which no response is required. To the extent that a response may be deemed to be required, all averments contained within Paragraph 29 of Defendants' New Matter are specifically denied, in that Minor Plaintiff is not required under any statute and/or law of the Commonwealth of

Pennsylvania to have a valid driver's license in order to operate a dirt bike on a private road, and also that the dirt bike in question was not too large for his size, age and experience.

30. Denied. It is specifically denied that the Minor Plaintiff was driving too fast for conditions, and strict proof thereof is required at the time of trial. To the contrary, all injuries and damages suffered by the Plaintiffs' were caused solely by the negligence of the named Defendants.

31. Denied. It is specifically denied that Minor Plaintiff failed to yield the right-of-way to the backhoe, and strict proof thereof is demanded at the time of trial. To the contrary, the backhoe which was owned and operated by the named Defendants failed to yield the right-of-way to the Minor Plaintiff, as the backhoe was traveling on the Minor Plaintiff's side of the road.

32. Denied. It is specifically denied that Minor Plaintiff failed to use proper caution in coming around the curve in the road, and strict proof thereof is demanded at the time of trial. To the contrary, Minor Plaintiff was operating the dirt bike on the proper side of the road for his direction of travel, and was also using proper caution and care as he rounded the curve in the road. Furthermore, the backhoe in question was being driven on the wrong side of the road for the backhoe's direction of travel.

33. Paragraph 33 of Defendants' New Matter does not require a response of the responding Plaintiffs. To the extent that a response may be deemed to be required, it is specifically denied that Defendants have any applicable affirmative defenses that may be raised and are not yet discovered.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to enter judgment in their favor and against the Defendants as has been more fully outlined in their Complaint In Civil Action.

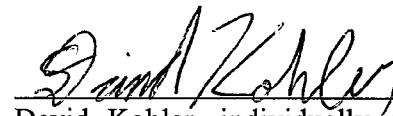
Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By: Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

VERIFICATION

I, David Kohler, hereby verify that the foregoing averments of fact contained in Plaintiff's Reply To New Matter are true and correct and based upon my personal knowledge, information or belief. I understand that these averments of fact are made subject to the penalties of 18 Purdons Consolidated Statutes Section 4904, relating to unsworn falsification to authorities.


David Kohler
David Kohler, individually and as parent
and natural guardian of Mitchell D. Kohler,
a minor

Date: 5-6-04

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Reply To New Matter** was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 11th day of May, 2004:

Robertz Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

 EDGAR SNYDER & ASSOCIATES, LLC

By: Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

FILED
MAY 13 2004
NO. 500-04
G
FBI
2004

William A. Shaw
Prothonotary/Clerk of Courts

(A)

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

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
: v.
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
: Type of Document:
: **Motion to Compel**
: Counsel for Defendants:
: Roberta Binder Heath, Esquire
: 3366 Lynnwood Drive
: P.O. Box 1311
: Altoona, PA 16603-1311
: (814) 940-8670

FILED

JUN 15 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

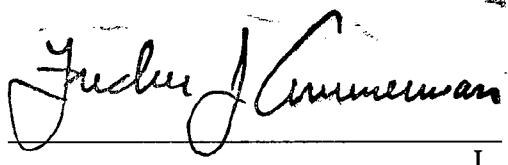
DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff v. KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

ORDER

AND NOW, this 16 day of June, 2004, upon consideration of the Motion to Compel, filed by Defendants, hereby issued upon Plaintiff shall provide full and complete responses to Defendants' First Set of Interrogatories, Request for Documents, and First Set of Admissions, as set forth in the within Motion.

Upon failure of the Plaintiffs to comply with this Order within fifteen (15) days, Defendants shall be permitted to seek direct and additional relief from the Court.

BY THE COURT:



J.

FILED

JUN 17 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
9/9/04
JUN 17 2004

Angie Heath

William A. Shaw
Prothonotary/Clerk of Courts

100
100

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

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
	:	
V.	:	
	:	
KENNETH L. TEST and ROGER BRESSLER, individually and	:	
t/d/b/a R.B. Contracting, Defendants	:	

MOTION TO COMPEL

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through its attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion to Compel and in support thereof, avers the following:

1. This matter was initiated with the Plaintiffs filing a Complaint against Defendants on or about December 22, 2003.
2. Defendants filed an Answer and New Matter to Plaintiffs' Complaint on or about April 28, 2004.
3. Defendants served its First Set on Interrogatories, First Request for Admissions, and First Request for Documents upon counsel for the Plaintiffs on or about April 19, 2004. (A copy of the Certificate of Service and correspondence to Plaintiffs' counsel serving this document request attached hereto as Exhibits "A").
4. The Plaintiffs have failed to produce the documents or responses to Defendants' First Set of Interrogatories, First Request for Admissions and First Request for Documents, and the Plaintiff has failed to produce requested information in a timely manner.

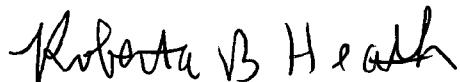
5. The Plaintiffs failed to file objections to the discovery request within 30 days pursuant to the Pennsylvania Rules of Civil Procedure.

6. At no time prior to the scheduled date of production was any Motion for Protective Order filed on behalf of the Plaintiff as required by Pa. R.C.P. 4011 and 4012.

WHEREFORE, Defendants respectfully requests that this Honorable Court order the Plaintiffs to provide full and complete responses to Defendants' First Request for Admissions, First Set of Interrogatories and First Request for Documents, within fifteen (15) days of the date of this Motion as set forth in the attached Order.

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants .

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8620

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff : No. 03-1868-CD

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant :

CERTIFICATE OF SERVICE

I, Roberta Binder Heath, Esquire, of the law firm of ANDREWS & BEARD, hereby certify that Defendants' First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff was served this 19th day of APRIL 2004 by mailing same first class United States mail, postage prepaid, addressed as follows:

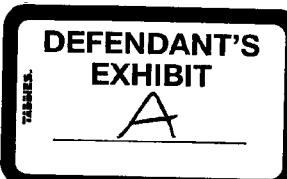
Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta Binder Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendant, Iona J. Pusey

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

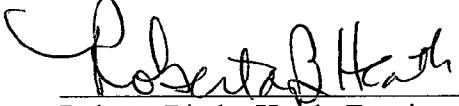


CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants Motion to Compel was served on this **14th** day of **JUNE 2004**, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire

Pa. I.D. No. 50798
Counsel for Defendants

FILED
11:20 AM
JUN 15 2004
Amy Heath

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**NOTICE OF SERVICE OF PLAINTIFFS'
FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
DEFENDANT, KENNETH L. TEST**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED

JUN 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

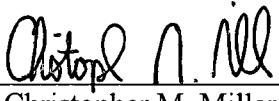
DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,
Defendants.

NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO
DEFENDANT, KENNETH L. TEST

I hereby certify that on this 17th day of June, 2004, the original Plaintiffs' First Set of Interrogatories and Request For Production Of Documents Directed To Defendant, Kenneth L. Test, and one (1) copy of Notice Of Service of same were mailed by First Class Mail, postage prepaid, to counsel for Defendant at the following address:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

EDGAR SNYDER & ASSOCIATES, LLC

By 
Christopher M. Miller, Esquire
Attorney for Plaintiffs

cc
FILED

3102764
JUN 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

**NOTICE OF SERVICE OF PLAINTIFFS'
FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
DEFENDANT, ROGER BRESSLER,
individually and t/d/b/a R. B. Contracting**

Defendants.

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED

JUN 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,
)
Defendants.

NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT,
ROGER BRESSLER, individually and t/d/b/a R. B. Contracting

I hereby certify that on this 17th day of June, 2004, the original Plaintiffs' First Set of Interrogatories and Request For Production Of Documents Directed To Defendant, Roger Bressler, individually and t/d/b/a R. B. Contracting, and one (1) copy of Notice Of Service of same were mailed by First Class Mail, postage prepaid, to counsel for Defendant at the following address:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

FILED No
m16-2784
JUN 2 1 2004
B
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**NOTICE OF SERVICE OF PLAINTIFF'S
ANSWERS TO DEFENDANTS' FIRST
SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED

JUL 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,

Defendants.

**NOTICE OF SERVICE OF PLAINTIFF'S ANSWERS TO DEFENDANTS' FIRST SET
OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

I hereby certify that on this 14th day of July, 2004, the original Plaintiff's Answers To Defendants' First Set of Interrogatories and Request For Production Of Documents, and one (1) copy of Notice Of Service of same were mailed by First Class Mail, postage prepaid, to counsel for Defendant at the following address:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

EDGAR SNYDER & ASSOCIATES, LLC

By *Christopher M. Miller*
Christopher M. Miller, Esquire
Attorney for Plaintiffs

FILED

MO

110-4854
JUL 16 2004
cc

William A. Shaw
Prothonotary/Clerk of Courts

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100% Recycled Paper

100% Recycled Paper

at

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

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
v.	:	
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant	:	<u>Type of Document:</u> Motion to Compel
	:	<u>Counsel for Defendants:</u>
	:	Roberta Binder Heath, Esquire
	:	3366 Lynnwood Drive
	:	P.O. Box 1311
	:	Altoona, PA 16603-1311
	:	(814) 940-8670

FILED 1cc
m/12/5007 Atty Health
APR 15 2005
SAC
by William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER,	:	No. 03-1868-CD
Plaintiff	:	
	:	
V.	:	
	:	
KENNETH L. TEST and ROGER BRESSLER, individually and	:	
t/d/b/a R.B. Contracting,	:	
Defendant	:	

FILED
10/22/05
APR 19 2005
6W
William A. Shaw
Prothonotary/Clerk of Courts
1cc Atty Hatch

ORDER

AND NOW, this 19th day of APRIL, 2005, upon consideration of the Motion to Compel Plaintiffs' Depositions filed by Defendant, it is hereby ORDERED and DECREED that the Plaintiffs shall provide deposition dates to counsel within ~~10~~ (20) days of this Order and appear for said deposition that is scheduled for a mutually convenient time or be subject to sanctions by this Court.

Upon failure of the Plaintiffs to comply with this Order within the designated time frame, Defendants shall be permitted to seek direct and additional relief from the Court.

BY THE COURT:


J.

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

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
	:	
v.	:	
	:	
KENNETH L. TEST and ROGER BRESSLER, individually and	:	
t/d/b/a R.B. Contracting, Defendants	:	

MOTION TO COMPEL

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through its attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion to Compel and in support thereof, avers the following:

1. This matter was initiated with the Plaintiffs filing a Complaint against Defendants on or about December 22, 2003.
2. Defendants filed an Answer and New Matter to Plaintiffs' Complaint on or about April 28, 2004.
3. Defendants served its First Set on Interrogatories, First Request for Admissions, and First Request for Documents upon counsel for the Plaintiffs on or about April 19, 2004. (A copy of the Certificate of Service and correspondence to Plaintiffs' counsel serving this document request attached hereto as Exhibits "A").
4. The Plaintiffs failed to produce the documents or responses to Defendants' First Set of Interrogatories, First Request for Admissions and First Request for Documents in a timely manner. Consequently, the Defendants were forced to file a Motion to Compel. (A copy of this Court's Order concerning the Motion to Compel is attached hereto and marked as "Exhibit B").

5. On July 16, 2004, Defendants wrote to Plaintiffs concerning the scheduling of depositions and provided various dates in September as Defendants had no dates available in August. (A true and correct copy of the July 16, 2004 letter is attached hereto and marked as "Exhibit C").

6. Depositions were scheduled for September 13, 2004, at which time both the Plaintiffs and Defendants were to be deposed. On September 9, 2004, Defendants received a faxed correspondence from Plaintiffs stating that Mitchell Kohler was no longer "available" for the scheduled deposition. Plaintiffs provided no clear reason as to Mitchell Kohler's unavailability. (A true and correct copy of the September 9, 2004 correspondence is attached hereto and marked as "Exhibit D").

7. On September 14, 2004, Defendants provided additional dates to Plaintiff in October, delineating multiple choices of dates available for depositions. (A true and correct copy of the September 14, 2004, letter is attached hereto and marked as "Exhibit E").

8. Plaintiffs failed to respond and reschedule the depositions throughout the remainder of 2004 and January of 2005.

9. On February 16, 2005, Defendants again wrote to Plaintiffs and indicated that, despite the prior attempts to reschedule the depositions, Plaintiff failed to respond and provide any available dates whatsoever. Thus, additional dates in March were provided by Defendants at that time. (A true and correct copy of the February 16, 2005, letter is attached hereto and marked as "Exhibit F").

10. On March 22, 2005, Defendants again wrote to Plaintiffs' counsel and indicated that they wanted a response concerning deposition dates by April 8, 2005 or a Motion to Compel would be filed with the Court. (A true and correct copy of the March 22, 2005, letter is attached hereto and marked as "Exhibit G").

11. Defense counsel has spoken with Plaintiff's counsel and determined that settlement is not an option at this point and thus, counsel for defense indicated by telephone that

Defendants were still waiting to receive potential deposition dates. Once again, Plaintiffs failed to respond in any manner. Consequently, this Motion to Compel was necessitated.

12. Plaintiffs' continuing refusal to actively pursue their claim has prejudiced Defendants enormously. Thus, if Plaintiffs continue to fail to take an active part in this lawsuit, sanctions should be imposed, up to and including dismissal.

WHEREFORE, Defendants respectfully requests that this Honorable Court enter the attached proposed Order indicating that Plaintiffs provide dates within ten (10) days for a mutually convenient time and produce the Plaintiffs or be subject to further sanctions by this Honorable Court.

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants .

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8620

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:

1

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendant

CERTIFICATE OF SERVICE

I, Roberta Binder Heath, Esquire, of the law firm of ANDREWS & BEARD, hereby certify that Defendants' First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff was served this 19th day of APRIL 2004 by mailing same first class United States mail, postage prepaid, addressed as follows:

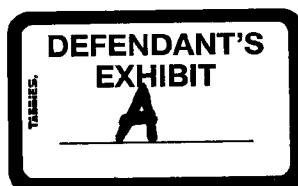
Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Robert B. Haskin

Robert Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendant, Iona J. Pusey

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670



**ANDREWS
& BEARD**
LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670

FAX: 814.943.0856

rbheath@andrewsbeard.com

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

April 19, 2004

**Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925**

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Mr. Miller:

Enclosed please find Defendants' First Set of Interrogatories and Request for Production of Documents regarding the above-referenced matter. I have also enclosed two HIPPA releases for your client's signature.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Roberta Binder Heath

**RBH/dlg
Enclosures
xc: Dick Gustashaw, Sr. Claims Adjuster**

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

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:

V.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendant

ORDER

AND NOW, this 16th day of June, 2004, upon consideration of the Motion to Compel, filed by Defendants, hereby issued upon Plaintiff shall provide full and complete responses to Defendants' First Set of Interrogatories, Request for Documents, and First Set of Admissions, as set forth in the within Motion.

Upon failure of the Plaintiffs to comply with this Order within fifteen (15) days, Defendants shall be permitted to seek direct and additional relief from the Court.

BY THE COURT:

/s/ Fredric J. Ammerman

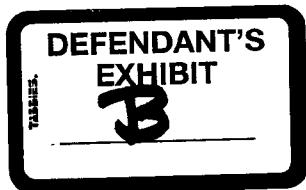
J.

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

JUN 17 2004

Attest

William L. Brown
Prothonotary/
Clerk of Courts



**ANDREWS
& BEARD**
LAW OFFICES.

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

July 16, 2004

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Mr. Miller:

As discovery has been exchanged in the above-referenced matter, I would like to take the deposition of Mitchell Kohler and Richard Duttry sometime in September. Obviously, I will also make Roger Bressler and Ken Test available for depositions as well. We need to determine the availability of Tom Miller as he is a resident of Michigan and only comes to the area on occasion.

Dates that I have available in September include September 13, 14, 15, 16, 20, 21, 22 and 23, 2004. Unfortunately, I have no available in August. Please contact me at your convenience so that we may schedule these depositions at a mutually convenient time.

As this case has been brought in Clearfield County, I would suggest that we take these depositions at our Altoona office. Otherwise, we will need to make an attempt to find an office in Clearfield where we can hold these depositions.

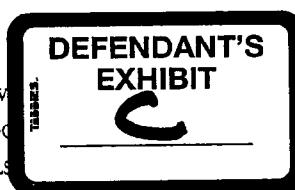
I look forward to hearing from you.

Very truly yours,


Roberta Binder Heath

RBH/rif

cc: Dick Gustashaw, Sr. Claims Adjuster





Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925
Telephone: 412/394-1000
Web Site: edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number 412/391-2180

September 9, 2004

VIA TELEFAX – (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Ms. Binder Heath:

Kindly allow this correspondence to confirm the message which I left for you today concerning the depositions scheduled to take place on Monday, September 13, 2004.

Unfortunately, I just received a phone call today from my client's father, David Kohler, indicating that his son, Mitchell Kohler is no longer available for the deposition scheduled to take place on September 13, 2004 at 1:00 p.m. As such, my client's deposition will need to be rescheduled. Due to the fact that my client is unavailable, I am also willing to reschedule the depositions of Roger Bressler and Kenneth Test for a later date.

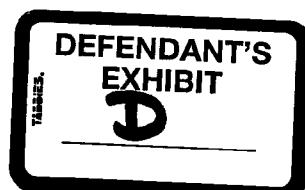
If this presents any problem for you, please contact my office to discuss this in greater detail. Otherwise, I will assume that all depositions will be scheduled for a later date.

Thank you for your attention to this matter.

Very truly yours,

Christopher M. Miller

CMM/kb



**ANDREWS
& BEARD**
LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

**DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH**

**PATRICK J. FANELLI
AIMEE L. WILLETT**

September 14, 2004

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Attorney Miller:

Here are days in October that I am available for deposition:

October 4-5
October 11-15
October 25-27

I am still waiting to hear from you relative to the HIPAA releases as I do believe there should have been a toxicology screen performed on the minor-Plaintiff at the time of his admittance to the hospital. As I had indicated before, this was not a part of the medical records. If I do not receive the HIPAA releases from you within the next ten (10) days, I will file a motion to compel.

I thank you in advance for your anticipated cooperation in this regard.

Very truly yours,

Roberta Binder Heath

RBH/vjb

cc: Dick Gustashaw, Rockwood Casualty Insurance Company
Roger Bressler



3366 LYNNWOOD DRIVE PO Box 1311 03-1311 814.943.3304 FAX 814.943.3430

OFFICES LOCATED AT 101 N. MAIN ST. JOHNSTOWN, PA

ANDREWS & BEARD

LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

February 16, 2005

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Attorney Miller:

Despite my prior attempts to reschedule the depositions of the Plaintiffs (father and son) you have not responded and provided any dates. I have the following dates open in March when depositions could be taken:

March 7, 8, 10
March 14, 15
March 21, 24

At this point, because the weather will be getting more pleasant, I need to schedule the Defendants' depositions well ahead to insure that my clients will not be missing work and would be available for the depositions on a particular date. Nonetheless, I want to depose the Plaintiffs as soon as possible. If I do not hear from you by the end of February 2005, I will file a Motion with the court to compel the depositions of the Plaintiffs on a date certain.

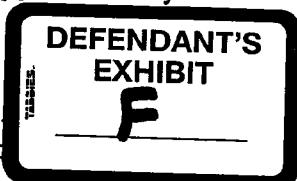
Very truly yours,

Roberta Binder Heath
Roberta Binder Heath

RBH/pb
xc: Roger Bressler
Richard Gustashaw, Rockwood Casualty Ins.

3366 LYNNWOOD DRIVE PO Box 1311

OFFICE



1311 814.943.3304 FAX 814.943.3430

PA

ANDREWS & BEARD

LAW OFFICES

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

March 22, 2005

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Attorney Miller:

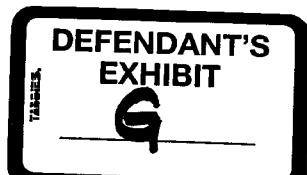
Please contact me concerning the status of the above-referenced matter. In lieu of filing a Motion to Compel at this point, I would like to explore the potential of settlement with you. I await to hear from you. If I do not hear from you by April 8, 2005, I will file a Motion to Compel with the court.

Thank you.

Very truly yours,

Robin B. Heath
Roberta Binder Heath

RBH/pb
xc: Rick Tipton, Rockwood Casualty



CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants Motion to Compel was served on this 13th of April 2005, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta B Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

CK

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

DAVID KOHLER, individually and as parent and natural guardian of
MITCHELL D. KOHLER,
Plaintiff

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

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Type of Document:
Defendant's Motion for Non Pros

Counsel for Defendants:
Roberta Binder Heath, Esquire
Nicole J. Wingard, Esquire

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

FILED

MAY 16 2005 (E)

1112:55AM
William A. Shaw
Prothonotary

I CERT TO APP

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

ORDER

AND NOW, this _____ day of _____, 2005, upon consideration of
the Motion for Non Pros and Supporting Brief filed by Defendant, it is hereby ORDERED and
DECREED that the Defendant's Motion for Non Pros is GRANTED and the above-referenced
case is DISMISSED with prejudice.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as	:	
parent and natural guardian of	:	
MITCHELL D. KOHLER,	:	No. 03-1868-CD
Plaintiff	:	
	:	
V.	:	
	:	
KENNETH L. TEST and ROGER	:	
BRESSLER, individually and	:	
t/d/b/a R.B. Contracting,	:	
Defendants	:	

MOTION FOR NON PROS

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through its attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion for Non Pros, and in support thereof, avers the following:

1. This matter was initiated with the Plaintiffs filing a Complaint against Defendants on or about December 22, 2003.
2. Defendants filed an Answer and New Matter to Plaintiffs' Complaint on or about April 28, 2004.
3. Defendants served its First Set on Interrogatories, First Request for Admissions, and First Request for Documents upon counsel for the Plaintiffs on or about April 19, 2004. (A copy of the Certificate of Service and correspondence to Plaintiffs' counsel serving this document request attached hereto as Exhibits "A").
4. The Plaintiffs failed to produce the documents or responses to Defendants' First Set of Interrogatories, First Request for Admissions and First Request for Documents in a timely manner. Consequently, the Defendants were forced to file a Motion to Compel. (A copy of this Court's Order concerning the Motion to Compel is attached hereto and marked as "Exhibit B").

5. On July 16, 2004, Defendants wrote to Plaintiffs concerning the scheduling of depositions and provided various dates in September as Defendants had no dates available in August. (A true and correct copy of the July 16, 2004 letter is attached hereto and marked as "Exhibit C").

6. Depositions were scheduled for September 13, 2004, at which time both the Plaintiffs and Defendants were to be deposed. On September 9, 2004, Defendants received a faxed correspondence from Plaintiffs stating that Mitchell Kohler was no longer "available" for the scheduled deposition. Plaintiffs provided no clear reason as to Mitchell Kohler's unavailability. (A true and correct copy of the September 9, 2004 correspondence is attached hereto and marked as "Exhibit D").

7. On September 14, 2004, Defendants provided additional dates to Plaintiff in October, delineating multiple choices of dates available for depositions. (A true and correct copy of the September 14, 2004, letter is attached hereto and marked as "Exhibit E").

8. Plaintiffs failed to respond and reschedule the depositions throughout the remainder of 2004 and January of 2005.

9. On February 16, 2005, Defendants again wrote to Plaintiffs and indicated that, despite the prior attempts to reschedule the depositions, Plaintiff failed to respond and provide any available dates whatsoever. Thus, additional dates in March were provided by Defendants at that time. (A true and correct copy of the February 16, 2005, letter is attached hereto and marked as "Exhibit F").

10. On March 22, 2005, Defendants again wrote to Plaintiffs' counsel and indicated that they wanted a response concerning deposition dates by April 8, 2005 or a Motion to Compel would be filed with the Court. (A true and correct copy of the March 22, 2005, letter is attached hereto and marked as "Exhibit G").

11. Defense counsel spoke with Plaintiff's counsel and determined that settlement is not an option at this point and thus, counsel for defense indicated by telephone that Defendants

were still waiting to receive potential deposition dates. Once again, Plaintiffs failed to respond in any manner.

12. On April 15, 2005, Defendants filed a Motion to Compel Plaintiff's Depositions and on April 19, 2005, this Honorable Court ordered Plaintiff's to provide deposition dates to counsel within 20 days of the Order. (A copy of this Court's Order concerning the Motion to Compel is attached hereto and marked as "Exhibit H").

13. Plaintiff has utterly failed to comply with this Court's Order and has not even attempted to contact Defendants with any proposed deposition dates.

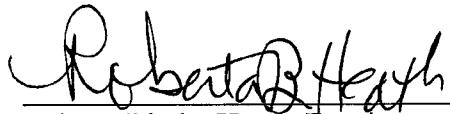
14. It has been more than a year since Defendants filed their Answer and they are still waiting to be given the opportunity to depose Plaintiffs. The 20-day limit imposed by this Honorable Court has passed and there has been no response from Plaintiffs and no explanation provided.

15. Plaintiffs' continuing refusal to actively pursue their claim has prejudiced Defendants enormously. As a result of this undue delay, evidence becomes stale and people's memories fade. All of the aforementioned problems, as a result of Plaintiff's delay and refusal to communicate with Defendants, prejudice the Defendants' ability to adequately defend this case. Thus, the case should be dismissed.

WHEREFORE, Defendants respectfully requests that this Honorable Court grant the Motion for Non Pros and the case be dismissed with prejudice.

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Nicole J. Wingard, Esquire
Pa.I.D. No. 93961

Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants Motion to Compel was served on this 12th of May 2005, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta B Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff

No. 03-1868-CD

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

CERTIFICATE OF SERVICE

I, Roberta Binder Heath, Esquire, of the law firm of ANDREWS & BEARD, hereby certify that Defendants' First Set of Interrogatories and Request for Production of Documents Directed to Plaintiff was served this 19th day of APRIL 2004 by mailing same first class United States mail, postage prepaid, addressed as follows:

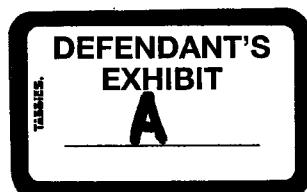
Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta Binder Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendant, Iona J. Pusey

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670



ANDREWS & BEARD

LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

April 19, 2004

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

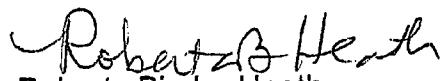
**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Mr. Miller:

Enclosed please find Defendants' First Set of Interrogatories and Request for Production of Documents regarding the above-referenced matter. I have also enclosed two HIPPA releases for your client's signature.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Roberta Binder Heath

RBH/dlg
Enclosures
xc: Dick Gustashaw, Sr. Claims Adjuster

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of
MITCHELL D. KOHLER, Plaintiff
v.
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

No. 03-1868-CD

ORDER

AND NOW, this 16th day of June, 2004, upon consideration of the Motion to Compel, filed by Defendants, hereby issued upon Plaintiff shall provide full and complete responses to Defendants' First Set of Interrogatories, Request for Documents, and First Set of Admissions, as set forth in the within Motion.

Upon failure of the Plaintiffs to comply with this Order within fifteen (15) days, Defendants shall be permitted to seek direct and additional relief from the Court.

BY THE COURT:

/s/ Fredric J. Ammerman

J.

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

JUN 17 2004

Attest.

William B. Ammerman
Prothonotary/
Clerk of Courts



**ANDREWS
& BEARD**
LAW OFFICES

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

July 16, 2004

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120

Dear Mr. Miller:

As discovery has been exchanged in the above-referenced matter, I would like to take the deposition of Mitchell Kohler and Richard Duttry sometime in September. Obviously, I will also make Roger Bressler and Ken Test available for depositions as well. We need to determine the availability of Tom Miller as he is a resident of Michigan and only comes to the area on occasion.

Dates that I have available in September include September 13, 14, 15, 16, 20, 21, 22 and 23, 2004. Unfortunately, I have no available in August. Please contact me at your convenience so that we may schedule these depositions at a mutually convenient time.

As this case has been brought in Clearfield County, I would suggest that we take these depositions at our Altoona office. Otherwise, we will need to make an attempt to find an office in Clearfield where we can hold these depositions.

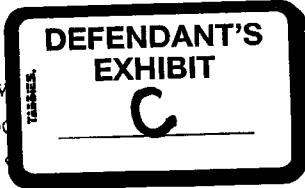
I look forward to hearing from you.

Very truly yours,


Roberta Binder Heath

RBH/rif

cc: Dick Gustashaw, Sr. Claims Adjuster





Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925
Telephone: 412/394-1000
Web Site: edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number 412/391-2180

September 9, 2004

VIA TELEFAX – (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Ms. Binder Heath:

Kindly allow this correspondence to confirm the message which I left for you today concerning the depositions scheduled to take place on Monday, September 13, 2004.

Unfortunately, I just received a phone call today from my client's father, David Kohler, indicating that his son, Mitchell Kohler is no longer available for the deposition scheduled to take place on September 13, 2004 at 1:00 p.m. As such, my client's deposition will need to be rescheduled. Due to the fact that my client is unavailable, I am also willing to reschedule the depositions of Roger Bressler and Kenneth Test for a later date.

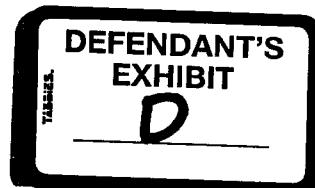
If this presents any problem for you, please contact my office to discuss this in greater detail. Otherwise, I will assume that all depositions will be scheduled for a later date.

Thank you for your attention to this matter.

Very truly yours,

Christopher M. Miller

CMM/kb



ANDREWS & BEARD

LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

September 14, 2004

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Attorney Miller:

Here are days in October that I am available for deposition:

October 4-5
October 11-15
October 25-27

I am still waiting to hear from you relative to the HIPAA releases as I do believe there should have been a toxicology screen performed on the minor Plaintiff at the time of his admittance to the hospital. As I had indicated before, this was not a part of the medical records. If I do not receive the HIPAA releases from you within the next ten (10) days, I will file a motion to compel.

I thank you in advance for your anticipated cooperation in this regard.

Very truly yours,

Roberta Binder Heath

RBH/vjb

cc: Dick Gustashaw, Rockwood Casualty Insurance Company
Roger Bressler

DEFENDANT'S
EXHIBIT
E

3366 LYNNWOOD DRIVE PO Box 1311

3-1311 814.943.3304 FAX 814.943.3430

**ANDREWS
& BEARD**
LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

February 16, 2005

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Attorney Miller:

Despite my prior attempts to reschedule the depositions of the Plaintiffs (father and son) you have not responded and provided any dates. I have the following dates open in March when depositions could be taken:

March 7, 8, 10
March 14, 15
March 21, 24

At this point, because the weather will be getting more pleasant, I need to schedule the Defendants' depositions well ahead to insure that my clients will not be missing work and would be available for the depositions on a particular date. Nonetheless, I want to depose the Plaintiffs as soon as possible. If I do not hear from you by the end of February 2005, I will file a Motion with the court to compel the depositions of the Plaintiffs on a date certain.

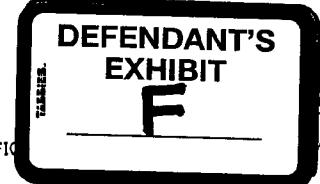
Very truly yours,

Roberta Binder Heath
Roberta Binder Heath

RBH/pb
xc: Roger Bressler
Richard Gustashaw, Rockwood Casualty Ins.

3366 LYNNWOOD DRIVE PO Box 1311

OFFICE



1311 814.943.3304 FAX 814.943.3430

PENNSYLVANIA

**ANDREWS
& BEARD**
LAW OFFICES

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

March 22, 2005

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Attorney Miller:

Please contact me concerning the status of the above-referenced matter. In lieu of filing a Motion to Compel at this point, I would like to explore the potential of settlement with you. I await to hear from you. If I do not hear from you by April 8, 2005, I will file a Motion to Compel with the court.

Thank you.

Very truly yours,

Roberta Binder Heath
Roberta Binder Heath

RBH/pb
xc: Rick Tipton, Rockwood Casualty



CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants Motion to Compel was served on this 13th of April 2005, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta B Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff v. KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

ORDER

AND NOW, this 19th day of April, 2005, upon consideration of the Motion to Compel Plaintiffs' Depositions filed by Defendant, it is hereby ORDERED and DECREED that the Plaintiffs shall provide deposition dates to counsel within ~~ten~~ (10) days of this Order and appear for said deposition that is scheduled for a mutually convenient time or be subject to sanctions by this Court.

Upon failure of the Plaintiffs to comply with this Order within the designated time frame, Defendants shall be permitted to seek direct and additional relief from the Court.

BY THE COURT:

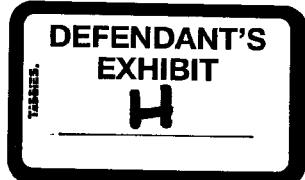
/s/ Fredric J. Ammerman

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

APR 19 2005

Attest:

[Signature]
Prothonotary/
Clerk of Courts



FILED

MAY 16 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER,
Plaintiff

No. 03-1868-CD

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,

Defendant

Type of Document:
**Defendant's Brief in Support of Motion
for Non Pros**

Counsel for Defendants:
Roberta Binder Heath, Esquire
Nicole J. Wingard, Esquire

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

RECEIVED

MAY 16 2005

COURT ADMINISTRATOR'S
OFFICE

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

DAVID KOHLER, individually and as	:	
parent and natural guardian of	:	
MITCHELL D. KOHLER,	:	No. 03-1868-CD
Plaintiff	:	
	:	
v.	:	
	:	
KENNETH L. TEST and ROGER	:	
BRESSLER, individually and	:	
t/d/b/a R.B. Contracting,	:	
Defendants	:	

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR NON PROS

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting, by and through its attorney of record, Roberta Binder Heath, Esquire, and files the within Brief in Supporting the Motion for Non Pros that has been filed with this Honorable Court.

I. FACTUAL BACKGROUND

This action involves a personal injury claim by the Plaintiff against Defendants for injuries sustained during a collision between a dirt bike operated by minor Plaintiff and a backhoe operated and owned by Defendants. Procedurally, this case was first instituted with Plaintiff filing a Complaint against Defendant on or about December 22, 2003. Defendants filed an Answer and New Matter to Plaintiff's Complaint on or about April 28, 2004.

Defendants served their initial written discovery requests, in the nature of Interrogatories and Request for Production of Documents, on the Plaintiff on or about April 19, 2004. On June 15, 2004, Defendants were forced to file a Motion to Compel in order to receive responses to

their requests for discovery. On June 16, 2004, this Honorable Court granted the Motion, ordering the Plaintiff to provide full and complete responses within 15 days of the Order. On July 14, 2004, Defendant was served with the Plaintiff's discovery responses.

Beginning on July 16, 2004, Defendants have repeatedly attempted to depose Plaintiffs, but to no avail. Depositions were originally scheduled on September 13, 2004 for both Plaintiffs and Defendants. However, on September 9, 2004, Defendants received notification that Plaintiff Mitchell Kohler was no longer "available" for the scheduled deposition. Defendants were not provided with a clear reason as to why Mitchell Kohler was unavailable.

On September 14, 2004, Defendants provided additional dates for depositions. However, for 5 months there was no word from Plaintiffs and so Defendants again wrote to Plaintiffs, on February 16, 2005, and indicated additional possible dates. Another month passed and so, on March 22, 2005, Defendants sent yet another letter advising that if they had heard no response from Plaintiffs by April 8, 2005, Defendants would be filing a Motion to Compel. Plaintiffs, again, did not provide any dates for depositions and therefore, on April 15, 2005, Defendants filed a Motion to Compel Plaintiff's Depositions. The aforementioned order followed and at this time, Defendants have still not received word from Plaintiffs.

The lack of due diligence by Plaintiffs in actively pursuing this suit is troubling. Since September of 2004, Defendants have repeatedly attempted to set up a time to depose Plaintiffs. However, not only have Plaintiffs been uncooperative in finding a date that would work for all parties, Plaintiffs have virtually stopped communication with Defendants and have disregarded this Honorable Court's order of April 19, 2005, ordering Plaintiffs to provide deposition dates to Defendant's counsel within 20 days of the Order. Therefore, it is clear that the delay in

prosecution of action by the Plaintiffs allows this case to properly be dismissed by virtue of a Judgment of Non Pros.

II. LEGAL ARGUMENT

Under the test formulated in James Bros. Co. v. Union Banking and Trust Co. of DuBois, 432 Pa. 129, 247 A.2d 587 (1986), and returned to in Jacobs v. Holloran, 551 Pa. 350, 710 A.2d 1098 (1988), a Court may properly enter a judgment of non pros when a three-pronged test is met: (1) a party to the proceeding has shown a want of due diligence in failing to proceed with reasonable promptitude, (2) there has been no compelling reason for the delay, and (3) the delay has caused some prejudice to the adverse party.

It is clear that Plaintiffs have demonstrated a complete lack of due diligence in proceeding with the prosecution of this case. It has been more than a year since Defendants filed the Answer and New Matter with regard to Plaintiffs complaint. In that time, the only activity that has occurred was the exchange of written discovery. There have been numerous attempts by the Defendants to schedule a deposition of Plaintiffs. However, these attempts have not only been refuted but Plaintiffs have blatantly ignored these efforts. Not only have Plaintiffs unduly delayed this matter, they have also violated this Court's Order of April 19, 2005, wherein Plaintiff was provided an additional 20 days in which to provide deposition dates to Defendants. It is Plaintiffs' burden to proceed to prosecute their case with diligence once it is brought before the Court. Plaintiffs' failure to comply with this Court's Order and to respond to Attorney Heath's numerous requests, at the very least, demonstrates Plaintiffs' disinterest in pursuing their claim.

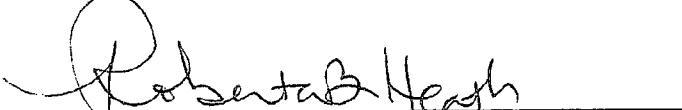
Secondly, Plaintiffs have failed to provide any substantial or compelling reason for the delay. In fact, the September 9, 2004 notification that Plaintiff Mitchell Kohler was available did

not provide a reason for the unavailability. Furthermore, Plaintiffs have not attempted to explain their reason for delay and instead, have chosen to ignore Attorney Heath's attempts at correspondence as well as the Court's Order.

Finally, Defendants will be extremely and irrefutably prejudiced by Plaintiff's unexplained and unnecessary delay in actively pursuing their case. Prejudice is created as evidence becomes stale and people's memories fade. At this juncture, it has been almost three (3) years since the time of the incident at the heart of this case. In those three (3) years, Defendants have been unable to depose Plaintiffs in order to accurately record Plaintiffs' recollection of the events of that day. As more and more time passes, the Plaintiffs' memory of that day will deplete and it will be more arduous for Defendants to defend themselves in this case. Clearly this will unfairly prejudice the Defendant and therefore, the case should be dismissed with prejudice.

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Nicole J. Wingard, Esquire
Pa.I.D. No. 93961

Counsel for Defendants

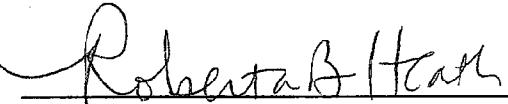
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants Motion to Compel was served on this 12th of May 2005, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

CIVIL DIVISION

No. 03-1868-CD

**PLAINTIFFS' REPLY TO DEFENDANTS'
MOTION FOR NON PROS**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED *No CC*
3/11/18 BY
MAY 17 2005

BS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
Defendants.)

PLAINTIFFS' REPLY TO DEFENDANTS' MOTION FOR NON PROS

AND NOW, come the Plaintiffs, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through their attorneys, EDGAR SNYDER & ASSOCIATES, LLC, and CHRISTOPHER M. MILLER, ESQUIRE, and files and serves the within Reply To Defendants' Motion For Non Pros, averring in support thereof as follows:

1. Admitted.
2. It is admitted that the Defendants' counsel filed a responsive pleading to Plaintiffs' Complaint four (4) months after it was filed and service was effectuated..
3. Admitted.
4. Admitted in part. It is admitted that Defendants' counsel did not receive responses within the time frame specified by the PA Rules of Civil Procedure and therefore filed a Motion To Compel. By way of further response, Plaintiffs' Answers To Interrogatories and Request For Production of Documents were forwarded to defense counsel on July 16, 2004.

5. Admitted. By way of further response, Plaintiffs' counsel wrote to Defendants' counsel on July 14, 2004, requesting available deposition dates for August or September, 2004. A true and correct copy of Plaintiffs' correspondence is attached hereto as Exhibit "A."

6. Admitted.

7. Admitted.

8. Admitted. By way of further response, Defendants' counsel also did not attempt to reschedule the depositions after their September 14, 2004 correspondence throughout the remainder of 2004 and January, 2005.

9. Admitted.

10. Admitted.

11. Admitted. By way of further response, Defendants' counsel's settlement offer was considerably less than what had previously been offered by the claims adjuster who was handling the case prior to the lawsuit being filed.

12. Admitted. By way of further response, a copy of the signed Order of Court, dated, April 19, 2005 was not received by Plaintiffs' counsel until May 12, 2005, which was after twenty (20) days had already expired. Additionally, on May 12, 2005, Plaintiffs' counsel faxed a letter to Defendants' counsel indicating that Mitchell Kohler was available for depositions in June, 2005. A true and correct copy of this correspondence dated May 12, 2005 is attached hereto and identified as Exhibit "B."

13. Denied. It is specifically denied that Plaintiff has failed to comply with this Court's Order and has not attempted to contact Defendants' counsel with any proposed deposition dates. To the contrary, as stated, Plaintiffs' counsel did not receive the executed Order of Court until May 12, 2005. Also, as stated, Plaintiffs' counsel had faxed a letter to

Defendants' counsel on May 12, 2005 advising that Plaintiff was available for depositions in June, 2005. Please refer to Exhibit "B."

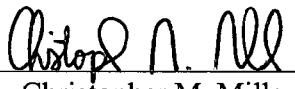
14. Admitted in part. It is admitted that Defendants filed their Answer to Plaintiffs' Complaint on April 7, 2004. The remaining allegations contained in Paragraph 14 of Defendants' Motion For Non Pros are specifically denied due to the fact that the Order of Court dated April 19, 2005 was not received in Plaintiffs' counsel's office until May 12, 2005. Further, Plaintiffs' counsel faxed a letter with deposition dates to Defendants' counsel on May 12, 2005. Please refer to Exhibit "B."

15. Paragraph 15 of Defendants' Motion For Non Pros contains various conclusions of law to which no response is required. To the extent that a response may be deemed to be required, it is specifically denied that Defendants' case has been prejudiced in any manner other than Defendants' counsel's allegations that evidence becomes stale, people's memories fade, and exactly in what manner the defense has been prejudiced. Defendants' counsel has failed to indicate any specific examples of what evidence has allegedly become stale, and how her clients' memories have faded. By way of further response, it is specifically denied that the case should be dismissed.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny Defendants' Motion For Non Pros.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By 
Christopher M. Miller, Esquire
Attorney for Plaintiffs

Edgar Snyder & ASSOCIATES^{LLC}

A Law Firm Representing Injured People.

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Telephone: 412/394-1000
Web Site: edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number 412/391-2180

July 14, 2004

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

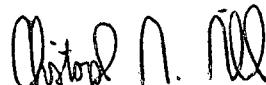
Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Ms. Binder Heath:

I am in receipt of your July 12, 2004 correspondence, and have no objection to providing a reasonable extension of time in which to respond to my written discovery previously sent. However, please note that I would like to schedule the depositions of your clients for some point in August or September, 2004. Please contact me at your earliest convenience to make arrangements for these depositions to take place. If I do not hear from you in this respect, please note that I will take the liberty of scheduling your clients' depositions.

I look forward to hearing from you in the near future. Thank you for your attention to this matter.

Very truly yours,



Christopher M. Miller

CMM/kb

EXHIBIT

tabbies®

"A"

KRB009255V001.doc July 14, 2004

Other Offices In PA: Altoona
Ebensburg • Erie • Johnstown

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DATE: 5/2/05

FAX TO: ROBERTA BINDER HEATH, ESQUIRE

FAX NO.: (814) 943-0856

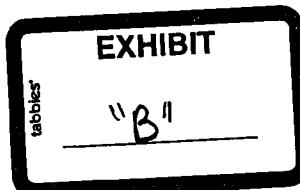
FAX FROM: Christopher M. Miller, Esquire CMM

PHONE: (412) 394-4517

We are transmitting 2 page(s), including this cover sheet.

An original and/or copy will () will not (X) be sent.

MESSAGE:



Edgar Snyder & ASSOCIATES^{LLC}

A Law Firm Representing Injured People.

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

US Steel Tower • 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412-394-1000
Toll Free: 1-800-222-6540

Fax: 412-391-2180
Web: www.edgarsnyder.com

May 12, 2005

VIA TELEFAX – (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

**Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120**

Dear Ms. Binder Heath:

Please note that I have yet to receive an argument date and/or an executed Order for the Motion to Compel which you filed on April 12, 2005. However, in checking with the Court, it is my understanding that an Order has been executed. As such, I am requesting that you provide a copy of said Order in the event that you have received same.

Additionally, in checking with my client, it is my understanding that he is unavailable for a deposition until June, 2005. Please provide available dates for his deposition to take place. Also, I am requesting that your clients be available on the same day so that I may take their depositions.

Thank you for your attention to this matter.

Very truly yours,



Christopher M. Miller

CMM/kb

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	3548
CONNECTION TEL	18149430856
SUBADDRESS	
CONNECTION ID	
ST. TIME	05/12 10:01
USAGE T	01 '20
PGS.	2
RESULT	OK

**Edgar Snyder
& ASSOCIATES**

A Law Firm Representative of Injured People.

US Steel Tower 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412/394-1000
Fax: 412/391-2180

Other Offices In PA: Altoona
Ebensburg · Erie · Johnstown

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DATE: 5/2/05

FAX TO: BOBEPJA BINDER HEALTH ESCAPE

FAX NO.: (814) 943-0857

FAX FROM: Christopher M. Miller, Esquire CMM

PHONE: (412) 394-4517

We are transmitting 2 page(s), including this cover sheet.

An original and/or copy will () will not (X) be sent.

MESSAGE:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiffs' Reply To Defendants' Motion For Non Pros** was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 16th day of May, 2005:

**Robert Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**

EDGAR SNYDER & ASSOCIATES, LLC

By: Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

FILED

MAY 17 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

PLAINTIFFS' MOTION TO COMPEL

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED NO CC
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MAY 18 2005 60

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
Defendants.)

MOTION TO COMPEL

AND NOW, come the Plaintiffs, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through their attorneys, EDGAR SNYDER & ASSOCIATES, LLC, and CHRISTOPHER M. MILLER, ESQUIRE, and files and serves the within Motion To Compel Discovery Requests:

1. Plaintiff instituted a lawsuit in the above-referenced matter in the Court of Common Pleas of Clearfield County, Pennsylvania, 03-1868-CD on December 22, 2003.
2. On June 17, 2004, Plaintiff forwarded to defense counsel Plaintiff's First Set of Interrogatories and Request For Production of Documents Directed To Defendant, Roger Bressler, individually and t/d/b/a R. B. Contracting and Plaintiff's First Set of Interrogatories and Request For Production of Documents Directed To Defendant, Kenneth L. Test.
3. On July 21, 2004, Defendants' counsel forwarded responses to the written discovery requests.

4. On July 30, 2004, Plaintiffs' counsel forwarded a letter to defense counsel requesting that a copy of the applicable Declarations Page, responses to Plaintiffs' Request For Production numbers 2, 5 and 10, as well as any videotape surveillance obtained by defense counsel be provided. A copy of Plaintiffs' counsel's letter dated July 30, 2004 is attached hereto, made a part hereof and identified as Exhibit "A".

5. On August 3, 2004, Defendants' counsel responded to the July 30, 2004 request, indicating that she was awaiting the applicable Declarations Page, that no videotape surveillance had yet been undertaken, and she was unsure as to exactly what Plaintiffs' counsel was looking for in Request for Production numbers 2, 5, and 10. A copy of Defendants' counsel's letter dated August 3, 2004 is attached hereto, made a part hereof and identified as Exhibit "B".

6. Request for Production number 2 states "Any investigative report, including surveillance, concerning the Plaintiff's, the Defendants, any witness or prospective witness, or any claim, defense, issue or part of the instant case." The response received was "See response to Interrogatory #1 as well as notes for insurance file that are not subject to privilege." No such notes from the insurance file were enclosed with the responses. Additionally, no copies of surveillance tapes have yet to be received. A copy of the entire set of Request for Production of Documents and Defendants' responses thereto are attached hereto, made a part hereof and identified as Exhibit "C".

7. Request for Production number 5 states "Any written note, report or memorandum of the accident or report of accident by Defendant or any other person to Plaintiffs' insurance carrier or the carrier's representative." The response received was "See attached insurance notes that are not subject to privilege." Again, no such notes from the insurance file were enclosed with the responses. Please refer to Exhibit "C".

8. Request for Production number 10 states "Kindly attach hereto a true and complete copy of each and every document contained in any claims file, underwriting file, liability file, or any other document, item or thing more fully described in Pa.R.C.P. 4009 in the aforesaid files which are in the possession, custody or control of the defendant or their representative, including his attorney, consultant, surety, indemnitor, insurer or agent." The responses received was "All documents that are not subject to privilege have been provided." Again, no such documents were produced. Please refer to Exhibit "C".

9. The only documentation which Defendants' counsel produced in response to the aforementioned written discovery requests were three (3) recorded statements, scene photographs and reproductions of written correspondence between Plaintiffs' counsel, the insurance adjustor handling the file for Rockwood Casualty Insurance and E.L. Braid Claim Service, Inc.

10. As of this date, Defendants' counsel has failed to produce any other information, documentation and/or discoverable items which were requested in Request for Production numbers 2, 5 and 10. Additionally, the applicable Declarations Page and any surveillance tapes obtained by the defense have also yet to be produced.

11. Over nine (9) months have passed since Plaintiffs forwarded these discovery requests to defense counsel.

12. Plaintiffs have been extremely lenient in granting the Defendants a reasonable length of time to provide complete responses to Plaintiffs' written discovery requests.

13. Defendants are in direct violation of the Pennsylvania Rules of Civil Procedure by not supplying responses to Plaintiffs' discovery requests within a thirty (30) day period.

WHEREFORE, Plaintiff respectfully requests this Court to order and compel defense counsel to supply complete responses to Plaintiffs' First Set of Interrogatories and Request For Production of Documents.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs



Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Telephone: 412/394-1000
Web Site: edgarsnyder.com

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Dept Fax Number 412/391-2180

July 30, 2004

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

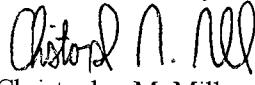
Dear Ms. Binder Heath:

Please note that I have recently reviewed your responses to the Requests For Production of Documents which my office previously requested. In doing so, it appears that several items were not produced. The only documentation provided with your responses to my Requests were the recorded statements of Tom Miller, Roger Bressler and Richard Dutry. Additionally, you provided scene photographs as well as letters between myself and Mr. Gustashaw, and correspondence between Mr. Gustashaw and Ed Yocum.

However, it appears that a video tape was also taken. I am hereby requesting that a copy of the video tape be produced pursuant to my Requests For Production of Documents. Further, no Declarations Page for the insuring agreement was provided with your responses, and neither were any documents produced subject to my Requests #2, #5, and #10. I am therefore asking that you produce this documentation and video tape in response to my Requests at your earliest convenience. Additionally, I am also requesting color copies of the photographs which you have produced. I am willing to pay any reasonable expense associated with their reproduction.

Thank you for your attention to this matter.

Very truly yours,


Christopher M. Miller

CMM/kb

EXHIBIT

"A"

KRB009335V001.doc July 30, 2004

ANDREWS & BEARD

LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670

FAX: 814.943.0856

rbheath@andrewsbeard.com

DAVID P. ANDREWS
CARL P. BEARD
CHRISTINE C. PODRATSKY
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT

August 3, 2004

Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

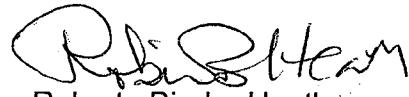
**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120.**

Dear Attorney Miller:

I am in receipt of your letter dated July 30, 2004, relative to your Request for Production of Documents and various inquiries. As I had indicated in the responses to the Request for Production of Documents themselves, the Defendants intend at some point to take a videotape. To date, no videotape has been taken. Obviously, upon receipt of same, I will provide a copy to you and will bill you for the charge of that copy. I am awaiting the declarations page from the insurance company and will provide that to you upon receipt of same.

Relative to your other concerns concerning Numbers 2, 5 and 10, I am unsure as to what information you are looking for as I have produced everything that is in my possession. If you wish to discuss this with me further, do not hesitate to contact me.

Very truly yours,


Roberta Binder Heath

RBH/vjb

cc: Dick Gustashaw, Sr. Claims Adjuster

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

**PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT, ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting**

Defendants.

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

EXHIBIT

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KRB008723V001.doc June 17, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,
)
Defendants.

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT,
ROGER BRESSLER, individually and t/d/b/a R. B. Contracting

TO: Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

AND NOW, come the Plaintiffs, DAVID KOHLER, individually and as parent and
natural guardian of MITCHELL D. KOHLER, a minor, by and through their attorneys, EDGAR
SNYDER & ASSOCIATES, LLC, and CHRISTOPHER M. MILLER, ESQUIRE and requests
that the within named Defendant, ROGER BRESSLER, individually and t/d/b/a R. B.
Contracting, produce the following described documents and materials for inspection and
copying at the offices of the Plaintiffs' attorney, in accordance with the provisions of the

Pennsylvania Rules of Civil Procedure, as they relate to permissible pre-trial discovery, and such materials that relate to the within-captioned cause of action upon which the Plaintiffs base their claim against the Defendant. This request is deemed to be continuing in nature and will require updating as additional documents and materials come into the possession of the Defendant, the Defendant's attorney, or the agents for the Defendant. Please include the following for each Document Production Request:

- a. A description of each document produced;
- b. A complete description of each document covered by the request that is not provided or produced;
- c. The reasons why each non-produced document was not provided or produced;
- d. An affidavit from Defendant that the documents produced and the documents withheld constitute every document described in the document request that is within the possession, custody or control of the responding party.

1. Each and every written or recorded statement taken from any party, witness or other persons relative to any claim, defense, issue or part of the instant case, including any and all reports, memoranda, letters, notes or summaries of any oral statement, and/or stenographic, mechanical, electrical or other recording or transcript of such oral statement.

See attached statements of Tom Miller, Richard Duttry and Roger Bressler.

2. Any investigative report, including surveillance, concerning the Plaintiff[s], the Defendants, any witness or prospective witness, or any claim, defense, issue or part of the instant case.

See response to Interrogatory #1 as well as notes for insurance file that are not subject to privilege.

3. Any plans, drawings, maps, charts, sketches, photographs, diagrams, films, videotapes, recordings, or the like, relating to any claim, defense, issue or part of the instant case.

See attached photographs. Videotape taken by Defendants will be provided.

4. Any written report or memorandum of any oral report of the incident, facts or circumstances of the accident or any claim, defense, issue or part of the instant case.

N/A.

5. Any written note, report or memorandum of the accident or report of accident by Defendant or any other person to Plaintiffs' insurance carrier or the carrier's representative.

See attached insurance notes that are not subject to privilege.

6. Any written report, note or memorandum of any inspection of the area at or around the incident scene, made for any purpose whatsoever, in the possession of Defendant, their agents, adjusters, counsel or representative.

See attached photographs.

7. Any report prepared by any expert made for the purpose of prosecuting this pending claim or action, or made in the process of investigation of this case or claim whether or not such expert is anticipated to be a witness at the trial of this matter.

Not applicable at this time. Defendant reserves the right to supplement same.

8. Pursuant to Pennsylvania Rule of Civil Procedure 4003.2, a copy of any insurance agreement which may be used to satisfy part or all of the judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. Included in this information shall be the total amount of insurance coverage and a true and correct copy of the Defendant's declaration page for the date of the accident in question which this Defendant contends was in force.

See Declaration Page #9.

9. All letters, reports, records, and correspondence obtained by Defendant, or its attorneys or representatives thereof concerning the nature and extent of Plaintiffs' injuries, medical causation, diagnosis and/or prognosis.

All medical reports were obtained through Plaintiff.

10. Kindly attach hereto a true and complete copy of each and every document contained in any claims file, underwriting file, liability file, or any other document, item or thing more fully described in Pa. R.C.P. 4009 in the aforesaid files which are in the possession, custody or control of the defendant or their representative, including his attorney, consultant, surety, indemnitor, insurer or agent.

All documents that are not subject to privilege have been provided.

11. Kindly attach hereto the result and all documents related to any request made by you or any representative, attorney or insurance carrier to the Cleveland Index Bureau or other indexing system to any person who is either a party or witness in this case.

N/A.

12. Any written request, report, note, or memorandum of or concerning any surveillance, observation, or investigation of Plaintiffs, as well as a true and correct copy of each videotape, video disc, film, photograph, slide, recording, and any other visual or audio memorialization of or regarding Plaintiffs or any surveillance, observation, or investigation of Plaintiffs.

N/A.

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

Date: 6/17/04

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiffs' First Request For Production of Documents Directed To Defendant, Roger Bressler, individually and t/d/b/a R. B. Contracting** was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 17th day of June, 2004:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

EDGAR SNYDER & ASSOCIATES, LLC

By: Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

VERIFICATION

I verify that the statements and averments of fact contained in Defendants' First Set of Interrogatories and First Request for Production of Documents are true and correct to the best of my knowledge, information, and belief. I understand that my statements are made subject to 18 Pa. C.S. Section 4904 providing for criminal penalties for unsworn falsification to authorities.

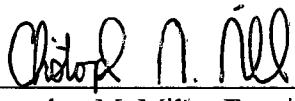
7-21-04
Date

Roger Bressler
Roger Bressler

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion To Compel was served upon all counsel of record on this 16th day of May, 2005 by U.S. First Class Mail, at the following address:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311



Christopher M. Miller Esquire
Attorney for Plaintiffs

FILED

MAY 18 2005

William A. Shalaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
Defendants.)

ORDER OF COURT

AND NOW, to-wit, this 19th day of MAY, 2005, it is hereby

Ordered that Defendants shall produce the requested materials and documentation in response to Plaintiffs' Request for Production numbers 2, 5 and 10 within twenty (20) days of the date of this Order or defendant shall suffer sanctions as set forth in the Pennsylvania Rules of Civil Procedure, which shall be further imposed by this Court.

BY THE COURT:


_____, J.

FILED
04:00 PM
MAY 19 2005 Atty. Miller
2cc

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 19 2005

William A. Shaw
Prothonotary Clerk of Courts

6X

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

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER :
: vs. : No. 03-1868-CD
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and t/d/b/a :
R.B. CONTRACTING :
:

ORDER

AND NOW, this 17 day of May, 2005, upon consideration of
Defendants' Motion for Non Pros filed in the above matter, it is the Order of the
Court that argument has been scheduled for the 10th day of June,
2005, at 1:30 PM, in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED ^{LP}
ACC
MAY 18 2005 Atty Heath
w/ memo
Re: service
William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 18 2005

William A. Shaw
Prothonotary Clerk of Courts



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

(A)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
: :
v. :
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
: Type of Document:
: Praeclipe to Withdraw
: Motion for Non Pros
: :
: Counsel for Defendants:
: Roberta Binder Heath, Esquire
: Nicole J. Wingard, Esquire
: :
: 3366 Lynnwood Drive
: P.O. Box 1311
: Altoona, PA 16603-1311
: (814) 940-8670

FILED
MAY 11 1984 NOCC
MAY 25 2005 WK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

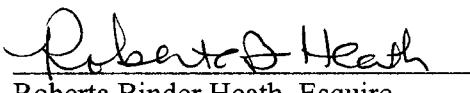
DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

PRAECIPE TO WITHDRAW

TO THE PROTHONOTARY:

Kindly withdraw the Defendant's Motion for Non Pros filed in the above-captioned matter.

Respectfully submitted:



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

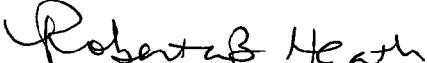
DAVID KOHLER, individually and as	:	
parent and natural guardian of	:	
MITCHELL D. KOHLER,	:	No. 03-1868-CD
Plaintiff	:	
	:	
v.	:	
	:	
KENNETH L. TEST and ROGER	:	
BRESSLER, individually and	:	
t/d/b/a R.B. Contracting,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certifies that the Defendant's Praecipe to Withdraw Defendant's Motion for Non Pros was served on this 26th of May 2005, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

FJA not
signing this
now. n -

CA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER,
Plaintiff

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendant

... : No. 03-1868-CD

... : Type of Document:
**Responses to Plaintiff's
Motion to Compel**

... : Counsel for Defendants:
Roberta Binder Heath, Esquire
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

FILED *cc*
m/11/05 Atty Heath
MAY 25 2005 *68*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
:		
V.	:	
:		
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting,	:	
Defendant	:	
:		

**DEFENDANTS' RESPONSES TO PLAINTIFF'S
MOTION TO COMPEL**

AND NOW, comes Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R.B. Contracting, by and through their attorney, Roberta Binder Heath, Andrews & Beard, 3366 Lynnwood Drive, Altoona, PA, and files the within Responses to Plaintiff's Motion to Compel:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. No surveillance tapes exist. The only insurance "notes" are in the form of correspondence, which have been produced unless subject to attorney-client privilege. Defendants have attached additional copies for your convenient reference.

7. See response to Paragraph 6.
8. All documents not subject to privilege have been produced. Defendants also have attached the declaration page for the subject policy.
9. Admitted. No other responsive documents exist.
10. No other information is available. The Declaration page is attached.
11. Denied as stated. Nine months has passed since discovery requests were forwarded to defense counsel, which were answered in a timely fashion. Despite the timely response, it was not until the Motion for Non Pros was filed that Plaintiff actually paid any attention to the alleged deficiencies in the discovery, which are in fact, are non-existent.
12. Denied as stated. It has been Plaintiff's dilatory practice that has caused any delay in this case. At no time until this Motion was filed did Plaintiffs indicate they believed Defendant's responses to be incomplete or insufficient.
13. Denied. To the contrary, Defendants have been in compliance with the pertinent Rules of Civil Procedure at all times material hereto.

WHEREFORE, Defendants respectfully request that Plaintiff's Motion to Compel be denied.

Respectfully submitted:



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Attorney for Defendants

Edgar Snyder & ASSOCIATES^{LLC}

A Law Firm Representing Injured People.

Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Telephone: 412/394-1000
Web Site: edgarsnyder.com

Attorney Christopher M. Miller

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number: 412/391-2180

October 9, 2002

Rockwood Casualty Insurance
Attn: Mr. Dick Gustashaw
P.O. Box 128
654 Main Street
Rockwood, PA 15557

VNSV

RE: Our Client: **Mitchell D. Kohler**
Your Insured: **R.B. Contracting (Roger Bressler)**
Our File #: **340120**
Your Claim #: **244675**
Date of Accident: **July 21, 2002**

Dear Mr. Gustashaw:

It was a pleasure speaking with you today, October 9, 2002.

Pursuant to your request, enclosed please find copies of the following medical records and bills for treatment rendered to my client which has been received as of this date:

Provider	Dates of Service	Records/Bills	Amount
Clearfield EMS	7/21/02	Records/Bill	\$790.00
Clearfield Hospital	7/21/02	Records/Bill	\$1,223.04
DuBois Regional Medical Center	7/21/02-8/15/02	Records/Bill	\$8,142.57
Total			\$10,155.61

Currently, please note that my client continues to treat as a result of the injuries that he sustained in this incident. I will provide you with updated medical documentation as soon as it is received by my office.

Additionally, please accept my apologies, as I realized after our telephone conversation that I had in fact obtained a copy of the Pennsylvania State Police report. I am enclosing a copy for your review. However, as you can see, it really does not provide all that much information relative to this incident due to the fact that it occurred on a private roadway.

Mr. Dick Gustashaw
October 9, 2002
Page 2

I am also enclosing a copy of a recorded statement obtained from Richard Duttry. As you can see, he has indicated that the backhoe which Kenneth Test was operating at the time of this incident was traveling on the wrong side of the road.

His statement supports my theory of liability for this matter. It is my position that Mr. Test was operating the backhoe which was owned by Roger Bressler on the wrong side of the road at the time of this incident. As Mitchell Kohler came around the bend and encountered the backhoe which was heading straight for him on his side of the road, he attempted to avoid a collision by swerving to his left. His efforts to avoid the collision were unsuccessful, as the front end loader of the backhoe struck him, ultimately resulting in the injuries which have been documented in his medical records. Had Mr. Test been operating the backhoe on the correct side of the road, this incident would have never occurred.

You had indicated during our telephone conversation that it is unclear whether Mr. Test was acting within the course and scope of his employment with R.B. Contracting at the time of this incident. As soon as your investigation into this matter is complete, I would request that you advise whether he will also be covered under the policy in question for this incident.

I look forward to working with you on this case, and I hope that we will be able to resolve this matter in an amicable fashion. Again, I will provide you with updated medical documentation as soon as it is received. In the interim, should you have any further questions or concerns, please feel free to contact me.

Thank you for your attention to this matter.

Very truly yours,



Christopher M. Miller

CMM/kb
Enclosures

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

October 25, 2002

Re: Insured: BRESSLER, ROGER
d/b/a R.B. CONTRACTING
Policy: CGL39246
D/L: 7/21/02
Our File: 2W-2406
Claim No: 244675
Claimant: KOHLER, MITCHELL D.
(a minor)

CHRISTOPHER MILLER, ESQ.
EDGAR SNYDER & ASSOCIATES
GULF TOWER, FLOOR 16
707 GRANT STREET
PITTSBURGH, PA 15219

Dear Mr. Miller:

Please be advised that we represent Rockwood Insurance Company in a limited capacity in regards to the above-captioned claim.

The purpose of this correspondence is to ask and gain your permission to inspect the motorcycle that was involved in this accident, which to our understanding is a 1983 Honda XR-500. We would like to inspect and photograph the damages, which of course would be done at the convenience of your client and his guardians.

I would ask that, once you've had the opportunity to review this request, you please advise if this is permissible by contacting this writer at the above-listed numbers at extension 205. I thank you for your prompt reply.

Very Truly Yours,

E.L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum *bjl*
Edward J. Yocum

EJY/bl
cc: Dick Gustashaw, Rockwood

24 1675
(P)

Law Office of Bryan B. Davenport, P.C.
160 Fairway Lakes Drive
Franklin, Indiana 46131
Phone: 317-738-9540 Fax: 317-738-9310

November 12, 2002

Rockwood Casualty Insurance Company
Attention: Claims Adjuster
654 Main Street
P.O. Box 128
Rockwood, PA 15557

Via fax: 814-926-4070
of pages: 1

In re: Plan name: Glenn O. Hawbaker, Inc. Employee Benefit Plan
Plan Participant: Mitchell Kohler
Date of Injury: 7/21/02
Your Insured: R.B. Contracting
Driver: Roger Bressler
Claim No.: 244675
My File No.: N1-243-02

Dear Claims Adjuster,

I represent the Glenn O. Hawbaker, Inc. Employee Benefit Plan. The Glenn O. Hawbaker, Inc. Employee Benefit Plan is a self-insured employee welfare benefit plan. The Plan provides health benefits to Mitchell Kohler. I understand that Mitchell Kohler was involved in a personal injury matter on 7/21/02 that may have been the fault of Roger Bressler with R.B. Contracting. As a result of said personal injury the Plan has advanced certain health expenses of Mitchell Kohler. Please provide me with the name, address and telephone number of the adjuster handling this claim.

The Plan has a provision that provides it certain rights which include a right to intervene into the action filed by the Plan Participant, a right to file an independent action against any tortfeasor or their insurer, an equitable right of restitution and constructive trust in the specific proceeds or property of any settlement and provides the Plan with a right of reimbursement where appropriate. My client claims a lien against any settlement that you make with Mitchell Kohler. Please take those steps necessary to have my client shown as a co-payee on any settlement check.

Please be advised that this Plan is a self-insured ERISA Plan. This means that state law is pre-empted and it shall have no effect on the Plan's recovery of the sum it expended.

I will be happy to discuss this matter with you at any time. I will also provide you with any information that you request.

Thank you for your cooperation in this matter. I look forward to hearing from you.

Very Truly Yours,

Bryan B. Davenport/sb

Law Office of Bryan B. Davenport, P.C.
Bryan B. Davenport, Attorney

/sb

814 765-6747
814 765-2554
FAX 814 768-9410

⑧ 10/29/02
E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

W-0-84

October 25, 2002

Re: Insured: BRESSLER, ROGER
d/b/a R.B. CONTRACTING
Policy: CGL39246
D/L: 7/21/02
Our File: 2W-2406
Claim No: 244675
Claimant: KOHLER, MITCHELL D.
(a minor)

ROCKWOOD INSURANCE COMPANY
654 MAIN STREET
ROCKWOOD, PA 15557

Attn: Mr. Dick Gustashaw

Dear Mr. Gustashaw:

Please let this serve as a brief status on the above, which was received in our office on Wednesday, October 9, 2002. Initial contact was established with the insured the following date and we met with the insured at the accident scene on October 16, 2002 and secured preliminary information along with photographs of the roadway along with evidence at the scene. In fact, prior to our arrival, the investigator for Edgar Snyder and Associates had used ribbon to mark the roadway and the final resting position of their client, which as you will note a piece of the claimant's jeans were still wedged between rocks that he landed on after impact.

We learned that the insured's part-time employee, Ken Test, was operating the insured's 1994, 580 Case Backhoe, along this private road as situated on and within State Game Lands leased by various parties owning camps and seasonal dwellings along this roadway. In fact, the insured was working for Tom and Shelly Miller of Michigan, whom were witnesses to the accident as Mr. Miller was following the backhoe. The insured, Roger Bressler, and his brother were ahead of the backhoe when the claimant came around a sharp bend narrowly missing Mr. Bressler and his pick-up. To our understanding, without the quick reaction of Mr. Test making an evasive left-hand turn move, impact would have most likely been head on. It is our understanding the claimant struck the right front corner of the backhoe and the front bucket, which was in the down position. This unit has a maximum speed of 18 miles per hour. At the time of the accident, Mr. Bressler states that the operator was nearly stopped, but most likely just prior to observing the claimant would have been traveling at no more than 10 miles per hour. He

further stated that Mr. Test had the four-way flashing lights on and had this unit clearly under control and blames the claimant operator for careless and reckless operation of the motorcycle.

We are currently in the process of securing a statement from all witnesses including Tom Miller, Alan Bressler and, as well, securing the statement of Ken Test and will hope to do so within the next two (2) business weeks, all depending on the availability of the witnesses.

In regards to the claimant, we have requested the opportunity to physically inspect the motorcycle, but if you should require a statement of the claimant please advise and we will also attempt to coordinate that with Edgar Snyder and Associates office.

Should you have any further instructions or questions, please do not hesitate to contact this writer at the above-listed numbers at extension 205. Otherwise, our additional reporting will soon follow.

Very Truly Yours,

E.L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum bjl

Edward J. Yocum

EJY/b1
Enclosures

ROCKWOOD CASUALTY

INSURANCE COMPANY

P. O. Box 128
654 Main Street Rockwood, PA 15557

(800) 837-9062
(814) 926-4661

FAX(814)926-4070 - Claims
FAX(814)926-3027 - Underwriting

December 4, 2002

Bryan B. Davenport, Esquire
160 Fairway Lakes Drive
Franklin, Indiana 46131

Re: Plan Name: Glenn O. Hawbaker, Inc., Employee Benefit Plan
Plan Participant: Mitchell Kohler
Your File No.: N1-243-02
Our Insured: Roger Bressler d/b/a R B Contracting
Our Claim No.: 244675
Date of Injury: 7/21/02

Dear Attorney Davenport:

Thank you for your letter of November 12, 2002 regarding the above captioned claim. Please be advised that the undersigned is the handling adjuster at Rockwood Casualty. My telephone number is 1-800-837-9062, extension 5280. Correspondence can be directed to the above address.

Our investigation into the circumstances of this accident is continuing. As such, no decision on liability has been determined as yet. However, should we determine any liability on our insured's part, we will be certain to include your client as a co-payee on any settlement made.

If you have any questions or wish to discuss your involvement further, please do not hesitate to telephone me. Thank you.

Sincerely,

Dick Gustashaw
Sr. Claims Adjuster

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties

Edgar Snyder & ASSOCIATES^{LLC}

A Law Firm Representing Injured People.

Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Telephone: 412/394-1000
Web Site: edgarsnyder.com

Attorney Christopher M. Miller

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number: 412/391-2180

December 3, 2002

Rockwood Casualty Insurance
Attn: Mr. Dick Gustashaw
P.O. Box 128
654 Main Street
Rockwood, PA 15557



RE: Our Client: Mitchell D. Kohler
Your Insured: R.B. Contracting (Roger Bressler)
Our File #: 340120
Your Claim #: 244675
Date of Accident: July 21, 2002

1084

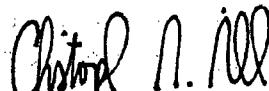
Dear Mr. Gustashaw:

Please recall that on October 9, 2002 I provided you with a letter which outlined my position with respect to liability in this case. I requested at that time that you provide your position with respect to liability as well. Further, I had requested that you advise whether Mr. Test was acting within the course and scope of his employment with R.B. Contracting at the time of this incident, and whether he will be covered under the policy in question for this incident.

While I realize that your investigation is likely still continuing, it has been two (2) months since the request was made. Therefore, I must again request that you advise of your position with respect to liability in this matter as well as whether Mr. Test will be covered under the policy in question for this incident.

Thank you for your attention and anticipated cooperation with respect to this matter.

Very truly yours,



Christopher M. Miller

CMM/kb

ROCKWOOD CASUALTY

INSURANCE COMPANY

P. O. Box 128
654 Main Street Rockwood, PA 15557

(800) 837-9062
(814) 926-4661

FAX(814)926-4070 – Claims
FAX(814)926-3027 - Underwriting

January 3, 2003

Mr. Christopher M. Miller, Esquire
Edgar Snyder & Associates
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Re: Our Insured : Roger Bressler D/B/A R.B. Contracting
Claimant : Mitchell Kohler
Date of Loss : 07/21/02
Your File No. : 340120
Our Claim No. : 244675

Dear Attorney Miller:

Thank you for your letter of December 3, 2002. I apologize for the delay in responding to you..

Our investigation is continuing in this matter. Although I have preliminary investigative material on file, it is not sufficient to make a definitive liability determination. Once I have received the completed investigation I will be in a position to provide you with our decision in that respect.

If you have any questions, please feel free to call. Thank you.

Sincerely,

Dick Gustashaw
Sr. Claims Adjuster

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties

ROCKWOOD CASUALTY

INSURANCE COMPANY

P. O. Box 128
654 Main Street
Rockwood, PA 15557

(800) 837-9062
(814) 926-4661

FAX(814)926-4070 – Claims
FAX(814)926-3027 - Underwriting

January 3, 2003

E.L. Braid Claim Service, Inc.
PO Box 946
Clearfield, PA 16830
Attention: Mr. Edward J. Yocum

Re: Your File No. : 2W-2406
Insured : Roger Bressler D/B/A R. B. Contracting
Claimant : Mitchell Kohler
D/L : 07/21/02
Our Claim No. : 244675

Dear Mr. Yocum:

I assigned the investigation of this claim to you. Your last status report to us was dated October 25, 2002. At that time you advised that you would be obtaining the statements of the eyewitnesses to this accident. Please provide me with a current status report indicating your progress in obtaining those statements. Thank you.

Sincerely,

Dick Gustashaw
Sr. Claims Adjuster

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties

Attorney Christopher M. Miller

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number: 412/391-2180

January 15, 2003

Rockwood Casualty Insurance
Attn: Mr. Dick Gustashaw
P.O. Box 128
654 Main Street
Rockwood, PA 15557

W-D-84

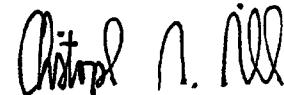
RE: Our Client: Mitchell D. Kohler
Your Insured: R.B. Contracting (Roger Bressler)
Our File #: 340120
Your Claim #: 244675
Date of Accident: July 21, 2002

Dear Mr. Gustashaw:

Enclosed please find copies of medical records and bills that were recently received from William F. Schrantz, M.D. regarding treatment rendered to Mitchell D. Kohler.

Should you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Very truly yours,


Christopher M. Miller

CMM/kb
Enclosures

Rockwood Casualty

INSURANCE COMPANY

P. O. Box 128
654 Main Street Rockwood, PA 15557

(800) 837-9062
(814) 926-4661

FAX(814)926-4070 – Claims
FAX(814)926-3027 - Underwriting

July 31, 2003

Mr. Christopher M. Miller, Esquire
Edgar Snyder & Associates, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Re: Claim Number : 244675
Insured : Roger Bressler d/b/a R. B. Contracting
Claimant : Mitchell D. Kohler
Injury Date : July 21, 2002

Dear Mr. Miller:

Thank you for your letter of July 24, 2003 and the accompanying support documentation. I have had the opportunity to review the documents along with my investigation on file.

After thorough review, I must respectfully deny liability on the part of our insured. As you know, the location of the accident was a private road. Our photographs show a windy, narrow lane with no lane markings whatsoever. It is obvious from the photos that the curves in the lane at the location of impact are shielded by vegetation and overgrowth, creating a "blind curve" situation.

Additional investigation by our investigator revealed that there were at least four eye witnesses to the accident as well as the operator of our insured's backhoe. Our investigation to date indicates that the operator of the backhoe had attempted to take evasive action in turning to the left to avoid a head-on collision with young Mr. Kohler who was traveling toward a collision with the center of the bucket of the backhoe. Witnesses in the vehicle leading the backhoe advised that Mr. Kohler had narrowly missed them as he traveled toward them. They attribute the evasive action of the backhoe operator in avoiding a head-on collision. It is noted by our insured that the maximum speed of the Case 580 backhoe is eighteen (18) miles per hour. Having personally owned a Case 580C backhoe, I would concur that the top speed of that type of machine would be in that vicinity. Finally, it is the contention of our insured and his employee operator that the four way caution flashers were in use at the time of the collision.

If you would like to discuss this claim further, please call me at (814) 9265280 or 1-(800) 837-9062, extension 5280. Thank you.

Very truly yours,

**Dick Gustashaw
Sr. Claims Adjuster**

Rockwood Casualty

INSURANCE COMPANY

P. O. Box 128
654 Main Street Rockwood, PA 15557

(800) 837-9062
(814) 926-4661

FAX(814)926-4070 - Claims
FAX(814)926-3027 - Underwriting

July 31, 2003

Mr. Edward J. Yocum
E. L Braid Claim Service, Inc.
PO Box 946
Clearfield, PA 16830
VIA FACSIMILE

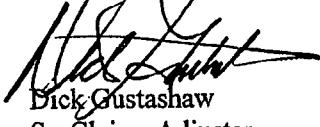
Re: Claim Number : 244675
 Insured : Roger Bressler d/b/a R. B. Contracting
 Claimant : Mitchell D. Kohler
 Injury Date : 07/21/2002

Dear Mr. Yocum:

On January 3, 2003 I wrote you asking for an update on your obtaining the statements of the eye witnesses you identified in your October 25, 2002 report. To date I have not received a response nor the statements. Opposing counsel has now placed a demand to settle this case. I need to know if you were able to obtain the statements or, if not, whether or not you can obtain them. I will need them in very short order as I need to know that I can substantiate a denial of this claim. Please provide me with a response today or tomorrow.

My telephone number is (814) 926-5280 or 1-(800) 837-9062, extension 5280. Thank you.

Very truly yours,


Dick Gustashaw
Sr. Claims Adjuster

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

August 4, 2003

Re: Insured: BRESSLER, ROGER
DBA R.B. CONTRACTING
Policy: CGL 39246
D/L: 7/21/02
Our File: 2W 2406
Claim no.:244675
Claimant: KOHLER, MITCHELL
(A MINOR)

MR. KEN TEST
515 FILBERT STREET
CURWENSVILLE PA 16833

Dear Mr. Test:

As you will recall we are the independent insurance adjusters assigned to investigate this matter and as discussed in our personal meeting last fall at the scene, along with Mr. Bressler, we will now be in need of your statement as the claimant's attorney is pressing the matter. Upon receipt of this correspondence please contact this writer at the above listed numbers at extension 205 and we will make arrangements to secure your statement as soon of possible. We can secure your statement by telephone as to expedite the process.

I thank you for your assistance and we now await your reply.

Very truly yours,

E. L. BRAID CLAIM SERVICE, INC.

Edward J. Yocom

Edward J. Yocom

EJY/kjw

CC: Rockwood Insurance Company ✓

August 4, 2003

Re: Insured: BRESSLER, ROGER
DBA R.B. CONTRACTING
Policy: CGL 39246
D/L: 7/21/02
Our File: 2W 2406
Claim no.:244675
Claimant: KOHLER, MITCHELL
(A MINOR)

ROGER BRESSLER
R.B. CONTRACTING
R.D.#1 BOX 13
CURWENSVILLE PA 16833

Dear Mr. Bressler:

In regards to the above captioned claim, we write as the claimant's attorney is now pressing the matter and has apparently submitted a demand to Rockwood Casualty Insurance Company to settle this claim for bodily injury and property damage.

As we had discussed at the time of our meeting back in October of 2002, we will need a formal statement of you along with your employee Ken Test and the customer/witness Tom Miller.

I would ask that upon receipt of this correspondence you please contact this writer at the above listed numbers at extension 205 and we will move forward to secure your statement which can be done by telephone at your convenience.

In addition, if you could kindly supply us with an address of the witness, Tom Miller, whom we have a telephone number of 810-348-5417. We cannot reach anyone at that telephone number and if you would have the address for Mr. Miller it would be greatly appreciated.

We thank you in advance and await your response.

Very truly yours,

Edward J. Yocum

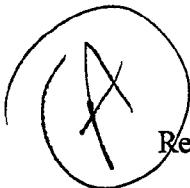
EJY/kjw CC: Rockwood Insurance 

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830



August 4, 2003

Re:

Insured: BRESSLER, ROGER
DBA R.B. CONTRACTING
Policy: CGL 39246
D/L: 7/21/02
Our File: 2W 2406
Claim no.: 244675
Claimant: KOHLER, MITCHELL
(A MINOR)

LO 84

ROCKWOOD INSURANCE GROUP
654 MAIN STREET
ROCKWOOD PA 15557

Attention: Mr. Dick Gustashaw

Dear Mr. Gustashaw:

Confirming my message left on your voice mail Thursday July 31st, 2003 you will note we once again have followed up with the insured and his employee to secure their statements. We will do so as promptly as possible, without fail.

In addition, we hope to secure the statement of the witness/customer whom would have observed this accident as outlined in our report of October 25th, 2002.

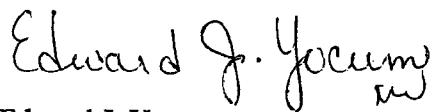
Finally, as mentioned we, in late November of 2002, secured permission from the claimant's attorney to secure photographs of the motorcycle but we have had no response from the claimant's father, but I believe that Attorney Miller indicates that he does have photographs of the motorcycle in question which may have already been repaired, even at the time of our attempts to secure the photographs on our own. Regardless, based upon the verbal interviews of both the insured and his employee, Ken Test, we feel that this is a defensible case as the claimant, although a minor, was operating an unlicensed motorcycle on state game land roadways and did not have the motorcycle under control at the time of accident. We feel, based upon these facts alone liability of the insured is minimal at best.

If upon receipt of this status you should have any questions please contact this writer at the above listed numbers at extension 205.

Otherwise as stated above, we will move expeditiously to secure the statements so as to give you additional information to support your position and respond to the demand of the claimant's attorney.

Very truly yours,

E. L. BRAID CLAIM SERVICE, INC.



Edward J. Yocum

EJY/kjw
Enclosure

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

August 15, 2003

Re: Insured: BRESSLER, ROGER
D/B/A R.B. CONTRACTING
Policy: CGL 39246
D/L: 7/21/02
Our File: 2W 2406 L - G - 84
Claim no.: 244675
Claimant: KOHEER, MITCHELL
(A minor)

ROCKWOOD INSURANCE
654 MAIN STREET
ROCKWOOD PA 15557

Attention: Mr. Dick Gustashaw

Dear Mr. Gustashaw:

In follow up to our August 4th, 2003 correspondence relative to the above, we have had a response from the insured who has indicated in a voice mail message that he would be available the week of August 18th, to secure his statement and he is hoping to bring with him his backhoe operator/employee, Ken Test. Thus, we will at long last have the necessary statements to allow you to respond to the demand of claimant counsel.

Again, we stress that liability appears very questionable on behalf of the insured but we do recognize a rather significant injury was sustained by minor claimant, which will clearly complicate the matter regardless of opinion of liability. It does appear that this is a defensible case. If upon receipt of this status you should have any questions please contact this writer at the above listed numbers at extension 205.

Otherwise, our report containing the statements of the insureds should be shortly forthcoming.

Very truly yours,

Edward J. Yocum *bjl*

Edward J. Yocum

EJY/kjw

Edgar Snyder & ASSOCIATES LLC

A Law Firm Representing Injured People.

Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

Telephone: 412/394-1000
Web Site: edgarsnyder.com

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Other Offices In: Altoona
Ebensburg • Erie • Johnstown

Dept Fax Number 412/391-2180

August 18, 2003

Mr. Dick Gustashaw
Rockwood Casualty Insurance
P. O. Box 128
654 Main Street
Rockwood, PA 15557

RE: Our Client:
Our File #:
Your Insured:
Your Claim #:
Date of Accident:

Mitchell D. Kohler
340120
R.B. Contracting
244675
July 21, 2002

Dear Mr. Gustashaw:

Kindly allow this correspondence to confirm our recent telephone conversation. At such time, I requested that you provide me with copies of any and all statements which you have obtained through your investigation. You advised that you are willing to do so upon receipt of same. As such, I will await receipt of these recorded statements from your office so that I may take them into consideration and determine how I intend to proceed with the handling of this case.

Should you have any questions or concerns, please feel free to contact me. Thank you for your attention to this matter.

Very truly yours,


Christopher M. Miller

CMM/kb

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

PO BOX 94

CLEARFIELD, PA 16830

August 29, 2003

Re: Insured: BRESSLER, ROGER
d/b/a R.B. CONTRACTING
Policy: CGL39246
D/L: 7/21/02
Our File: 2W-2406
Claim No: 244675
Claimant: KOHLER, MITCHELL(minor)

ROCKWOOD INSURANCE CO.
654 MAIN STREET
ROCKWOOD, PA 15557

Attn: Mr. Dick Gustashaw

Dear Mr. Gustashaw:

In follow-up to our August 21, 2003 correspondence, I am now attaching a copy of the recorded statement transcription of the witness, Tom Miller.

I will not summarize, as you will find the transcription to be self-explanatory. But, the content of the statement is very positive, as it relates to the defense of the insured in this matter. Mr. Miller confirms information that we have already gathered from the insured and is very adamant that, without the evasive action of the insured operator, we may have been dealing with a fatal accident, versus a serious injury. He further states that the motorcyclist was on the wrong side of the roadway. Even though it is a narrow and unlined private road, I believe the rules of motor vehicle operation would still apply.

If upon receipt of this additional statement you should have any questions, please contact this writer at the above-listed numbers at extension 205. Otherwise, we await your further handling instructions.

Very Truly Yours,

E.L. BRAID CLAIM SERVICE, INC.

Edward J. Yocom
Edward J. Yocom

EJY/b1
Enclosures

814 765-6747
814 765-2554
FAX 814 768-9410

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830



August 21, 2003

W/D 8/4

Re: Insured: BRESSLER, ROGER
d/b/a R.B. CONTRACTING
Policy: CGL39246
D/L: 7/21/02
Our File: 2W-2406
Claim No: 244675
Claimant: KOHLER, MITCHELL(minor)

ROCKWOOD INSURANCE CO.
654 MAIN STREET
ROCKWOOD, PA 15557

Attn: Mr. Dick Gustashaw

Dear Mr. Gustashaw:

We are enclosing, at long last, the transcription of the statement obtained from Mr. Bressler. I believe you will find the transcription to be self-explanatory and more beneficial in you reading than in this writer summarizing. I will point out that Mr. Bressler is adamant that his employee, Ken Test, did nothing wrong in this motor vehicle accident, and it was simply a case of the claimant not being in control of the motorcycle. The statements of both Mr. Test and Mr. Miller will be necessary. The major impact statement will be the one of Mr. Miller, as he is a third party that has no relationship to Mr. Bressler, other than the business arrangements they had for excavation work, but of interest is the fact that Mr. Miller's cousin dates the claimant's mother. One would think that if, indeed, there was some connection, such as in this case, the witness would not want to state anything derogatory against his family or friend. It is our understanding that Mr. Miller is a "straight shooter" and assured Mr. Bressler and Mr. Test that he would testify to the fact that they did nothing wrong and that the claimant was out of control of the motorcycle when the accident took place.

REMARKS: Please be advised that we attempting to meet with Mr. Miller by week's end, as it is our understanding that he is in town spending the week at his camp. Again, the statement of Mr. Miller will have a big impact on your position. And, as stated previously, it is clear that this case is defensible.

I would ask that, if upon receipt of this correspondence you should have any questions or concerns, please contact this writer at the above-listed numbers at extension 205. Otherwise, we will do our very best to secure the statement of Mr. Miller by week's end.

Very Truly Yours,

E.L. BRAID CLAIM SERVICE, INC.

Edward J. Yocum *bj*
Edward J. Yocum

EJY/bl
Enclosures

Rockwood Casualty

INSURANCE COMPANY

654 Main Street Rockwood, PA 15557 (800) 837-9062
(814) 926-4661

FAX(814)926-4070 - Claims
FAX(814)926-3027 - Underwriting

F A C S I M I L E

TO Edgar Snyder & Associates
ATTN Chris Miller, Esq.
FAX # (412) 391-2180
DATE September 2, 2003
FROM Dick Gustashaw
FAX# (814) 926-4070
RE Mitchell Kohler v. R.B. Contracting / Your File #: 340120 / Our Claim #: 244675
NO. OF PAGES 6
(Including Cover Page)

PLEASE ADVISE IF YOU DO NOT RECEIVE LEGIBLE COPIES OF ALL PAGES. THANK YOU.

Attorney Miller,

Here is a copy of the recorded statement of the witness traveling directly behind the backhoe when it was struck by Mitchell Kohler. We are also in the process of obtaining the statement of our insured. I will provide you with a copy of that statement when I obtain it.

If you have any questions, please call me at 1-800-837-9062, extension 5280. Thank you.

Dick Gustashaw

COMMERCIAL GENERAL LIABILITY POLICY

ROCKWOOD CASUALTY INSURANCE COMPANY
654 Main Street
Rockwood, PA 15557

A STOCK COMPANY

HO # 1424

HOME OFFICE COPY

INSTALLMENT PLAN

CLAIM

OGL 39247

24369-02

This Policy consists of this Declarations Form, the Common Policy Conditions, the Commercial General Liability Form and the Endorsements indicated as applicable.

EMPLOYER FEDERAL ID #

1. NAMED INSURED AND MAILING ADDRESS
(Name, Street, Apt., Town or City, County, State, ZIP Code)

AGENT CODE
#1593

AGENT OR PRODUCER

INSTAllments

Hoffman Mining, Inc., Shade, Inc.,
Donnic, Inc., Carbon Fuel Sales Co.,
& Shade Mining Co., Inc.
PO Box 130, 118 Runway Rd.
Friedens, PA 15541

Evergreen Ins. Assoc., Inc.
PO Box 505
Ebensburg, PA 15931

COALOGL 38919
RENEWAL #

2. POLICY PERIOD From 04-30-2001

TO 04-30-2001

12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS ABOVE

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU
TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

3. LIMITS OF INSURANCE

PREVIOUS CLAIM

General Aggregate Limit (Other Than Products - Completed Operations)	\$ 2,000,000 ✓
Products Completed Operations Aggregate Limit	\$ 1,000,000 ✓
Personal & Advertising Injury Limit	\$ 1,000,000 ✓
Each Occurrence Injury Limit	\$ 1,000,000 ✓
Fire Damage Limit	\$ 50,000 Any One Fire
Medical Expense Limit	\$ 5,000 Any One Person

RETROACTIVE DATE (CG 00 02 ONLY) - Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown below.

Retroactive Date: **NOT APPLICABLE** (Enter Date or "None" if no Retroactive Date applies.)

Location of All Premises You Own, Rent or Occupy (Same as Item 1 unless shown below): Coal

See CG0656

EXPLAN. NO. 39749

SCHEDULE RATE

1.05 ✓

CLASSIFICATION	CODE NO.	PREMIUM BASIS	RATE	ADVANCE PREMIUM PR/CO	ALL OTHER
Mining-Surface (334) ✓	00014 ✓	Per 100 Tons ✓	4.645	4645	4,329.00
(334) ✓	00014 ✓	t)100,000 ✓	2.485 2.525		2,216.00
(336) ✓	00014 ✓	t)300,000 ✓	Incl.		75.75
		t)400,000 ✓	(5,000 Ded., .84 Credit) ✓		10,537.00
					10,181.
Dwelling - one family (LRO) (334) ✓	63010 ✓	t)X2	63.118	655.57	100
			59.304	X-REF.	50.00 1/2
Loc: (1) Int. of LR55068 & Twp. Rt. 799 ✓ Quemahoning Twp., PA ✓				WC 100/700 (6-1)	
(2) Shade Twp, Somerset Co., PA ✓				Lip. CNA 8465	
Additional Insured(s) (334) 49950	E.) 10		100.-	Auto 991.95	9743
REJECT TO A \$2,500.00 MINIMUM PREMIUM. ✓				Other 1000	1000

4. FORMS/ENDORSEMENTS APPLICABLE	IL 00 21	CG0001(7-98) ✓	IL 0017	\$ 10,587.10 10.30
CG0827, CG0435, CG2149(9-99), CG0656, CG0300, CG2136, CG0246, ✓				ESTIMATED ANNUAL PREMIUM
IL 0910, CG0384, CG2012(7-98), CG2011, CG2028, CG0808(9-96), CG2026				
CG2147(7-98), CG2160, CG0057, CG0831(1-01), CG0832(3-01), CG2146, CG2162 (4-2)				
CG2173 (12-2), CG2175 (12-2), CG0062 (12-2)				

FORM OF BUSINESS: Individual Joint Venture Partnership Organization (Other than Partnership or Joint Venture)

Business Description: **Surface Mining** Audit Period: Annual unless otherwise stated:

See copyrighted material of Insurance Service Office, Inc. with its permission.
Copyright 1984 Insurance Service Office, Inc. 1984.

COUNTERSIGNED

BY

ERS/pat

3-25-0

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that Defendants' Responses to Plaintiff's Motion to Compel was served on this 24th day of May, 2005, by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD

Roberta B. Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

ORDER

AND NOW, this ____ day of _____, 2005, it is hereby Ordered that the
Plaintiff's Motion to Compel is denied.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D.
KOHLER, a minor, CIVIL DIVISION
No. 03-1868-CD

Plaintiffs,
vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

PRAECIPE FOR TRIAL

Filed on behalf of:
DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

FILED NOCC
M 10/20/06
AUG 02 2006
6R

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)

Defendants.

PRAECIPE FOR TRIAL

To the Prothonotary:

Please list the above-captioned case for trial.

As listing counsel, pursuant to Local Rule 212.2, I hereby certify:

1. There are no outstanding motions.
2. All discovery is completed or will be completed prior to trial, and all and pleadings are closed.
3. A jury trial is demanded.
4. All counsel of record and unrepresented parties have been served with this Praecipe by United States Mail, first class, postage prepaid.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE FOR TRIAL** was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 31st day of _____
July, 2006:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

FILED

AUG 02 2006

William A. Shaw
Prothonotary/Clerk of Courts

2006-10-15

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

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER,
Plaintiff

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendant

No. 03-1868-CD

Type of Document:
**JOINT MOTION FOR CONTINUANCE
OF TRIAL DATE**

Counsel for Defendants:
Roberta Binder Heath, Esquire

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

FILED ¹⁰⁰
m 15 2013 BY Atty Heath
DEC 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of
MITCHELL D. KOHLER, Plaintiff

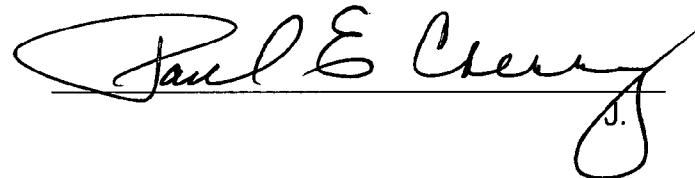
No. 03-1868-CD

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant

ORDER

AND NOW, this 18th day of December, 2006, it is hereby ORDERED and DECREED that the Trial currently scheduled for the Winter Term with a Civil Call scheduled for Tuesday, January 2, 2007, is hereby continued as discovery is ongoing and parties are currently seeking mediation.



FILED *cc Atty Heath*
01:30pm
DEC 19 2006
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12-19-2006

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

DEC 19 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
	:	
V.	:	
	:	
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant	:	
	:	

JOINT MOTION FOR CONTINUANCE

AND NOW, come the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through their attorney of record, Roberta Binder Heath, Esquire, and file the foregoing Joint Motion for Continuance of Call of the List and Trial Date and in support thereof, aver the following:

1. In accordance with the Civil Call Order, this case is scheduled before Judge Ammerman for the Winter Term with the Civil Call scheduled on January 2, 2007. (A true and correct copy of the Civil Call List is attached hereto and marked as Exhibit "A").
2. Defendants request a continuance due to conflicts with counsel for Defendants' trial scheduled and other conflicting commitments in the Winter Term including, but not limited to, teaching obligations at Juniata College.

3. The Plaintiff's have no objection to the Motion for Continuance. (A true and correct copy of the letter from Attorney Miller is attached hereto and marked as Exhibit "B")

4. The parties respectfully requests this Motion be granted for reasons of professional courtesy, judicial expediency, and to allow all avenues of settlement to be pursued.

5. Neither Plaintiffs nor Defendants shall sustain prejudice by virtue of a continuance until Spring Term.

WHEREFORE, Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting,, respectfully requests that that Honorable Court grant this Joint Motion for Continuance and place this case on the Spring 2007 Trial List.

Respectfully submitted,

ANDREWS & BEARD

Date: December 15, 2006

Roberta B. Heath

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603
(814) 940-8670

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

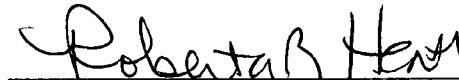
DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
	:	
V.	:	
	:	
KENNETH L. TEST and ROGER BRESSLER, individually and	:	
t/d/b/a R.B. Contracting, Defendant	:	

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the Joint Motion to Continue Trial was served on this 15th of December, 2006 by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

**Office of Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
814-765-2641**

Memo

To: Attorneys
From: Ronda J. Wisor, Deputy Court Administrator
CC:
Date: 12/04/06
Re: 2006 Winter Civil Trial List

Enclosed you will find a copy of the Civil Trial Lists for Judge Ammerman and Judge Cherry for the upcoming *Winter* Term. Civil Call will be held on **Tuesday, January 2, 2007**, at 11:00 A.M. in Court Room No. 1. All attorneys who have a case on the list must be present at the Call.

Pre-Trial Conferences will be held on **Wednesday, January 24, 2007** for both Judges. The time for Pre-Trial Conferences will be selected at the Civil Call.

Pursuant to Local Rule 212.4e, your Pre-Trial Statement must be submitted one week prior to the date of the Pre-Trial Conference and should be mailed or delivered to me with copy to opposing counsel. For your convenience, a Pre-Trial Memorandum Instruction Form is also enclosed.

Jury Selection will be held on **Thursday, February 1, 2007**, for both Judge Ammerman and Judge Cherry.

The next term of Civil Court will be the *Spring* 2007 List. This list closes on Friday, March 9, 2007. Civil Call will be Tuesday, April 3, 2007 at 11:00 A.M. with Pre-Trial Conferences being held Thursday, April 20, 2007 and Jury Selection Tuesday, May, 1, 2007.

If you have any questions, please feel free to call me at 814-765-2641, Ext. 1300. Thank you.



CLEARFIELD COUNTY JURY TRIAL LIST
WINTER 2007
CALL JANUARY 2, 2007 AT 11:00 A.M.

1

No. 05-997-CD <i>Judge Cherry</i> STEVEN BRAZINSKI vs. ROBERT CONTORCHICK	#1	4/25/06*
CONTINUED FROM 7/27/06 LIST		S. Casey Bowers, Esquire
		Dennis J. Stofko, Esquire

No. 02-934-CD <i>Judge Ammerman</i> WILLIAM LYNN HOLLEN vs. DEBORAH M. MONTOUR, an individual vs. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION	#2	04/24/06*
TRIAL DATES: CONTINUED FROM 7/27/06 LIST		Raymond Bily, Esquire
		Eugene Sundberg, Jr., Esquire
		Joseph F. McCarthy, Esquire

No. 05-418-CD <i>Judge Ammerman</i> AYDEN SHAFFER-DOAN, a minor, by his parents and natural guardians, TIMOTHY DOAN and KAREN SHAFFER, and TIMOTHY DOAN and KAREN SHAFFER, in their own right, vs. RICHARD GROUT, M.D., SUNDAR CHANDRASEKHAR, M.D., DUBOIS REGIONAL MEDICAL CENTER and GATEWAY MEDICAL ASSOCIATES, INC.	#3	5/18/06*
		Shanin Specter, Esquire
		Michael A. Sosnowski
		Terry C. Cavanaugh, Esquire
		David J. Johnson, Esquire
		John W. Blasko, Esquire
Trial Dates February 19, 20, 21, 22 23, 26, 27, 28 March 1 and 2, 2007 w/ Judge Reilly presiding		

No. 03-1868-CD <i>Judge Ammerman</i> DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor vs. KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. CONTRACTING	#4	08/02/06*
		Christopher Miller, Esquire
		Roberta B.- Heath, Esquire

No. 05-362-CD Consolidated w/No. 05-363-CD <i>Judge Ammerman</i> WADE A. MAINES and DARLENE A. MAINES, husband and wife, and Parents and Natural Guardians of JOHNATHAN MAINES, a minor vs. STEPHANIE L. MOORE and CHARLES A. PASH	#5	08/08/06*
		James A. Naddeo, Esquire
		John F. Deasy, Esquire

Edgar Snyder & ASSOCIATES^{LLC}

A Law Firm Representing Injured People.

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

US Steel Tower • 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412-394-1000
Toll Free: 1-800-222-6540

Fax: 412-391-2180
Web: www.edgarsnyder.com

December 12, 2006

VIA FACSIMILE: (814) 943-3430

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: Kohler v. Test, et al
Docket #: 03-1868-CD
Our File #: 340120

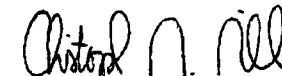
Dear Ms. Binder Heath:

Kindly note that I am in receipt of your December 12, 2006 correspondence.

Please be advised that I have no objections to postponing the trial for this matter until the Spring of 2007. Feel free to indicate in your Motion for Continuance that I have consented to your request to continue the trial for this matter until the Spring trial term of 2007. Kindly provide me with a copy of your Motion as well as the Judge's Order.

Should you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Very truly yours,


 Christopher M. Miller

CMM/kb



#826837

67

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

DAVID KOHLER, individually and as : NO. 03-1868-CD
parent and natural guardian of MITCHELL :
KOHLER, a minor, :
Plaintiff :
: :
v. :
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and t/d/b/a :
R.B. CONTRACTING, :
Defendant :
:

FILED *ICC Atlys:*
02/458N *Miller*
APR 20 2007 *Heath*
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 20th day of April, 2007, following Pre-Trial Conference, it is the
ORDER of this Court as follows:

1. Jury Selection in this matter is scheduled for May 1, 2007, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for July 30, 31 and August 1, 2007, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. The deadline for providing any and all outstanding discovery shall be by and no later than thirty (30) days prior to the commencement of trial.
4. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than twenty (20) days prior to the commencement of trial.
5. The deadline for submitting any and all Motions shall be by and no later than forty-five (45) days prior to the commencement of trial.

6. Points for Charge shall be submitted to the Court by and no later than fifteen (15) days prior to the commencement of trial.
7. Proposed Verdict Slip shall be submitted to the Court by and no later than fifteen (15) days prior to the commencement of trial.
8. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

APR 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/20/07

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney Other

 Special Instructions:

DAVID KOHLER, individually and as
parent and natural guardian of

MITCHELL D. KOHLER, a minor
Plaintiff

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendants

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

No. 03-1868-CD

**Defendants' Motion *In Limine*
to Exclude Evidence of
Photographs of Plaintiff in the
Hospital and of His Scars**

Counsel for Defendants:

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 943-3304
rheath@andrewsbeard.com

FILED
MAY 24 2001
Atty Heath
GR

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendants :
:

ORDER

AND NOW, this _____ day of _____, 20____, upon
consideration of the foregoing Defendant's Motion *In Limine* to Exclude Evidence
of Photographs Plaintiff in the Hospital and of His Scars, it is hereby ORDERED
that:

Any evidence of or reference to the photographs of the Plaintiff's scars
taken on or before January 13, 2003 and photographs of the Plaintiff in the
hospital taken on or before July 23, 2002, shall be excluded from the trial in the
above captioned action.

BY THE COURT,

J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor Plaintiff	:	
	:	No. 03-1868-CD
v.	:	
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendants	:	
	:	
	:	

**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
PHOTOGRAPHS OF PLAINTIFF IN THE HOSPITAL AND OF HIS SCARS**

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R.B. Contracting, by and through their attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion to Exclude Evidence of Plaintiff's Photographs of Scar Tissue and in support thereof avers the following:

1. This civil action stems from an accident that occurred in Clearfield County, Pennsylvania, on or about July 21 of 2002, on a private road that was known at the time as Panther Road.
2. The accident occurred when the Plaintiff, who was riding a dirt bike, collided with a backhoe on Panther Road that was being driven by an employee of the Defendants.

3. The Plaintiff sustained injuries as a result of the accident, which resulted in four scars forming on his right leg and hip following the accident and subsequent surgery.

4. The Plaintiff took four photographs of the scars, which were dated January 13, 2003; and six photographs of the Plaintiff in the hospital dated July 23, 2002.

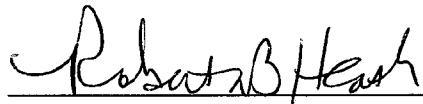
5. At his deposition taken on August 15, 2006, the Plaintiff admitted that the scar tissue is no longer red and inflamed as it was at the time that the photographs were taken. (See Exhibit "A", Deposition Transcript of Plaintiff Mitchell Kohler at p. 16.) The scars no longer require medical treatment and at least one scar has healed completely. (See Exhibit "A", Deposition Transcript of Plaintiff Mitchell Kohler at pp. 16, 56.)

6. The Defendants believe and therefore aver that the Plaintiff nonetheless intends to introduce the photographs of his scars as evidence at the trial in the above-captioned action.

7. The Defendants move that photographs of the Plaintiff's scar tissue and of the Plaintiff in the hospital be excluded from the trial in the above captioned action because the photographs are no longer relevant evidence, and are inadmissible pursuant to Pa. R.C.P. 402. (See memorandum of law in support.)

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath
Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603
(814) 943-3304

EXHIBIT

A

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

* * * * *

* Case No.

DAVID KOHLER, * 03-1868-CD

individually and as *
a parent and natural*
guardian of MITCHELL*

D. KOHLER, a minor, *

Plaintiff *

vs. *

KENNETH L. TEST and *

ROGER BRESSLER, *
individually and *
t/d/b/a R.B. *

CONTRACTING, *

Defendants *

* * * * *

DEPOSITION OF
MITCHELL D. KOHLER

AUGUST 15, 2005

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COPY

Page 14

1 engineering.
 2 QHave you looked into anything?
 3 AAs of right now, no.
 4 QThe injuries that you sustained
 5 on July 21st, 2002, does that affect
 6 your ability to make a living?
 7 ANo.
 8 QAnd when you dropped out of
 9 school, did that have anything to do
 10 with the accident that is the subject
 11 of this lawsuit?
 12 ANo.
 13 QAnd I said dropped out. Were
 14 you expelled or ---?
 15 ANo. I just pretty much dropped
 16 out, yes.
 17 QWere you afraid you were going
 18 to be expelled?
 19 ANo.
 20 QOkay. When you said you got
 21 into some trouble, were you referring
 22 to the DUI as the reason that you left
 23 school?
 24 AYes.
 25 QIt wasn't something else?

Page 16

1 QAnd I'm not going to ask you to
 2 show me. I'm just going to show you
 3 some pictures, and ask you if you think
 4 that they're better, your scars are
 5 better, I mean. And I'll show you what
 6 has been produced by the Plaintiff in
 7 response to the Defendants' Request for
 8 Production of Documents, which shows
 9 several pictures dated 1/13/03, where
 10 you're showing your scar. There's four
 11 pictures there.
 12 AOkay. Yes, those are my scars.
 13 QAnd today, how do they look
 14 compared to this picture that was taken
 15 six months after the accident?
 16 AThey're not as red. They're
 17 actually normal skin color now.
 18 QDo you put anything on them, any
 19 type of treatment, scar treatment,
 20 vitamin E, anything like that, to make
 21 them better?
 22 ANot anymore. Whenever they were
 23 like that I had to.
 24 QDo they bother you in any way?
 25 Do they hurt?

Page 15

Page 17

1 ANo.
 2 QIs this your first job that
 3 you've had?
 4 ANo. I've had previous jobs.
 5 QWhere else did you work?
 6 AJ worked at Shop 'N Save,
 7 Sheetz, and I did construction with
 8 Robert Powell.
 9 QWhen was that?
 10 AI did construction --- all the
 11 jobs were last year.
 12 QAll those jobs were in 2004?
 13 AYes.
 14 QAre you currently being treated
 15 by any doctor related to the injuries
 16 you sustained?
 17 ANo.
 18 QDo you have any permanent
 19 scarring from this accident?
 20 AYes. I have four scars on my
 21 right side.
 22 QAnd do you have any plans to
 23 have any corrective surgery concerning
 24 those scars?
 25 ANo.

1 AThe big one, it itches every now
 2 and again.
 3 QThe big one would be the one on
 4 the side of your leg there that's in
 5 picture two?
 6 AYeah.
 7 QAnd that's a scar that goes
 8 vertically down your leg; correct?
 9 AYes.
 10 QHow many inches would you say
 11 that is?
 12 AProbably eight or nine.
 13 QAnd the other three --- the next
 14 biggest one looks to be above there ---
 15 AUh-huh (yes).
 16 Q--- on your hip. And how many
 17 inches is that?
 18 Alt's probably three and a half,
 19 four.
 20 QAnd the one below it?
 21 Alt was about an inch and a half.
 22 QThe other two, the one that's on
 23 --- by your knee?
 24 AYeah. They're about an inch and
 25 a half.

Page 54

1 Al'm not sure of the exact time.
 2 I just know it happened quickly. As
 3 soon as I seen the backhoe, I tried to
 4 miss it.
 5 QIn your meeting with your
 6 attorney or at any time during this
 7 lawsuit did you ever see this document,
 8 which is a complaint?
 9 Al don't believe I have.
 10 QAnd have you ---?
 11 ATTORNEY MILLER:
 12 That's what was initially
 13 filed with the Court to get this
 14 whole process started.
 15 AOkay.
 16 ATTORNEY MILLER:
 17 Did you review that with
 18 your father when I sent it to
 19 him? That's what she's asking.
 20 ANo, I didn't. I believe my
 21 father did.
 22 ATTORNEY MILLER:
 23 Okay.
 24 BY ATTORNEY BINDER HEATH:
 25 QAnd if you look to paragraph 14,

Page 56

1 QAnd that's where the rod is
 2 affixed; correct?
 3 AYes.
 4 QAnd then a laceration to the
 5 right tibia?
 6 AYes.
 7 QAnd is that where another scar
 8 is?
 9 ANo. Actually, it healed up.
 10 QNo scar. And then a severely
 11 sprained right ankle. Did you also
 12 sprain your right ankle?
 13 AYes.
 14 QDid you have to have crutches?
 15 Were you in a cast the whole time?
 16 ANo, I was never in a cast.
 17 QSo what did they do when they
 18 --- after they operated on you, what
 19 did they do?
 20 AThey gave me a set of crutches
 21 to ---.
 22 QAnd were you in a wrap?
 23 ANo.
 24 QJust nothing?
 25 AThere was bandages for my scars,

Page 55

1 ---
 2 AOkay.
 3 Q--- you are saying here --- this
 4 complaint is saying that you rounded a
 5 curve and you were traveling in a
 6 generally westerly direction. Does
 7 that refresh your recollection of which
 8 way you were going, or don't you know?
 9 ANo. I have no clue.
 10 QBut in your testimony the sun
 11 was not a factor ---
 12 ANo.
 13 Q--- in your vision of the
 14 roadway?
 15 ANo.
 16 QLooking at paragraph 19, there
 17 are some injuries that are listed
 18 there.
 19 AOkay.
 20 QAnd you said, yes, you did have
 21 a bruise on your temple; correct?
 22 AYes.
 23 QAnd that you had a fracture of
 24 your right femur?
 25 AYes.

Page 57

1 and that was ---.
 2 QThat was it?
 3 AThat was it.
 4 QWhat about your ankle, did you
 5 have any treatment for that?
 6 ANo.
 7 QYou didn't have any kind of Ace
 8 bandage or anything on your ankle?
 9 Al believe by the time I got out
 10 of the hospital, the swelling had went
 11 done.
 12 QAnd that was what, for five
 13 days?
 14 AYes.
 15 QSo when you went to physical
 16 therapy, did it have anything to do
 17 with your ankle?
 18 ANo.
 19 QDo you know if your medical
 20 treatment was covered by insurance?
 21 Al believe some of it was.
 22 QDo you know if either of your
 23 parents had any out-of-pocket expenses
 24 for your medical bills?
 25 Al don't know.

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

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the Defendants' Motion in Limine was served on this 23rd of May, 2007 by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

DAVID KOHLER, individually and as parent and natural guardian of

MITCHELL D. KOHLER, a minor Plaintiff

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

No. 03-1868-CD

Defendants' Motion *In Limine* to Exclude Evidence of Testimony of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon and Plaintiff's Evidence of Photographs of Accident Scene

Counsel for Defendants:

Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 943-3304
rheath@andrewsbeard.com

FILED
MAY 24 2007
Atty Heath
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor Plaintiff

No. 03-1868-CD

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendants

ORDER

AND NOW, this _____ day of _____, 20____, upon consideration of the foregoing Defendants' Motion *In Limine* to Exclude Testimony of Witnesses and Evidence of Photographs, it is hereby ORDERED that:

1. Plaintiff's witnesses Jim Dixon and Richard Duttry shall not be permitted to testify at the trial for the above captioned matter regarding the events of the accident involving the Defendant's back hoe and the Plaintiff's dirt bike,
2. Any evidence of or reference to the photographs taken by Jim Dixon and Richard Duttry shall be excluded from the trial in the above captioned action.

BY THE COURT,

J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER, a minor
Plaintiff

No. 03-1868-CD

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendants

**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF
PLAINTIFF'S WITNESS RICHARD DUTTRY AND PLAINTIFF'S WITNESS JIM
DIXON AND PLAINTIFF'S EVIDENCE OF PHOTOGRAPHS OF ACCIDENT
SCENE**

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through its attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion to Exclude Testimony and Evidence and in support thereof avers the following:

1. This civil action stems from an accident that occurred in Clearfield County, Pennsylvania, on or about July 21 of 2002, on a private road that was known at the time as Panther Road.
2. The accident occurred when the Plaintiff, who was riding a dirt bike, collided with a backhoe on Panther Road that was being driven by an employee of the Defendant.
3. The only eyewitness to the accident, other than the Defendants' employee and the Plaintiff, was Thomas Miller.

4. At the time of the accident, Thomas Miller was driving a four-wheel all-terrain vehicle behind the backhoe.

5. The parties deposed Thomas Miller on August 15, 2005.

6. Thomas Miller testified that Mr. Richard Duttry and Mr. Jim Dixon arrived at the scene of the accident on Panther Road after it had occurred. (Miller's deposition at 14, A copy of which is attached as Exhibit "A").

7. Thomas Miller also testified that, on the day after the accident, Mr. Duttry and Mr. Dixon painted lines on the road showing near where the accident occurred. The two men painted the lines to indicate where they believed that the vehicles were positioned before and after the accident. They also took photographs of the lines. (Miller's deposition at 18, A copy of which is attached as Exhibit "B").

8. The Defendants attempted to depose Mr. Duttry and Mr. Dixon, but Plaintiff's counsel averred that the two men were not available to be deposed.

9. The Defendants believe and therefore aver that the Plaintiffs will nonetheless attempt to introduce at trial testimony from Mr. Richard Duttry and Mr. Jim Dixon, and will attempt to introduce their photographs of the accident scene into evidence.

10. The Defendants move that the testimony of Mr. Dixon and Mr. Duttry be excluded from the trial in the above captioned matter.

11. The Defendants also request that this Honorable Court exclude any evidence of or reference to the photographs taken by Mr. Dixon and Mr. Duttry. (See memorandum of law in support.)

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603
(814) 943-3304

EXHIBIT

A

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

* * * * *

* Case No.

DAVID KOHLER, * 03-1868-CD
individually and as *
a parent and natural*
guardian of MITCHELL*
D. KOHLER, a minor, *

COPY

Plaintiff *
vs. *
KENNETH L. TEST and *
ROGER BRESSLER, *
individually and *
t/d/b/a R.B. *
CONTRACTING, *

Defendants *

* * * * *

DEPOSITION OF

THOMAS MILLER

AUGUST 15, 2005

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by the certifying agency.

Page 14

1 free and made sure he wasn't going into
 2 shock or bleeding. Then I told him I
 3 would go get the cell phone and call
 4 the ambulance. And I called back down
 5 to my cousin's place and Kim's and told
 6 them that he got hurt and call an
 7 ambulance, that he would be all right.
 8 He probably broke his leg. And then I
 9 went back --- took some water back to
 10 him, made sure he wasn't going into
 11 shock. Lenny was pretty upset. Then I
 12 walked --- or drive to the gate to wait
 13 for the ambulance. And I seen Kim come
 14 up. His mother and my cousin, Steve,
 15 were together. They came up to check
 16 on the boy. And then after the
 17 ambulance got there, we were taking
 18 them back, they were very slow. And
 19 that's --- and I seen Ricky Duttry and
 20 some other guy that was with him, and I
 21 told them what happened. And then we
 22 all went back with the ambulance,
 23 followed the ambulance back to the
 24 accident.

25 QSo Mr. Duttry wasn't there at

Page 16

1 BY ATTORNEY BINDER HEATH:
 2 QJust for the record, have you
 3 talked to me before today?
 4 ANo.
 5 QIf you could just draw part of
 6 the roadway. Just show me the angle of
 7 the backhoe when it stopped upon
 8 impact.
 9 AWhen it stopped? I'm not sure
 10 about that. We were coming here. And
 11 when Lenny stops it, we were about like
 12 this. There's trees and rocks all up
 13 in here. Well, when Lenny cut it, I
 14 believe he's like right in here. His
 15 bucket was like this, the backhoe,
 16 somewhere in this angle like this. And
 17 when Mitchell hit --- well, maybe he
 18 was up farther. He's probably --- he
 19 was probably here. As soon as he was
 20 coming around that curve, he swung it
 21 in. And Mitchell was wide out, wide on
 22 that, so ---
 23 QWide going to Mitchell's own
 24 left; ---
 25 AYeah.

Page 15

Page 17

1 the time of the accident, at the time
 2 of the impact?
 3 ANo. He was there after the
 4 ambulance was there. As a matter of
 5 fact, I asked him to wait for the
 6 second ambulance so we could get the
 7 first one down there. But they
 8 wouldn't --- the ambulance wouldn't go
 9 any further without the other one, so
 10 we all went back together.
 11 QDid you see Mitchell on the dirt
 12 bike before the impact?
 13 ANo, I heard him. No, I didn't
 14 hear him either. No, I just seen Lenny
 15 cut hard, and I seen Mitchell hit the
 16 right edge of his bucket and go flying.
 17 That's about all I seen.
 18 QAnd after the impact, if you ---
 19 let me give you a piece of paper.
 20 ATTORNEY BINDER HEATH:
 21 Let's make this Miller
 22 Two.
 23 (Miller Exhibit Two
 24 marked for
 25 identification.)

1 Q--- is that right?
 2 ABut when he did, he come in and
 3 swing it hard in. Maybe not that
 4 angle, but --- he ended up over here,
 5 like that.
 6 QSo what I'm asking you, was the
 7 backhoe straight on the road or was it
 8 angled to the left?
 9 AIt was angled to the left.
 10 QAnd you said you saw Mitchell
 11 coming which way, toward the other side
 12 of the backhoe, which would be Ken's
 13 --- or Lenny's right, Mitchell's left?
 14 Do you see what I'm asking?
 15 AJ don't understand.
 16 QDid you see Mitchell driving at
 17 all before you saw him hit the brake
 18 --- bucket?
 19 ANo. What I seen was Lenny
 20 jamming hard to the left, and I seen
 21 the bucket --- seen Mitchell hit the
 22 bucket and fly.
 23 QNow, when we were sitting down
 24 you were taking a look at some
 25 pictures. And I'll show you what's

Page 18	Page 20
<p>1 been already marked on other people's 2 depositions, which are pictures 41 and 3 42. 4 A Uh-huh (yes). 5 Q And just for the record, I will 6 tell you that these lines were drawn 7 with the paint by Mr. Duttry and what 8 he purports to be the skid marks which 9 preceded the accident. This up to the 10 top of the picture is where Mitchell 11 would have been. And this was where 12 he's saying the backhoe was. 13 A Well, that's a bunch of BS. 14 That's not correct at all. These were 15 put down there like the following day 16 --- or maybe that night, because I went 17 to Steve's later and they weren't in 18 the road. And then the next day I seen 19 these marks. These marks should be 20 over here. 21 Q You mean angled to the left? 22 A Angled over to this side. 23 That's BS. 24 Q To the right of the road? 25 A There was two ambulances --- I</p>	<p>1 like it's raining or had been raining? 2 A I don't remember it being wet. 3 when it happened. 4 Q I'm saying afterwards. 5 A Probably. 6 Q When these pictures were taken, 7 --- 8 A Oh, yeah. 9 Q --- several days had elapsed, 10 plus it had been raining; is that 11 correct? 12 A Those pictures aren't right. 13 ATTORNEY BINDER HEATH: 14 I have no further --- 15 A And you know, I was there. I 16 know. 17 ATTORNEY BINDER HEATH: 18 No further questions. 19 A These aren't right. 20 ATTORNEY BINDER HEATH: 21 Mr. Miller wants to ask 22 you some. 23 A Okay. 24 EXAMINATION 25 BY ATTORNEY MILLER:</p>
<p>1 don't know how many vehicles had came 2 up and down that road before he put 3 those on there. Because I was up and 4 down there like two or three times 5 myself. 6 Q On that road before Mr. Duttry 7 ---? 8 A On that road before Duttry got 9 there. And how many other people came 10 up and down there that I don't know of. 11 Then the insurance --- or whoever it 12 was, the attorney's inspector came out 13 the following Monday. I was helping 14 Kim and Steve at the bar --- 15 restaurant, and he came in and asked 16 where it was, and we told him where it 17 was. And I told him at the time those 18 weren't right. And it was three days 19 after, too. And he said that he seen 20 skid marks later, which I don't know 21 how he could after --- you know, 22 because I had been up and down that 23 road at least 10, 12 times in three to 24 four days. 25 Q And from these pictures it looks</p>	<p>Page 19</p> <p>1 Q Hi, Mr. Miller. 2 A Hello. 3 Q My name is Chris Miller. I 4 represent Mitchell Kohler. 5 ATTORNEY BINDER HEATH: 6 Another Mr. Miller. 7 BY ATTORNEY MILLER: 8 Q And for the record, we're not 9 related to our knowledge; are we? 10 A No, not as far as I know. 11 Q All right. I want to ask you a 12 little bit about this drawing that you 13 made. I guess it's marked as Miller 14 One. 15 ATTORNEY BINDER HEATH: 16 Two. 17 ATTORNEY MILLER: 18 Miller Two? 19 ATTORNEY BINDER HEATH: 20 Yes. 21 ATTORNEY MILLER: 22 Oh, the statement was 23 One; is that right? 24 ATTORNEY BINDER HEATH: 25 That's correct.</p>

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

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the Defendants' Motion in Limine was served on this **23rd of May, 2007** by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER, a minor
Plaintiff

..... No. 03-1868-CD

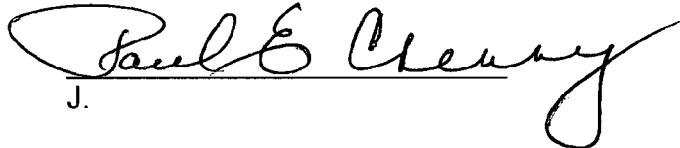
v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendants

RULE RETURNABLE

AND NOW on this 30th day of May, 2007 upon
consideration of the foregoing Defendant's Motion *In Limine* to Exclude Evidence
of Photographs of Plaintiff in the Hospital and of His Scar, a hearing is hereby set
for the 25th day of June, 2007 at 3:00 AM/PM in
courtroom No. 2, Clearfield County Courthouse, Clearfield,
Pennsylvania Motions Court.

BY THE COURT:


J.

FILED
05/31/2007 3:00 PM
MAY 31 2007 Atty Health
602

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 31 2007

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

DATE: 5/31/07

You are responsible for serving all appropriate parties.
 The Prothonotary's office has provided service to the following parties:
 Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney Other
 Special Instructions:

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER, a minor
Plaintiff

No. 03-1868-CD

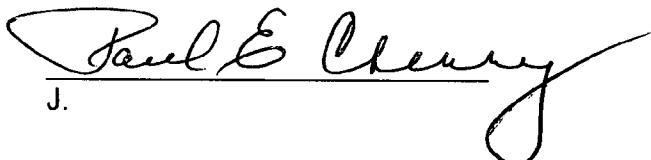
v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendants

RULE RETURNABLE

AND NOW on this 30th day of May, 2007 upon
consideration of the foregoing Motion *In Limine* to Exclude Evidence of
Testimony of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon
and Plaintiff's Evidence of Photographs of Accident, a hearing is hereby set for
the 25th day of June, 2007 at 3:00 AM/PM in courtroom
No. 2, Clearfield County Courthouse, Clearfield, Pennsylvania Motions
Court.

BY THE COURT:


J.

FILED
03-54301
MAY 31 2007
3cc
Atty Heath
GK

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 31 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/31/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Dftn't

Defendant(s) Defendant(s) Attorney Dftn't

Special Inspector(s):

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

CIVIL DIVISION

No. 03-1868-CD

**PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE AND
TESTIMONY CONCERNING
PLAINTIFF'S PRIOR CRIMINAL
RECORD AND PENDING CHARGES**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
U.S. Steel Tower, 10th Floor
600 Grant Street
Pittsburgh, PA 15219

(412) 394-1000

JURY TRIAL DEMANDED

FILED No CC
m/10:40cm
JUN 13 2007
WAS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
)
Defendants.)

PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE EVIDENCE AND TESTIMONY
CONCERNING PLAINTIFF'S PRIOR CRIMINAL RECORD AND PENDING
CHARGES

AND NOW, comes the Plaintiff, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CHRISTOPHER M. MILLER, ESQUIRE and files and serves the within Plaintiff's Motion in Limine to Exclude Evidence and Testimony Concerning Plaintiff's Prior Criminal Record and Pending Charges, averring in support thereof as follows:

1. The above-captioned case arises out of a dirt bike accident which occurred on July 21, 2002 in Pine Township, Clearfield County, Pennsylvania on a private thoroughfare known as Panther Road which runs in a generally east/west direction.
2. As a result of this incident, Plaintiff, Mitchell Kohler suffered serious and severe personal injuries and damages.

3. Plaintiff, Mitchell Kohler subsequently filed a lawsuit against the named Defendants as a result of the aforementioned incident.

4. Plaintiff, Mitchell Kohler has both a prior criminal record as well as criminal charges which are currently pending against him.

5. Plaintiff, Mitchell Kohler believes and therefore avers that counsel for the Defendants may attempt to somehow reference these charges, elicit testimony concerning these charges or introduce evidence of these charges at the civil trial of this matter.

6. For the reasons stated herein, Plaintiff asserts that any such reference, testimony or introduction of the prior or the pending criminal charges should be prohibited at Plaintiff's civil trial, currently scheduled to begin on July 31, 2007.

I. PLAINTIFF'S JUVENILE RECORD

7. During the deposition of Plaintiff Mitchell Kohler, counsel for the Defendants elicited certain information concerning Plaintiff's juvenile criminal record.

8. Plaintiff believes and therefore avers that counsel for the Defendants may attempt to elicit testimony and/or evidence concerning Plaintiff's juvenile criminal record at the civil trial.

9. According to 42 Pa.C.S. §6308 (a), “[u]nless a charge of delinquency is transferred for criminal prosecution under section 6355 (relating to transfer to criminal proceedings), the interest of national security requires, or the court otherwise orders in the interest of the child, *the records and files shall not be open to public inspection or their contents disclosed to the public except as provided in a subsection.*” (emphasis added).

10. As none of the exceptions outlined in 42 Pa.C.S. §6308(b) are applicable to the instant matter, evidence and/or testimony regarding Plaintiff Mitchell Kohler's prior juvenile criminal record must not be permitted to be introduced at trial, as such introduction would constitute disclosure to the public.

11. Said testimony and/or evidence is also irrelevant.

12. Said testimony and/or evidence is also unfairly prejudicial and of no probative value.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court preclude any testimony or evidence which in any manner references Plaintiff's juvenile record.

II. PLAINTIFF'S PRIOR AND PENDING CHARGES

13. In March of 2005, a criminal complaint was filed in the Court of Common Pleas of Clearfield County against Plaintiff, Mitchell Kohler, who subsequently plead guilty to the charge of Unauthorized Use of an Automobile, a 2nd Degree Misdemeanor.

14. In July of 2006, a second criminal complaint was filed against Plaintiff, Mitchell Kohler in the Court of Common Pleas of Clearfield County. All but two charges were dropped from the complaint, leaving only the misdemeanor of simple assault and the summary offense of harassment.

15. A criminal trial has not yet been held; therefore, Plaintiff has not yet been convicted of either offense.

16. Plaintiff believes that the introduction of either of these charges in the above-captioned case is not only immaterial and irrelevant, but is extremely prejudicial.

17. The law in Pennsylvania is clear that any prior convictions are inadmissible other than convictions involving crimes of a "crimen falsi nature" as stated by Pa.R.E. 609.
18. None of the aforementioned charges are of a crimen falsi nature.
19. Plaintiff believes this evidence, if admitted, will prove to be extremely prejudicial. The only purpose for which counsel for the Defendants could attempt to admit such evidence would be to disparage Plaintiff's reputation and to inflame the minds of the jury against the Plaintiff so that they would be unable to render an impartial verdict.
20. Plaintiff respectfully requests that this Honorable Court preclude counsel for the Defendants from making any reference to, eliciting testimony or attempting to introduce any evidence which in any manner addresses Plaintiff's prior or pending criminal record and charges.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court preclude any testimony or evidence which in any manner references Plaintiff's prior criminal record or pending criminal charges.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
)
Defendants.)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby
ORDERED, ADJUDGED and DECREED Plaintiff's Motion In Limine To Exclude Evidence
and Testimony Concerning Plaintiff's Prior Criminal Record and Pending Charges is
GRANTED.

BY THE COURT:

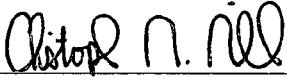
J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Motion in Limine to Exclude Evidence and Testimony Concerning Plaintiff's Criminal Record was served upon all counsel of record on this 12th day of June, 2007 by U.S. First Class Mail, at the following address:

**The Honorable Paul E. Cherry
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830**

**Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**



Christopher M. Miller Esquire
Attorney for Plaintiffs

FILED

JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION
No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF TESTIMONY OF
PLAINTIFF'S WITNESS RICHARD
DUTTRY AND PLAINTIFF'S WITNESS
JIM DIXON AND PLAINTIFF'S
EVIDENCE OF PHOTOGRAPHS OF
ACCIDENT SCENE**

Filed on behalf of:
DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
US Steel Tower, 10th Floor
600 Grant Street
Pittsburgh, PA 15219

(412) 394-1000

JURY TRIAL DEMANDED

FILED No. 6
m/10:40 am
JUN 13 2007
WM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
)
Defendants.)

**PLAINTIFF'S REPLY TO DEFENDANTS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF PLAINTIFF'S WITNESS RICHARD DUTTRY AND PLAINTIFF'S
WITNESS JIM DIXON AND PLAINTIFF'S EVIDENCE OF PHOTOGRAPHS OF
ACCIDENT SCENE**

AND NOW, comes the Plaintiff, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CHRISTOPHER M. MILLER, ESQUIRE and files and serves the within Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon and Plaintiff's Evidence of Photographs of Accident Scene, averring in support thereof as follows:

1. Admitted.
2. Admitted.

3. After reasonable investigation, Plaintiff is without knowledge or information sufficient to form a belief with respect to the averments contained in Paragraph 3 of Defendants' Motion In Limine. Strict proof thereof is demanded. By way of further response, it is believed and therefore averred that additional witnesses either observed the accident take place or arrived shortly thereafter and observed the accident scene.

4. Admitted in part. It is admitted that Thomas Miller has testified at his deposition that he was driving a four-wheel all-terrain vehicle behind the backhoe. Said testimony is subject to cross-examination at trial.

5. Admitted.

6. Admitted. By way of further response, Richard Duttry has provided a recorded statement which was taken on July 25, 2002 wherein he has stated that he arrived at the scene shortly after the accident took place. A true and correct copy of Richard Duttry's statement dated July 25, 2002 is attached hereto, made a part hereof and identified as Exhibit "1".

7. Denied. It is specifically denied that Thomas Miller testified that the lines were painted on the road the day after the accident. To the contrary, Thomas Miller testified as follows: "Well, that's a bunch of BS. That's not correct at all. These were put down there like the following day-or maybe that night, because I went to Steve's later and they weren't in the road. And then the next I seen these marks. These marks should be over here." It is further denied that the two men painted the lines to indicate where they believed that the vehicles were positioned before and after the accident, as nothing contained within Thomas Miller's testimony indicates as such. A true and correct copy of Page 18 of Thomas Miller's deposition transcript is attached hereto, made a part hereof and identified as Exhibit "2", and the photographs in question are attached hereto, made a part hereof and identified as Exhibit "3".

8. Denied. It is specifically denied that Plaintiff's counsel ever made any representations to Defendants' counsel which indicated that Mr. Duttry and Mr. Dixon were not available to be deposed. To the contrary, on May 17, 2006, a letter was sent from Plaintiff's counsel to Defendants' counsel which gave the last know address of Mr. Duttry and further indicated that an address for Mr. Dixon was not known. This correspondence also provided dates of availability for the depositions to take place. Furthermore, on May 26, 2006, a second letter was faxed to Defendants' counsel indicating that Plaintiff's counsel was unavailable for depositions on June 30, 2006, and requested that if the depositions were to take place that they be rescheduled. Additionally, on June 9, 2006, Plaintiff's counsel received a call from Nicole from Attorney Binder Heath's office indicating that the depositions scheduled to take place on June 13, 2006 were cancelled due to the fact that the witnesses could not be located. No further communications were ever made concerning the taking of the aforementioned depositions. A true and correct copy of Plaintiff's counsel's May 17, 2006 and May 26, 2006 correspondence is attached hereto, made a part hereof and identified as Exhibit "4".

9. Denied as stated. Although Plaintiff's counsel is currently considering calling Mr. Duttry and Mr. Dixon to testify at trial, and is also considering introducing photographs of the accident scene into evidence, no final decision has been made in this respect at this time.

10. No response is required of Plaintiff to the averments contained in Paragraph 10 of Defendant's Motion In Limine, as the averments contained in Paragraph 10 are essentially Defendants' prayer for relief. To the extent that a response may be deemed to be required, it is specifically denied that any legal foundation exists whatsoever to preclude the testimony of Mr. Dixon and Mr. Duttry at the trial of the instant matter.

11. No response is required of Plaintiff to the averments contained in Paragraph 11 of Defendant's Motion In Limine, as the averments contained in Paragraph 11 are essentially Defendants' prayer for relief. To the extent that a response may be deemed to be required, it is specifically denied that any legal foundation exists whatsoever to preclude introducing into evidence or referencing any photographs taken by Mr. Dixon and Mr. Duttry.

WHEREFORE, it is respectfully requested that this Honorable Court deny Defendants' based Motion in Limine to Exclude Evidence of Plaintiff's Witness Richard Duttry and Plaintiff's Witness James Dixon and Plaintiff's Evidence of Photographs of the Accident Scene.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs



Gittings Private Investigations & Security, Inc.
110 West High Street, Ebensburg, PA 15931
(800) 453-0534 FAX (814) 472-8846
Dean C. Gittings, Licensed Private Detective
www.gittingspi.com gpi@uplink.net

Investigator: My name is Mark Vermillion. I am an Investigator with Gittings Investigations. The date is July 25, 2002. The time is 1:25pm. I am at Bear Run Development, Lot 61, Rockton, PA, 15856. This is one of the residences of Richard Duttry. **Mr.** Duttry are you aware that this statement is being recorded?

Witness: Yes I am.

Investigator: Can you spell your last name?

Witness: D-U-T-T-R-Y.

Investigator: What is your telephone number?

Witness: (814) 894-5103.

Investigator: Are you employed?

Witness: No, I am on Social Security disability.

Investigator: Could you briefly tell me what happened on July 21, 2002 around noon here at Bear Run Development?

Witness: First we heard Mitchell's motorcycle we knew it was his because it has a distinct sound. Probably 20 minutes after we heard it we did not hear it no more. We normally hear him going out the road. Probably 25 minutes after that we seen a four-wheeler come down the road the gate and an ambulance followed the four-wheeler back it. We had a bad feeling that it was Mitchell cause we knew his bike sound. So we followed the first ambulance out. When we got there Mitchell was laying on a rock on the edge of the road or off the road. The bike was already pulled out of the road and the backhoe and the bike we both moved away from the scene. The ambulance people had started working on Mitchell but they needed more help so me and Jim Dixon, the friend that helped lift him, was assisting helping hold the stretcher and I was getting leg splints out for them as they cut his pant leg up. First they had to get him calmed down, the pain in the leg before they could even move him



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Investigator: Did you or Mr. Dixon speak with the operator of the backhoe?

Witness: Yes, I did.

Investigator: Could you tell me his name?

Witness: His name is Len Test, cause I asked him his name twice.

Investigator: Do you know the address of Mr. Test?

Witness: No I have no idea.

Investigator: Could you tell me what Mr. Test said to you?

Witness: He kept saying he felt really bad because he felt it was his fault. When he come around the road there and he was on the wrong side of the road and Mitchell came around on his own side there was no time to move cause it was on a corner. He felt bad because. . . he just saying he felt bad that it was his fault, he repeated it, I know four times.

Investigator: After the accident did you notice any skid marks in the gravel in the dirt on the road?

Witness: Yes.

Investigator: Were you one of the men that went out and highlighted those skid marks with orange fluorescent paint?

Witness: Yes me and Jim Dixon went out and highlighted the skid marks because the police did not come out to mark them and look at them themselves as far as we know. We wanted to get them marked before they got run off the road.

Investigator: Okay you actually marked just where the skid marks for the rear tires on the backhoe and the skid marks from the bike?

Witness: Correct. The rear tires on the backhoe and the brakes were obviously locked up and Mitchell's bike tires.



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Dean C. Gittings, Licensed Private Detective
www.gittingspi.com gpi@uplink.net

Investigator: Do you know if there's any insurance on the road like a homeowner's insurance plan or anything?

Witness: I think there is cause it's the Bear Run development private road on the road itself.

Investigator: Do you know the owner of Bear Run Development?

Witness: No I don't, no.

Investigator: Could you tell me are in any way related to Mr. Mitch Kolar?

Witness: Well he's like a step-nephew, yea. Cause his dad is like my brother-in-law. I'm not really married to his sister but we've been together for 13 years.

Investigator: So he's like your nephew?

Witness: Yes.

Investigator: Did you speak to anyone else regarding the accident at the time of the accident, the ambulance crew, anybody like that regarding about what happened?

Witness: No, not really. All I did was basically assist them and help in getting him fixed up and getting him into the ambulance because they needed more people.

Investigator: Mr. Duttry would you be willing to testify to your observations?

Witness: Yes.

Investigator: You are aware that this statement was being recorded?

Witness: Yes I am.

Investigator: That concludes this statement. The time is 1:35pm.

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PA

CIVIL DIVISION

* * * * *

* Case No.

DAVID KOHLER, * 03-1868-CD

individually and as *

a parent and natural *

guardian of MITCHELL*

D. KOHLER, a minor, *

Plaintiff *

vs. *

KENNETH L. TEST and *

ROGER BRESSLER, *

individually and *

t/d/b/a R.B. *

CONTRACTING, *

Defendants *

* * * * *

DEPOSITION OF

THOMAS MILLER

AUGUST 15, 2005

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EXHIBIT

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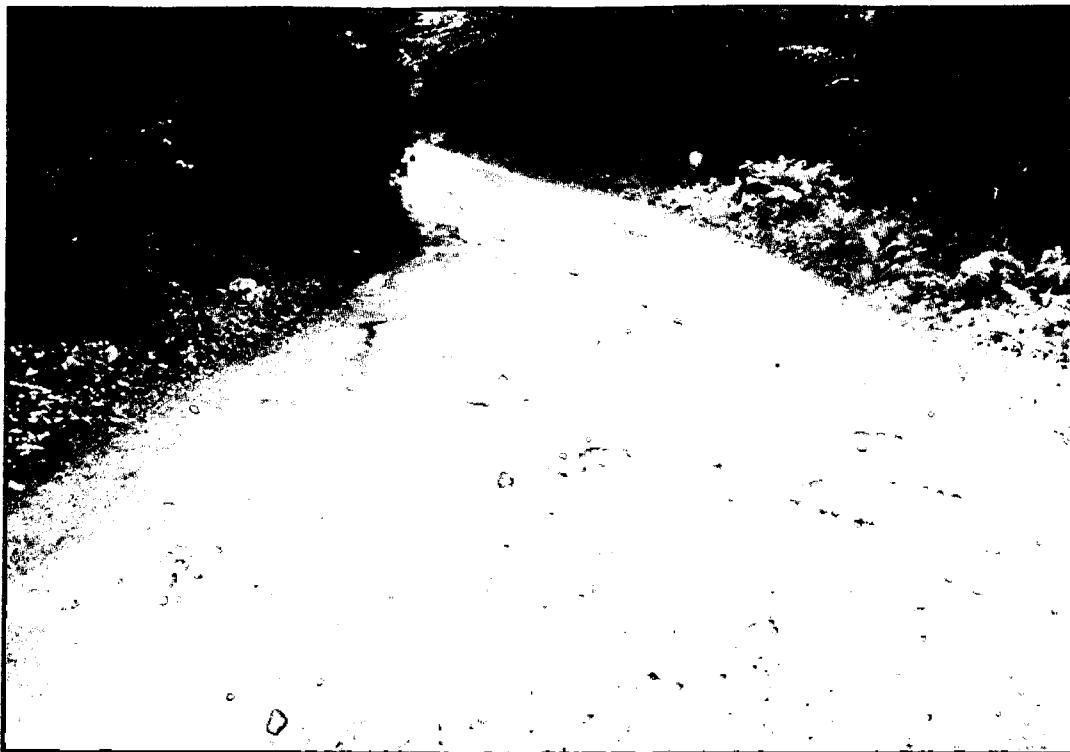
"2"

Page 18	Page
<p>1 been already marked on other people's 2 depositions, which are pictures 41 and 3 42.</p> <p>4 A.Uh-huh (yes).</p> <p>5 QAnd just for the record, I will 6 tell you that these lines were drawn 7 with the paint by Mr. Duttry and what 8 be purports to be the skid marks which 9 preceded the accident. This up to the 10 top of the picture is where Mitchell 11 would have been. And this was where 12 he's saying the backhoe was.</p> <p>13 A.Well, that's a bunch of BS.</p> <p>14 That's not correct at all. These were 15 put down there like the following day 16 --- or maybe that night, because I went 17 to Steve's later and they weren't in 18 the road. And then the next day I seen 19 these marks. These marks should be 20 over here.</p> <p>21 Q.You mean angled to the left?</p> <p>22 AAngled over to this side.</p> <p>23 That's BS.</p> <p>24 Q.To the right of the road?</p> <p>25 A.There was two ambulances --- I</p>	<p>1 like it's raining or had been raining?</p> <p>2 A.I don't remember it being wet</p> <p>3 when it happened.</p> <p>4 QI'm saying afterwards.</p> <p>5 A.Probably.</p> <p>6 Q.When these pictures were taken,</p> <p>7 ---</p> <p>8 A.Oh, yeah.</p> <p>9 Q--- several days had elapsed, 10 plus it had been raining; is that 11 correct?</p> <p>12 A.Those pictures aren't right.</p> <p>13 ATTORNEY BINDER HEATH:</p> <p>14 I have no further ---.</p> <p>15 AAnd you know, I was there. I 16 know.</p> <p>17 ATTORNEY BINDER HEATH:</p> <p>18 No further questions.</p> <p>19 A.These aren't right.</p> <p>20 ATTORNEY BINDER HEATH:</p> <p>21 Mr. Miller wants to ask 22 you some.</p> <p>23 A.Okay.</p> <p>24 EXAMINATION</p> <p>25 BY ATTORNEY MILLER:</p>
Page 19	Page
<p>1 don't know how many vehicles had came 2 up and down that road before he put 3 those on there. Because I was up and 4 down there like two or three times 5 myself.</p> <p>6 Q.On that road before Mr. Duttry 7 ---?</p> <p>8 A.On that road before Duttry got 9 there. And how many other people came 10 up and down there that I don't know of.</p> <p>11 Then the insurance --- or whoever it 12 was, the attorney's inspector came out 13 the following Monday. I was helping 14 Kim and Steve at the bar ---</p> <p>15 restaurant, and he came in and asked 16 where it was, and we told him where it 17 was. And I told him at the time those 18 weren't right. And it was three days 19 after, too. And he said that he seen 20 skid marks later, which I don't know 21 how he could after --- you know, 22 because I had been up and down that 23 road at least 10, 12 times in three to 24 four days.</p> <p>25 QAnd from these pictures it looks</p>	<p>1 QHi, Mr. Miller.</p> <p>2 AHello.</p> <p>3 QMy name is Chris Miller. I 4 represent Mitchell Kohler.</p> <p>5 ATTORNEY BINDER HEATH:</p> <p>6 Another Mr. Miller.</p> <p>7 BY ATTORNEY MILLER:</p> <p>8 QAnd for the record, we're not 9 related to our knowledge; are we?</p> <p>10 ANo, not as far as I know.</p> <p>11 QAll right. I want to ask you a 12 little bit about this drawing that you 13 made. I guess it's marked as Miller 14 One.</p> <p>15 ATTORNEY BINDER HEATH:</p> <p>16 Two.</p> <p>17 ATTORNEY MILLER:</p> <p>18 Miller Two?</p> <p>19 ATTORNEY BINDER HEATH:</p> <p>20 Yes.</p> <p>21 ATTORNEY MILLER:</p> <p>22 Oh, the statement was</p> <p>23 One; is that right?</p> <p>24 ATTORNEY BINDER HEATH:</p> <p>25 That's correct.</p>

Edgar Snyder & Associates, P.A.

Our Client: MITCHELL KOHLER

File No.:



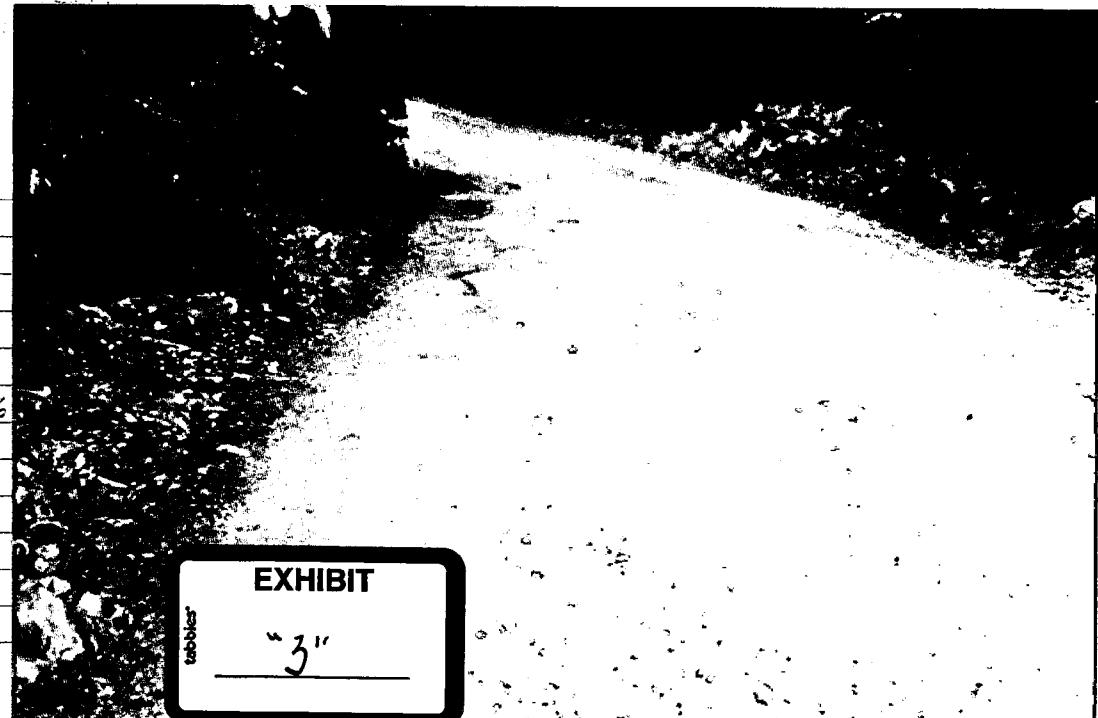
Picture #: 61

Date Taken: 7-23-62

By: Mark Vermillion

Description:

VIEW OF SCENE
STANDING IN
MIDDLE OF ROAD



Picture #: 60

Date Taken: 7-23-62

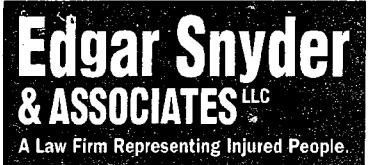
By: Mark Vermillion

Description:

VIEW OF
SCENE FOLLOWING
BACKHOE'S
REPORTED PATH

EXHIBIT

"3"



Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

US Steel Tower • 10th Floor
600 Grant Street
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Toll Free: 1-800-222-6540

Fax: 412-391-2180
Web: www.edgarsnyder.com

May 17, 2006

VIA TELEFAX – (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Robin:

You previously advised that you would like to obtain the depositions of Richard Duttry and Jim Dixon. The last known address which I have for Richard Duttry is Bear Run Development, Lot 61, Rockton, PA 15856. I do not have a current address for Mr. Dixon.

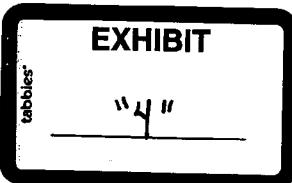
As I previously advised, I would like to place this case at issue as soon as possible. I am agreeable to conducting these depositions at any time prior to trial. Therefore, please be advised that I intend to file the appropriate documentation with the Court on June 1, 2006 in order to have this case put on the next available trial list. Again, I have no objection to taking these depositions at a later point prior to trial. However, I do not plan on scheduling these depositions. Therefore, should you wish to take these depositions, please schedule them at your convenience. Please note that I am unavailable on the following dates: May 22, May 24, May 26, May 29, June 2, June 5, June 12, June 21, June 22, June 23, June 30, July 3 and July 4.

Thank you for your attention to this matter.

Very truly yours,

Christopher M. Miller

CMM/kb



KRB016767V001.doc

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0811
CONNECTION TEL	18149430856
SUBADDRESS	
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ST. TIME	05/17 10:57
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PGS.	2
RESULT	OK



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600 Grant Street
Pittsburgh, PA 15219-2705

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DATE: 5/17/06

FAX TO: ANITA BLANTER HEATH, ESQUIRE

FAX NO.: (814) 403-0856

FAX FROM: Christopher M. Miller, Esquire CMM

PHONE: (412) 394-4517

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MESSAGE:

Edgar Snyder & ASSOCIATES LLC

A Law Firm Representing Injured People.

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

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Fax: 412-391-2180
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May 26, 2006

VIA TELEFAX – (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Robin:

Please note that I am in receipt of your May 23, 2006 correspondence. At this time, I am kindly requesting that you clarify the date of the deposition of Richard Duttry. While your cover letter states that you have scheduled his deposition to take place on June 13, 2006, the Subpoena indicates that he is to appear on June 30, 2006. As you know from my previous correspondence dated May 17, 2006, I am unavailable on June 30, 2006. Therefore, if this is the date that you intend to depose Mr. Duttry, I would request that his deposition be rescheduled.

Furthermore, please be advised that I still intend to file the appropriate documentation with the Court on June 1, 2006 in order to have this case put on the next available trial list. There is no valid reason to further delay this case from being placed on the next available trial list. Again, I have no objection to taking the additional depositions at a later point in time prior to trial.

Thank you for your attention to this matter.

Very truly yours,



Christopher M. Miller

CMM/kb

*** TX REPORT ***

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TX/RX NO	0865
CONNECTION TEL	18149430856
SUBADDRESS	
CONNECTION ID	
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PGS.	2
RESULT	OK



U.S. Department of Justice
FBI - Pittsburgh Office

US Steel Tower 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412/394-1000
Fax: 412/391-2180

Other Offices In PA: Altoona
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DATE:

5/26/00

FAX TO:

ROBERTA BINDER HEATH, ESQUIRE

FAX NO.:

(84)943-0852

FAX FROM:

Christopher M. Miller, Esquire CNN

PHONE:

(412) 394-4517

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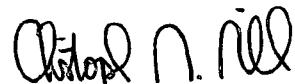
MESSAGE:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Testimony of Plaintiff's Witness Richard Duttry and Plaintiff's Witness Jim Dixon and Plaintiff's Evidence of Photographs of Accident Scene was served upon all counsel of record on this 10th day of June, 2007 by U.S. First Class Mail, at the following address:

**The Honorable Paul E. Cherry
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830**

**Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**



Christopher M. Miller Esquire
Attorney for Plaintiffs

FILED

JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF PLAINTIFF'S
PHOTOGRAPHS OF PLAINTIFF IN THE
HOSPITAL AND OF HIS SCARS**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
U.S. Steel Tower, 10th Floor
600 Grant Street
Pittsburgh, PA 15219

(412) 394-1000

JURY TRIAL DEMANDED

FILED NOCC
m 10:40am
JUN 13 2007
WMS

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
)
Defendants.)

**PLAINTIFF'S REPLY TO DEFENDANTS' MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF PLAINTIFF'S PHOTOGRAPHS OF PLAINTIFF IN THE HOSPITAL
AND OF HIS SCARS**

AND NOW, comes the Plaintiff, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CHRISTOPHER M. MILLER, ESQUIRE and files and serves the within Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Photographs of Plaintiff in the Hospital and of Scars, averring in support thereof as follows:

1. Admitted.
2. Admitted.
3. Admitted in part. It is admitted that Plaintiff suffered injuries as stated in Paragraph 3 of Defendants' Motion In Limine. It is further averred that Plaintiff suffered additional injuries as a result of this incident that are not referenced in Paragraph 3 of Defendants' Motion In Limine,

which are more fully set forth in Plaintiff's Complaint and various other documents which have been filed with the Court.

4. Admitted.

5. Denied as stated. Plaintiff testified that his scars are "not as red" (See Exhibit "1", Deposition Transcript of Plaintiff Mitchell Kohler, p. 16). Further, plaintiff only stated that one of his scars healed and only commented that he no longer had to put any type of medication on his scars. (See Exhibit "1", Deposition Transcript of Plaintiff Mitchell Kohler, p.p. 16, 56).

6. Admitted.

7. The averments contained in Paragraph 7 are conclusions of law to which no response is required. To the extent that a response is required, the photographs should not be excluded as evidence during trial. It is well-settled that the admission of photographs into evidence is within the discretion of the lower court. Nyce v Muffley, 119 A.2d 530 (Pa. 1956); Piso v. Weirton Steel, 345 A.2d 728 (Pa. Super. 1975); Fahringer v. Rinehimer, 423 A.2d 731, 733 (Pa. Super. 1980). When deciding if to include or exclude photographs, the court must consider whether the evidentiary value of the photograph outweighs the danger that it will upset the jury. Fahringer at 734. Courts have held that even if a witness can and has described an injury, a photograph may "still have evidentiary value in that it may make the description more intelligible." Id. (citing West v. Morgan, 27 A.2d 46 (Pa. 1942)). The photographs in question are necessary for the jury to understand the extent and nature of plaintiffs injuries and not result in any unfair prejudice to the Defendants. (Please see Brief in Support of Plaintiff's Response).

WHEREFORE, based on the foregoing and as more fully set forth at length in Plaintiff's accompanying Brief in Support of Plaintiff's Response to Defendants' Motion in Limine to

Exclude Evidence of Photographs of Plaintiff in the Hospital and of his Scars, Plaintiff respectfully requests that this Honorable Court deny Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Photographs of Plaintiff in the Hospital and of his Scars.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs

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

* * * * *

* Case No.

DAVID KOHLER, * 03-1868-CD

individually and as *
a parent and natural*
guardian of MITCHELL*

D. KOHLER, a minor, *

Plaintiff *

vs. *

KENNETH L. TEST and *

ROGER BRESSLER, *
individually and *
t/d/b/a R.B. *

CONTRACTING, *

Defendants *

* * * * *

DEPOSITION OF

MITCHELL D. KOHLER

AUGUST 15, 2005

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EXHIBIT

tabbed

"1"

1 engineering.
 2 Q Have you looked into anything?
 3 A As of right now, no.
 4 Q The injuries that you sustained
 5 on July 21st, 2002, does that affect
 6 your ability to make a living?
 7 A No.
 8 Q And when you dropped out of
 9 school, did that have anything to do
 10 with the accident that is the subject
 11 of this lawsuit?
 12 A No.
 13 Q And I said dropped out. Were
 14 you expelled or ---?
 15 A No. I just pretty much dropped
 16 out, yes.
 17 Q Were you afraid you were going
 18 to be expelled?
 19 A No.
 20 Q Okay. When you said you got
 21 into some trouble, were you referring
 22 to the DUI as the reason that you left
 23 school?
 24 A Yes.
 25 Q It wasn't something else?

Page 14

Page 16

1 Q And I'm not going to ask you to
 2 show me. I'm just going to show you
 3 some pictures, and ask you if you think
 4 that they're better, your scars are
 5 better, I mean. And I'll show you what
 6 has been produced by the Plaintiff in
 7 response to the Defendants' Request for
 8 Production of Documents, which shows
 9 several pictures dated 1/13/03, where
 10 you're showing your scar. There's four
 11 pictures there.
 12 A Okay. Yes, those are my scars.
 13 Q And today, how do they look
 14 compared to this picture that was taken
 15 six months after the accident?
 16 A They're not as red. They're
 17 actually normal skin color now.
 18 Q Do you put anything on them, any
 19 type of treatment, scar treatment,
 20 vitamin E, anything like that, to make
 21 them better?
 22 A Not anymore. Whenever they were
 23 like that I had to.
 24 Q Do they bother you in any way?
 25 Do they hurt?

Page 15

Page 17

1 A No.
 2 Q Is this your first job that
 3 you've had?
 4 A No. I've had previous jobs.
 5 Q Where else did you work?
 6 A I worked at Shop 'N Save,
 7 Sheetz, and I did construction with
 8 Robert Powell.
 9 Q When was that?
 10 A I did construction --- all the
 11 jobs were last year.
 12 Q All those jobs were in 2004?
 13 A Yes.
 14 Q Are you currently being treated
 15 by any doctor related to the injuries
 16 you sustained?
 17 A No.
 18 Q Do you have any permanent
 19 scarring from this accident?
 20 A Yes. I have four scars on my
 21 right side.
 22 Q And do you have any plans to
 23 have any corrective surgery concerning
 24 those scars?
 25 A No.

1 A The big one, it itches every now
 2 and again.
 3 Q The big one would be the one on
 4 the side of your leg there that's in
 5 picture two?
 6 A Yeah.
 7 Q And that's a scar that goes
 8 vertically down your leg, correct?
 9 A Yes.
 10 Q How many inches would you say
 11 that is?
 12 A Probably eight or nine.
 13 Q And the other three --- the next
 14 biggest one looks to be above there ---
 15 A Uh-huh (yes).
 16 Q --- on your hip. And how many
 17 inches is that?
 18 A It's probably three and a half,
 19 four.
 20 Q And the one below it?
 21 A It was about an inch and a half.
 22 Q The other two, the one that's on
 23 --- by your knee?
 24 A Yeah. They're about an inch and
 25 a half.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Photographs of Plaintiff in the Hospital and of his Scars was served upon all counsel of record on this 12th day of June _____, 2007 by U.S. First Class Mail, at the following address:

**The Honorable Paul E. Cherry
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830**

**Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**

Christopher M. Miller
Christopher M. Miller Esquire
Attorney for Plaintiffs

FILED

JUN 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

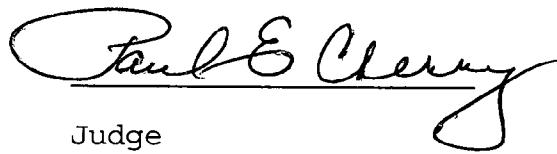
CIVIL DIVISION

DAVID KOHLER, ind. and as :
parent and natural guardian of :
MITCHELL D. KOHLER, a minor :
:
VS. : NO. 03-1868-CD
:
KENNETH L. TEST and ROGER :
BRESSLER, ind. and t/d/b/a :
R.B. CONTRACTING :
:

O R D E R

AND NOW, this 25th day of June, 2007, following argument on Plaintiffs' Motion in Limine to Exclude Evidence and Testimony concerning evidence of Plaintiff's prior criminal record and pending charges, it is the ORDER of this Court that counsel for the Defendant shall file appropriate brief within no more than ten (10) days from today's date.

BY THE COURT,


Paul E. Cleary

Judge

FILED
109-34152
JUN 27 2007
Heath
Miller

William A. Shaw
Prothonotary/Clerk of Courts

(GK)

FILED

JUN 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/27/07
You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:
 Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney
Special Instructions:

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER,
Plaintiff

No. 03-1868-CD

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendant

Type of Document:
MOTION TO STRIKE

Counsel for Defendants:
Roberta Binder Heath, Esquire

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

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JUL 02 2007

112-3074
William A. Shaw
Prothonotary/Clerk of Courts

no 11

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

ORDER

AND NOW, this _____ day of _____, 2006, it is hereby
ORDERED and *DECREED* that Plaintiff's Supplemental Pre-trial Memorandum
Including Expert Report of Accident Reconstructionist, is hereby permanently stricken
from the record and will not be utilized during trial.

J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
	:	
V.	:	
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendant	:	
	:	

**MOTION TO STRIKE SUPPLEMENTAL PRE-TRIAL STATEMENT INCLUDING
EXPERT REPORT OF ACCIDENT RECONSTRUCTIONIST**

AND NOW, come the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through their attorney of record, Roberta Binder Heath, Esquire, and file the foregoing Motion to Strike Plaintiff's Supplemental Pre-trial Statement Including Expert Report of Accident Reconstructionist and in support thereof, aver the following:

1. On April 20, 2007, counsel for Parties attended a pre-trial conference before the Honorable Paul Cherry in the Clearfield County Court of Common Pleas. At this time, a Pre-trial Schedule was prepared indicating that discovery was to end May 30, 2007 and all expert depositions were to be taken thirty (30) days prior to trial.
2. Pre-trial narratives, as per the Court's Order, have already been provided as well as all Motions *In Limine* in accordance with the Court's Scheduling Order. No

engineering expert had been identified at any time prior to June 28, 2007, despite litigation being ongoing for four (4) years.

3. On June 28, 2007, Plaintiff faxed Defendant a revised Pre-trial Narrative including an expert report from an accident reconstructionist dated June 28, 2007.

4. Trial begins in approximately one (1) month time.

5. This expert report at the eleventh hour is not only in direct contradiction to the Order of this Honorable Court, but is also extremely prejudicial to Defendant.

6. Given defense counsel's trial schedule and other deadlines, it is virtually impossible to obtain an expert at this late date to address and refute Plaintiff's report received on June 28, 2007.

7. Certainly, this last minute expert report concerning an accident which occurred five (5) years ago circumvents the spirit and intent of this Court's April 20, 2007, directive relative to pre-trial scheduling.

8. Not only was there no expert deposition to be taken as of the June 29, 2007, deadline but no report was even issued until one (1) day before.

9. Plaintiff further behaved in a dilatory fashion with regard to the deposition of their expert witness and treating physician Dr. William F. Shrantz. (See June 15, 2007, and June 18, 2007, Letters from Plaintiff to Defendant attached hereto collectively as Exhibit "A"; See also June 18, 2007, response letter from Defendant to Plaintiff attached hereto as Exhibit "B"). It was not until June 15, 2007, that the expert deposition was even addressed let alone scheduled before the June 29, 2007, deadline.

10. In attempting to be cooperative with counsel because defense counsel's schedule afforded no time between the date notice was served concerning the intent to

take Dr. Shrantz's deposition and the deadline for expert depositions prior to trial, Defendant worked with Plaintiff in order to arrange the mutually convenient date of July 20, 2007. Certainly, this deadline was not something Defendant had to agree to and was only done in the spirit of cooperation.

11. However, this June 28, 2007, expert report from an engineer is unprecedented and unacceptable and shows a pattern is emerging regarding dubious trial tactics. Clearly, Defendants are extremely prejudiced by this eleventh hour submission. Thus, Defendants request that Plaintiff's Supplemental Pre-trial Memorandum and Expert Report be stricken from the record and Plaintiff not be permitted to use either the expert at trial or his report.

12. Also, because the Plaintiff's engineering expert report is based largely on the photographs of Duttry and Dixon, which are the subject of a Motion In Limine, it appears that this is an attempt to have those photographs come into evidence through the back door.

13. Due to the time constraints, Defendants would appreciate a ruling as soon as possible because if an expert is needed to refute information, then the Defendants certainly need to know immediately so that a defense expert can be retained immediately.

WHEREFORE, Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, respectfully requests this Honorable Court grant this Motion to Strike Plaintiff's Supplemental Pre-trial Memorandum including Expert Report of Accident Reconstructionist from the record and bar utilization of same during trial.

Respectfully submitted,

ANDREWS & BEARD

Date: June 29, 2007



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603
(814) 940-8670

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent and natural guardian of	:	
MITCHELL D. KOHLER,	:	No. 03-1868-CD
Plaintiff	:	
:		
V.	:	
:		
KENNETH L. TEST and ROGER BRESSLER, individually and	:	
t/d/b/a R.B. Contracting,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the Motion to Strike was served on this **29th of June, 2007** by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

EXHIBIT

A

Edgar Snyder & ASSOCIATES^{LLC}

A Law Firm Representing Injured People.

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

US Steel Tower • 10th Floor
800 Grant Street
Pittsburgh, PA 15219-2705

Telephone 412-391-1000
Toll Free 1-800-222-6540

Fax: 412-391-2180
Web: www.edgarsnyder.com

June 15, 2007

VIA TELEFAX – (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: **Kohler v. Test, et al**
Docket #: 03-1868-CD
Our File #: 340120

Dear Ms. Binder Heath:

Please note that I would like to take the deposition of William F. Schrantz, M.D. in the near future. As such, I am kindly requesting that you provide my office with dates that you may be available for this deposition. Due to the fact that the trial date is rapidly approaching, in the event that I do not hear back from your office by June 20, 2007, I will take the liberty of selecting a date for this deposition. As was indicated at the Pre-Trial Conference, Dr. Schrantz has relocated to Philadelphia. Therefore, it will be necessary for us to travel to Philadelphia for his deposition.

Thank for your attention to this matter.

Very truly yours,

Christopher M. Miller

CMM/kb





US Steel Tower • 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412-394-1000
Toll Free: 1-800-222-6540

Fax: 412-391-2180
Web: www.edgarsnyder.com

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

June 18, 2007

VIA TELEFAX - (814) 943-0856

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: **Kohler v. Test, et al**
Docket #: **03-1868-CD**
Our File #: **340120**

Dear Robin:

I am in receipt of your June 18, 2007 facsimile. The court deadline imposed for June 30, 2007 is a discovery deadline. I am not sure that Dr. Schrantz's videotape deposition falls into that category, as his deposition will be used as expert medical testimony at trial.

In any event, I am willing to work with your schedule so that you may attend Dr. Schrantz's videotape deposition. However, this may require scheduling his deposition after June 30, 2007, which again I am not so sure is applicable to this situation. Please let me know your position with respect to taking Dr. Schrantz's deposition after June 30, 2007 so that you may attend.

If you are unwilling to schedule his deposition after June 30, 2007, I will have no alternative but to schedule his deposition to take place prior to that date. I apologize for any inconvenience this may be causing, but as you know, I had a difficult time tracking him down due to his relocation to Philadelphia.

Please call me to discuss this matter further. I look forward to hearing from you in this respect.

Very truly yours,

Christopher M. Miller

CMM/kb

EXHIBIT

B

ANDREWS & BEARD

LAW OFFICES

ROBERTA BINDER HEATH

DIRECT DIAL: 814.940.8670
FAX: 814.943.0856
rbheath@andrewsbeard.com

June 18, 2007

DAVID P. ANDREWS
CARL P. BEARD
ROBERTA BINDER HEATH

PATRICK J. FANELLI
AIMEE L. WILLETT
ROBERT K. LASCHER

VIA FACSIMILE and U.S. MAIL

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

**In re: Mitchell Kohler v. Roger Bressler d/b/a R.B. Contracting
Your File No. 340120**

Dear Chris:

I am in receipt of your letter dated June 15, 2007, in which you indicated as trial is "rapidly approaching" you want to schedule the deposition of Dr. Shrantz in Philadelphia. As I am sure you can appreciate, my schedule cannot accommodate a deposition date by June 30, 2007, which was the Court deadline imposed at the Pre-Trial Conference on April 20, 2007. My office will be contacting you about the date, but we intend to object to the deposition at the June 25, 2007 hearing before Judge Cherry regarding the Motions In Limine. However, I do not want to waive our rights to participate should the Judge allow you to proceed.

Should you have any questions, do not hesitate to contact me.

Very truly yours,



Roberta Binder Heath

RHB/nrs

Enclosure

Cc: Kenneth Test

Roger Bressler

Richard Tipton (Claim #: 244675)



www.andrewsbeard.com

3366 LYNNWOOD DRIVE PO Box 1311 ALTOONA, PENNSYLVANIA 16603-1311 814.943.3304 FAX 814.943.3430

OFFICES ALSO LOCATED IN JOHNSTOWN, PA

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

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER :
: vs. : No. 03-1868-CD
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and t/d/b/a :
R.B. Contracting :
:

ORDER

AND NOW, this 3rd day of July, 2007, it is the ORDER of the Court that argument on Defendants Motion to Strike in the above matter shall be and is hereby scheduled for Tuesday, July 10, 2007 at 1:00 P.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA. One-half (1/2) hours has been allotted for this argument.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED *Cherry*
10/10/09
JUL 03 2007
ICC Atty's:
Heath
C. Miller

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 03 2007

Prothonotary/Clerk of Courts
William A. Shaw

DATE: 7/30/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID KOHLER, ind. and as :
parent and natural guardian of :
MITCHELL D. KOHLER, a minor :
:
VS. : NO. 03-1868-CD
:
KENNETH L. TEST and ROGER :
BRESSLER, ind. and t/d/b/a :
R.B. CONTRACTING :
:

O R D E R

AND NOW, this 10th day of July, 2007, following argument on Defendant's Motion to Strike and upon consideration thereof, it is the ORDER of this Court that said Motion be and is hereby denied.

It is the further Order of this Court that jury trial be and is hereby continued until the Fall Civil Term of Court, with Jury Selection to be held at 9:00 a.m. on Tuesday, August 28, 2007.

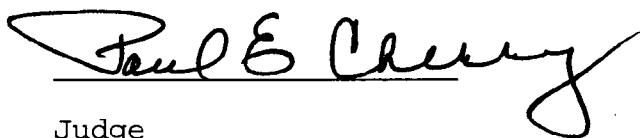
No further continuances shall be granted for any purpose.

BY THE COURT,

Judge

FILED
2007-3784 R. Heath
JUL 13 2007 ER

William A. Shaw
Prothonotary/Clerk of Courts



FILED

JUL 13 2007

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

D.ATE: 7/13/07

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION
No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS'
MOTION TO STRIKE**

Filed on behalf of:
DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
U.S. Steel Tower, 10th Floor
600 Grant Street
Pittsburgh, PA 15219

(412) 394-1000

JURY TRIAL DEMANDED

FILED NO
M 10:50 AM
JUL 09 2007
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent)	CIVIL DIVISION
and natural guardian of MITCHELL D.)	
KOHLER, a minor,)	No. 03-1868-CD
)	
Plaintiff,)	
)	
vs.)	
)	
KENNETH L. TEST and ROGER BRESSLER,)	
individually and t/d/b/a R. B. Contracting,)	
)	
Defendants.)	

PLAINTIFF'S REPLY TO DEFENDANTS' MOTION TO STRIKE

AND NOW, comes the Plaintiff, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CHRISTOPHER M. MILLER, ESQUIRE and files and serves the within Reply to Defendant's Motion To Strike, averring in support thereof as follows:

1. Denied as stated. It is specifically denied that the April 20, 2007 Order of Court indicates that discovery was to end May 30, 2007 or that expert depositions were to be taken thirty (30) days prior to trial. Pursuant to Judge Cherry's April 20, 2007 Order of Court, Paragraph 3, the deadline for providing any and all outstanding discovery shall be concluded no later than thirty (30) days prior to the commencement of trial, which would be Saturday, June 30, 2007. Furthermore, the April 20, 2007 Order of Court does not set any deadline regarding expert depositions.

2. Admitted in part. It is admitted that Plaintiff did not file an accident reconstruction report until June 28, 2007, which was prior to the discovery deadline set by the April 20, 2007 Order of Court. By way of further response, in Plaintiff's Pre-Trial Memorandum, Plaintiff reserved the right to supplement the Pre-Trial Memorandum with an expert engineering/accident reconstruction report. Additionally, counsel for both parties held a conversation following oral argument on their respective Motions in Limine wherein counsel agreed that the April 20, 2007 Order of Court, specifically paragraph 3, encompassed the filing of expert reports at any time up until thirty (30) days prior to the commencement of trial.

3. Admitted.

4. Admitted. It is admitted that trial for this matter is scheduled to begin on July 30, 2007.

5. Denied. It is specifically denied that Plaintiff's expert report was filed at the eleventh hour, that it was done so in direct contradiction of the April 20, 2007 Order of Court or that it is, in any manner, prejudicial to the Defendants. To the contrary, Plaintiff's supplemental filing of an accident reconstruction report is in direct compliance with the April 20, 2007 Order of Court. Furthermore, Defendants have not, in any manner, been prejudiced by this filing as they were free to obtain and file their own accident reconstruction report at any time during the course of this litigation, but apparently chose not to do so. Also, Plaintiff's counsel has indicated to defense counsel that no objections would be made to any accident reconstruction report obtained by defense counsel, as long as a copy of any such report is provided at least five (5) days prior to the commencement of trial. A true and correct copy of Plaintiff's counsel's June 28, 2007 correspondence directed to Roberta Binder Heath, Esquire is attached hereto, made a part hereof and identified as Exhibit "A".

6. After reasonable investigation, Plaintiff is without sufficient information to form a belief as to truth of the averments contained in paragraph 6 of Defendants' Motion to Strike. To the extent that a response may be deemed to be required, all averments contained in paragraph 6 of Defendant's Motion to Strike are therefore denied and strict proof thereof is demanded. By way of further response, as defense counsel has stated in its Motion to Strike, litigation for this case has been ongoing for approximately four (4) years, and defense counsel could have obtained an expert report at any time during the aforementioned timeframe.

7. Denied. It is specifically denied that the filing of Plaintiff's expert report on June 28, 2007 is a last minute filing or in any manner circumvents the April 20, 2007 Order of Court. To the contrary, Plaintiff's supplemental filing of the accident reconstruction report is in direct compliance with the April 20, 2007 Order of Court. By way of further response, counsel for both parties held a conversation following oral argument on their respective Motions in Limine wherein counsel agreed that the April 20, 2007 Order of Court, specifically paragraph 3, encompassed the filing of expert reports at any time up until thirty (30) days prior to the commencement of trial.

8. Denied as stated. The discovery deadline pursuant to the April 20, 2007 Order of Court indicated that discovery was to be completed no later than thirty (30) days prior the commencement of trial, or June 30, 2007. Plaintiff's accident reconstruction report was timely filed pursuant to April 20, 2007 Order of Court, as it was filed on June 28, 2007. By way of further response, pursuant to the Pennsylvania Rules of Civil Procedure, defense counsel is not entitled to take Plaintiff's expert's deposition unless good cause is shown for the necessity of such a deposition.

9. Denied. It is specifically denied that Plaintiff's counsel behaved in a dilatory fashion with regard to the deposition of Dr. William F. Schrantz. Medical expert depositions for use at trial can take place at any time prior to the commencement of trial, as they are to be used in lieu of live testimony at trial. Furthermore, Plaintiff's counsel was free to call Dr. Schrantz live at trial to testify as to Plaintiff's injuries and damages had he chose to do so. Therefore, the April 20, 2007 Order of Court does not, in any manner, apply to the taking of Dr. Schrantz's videotape deposition for use at trial. By way of further response, the scheduling of Dr. Schrantz's videotape deposition for use at trial has no relevance whatsoever with respect to Defendants' Motion to Strike.

10. Denied. The April 20, 2007 Order of Court does not address any deadline for the scheduling and/or taking of medical expert depositions. Furthermore, the April 20, 2007 Order of Court does not, in any manner, apply to the taking of Dr. Schrantz's videotape deposition for use at trial. Medical expert depositions for use at trial can take place at any time prior to the commencement of trial, as they are to be used in lieu of live testimony at trial. Furthermore, Plaintiff's counsel was free to call Dr. Schrantz live at trial to testify as to Plaintiff's injuries and damages had he chose to do so. By way of further response, the scheduling of Dr. Schrantz's videotape deposition for use at trial has no relevance whatsoever with respect to Defendants' Motion to Strike.

11. Denied. It is specifically denied that the filing of Plaintiff's accident reconstruction report is in any way is unprecedented, unacceptable or shows a pattern of dubious trial tactics. It is further denied that defense counsel is any way prejudiced by the filing of Plaintiff's accident reconstruction report, or that the report should be stricken from the record. Plaintiff's counsel takes exception to the averments set forth in paragraph 11 of Defendants'

Motion to Strike. The filing of Plaintiff's accident reconstruction report is in direct compliance with the April 20, 2007 Order of Court, and does not, in any manner, prejudice Defendants as they were free to file their own expert report had they chosen to do so, and furthermore are still free to do so as demonstrated by Exhibit "A". Furthermore, counsel for both parties held a conversation following oral argument on their respective Motions in Limine wherein counsel agreed that the April 20, 2007 Order of Court, specifically paragraph 3, encompassed the filing of expert reports at any time up until thirty (30) days prior to the commencement of trial.

12. Denied as stated. While the accident reconstruction report is based to an extent on the photographs of Duttry and Dixon which are presently subject to one of Defendants' Motions in Limine, it is specifically denied that the filing of Plaintiff's accident reconstruction report is, in any manner, an attempt to have the photographs come into evidence through the back door. By way of further response, this Honorable Court has yet to rule on Defendants' Motion in Limine, and therefore the averments contained in paragraph 12 of Defendants' Motion to Strike are being asserted prematurely.

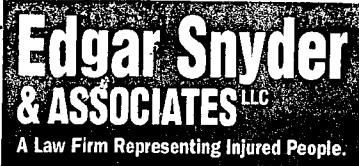
13. No response is required of Plaintiff with respect to the averments contained in Paragraph 13 of Defendant's Motion to Strike.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny Defendants' Motion To Strike.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiffs



US Steel Tower • 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412-394-1000
Toll Free: 1-800-222-6540

Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

Fax: 412-391-2180
Web: www.edgarsnyder.com

June 28, 2007

VIA TELEFAX – (814) 943-0856
(Original to follow via Fed Ex)

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Robin:

Enclosed herewith please find a copy of Plaintiff's Supplemental Pre-Trial Memorandum, the original of which is being sent to the Court via overnight mail for filing. This supplemental report is being timely filed pursuant to Judge Cherry's April 20, 2007 Order of Court. As we discussed following oral argument of the Motions In Limine, should you decide to retain an accident reconstruction expert, please note that I will have no objections to this as long as I am provided with a copy of any reports authored within five (5) days prior to the date of commencement of trial.

Additionally, you will receive via overnight mail proofs of the x-rays which I intend to have Dr. Schrantz address during his videotape deposition. I am providing these to you in the event that you are only able to participate in his deposition via telephone. I do not intend to go into much detail with Dr. Schrantz concerning these x-rays, but I will likely have him briefly address them during his deposition.

Lastly, we recently discussed the amount of the associated healthcare lien for this case. I had requested your stipulation of the associated healthcare lien, that being Nine Thousand Three Hundred Twenty Seven Dollars and 22/100ths (\$9,327.22). You had questioned whether a reduced amount would be accepted by the lien holder. Please note that I have not had any discussions with the law offices of Bryan B. Davenport regarding an associated lien reduction as

EXHIBIT

"A"

#866925

Pennsylvania Office Loca

Erie • Johnstown • Pittsburgh

Roberta Binder Heath, Esquire

June 28, 2007

Page 2

of this date. Furthermore, I do not believe that such a discussion is appropriate at this time, as many factors need to be taken into consideration with respect to potentially reducing the lien amount. Obviously, it is unknown what the outcome of the trial will be, and I believe that this is a critical factor in whether Mr. Davenport will be in a position to accept a reduced amount for the associated lien. The amount of any verdict obtained would clearly be something that Mr. Davenport would need to take into consideration prior to deciding whether a reduction would be appropriate. Accordingly, I do not, and will not, know whether Mr. Davenport will accept a reduced lien amount, as the outcome of this case is presently unknown.

Therefore, I am again requesting that you stipulate to the associated healthcare lien amount of Nine Thousand Three Hundred Twenty Seven Dollars and 22/100ths (\$9,327.22). In the event that you are unwilling to stipulate to this amount, it will be necessary for me to contact Mr. Davenport's office and either have him intervene in this litigation or else appear at trial in order to testify regarding this lien figure. Please advise of your position in this respect.

Should you wish to discuss any of these issues, please feel free to contact me. Thank you for your attention to this matter.

Very truly yours,



Christopher M. Miller

CMM/kb
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Reply to Defendants' Motion To Strike was served upon all counsel of record on this 6th day of July, 2007 by U.S. First Class Mail, at the following address:

**Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830**

**Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**



Christopher M. Miller, Esquire
Attorney for Plaintiffs

FILED

JUL 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendants

Type of Document:
MOTION FOR SITE VISIT

Counsel for Defendants:
Roberta Binder Heath, Esquire

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 940-8670

FILED
OCT 01 2007
100
Atty
William A. Shaw
Prothonotary/Clerk of Courts
(6K)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
: .

v. :
: .

KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendants : .

ORDER

AND NOW, this _____ day of _____, 2007, upon
consideration of the Motion for Site Visit filed by the Defendants, the Jury shall be
required to visit Panther Road, a private road located in Pine Township, Clearfield
County, Pennsylvania on a private thoroughfare which runs in a generally east/west
direction, during trial.

BY THE COURT:

J.

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

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, Plaintiff	:	No. 03-1868-CD
v.	:	
KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendants	:	

MOTION FOR SITE VISIT

AND NOW, come the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a/ R. B. Contracting, by and through their attorney of record, Roberta Binder Heath, Esquire, and file the foregoing Motion For Site Visit and in support thereof, aver the following:

1. The scene of the accident is a private road located in Pine Township, Clearfield County, Pennsylvania on a private thoroughfare known as Panther Road which runs in a generally east/west direction.
2. Plaintiff's are relying on photographs allegedly taken of tracks of the vehicles at the scene, which were painted over by two (2) individuals.
3. Plaintiff's accident reconstructionist relies on these photographs.
4. These photographs show paint placed on the roadway in the location where the two (2) friends of Plaintiff believe showed the path of travel of the dirt bike, and the

location of the backhoe at impact. These individuals were not eyewitnesses and did not put the paint on the road until the following day.

5. A view of the road's rough gravel surface makes these individual's placement of the tire marks questionable, especially after other vehicles had traveled up and down that road after the accident.

6. Thus, it is important for the jury to view the scene first-hand to assist them in drawing their own conclusions as to the reliability of the alleged tire marks painted.

7. Also, the road is extremely narrow and windy, which cannot be adequately appreciated in any of the photographs. The jury should see first-hand the topography of the roadway.

8. Defendants will be prejudiced if no site visit is permitted.

WHEREFORE, Defendant respectfully request a site visit be required of the jury during trial.

Respectfully submitted,

ANDREWS & BEARD

Date: September 28, 2007



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

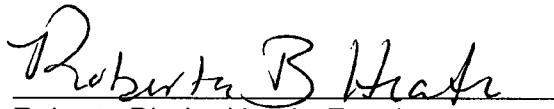
DAVID KOHLER, individually and as :
parent and natural guardian of :
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
:
v. :
:
KENNETH L. TEST and ROGER :
BRESSLER, individually and :
t/d/b/a R.B. Contracting, :
Defendant :
:

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the Motion for Site Visit was served on this 28th of September, 2007 by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

DAVID KOHLER, individually and as parent and natural guardian of

MITCHELL D. KOHLER, a minor Plaintiff

v.

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

No. 03-1868-CD

Defendants' Motion *In Limine* to Exclude Evidence of Photographs and Video of Plaintiff Received September 27, 2007

Counsel for Defendants:
Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311
(814) 943-3304
rheath@andrewsbeard.com

FILED *cc*
Oct 01 2007 *Att'y*
10/2/07

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER,
Plaintiff

No. 03-1868-CD

v.

KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendants

ORDER

AND NOW, this _____ day of _____, 20____, upon
consideration of the foregoing Defendant's Motion *In Limine* to Exclude Evidence
of photographs and video of Plaintiff's leg received September 27, 2007, it is
hereby ORDERED that:

Any evidence of or reference to the photographs or video of the Plaintiff's
leg received September 27, 2007 be excluded from the trial in the above
captioned action.

BY THE COURT,

J.

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

DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor Plaintiff : No. 03-1868-CD

v. :

KENNETH L. TEST and ROGER BRESSLER, individually and t/d/b/a R.B. Contracting, Defendants :

**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
PHOTOGRAPHS AND VIDEO OF PLAINTIFF'S LEG RECEIVED
SEPTEMBER 27, 2007**

AND NOW, comes the Defendants, Kenneth L. Test and Roger Bressler, individually and t/d/b/a R.B. Contracting, by and through their attorney of record, Roberta Binder Heath, Esquire, and files the foregoing Motion to Exclude Evidence of Plaintiff's Photographs of Plaintiff's leg received September 27, 2007 and in support thereof avers the following:

1. This civil action stems from an accident that occurred in Clearfield County, Pennsylvania, on or about July 21 of 2002, on a private road that was known at the time as Panther Road.
2. The accident occurred when the Plaintiff, who was riding a dirt bike, collided with a backhoe on Panther Road that was being driven by an employee of the Defendants.

3. The Plaintiff sustained injuries as a result of the accident, which resulted in four scars forming on his right leg and hip following the accident and subsequent surgery.

4. The Plaintiff took four photographs of the scars, which were dated January 13, 2003; and six photographs of the Plaintiff in the hospital dated July 23, 2002.

5. At his deposition taken on August 15, 2006, the Plaintiff admitted that the scar tissue is no longer red and inflamed as it was at the time that the photographs were taken. (See Exhibit "A", Deposition Transcript of Plaintiff Mitchell Kohler at p. 16.) The scars no longer require medical treatment and at least one scar has healed completely. (See Exhibit "A", Deposition Transcript of Plaintiff Mitchell Kohler at pp. 16, 56.). No testimony was presented about any bulging or other signs of disfigurement.

6. On July 20, 2007, at Dr. Schrantz's Deposition, Plaintiff's treating doctor indicated Plaintiff was fully recovered and no overt disfigurement existed. One day before the discovery deadline, Plaintiff produced fairly shocking photographs showing apparent disfigurement. (See Exhibit "B", Photographs of Mitchell Kohler's Leg received September 27, 2007). No mention of disfigurement of this magnitude was ever mentioned until September 27, 2007.

7. Plaintiff nonetheless intends to introduce these recent photographs and video of this disfigurement as evidence at the trial in the above-captioned action.

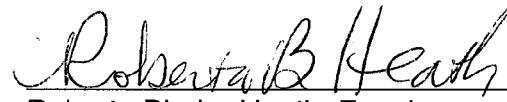
8. The Defendants move that photographs and video of the Plaintiff's apparent disfigurement produced on September 27, 2007, one day before the discovery deadline, be excluded from the trial in the above-captioned action because the photographs are highly prejudicial and produced so late in time, without forewarning or explanation, so as to put Defendants at an extreme disadvantage. No time exists within which for Defendant to refute this evidence, retain an expert, have an IME performed to deduce the cause and/or permanence of the apparent condition.

9. Production of evidence of such magnitude at this late juncture is suspect. No explanation was provided as to why these photographs were never produced previously. Plaintiff's treating physician was not shown these photographs at his trial deposition and had no knowledge this apparent disfigurement existed. Plaintiff himself never mentioned any disfigurement. It is now too late for Defendants to determine whether this newly produced evidence has been altered, or if some re-injury occurred. Throughout this litigation, Plaintiff has exhibited a pattern of producing prejudicial evidence at the eleventh hour. Clearly Plaintiff cannot continue to benefit from these underhanded and dilatory tactics.

WHEREFORE, it is respectfully requested this Court exclude these latest photographs and video of Plaintiff's leg.

Respectfully submitted,

ANDREWS & BEARD



Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603
(814) 943-3304

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as
parent and natural guardian of
MITCHELL D. KOHLER, : No. 03-1868-CD
Plaintiff :
V. :
KENNETH L. TEST and ROGER
BRESSLER, individually and
t/d/b/a R.B. Contracting,
Defendant :
:

CERTIFICATE OF SERVICE

I, ROBERTA BINDER HEATH, ESQUIRE, of the law firm of ANDREWS & BEARD, 3366 Lynnwood Drive, P. O. Box 1311, Altoona, Pennsylvania 16603-1311, hereby certify that the Defendants' Motion in Limine was served on this **28th of September, 2007** by First Class Delivery, postage pre-paid:

Christopher M. Miller, Esquire
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

ANDREWS & BEARD


Roberta Binder Heath, Esquire
Pa. I.D. No. 50798
Counsel for Defendants

EXHIBIT

A

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PA

CIVIL DIVISION

* * * * *

* Case No.

DAVID KOHLER, * 03-1868-CD

individually and as *

a parent and natural*

guardian of MITCHELL*

D. KOHLER, a minor, *

Plaintiff *

vs. *

KENNETH L. TEST and *

ROGER BRESSLER, *

individually and *

t/d/b/a R.B. *

CONTRACTING, *

Defendants *

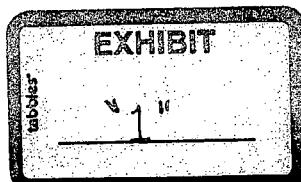
* * * * *

DEPOSITION OF

MITCHELL D. KOHLER

AUGUST 15, 2005

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is prohibited without authorization
by the certifying agency.



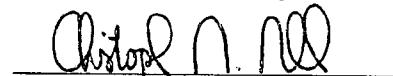
1 engineering. 2 Q Have you looked into anything? 3 A As of right now, no. 4 Q The injuries that you sustained 5 on July 21st, 2002, does that affect 6 your ability to make a living? 7 A No. 8 Q And when you dropped out of 9 school, did that have anything to do 10 with the accident that is the subject 11 of this lawsuit? 12 A No. 13 Q And I said dropped out. Were 14 you expelled or ---? 15 A No. I just pretty much dropped 16 out, yes. 17 Q Were you afraid you were going 18 to be expelled? 19 A No. 20 Q Okay. When you said you got 21 into some trouble, were you referring 22 to the DUI as the reason that you left 23 school? 24 A Yes. 25 Q It wasn't something else?	Page 14	1 Q And I'm not going to ask you to 2 show me. I'm just going to show you 3 some pictures, and ask you if you think 4 that they're better, your scars are 5 better, I mean. And I'll show you what 6 has been produced by the Plaintiff in 7 response to the Defendants' Request for 8 Production of Documents, which shows 9 several pictures dated 1/13/03, where 10 you're showing your scar. There's four 11 pictures there. 12 A Okay. Yes, those are my scars. 13 Q And today, how do they look 14 compared to this picture that was taken 15 six months after the accident? 16 A They're not as red. They're 17 actually normal skin color now. 18 Q Do you put anything on them, any 19 type of treatment, scar treatment, 20 vitamin E, anything like that, to make 21 them better? 22 A Not anymore. Whenever they were 23 like that I had to. 24 Q Do they bother you in any way? 25 Do they hurt?	Page 16
1 A No. 2 Q Is this your first job that 3 you've had? 4 A No. I've had previous jobs. 5 Q Where else did you work? 6 A I worked at Shop 'N Save, 7 Sheetz, and I did construction with 8 Robert Powell. 9 Q When was that? 10 A I did construction --- all the 11 jobs were last year. 12 Q All those jobs were in 2004? 13 A Yes. 14 Q Are you currently being treated 15 by any doctor related to the injuries 16 you sustained? 17 A No. 18 Q Do you have any permanent 19 scarring from this accident? 20 A Yes. I have four scars on my 21 right side. 22 Q And do you have any plans to 23 have any corrective surgery concerning 24 those scars? 25 A No	Page 15	1 A The big one, it itches every now 2 and again. 3 Q The big one would be the one on 4 the side of your leg there that's in 5 picture two? 6 A Yeah. 7 Q And that's a scar that goes 8 vertically down your leg; correct? 9 A Yes. 10 Q How many inches would you say 11 that is? 12 A Probably eight or nine. 13 Q And the other three --- the next 14 biggest one looks to be above there --- 15 A Uh-huh (yes). 16 Q --- on your hip. And how many 17 inches is that? 18 A It's probably three and a half, 19 four. 20 Q And the one below it? 21 A It was about an inch and a half. 22 Q The other two, the one that's on 23 --- by your knee? 24 A Yeah. They're about an inch and 25 a half.	Page 17

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Reply to Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Photographs of Plaintiff in the Hospital and of his Scars was served upon all counsel of record on this 12th day of June _____, 2007 by U.S. First Class Mail, at the following address:

**The Honorable Paul E. Cherry
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830**

**Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**



Christopher M. Miller Esquire
Attorney for Plaintiffs

EXHIBIT

B



Attorney Christopher M. Miller
Also admitted to practice in New Jersey

Direct Dial Number: 412/394-4517
E-mail: cmiller@edgarsnyder.com

US Steel Tower • 10th Floor
600 Grant Street
Pittsburgh, PA 15219-2705

Telephone: 412-394-1000
Toll Free: 1-800-222-6540

Fax: 412-391-2180
Web: www.edgarsnyder.com

September 25, 2007

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Re: David Kohler, individually and as parent and natural guardian of Mitchell D. Kohler, a minor vs. Kenneth L. Test and Roger Bressler, individually and t/d/b/a R. B. Contracting
Docket #: 03-1868-CD
Our File #: 340120

Dear Robin:

Pursuant to your ongoing discovery requests, enclosed please find color copies of photographs which I took of Mitchell on August 28, 2007.

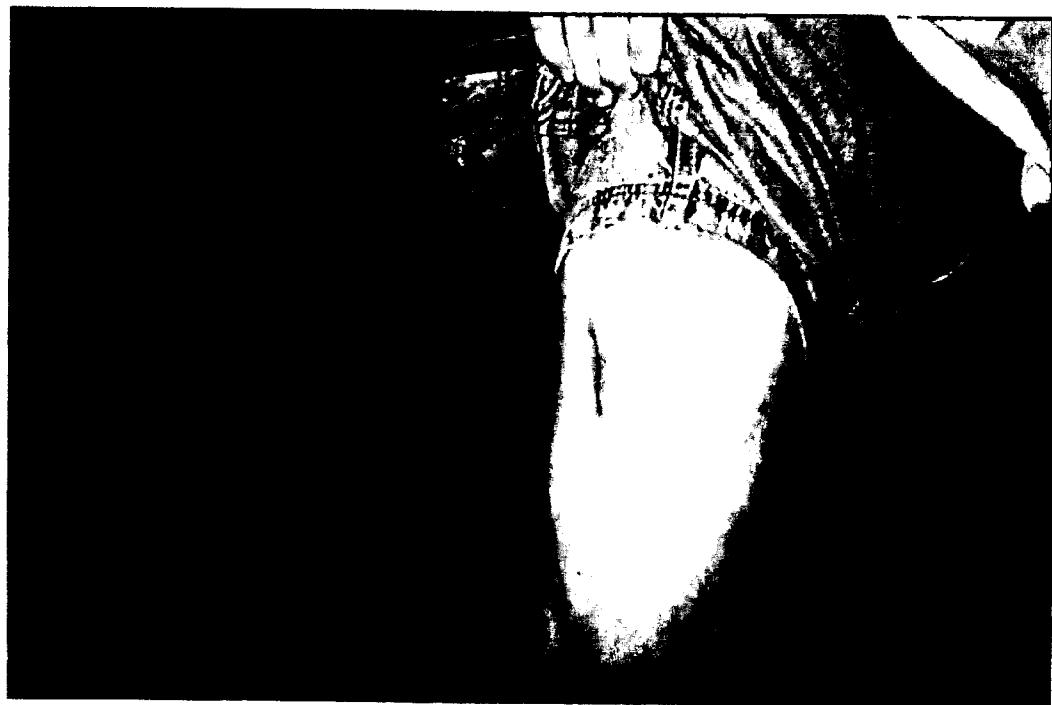
Should you have any questions, please feel free to contact me. Thank you for your attention to this matter.

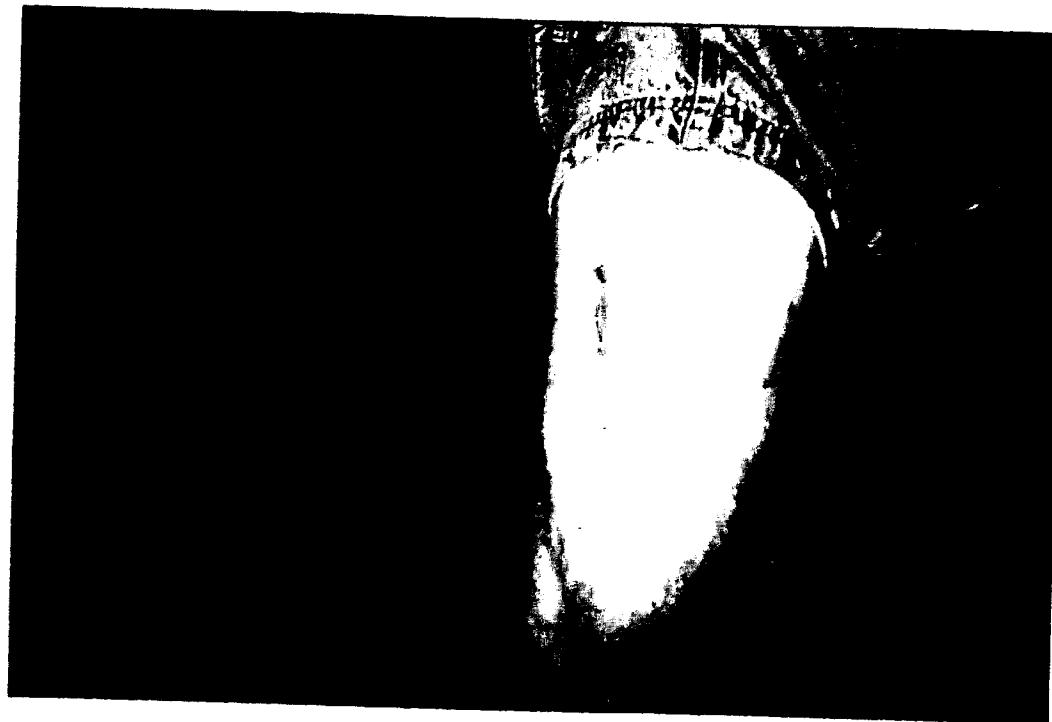
Very truly yours,

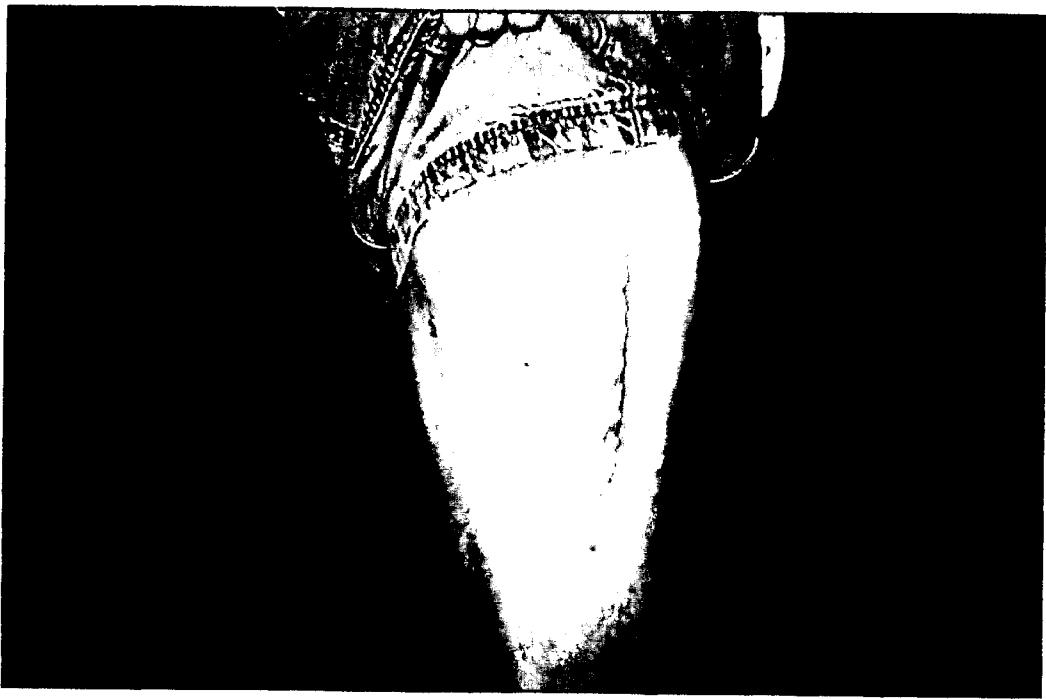
Christopher M. Miller

CMM/kb
Enclosures

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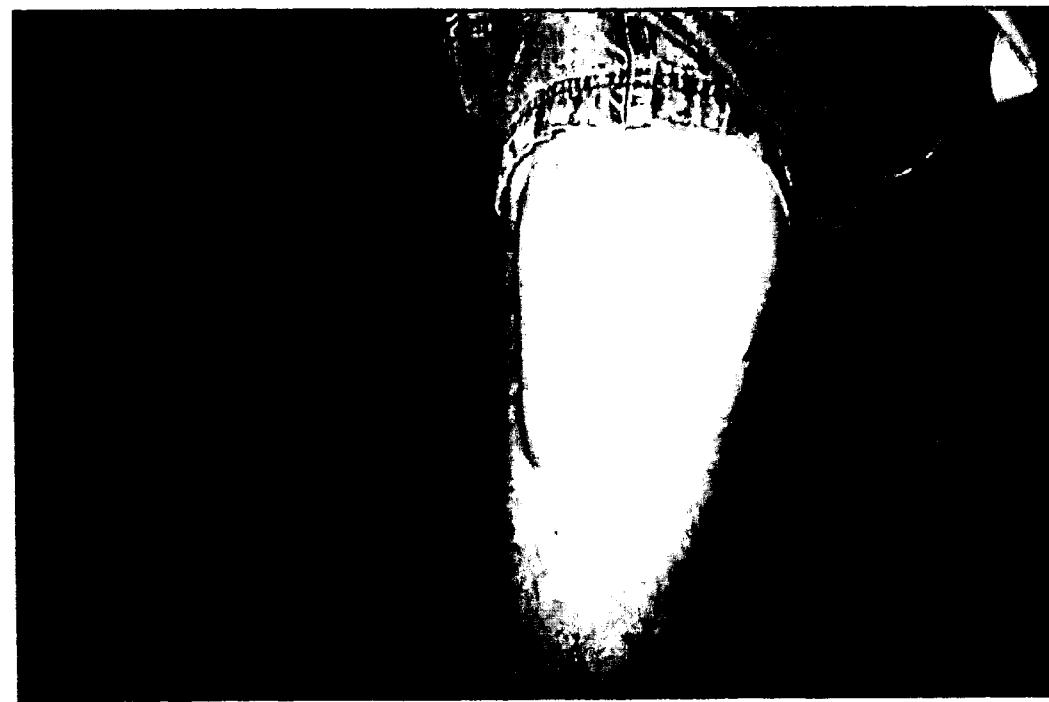
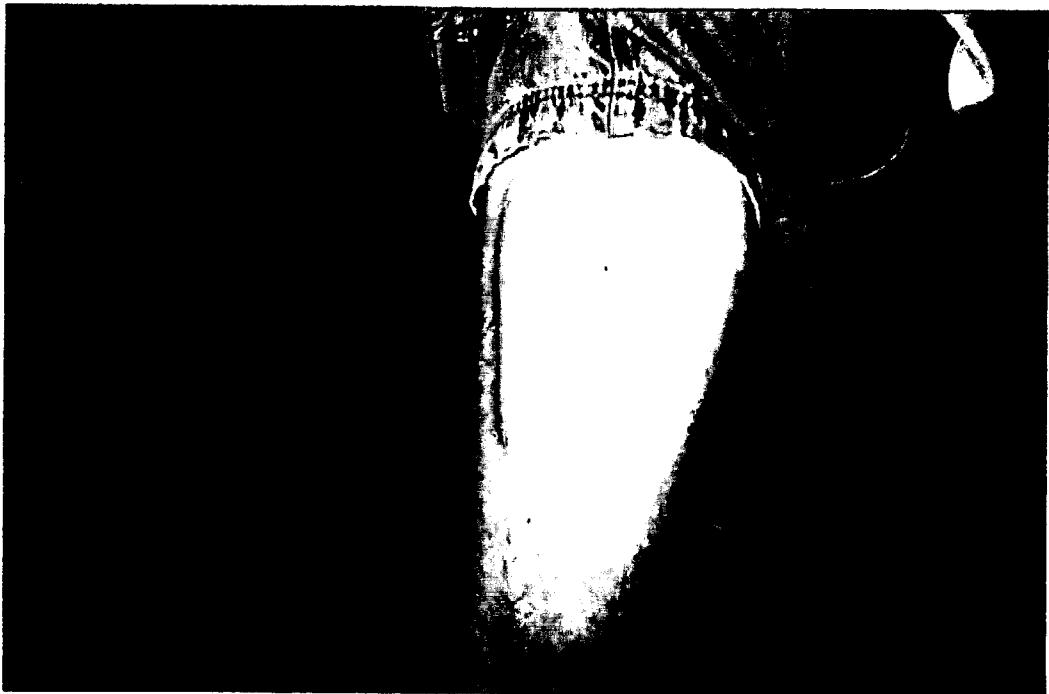


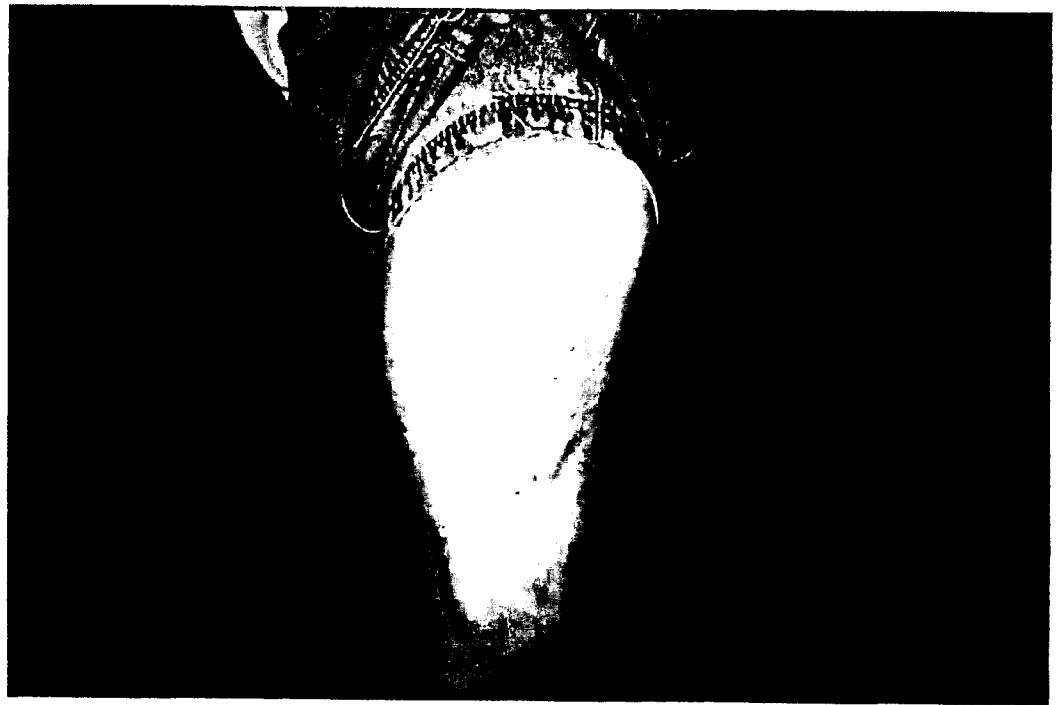
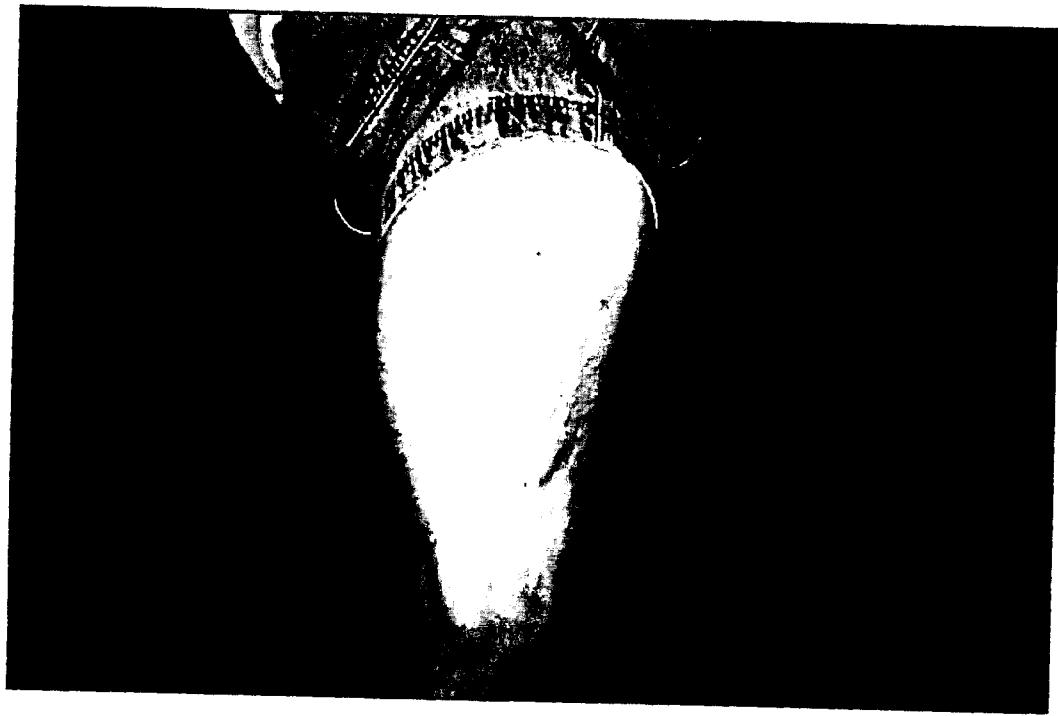


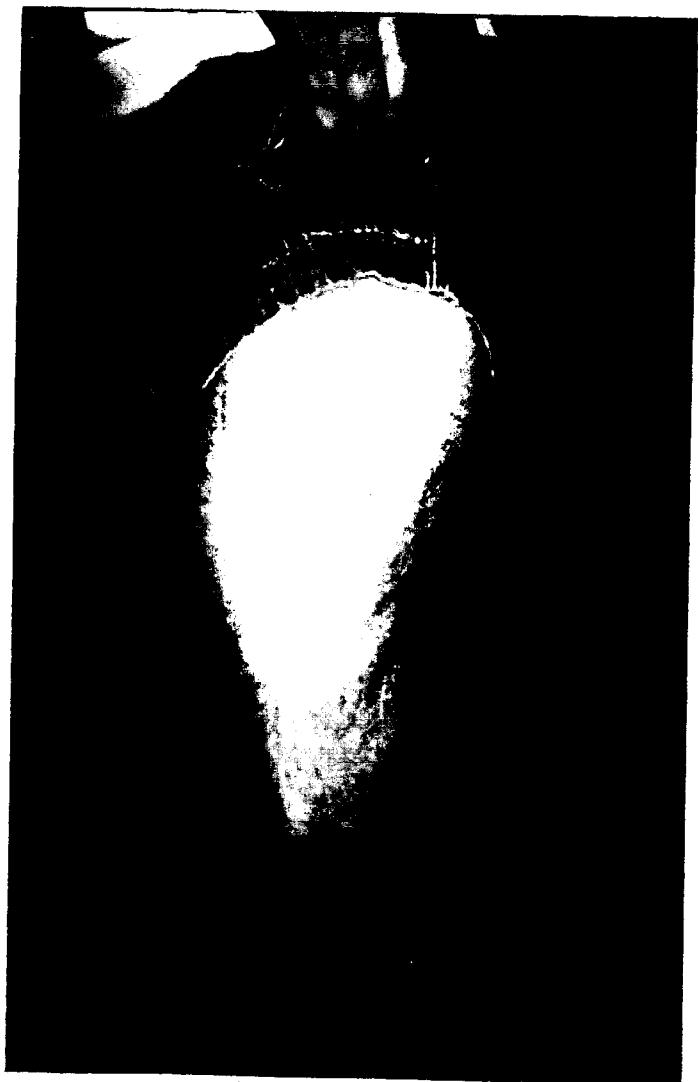


















IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID KOHLER, individually and as : NO. 03-1868-CD
parent and natural guardian of MITCHELL :
KOHLER, a minor, :
Plaintiff :
: v. :
: :
KENNETH L. TEST and ROGER :
BRESSLER, individually and t/d/b/a :
R.B. CONTRACTING, :
Defendant :
:

2CC ATT/s:
FILED C. Miller
01/22/2007 R. Heath
OCT 05 2007 (6K)

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 3rd day of October, 2007, it is the ORDER of this Court that
hearing with regard to Defendant's Motion for Site Visit and Defendant's Motion in
Limine to Exclude Evidence of Photographs and Video of Plaintiff Received September
27, 2007, be and is hereby scheduled for the 15th day of November, 2007, at
9:00 A.M., in Courtroom No. 2 at the Clearfield County Courthouse,
Clearfield, Pennsylvania.

BY THE COURT,

BY THE COURT,


PAUL E. CHERRY,
JUDGE

DATE: 10-5-2007

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney

 Special Instructions:

FILED

OCT 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION
No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS'
MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF PHOTOGRAPHS AND
VIDEO OF PLAINTIFF**

Filed on behalf of:
DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
U.S. Steel Tower, 10th Floor
600 Grant Street
Pittsburgh, PA 15219

(412) 394-1000

JURY TRIAL DEMANDED

FILED NO C C
OCT 11 2007
6K
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,

Defendants.

PLAINTIFF'S SECOND SUPPLEMENTAL PRE-TRIAL MEMORANDUM

AND NOW, come the Plaintiffs, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CHRISTOPHER M. MILLER, ESQUIRE and files and serves Plaintiffs' Reply To Defendants' Motion In Limine To Exclude Evidence of Photographs and Video of Plaintiff, averring in support thereof as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied as stated. It is specifically denied that Plaintiff testified that the scar tissue is no longer red and inflamed. To the contrary, Plaintiff's deposition testimony was "They're not as red. They're actually normal skin color now." See Plaintiff's deposition, page 16, lines 16-

17. Furthermore, Plaintiff testified that he no longer performs any type of scar treatment or puts vitamin E on his scars. See Plaintiff's deposition, page 16, lines 18-23. It is admitted that Plaintiff testified that one of the scars has healed. By way of further response, while Plaintiff may not have provided any testimony at his deposition concerning bulging or other signs of disfigurement regarding the scarring, this was due to the fact that defense counsel failed to address this issue with Plaintiff during his deposition. Simply because the issue was not addressed by defense counsel does not mean that bulging and disfigurement is not present.

6. Denied as stated. It is specifically denied that Dr. Schrantz testified during his deposition that Plaintiff was fully recovered and no overt disfigurement existed. To the contrary, Dr. Schrantz testified "I think just -- there wasn't any problems with the scars, but he would have one, two, three, four scars on his leg from the surgery itself." See Dr. Schrantz's deposition transcript, page 36, lines 13-15, attached hereto as Exhibit "1". By way of further response, it is admitted that Plaintiff produced photographs and a DVD which evidenced Plaintiff's current scarring and disfigurement as it presently appears. The photographs and DVD footage were provided in a timely manner in accordance with Judge Cherry's previous Order of Court regarding discovery, which set the discovery deadline for September 28, 2007. The photographs and DVD footage demonstrate the same area of scarring and disfigurement that was previously produced to defense counsel, albeit they are more recent. Defense counsel can't have it both ways – previously, defense counsel filed a Motion in Limine seeking to exclude the photographs taken in 2002 and 2003, claiming that these photographs did not depict how the scarring presently appeared. Now, defense counsel is apparently contending that these recent photographs and footage, which depict how Plaintiff's scarring and disfigurement presently appears, is somehow prejudicial to the case.

7. Admitted. Plaintiff is entitled to produce evidence and testimony regarding scarring and disfigurement as it is an element of the Plaintiff's case.

8. Denied. It is specifically denied that the photographs or DVD footage should be excluded from the trial. They are not prejudicial as they evidence Plaintiff's scarring and disfigurement sustained as a result of this incident. Furthermore, the photographs and DVD footage were produced in accordance with Judge Cherry's previous Order setting the discovery deadline for September 28, 2007. Defense counsel could have easily retained an expert and/or had a Defense Medical Examination performed and/or requested to take her own photographs of Plaintiff's leg in accordance with Judge Cherry's discovery deadline, but apparently chose not to do so.

9. Denied. It is specifically denied that production of the aforementioned evidence is suspect or requires any explanation. It is further denied that neither Plaintiff nor Dr. Schrantz provided testimony and/or mentioned any scarring or disfigurement as is evidenced by their deposition testimony. The aforementioned evidence was produced in accordance with Judge Cherry's previous Order which set the discovery deadline for this case on September 28, 2007. By way of further response, Plaintiff's counsel takes exception to the remarks set forth in Paragraph 9 by defense counsel, specifically the allegations of evidence alteration, exhibiting a pattern of producing prejudicial evidence at the eleventh hour, and benefiting from underhanded and dilatory tactics. To the contrary, all evidence has been disclosed to defense counsel in accordance with the Court's Orders. Defense counsel could have easily requested an inspection of Plaintiff's leg, photographed Plaintiff's leg, obtained a Defense Medical Examination or taken any other measures which were readily available to defense counsel prior to the expiration of the

discovery deadlines set by Judge Cherry. Plaintiff should not be punished for defense counsel's failure to undertake any of these measures.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to deny Defendants' Motion In Limine To Exclude Evidence of Photographs and Video of Plaintiff's Leg.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By 
Christopher M. Miller, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
Defendants.

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby
ORDERED, ADJUDGED and DECREED that Defendants' Motion In Limine To Exclude
Evidence of Photographs and Video of Plaintiff's Leg is hereby denied.

BY THE COURT;

J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PLAINTIFF'S REPLY TO DEFENDANTS' MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PHOTOGRAPHS AND VIDEO OF PLAINTIFF** was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 8th day of October, 2007:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

FILED

OCT 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE, TESTIMONY OR
ANY OTHER REFERENCE TO
ALCOHOL CONSUMPTION ON THE
PART OF PLAINTIFF**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
U.S. Steel Tower, 10th Floor
600 Grant Street
Pittsburgh, PA 15219

(412) 394-1000

JURY TRIAL DEMANDED

FILED
M 10/5/07
OCT 26 2007
NOCC

500
500
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
)
Defendants.)

**PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY OR
ANY OTHER REFERENCE TO ALCOHOL CONSUMPTION ON THE PART OF
PLAINTIFF**

AND NOW, comes the Plaintiff, DAVID KOHLER, individually and as parent and natural guardian of MITCHELL D. KOHLER, a minor, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CHRISTOPHER M. MILLER, ESQUIRE and files and serves Plaintiff's Motion in Limine to Exclude Evidence, Testimony or any other Reference to Alcohol Consumption on the Part of Plaintiff, averring in support thereof as follows:

1. The above-captioned case arises out of a dirt bike versus backhoe accident that occurred on July 21, 2002 in Pine Township, Clearfield County, Pennsylvania on a private thoroughfare known as Panther Road.
2. As a result of this incident, Plaintiff, Mitchell Kohler suffered serious and severe personal injuries and damages.

3. Plaintiff, Mitchell Kohler subsequently filed a lawsuit against the named Defendants as a result of the aforementioned incident.

4. There is no evidence indicating that Plaintiff, Mitchell Kohler had consumed alcohol on the date of loss, or that he was intoxicated at the time of this incident.

5. However, Defendants' counsel has questioned Plaintiff (see relevant portion of Plaintiff's deposition transcript, page 33, lines 21-23, attached hereto as Exhibit "A"), James Dixon, a witness (see relevant portion of James Dixon's deposition transcript, page 34, lines 15-18, attached hereto as Exhibit "B") and Dr. William Schrantz, Plaintiff's orthopedic surgeon (see relevant portion of Dr. Schrantz's deposition transcript, page 34, lines 20-24, page 35 lines 1-4, attached hereto as Exhibit "C") on the topic of alcohol consumption during their depositions.

6. Plaintiff, Mitchell Kohler believes and therefore avers that Defendants' counsel may try to introduce evidence, elicit testimony on direct and cross-examination and/or reference the issue of alcohol and alcohol consumption during the course of the trial of the instant matter.

7. It is well established law in Pennsylvania that where recklessness or carelessness is at issue in a case, the mere fact of consuming alcohol is inadmissible as unfairly prejudicial, unless it reasonably establishes intoxication. Whyte v. Robinson, 617 A.2d 380, 383 (Pa.Super. 1992); Cusatis v. Reichert, 406 A.2d 787, 788-89 (Pa.Super. 1979).

8. If the jury could not reasonably find intoxication based on such evidence, it is "highly prejudicial" to permit the jury to hear such evidence. Vignoli v. Standard Motor Freight, Inc., 210 A.2d 271, 273 (Pa.Super. 1965).

9. In this case, there is no evidence whatsoever of alcohol consumption on the part of Plaintiff, let alone intoxication.

10. Therefore, any evidence, including testimony elicited on direct and cross-examination, or any reference whatsoever regarding alcohol consumption would be highly prejudicial to Plaintiff, Mitchell Kohler, and should be excluded as such.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court preclude any reference whatsoever to the consumption of alcohol on the part of Plaintiff.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By: Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

1 A. Yes.

2 Q. That you were seen smoking pot

3 that day; is that correct?

4 A. No.

5 Q. What about the day before?

6 A. No.

7 Q. Have you ever smoked pot?

8 A. Yes.

9 Q. But you didn't smoke it that

10 day?

11 A. No.

12 Q. Do you remember the last time

13 you smoked pot before the accident?

14 A. No.

15 Q. Had you smoked pot before the

16 accident?

17 A. I don't think I have actually

18 before that.

19 Q. So it was afterwards?

20 A. Yeah.

21 Q. The day of the accident, had you

22 had any alcohol?

23 A. No.

24 Q. Did you have any other

25 medication, and I don't just mean

PLAINTIFF'S
EXHIBIT
"A"

Sargent's Court

Service, Inc.

<p style="text-align: right;">Page 34</p> <p>1 A. Coming out of the blind S-curve, 2 yes. 3 Q. You didn't actually hear any 4 impact or anything like that? 5 A. No. 6 Q. Just the ambulance? 7 A. That was too far away to hear 8 anything like that. 9 Q. The ambulance was the first 10 indication? 11 A. Indication that we knew 12 something was up that --- we didn't 13 know that it was Mitch, you know. We 14 just ---. 15 Q. Now, to your knowledge had 16 Mitchell consumed any alcohol or drugs 17 that day? 18 A. Not at our camp. 19 Q. Let me show you what I'd like 20 marked as Exhibit Four. 21 (Deposition Exhibit 22 Number Four marked for 23 identification) 24 BY ATTORNEY BINDER-HEATH: 25 Q. These are photographs, again,</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Now, if you look to the fourth 2 page, it has the width of the roadway, 3 it's about 15 feet. 4 A. Okay. 5 Q. Do you believe that's accurate? 6 A. Yes. 7 Q. Now, you said that the roadway 8 was sandy and so, therefore, you 9 believed you could tell the path of 10 travel of both the backhoe and 11 Mitchell's dirt bike? 12 A. Uh-huh (yes). 13 Q. Now, did you --- in looking at 14 the path of travel of the backhoe, 15 there's only an indication of where you 16 believe the back wheels are locked up. 17 Could you identify its path of travel 18 prior to those two lines where you 19 indicated you saw that they --- or 20 believe the back wheels had locked up? 21 Did you see the path of travel of the 22 backhoe in the roadway, in the dirt? 23 A. Could you ---? 24 Q. What I'm trying to ask is, could 25 you identify --- I understand where</p>
<p style="text-align: right;">Page 35</p> <p>1 that were provided to me by Mitchell's 2 attorney and it indicates here that 3 they were taken on 7/23/02, so it would 4 have been two days after the accident. 5 It indicates that the individual who 6 took the picture was Mark Vermillion. 7 Did you ever speak with anybody from 8 the insurance company or Edgar Snyder? 9 A. No. 10 Q. Now, these photographs, if you 11 look to the second page, it says 12 picture number 18. Now, it looks as if 13 it has rained between the time that you 14 took the photographs and these 15 photographs were taken? 16 A. Yes, it looks that way. 17 Q. Now did you put those cones 18 there? 19 A. No, I did not put no cones 20 there. 21 Q. So all that you did was the mark 22 where you believe the backhoe's back 23 wheels had locked up and Mitchell's 24 path of travel? 25 A. Yes.</p>	<p style="text-align: right;">Page 37</p> <p>1 you're saying that the backhoe, you 2 believe, stopped. 3 A. Yes. 4 Q. Could you tell --- 5 A. It's locked up. 6 Q. --- the path of travel prior to 7 that time? Could you see those tracks 8 in the roadway? 9 A. Yes. 10 Q. And why did you not mark them? 11 A. Because they weren't the actual 12 skid marks to where it stopped. It 13 actually happened to where Mitch was 14 coming and the backhoe locked them up 15 --- was what I thought was important, I 16 don't know. 17 Q. In looking at the roadway when 18 you took the pictures and you put the 19 paint down, --- 20 A. Yes. 21 Q. --- did you see the path of 22 travel of other vehicles as well? Like 23 the ambulances or tire tracks from 24 trucks? 25 A. The ambulances didn't come that</p>

1

2 (Whereupon, we were off the record.)

3

4 THE VIDEOGRAPHER: The time is 9:06.

5

We're back on the video record.

6

BY MS. HEATH:

7 Q On the night of the accident, which would
8 have been the night of July 21st of 2002, Doctor,
9 you had indicated that you had seen Mitchell Kohler
10 at the emergency room at the Dubois Medical Center;
11 correct?

12

A Correct.

13

Q Were you aware that prior to that time he
14 had also been taken to the Clearfield Emergency
15 Room after the accident?

16

A I know that from looking at the records,
17 but I'm not sure exactly where I saw it. I don't
18 recall it from my memory, but just from looking at
19 the records.

20

Q And from looking at your records, was
21 there ever a toxicology screen done on Mitchell
22 Kohler at either Clearfield or Dubois Hospital at
23 that time?

24

A I know I didn't do one. I don't know if

CA
(215)
tabbies

PLAINTIFF'S
EXHIBIT
"C"

ING
0-2626

July 20, 2007

Page 35

1. one was done at Clearfield or not.

2. Q And you don't recall ever seeing one; do
3. you, Doctor?

4. A No.

5. Q Would you say, within a reasonable degree
6. of medical certainty, that Mitchell Kohler will
7. have no issues that will affect him functionally in
8. the future as a result of this accident?

9. A I would assume that. It's true.

10. MS. HEATH: Thank you. I have no further
11. questions.

12. - - -

13. REDIRECT EXAMINATION

14. - - -

15. BY MR. MILLER:

16. Q Doctor, I just have a few follow-up
17. questions. Would you expect a teenager such as
18. Mitchell to complain about pain and discomfort at
19. these office visits?

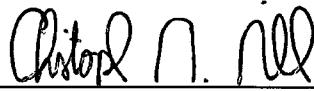
20. A He was just a quiet kid. I had to pull
21. answers out of him. He just wanted to get about
22. his life and not be bothered. And -- right. I
23. think he was a great patient. And if he had
24. discomfort that he could deal with, he probably

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Motion in Limine to Exclude Evidence, Testimony or any other Reference to Alcohol Consumption on the Part of Plaintiff was served upon all counsel of record on this 24th day of October _____, 2007 by U.S. First Class Mail, at the following address:

**The Honorable Paul E. Cherry
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830**

**Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311**



Christopher M. Miller Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
Plaintiff,)
vs.)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,)
Defendants.)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby
ORDERED, ADJUDGED and DECREED that Plaintiff's Motion in Limine to Exclude
Evidence, Testimony or any other Reference to Alcohol Consumption on the Part of Plaintiff is
GRANTED.

BY THE COURT:

J.

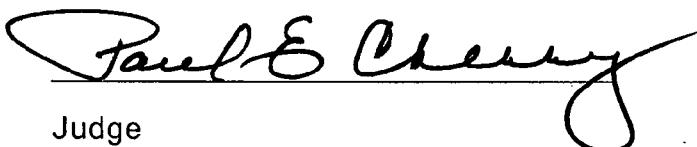
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID KOHLER, INDIVIDUALLY AND :
AS PARENT AND NATURAL GUARDIAN OF :
MITCHELL D. KOHLER, A MINOR :
VS : NO. 03-1868-CD
KENNETH L. TEST AND ROGER BRESSLER:
INDIVIDUALLY AND t/d/b/a R.B. :
CONTRACTING, :

O R D E R

NOW, this 15th day of November, 2007, this being the day and date set for Hearing on Defendant's Motion for Site Visit, it is the Order of this Court that said Motion is GRANTED with all costs of said site visit to be assessed to the defense with payment to be made before trial.

BY THE COURT:


Paul E. Cherry

Judge

FILED *200 Atty's*
01/31/2008 C. Miller
NOV 16 2007 R. Heath

William A. Shaw
Prothonotary/Clerk of Courts *(60)*

FILED

NOV 16 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/16/07

You are responsible for serving all appropriate parties.
 The Prothonotary's office has provided service to the following parties:
 Plaintiff(s) Plaintiff(s) Attorney Other
 Defendant(s) Defendant(s) Attorney
 Special Instructions:

FILED
m/11/10em
DEC 24 2007
1 Ceat of Lsc
issued to
ATA &
copy to C/A
LSN
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor,

CIVIL DIVISION

No. 03-1868-CD

Plaintiffs,

vs.

KENNETH L. TEST and ROGER
BRESSLER, individually and t/d/b/a R. B.
Contracting,

Defendants.

**PRAECIPE TO SETTLE AND
DISCONTINUE**

Filed on behalf of:

DAVID KOHLER, individually and as parent
and natural guardian of MITCHELL D.
KOHLER, a minor

Counsel of record for this party:

CHRISTOPHER M. MILLER, ESQUIRE
E-mail address: cmiller@edgarsnyder.com

PA I.D. No. 79533

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC
Gulf Tower, Sixteenth Floor
707 Grant Street
Pittsburgh, PA 15219-1925

(412) 394-1000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID KOHLER, individually and as parent) CIVIL DIVISION
and natural guardian of MITCHELL D.)
KOHLER, a minor,) No. 03-1868-CD
)
Plaintiff,)
)
vs.)
)
KENNETH L. TEST and ROGER BRESSLER,)
individually and t/d/b/a R. B. Contracting,
)
Defendants.

PRAECIPE TO SETTLE AND DISCONTINUE

TO: Clearfield County, Prothonotary

Please satisfy, settle and discontinue the within matter.

EDGAR SNYDER & ASSOCIATES, LLC

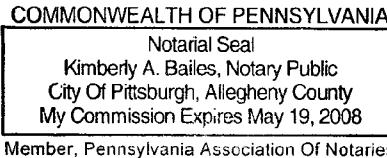
By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

Sworn to and subscribed

before me, this 21

day of December, 2007.

Kimberly A. Bailes
Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE TO SETTLE AND DISCONTINUE** was served on all Counsel listed below, by First Class Mail, postage prepaid, on this 21st day of December, 2007:

Roberta Binder Heath, Esquire
ANDREWS & BEARD
3366 Lynnwood Drive
P.O. Box 1311
Altoona, PA 16603-1311

EDGAR SNYDER & ASSOCIATES, LLC

By Christopher M. Miller
Christopher M. Miller, Esquire
Attorney for Plaintiff

FILED

DEC 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

David Kohler
Mitchell David Kohler

Vs.
Kenneth L. Test
Roger Bressler
R. B. Contracting

No. 2003-01868-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 December 24, 2007, marked:

Satisfied, Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Christopher M. Miller Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of December A.D. 2007.



William A. Shaw, Prothonotary