

04-248-CD
AARON CHOATE, et al vs. CHICAGO PNEUMATIC TOOL CO. et al.

2004-248-CD
Aaron Choate, et al vs. Chicago Pneumatic

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION - LAW

AARON CHOATE and
MARY CHOATE,
Plaintiffs

v.

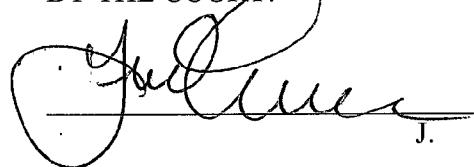
No. 04-248-CD

CHICAGO PNEUMATIC TOOL
COMPANY, et al.
Defendants.

ORDER

AND NOW, this 23 day of Feb, 2004, upon consideration of the Petition of Aaron Choate and Mary Choate, it is ORDERED that the Prothonotary of the Clearfield County Court of Common Pleas issue a subpoena to attend and testify pursuant to Pa. R.C.P. 234.1 directed to REICHdrill, Inc., in the form set forth in Exhibit "B" of the underlying Petition.

BY THE COURT:



J.

FILED

FEB 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED 3 cc orders
a 2 Subpoenas to Andy Schonover

019-25101
FEB 24 2004

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION - LAW

AARON CHOATE and
MARY CHOATE,
Plaintiffs

v.

CHICAGO PNEUMATIC TOOL
COMPANY, et al.
Defendants.

No. 04-248 - CD

TYPE OF CASE: Civil Action

TYPE OF PLEADING: Petition for
Issuance of Supoena

COUNSEL OF RECORD FOR THIS
PARTY:

Timothy A. Schoonover, Esq.
Stover, McGlaughlin, Gerace, Weyandt
& McCormick, P.C.
919 University Dr.
State College, PA 16801
(814) 231-1850

FILED

FEB 20 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION - LAW

AARON CHOATE and	:	
MARY CHOATE,	:	
Plaintiffs	:	
	:	
v.	:	No.
	:	
CHICAGO PNEUMATIC TOOL	:	
COMPANY, et al.	:	
Defendants.	:	

PETITION FOR ISSUANCE OF SUBPOENA
TO ATTEND AND TESTIFY
PURSUANT TO 42 Pa. C.S.A. §5326

This application is made to this Honorable Court pursuant to 42 Pa. C.S.A. §5326 of the Pennsylvania Judicial Code, "Assistance to Tribunals and Litigants Outside this Commonwealth with Respect to Depositions," to obtain an order for the issuance of a subpoena upon REICHdrill, Inc., located in Philipsburg, Clearfield County, Pennsylvania, to require the production of documents and the designation of one or more officers, directors, or managing agents or persons to attend a videotaped deposition at the law office of Stover, McGlaughlin, Gerace, Weyandt & McCormick, P.C. before an officer authorized to administer oaths in the Commonwealth of Pennsylvania.

1. Petitioners, are Aaron Choate and Mary Choate, who are represented by Craig R. Oliver, of the Law Offices of Robert Palmer, P.C., 205 Park Central East, Suite 511, Springfield, Missouri 65801, and local counsel, Timothy A. Schoonover, Stover, McGlaughlin, Gerace, Weyandt and McCormick, P.C., 919 University Drive, State College, Pennsylvania.

2. Petitioners are the Plaintiffs in a civil action filed against the above-referenced Defendant in the Circuit Court of Greene County, Missouri, Case No. 103CC2757. A true and correct copy of the Petition filed in this action is marked Exhibit "A" and is incorporated herein as if set forth at length.

3. Defendant Chicago Pneumatic is the lone remaining Defendant as Defendants Morris, Cretcher and Lynch have been dismissed from this action.

4. Petitioners' action is a products liability action involving a drill manufactured by the Defendant, Chicago Pneumatic Tool Company, in 1979.

5. At the time of the manufacture of the drill, Defendant Chicago Pneumatic had a division named "Reich Drill."

6. In 1984, Defendant Chicago Pneumatic, sold its drilling division assets to REICHdrill, Inc., a Pennsylvania corporation with its principal place of business located in Philipsburg, Clearfield County, Pennsylvania.

7. Petitioners have determined that Defendant Chicago Pneumatic does not have any records in its possession relating to the design of the drill, warnings on the drill or injuries caused by the type of drill, which injured Plaintiff Aaron Choate.

8. Upon information and belief, REICHdrill, Inc., possesses information relating to the design of the drill, warnings on the drill or injuries caused by the type of drill, which injured Plaintiff Aaron Choate, all of which is material to the Petitioners' Missouri action.

9. Petitioners are making this application to this Honorable Court as interested parties under 42 Pa. C.S.A. §5326.

10. Petitioners seek to have a subpoena issued pursuant to Pa. R.C.P. 234.1 requiring REICHdrill, Inc. to produce records and designate one or more officers, directors, or managing agents or persons to attend a deposition scheduled for April 6, 2004, commencing at 9:00 a.m. at the law office of Stover, McGlaughlin, Gerace, Weyandt and McCormick, P.C., 919 University Drive, State College, Pennsylvania. A true and correct copy of the subpoena which the Petitioners seek to have issued is attached as Exhibit "B" and is incorporated herein as if set forth at length.

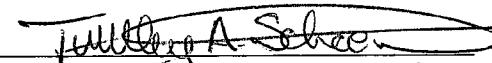
11. The subject matter upon which the examination shall take place and the documents sought to be produced are specifically set forth in the Petitioners' Notice of Deposition. A true and correct copy of said Notice is attached as Exhibit "C" and is incorporated herein as if set forth at length.

12. The discovery being sought by the Petitioners is in accordance with Missouri Rules of Civil Procedure 57.03 and 57.09. True and correct copies of said Rules are attached as Exhibits "D" and "E" and are incorporated herein as if set forth at length.

WHEREFORE, the Petitioners respectfully request this Honorable Court exercise the authority provided to it under 42 Pa. C.S.A. §5326 and issue an order directing that a subpoena be issued by the Clearfield County Prothonotary to REICHdrill, Inc. in the form set forth in Exhibit "B" attached hereto.

Respectfully submitted,

STOVER, McGLAUGHLIN, GERACE,
WEYANDT & McCORMICK, P.C.

BY: 
Timothy A. Schoonover, Esquire
Attorney for Petitioners
Atty. I.D. #76260
919 University Drive
State College, PA 16801
(814) 231-1850

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

AARON CHOATE and
MARY CHOATE,

Plaintiffs,

v.

CHICAGO PNEUMATIC TOOL COMPANY and
WILLIAM MORRIS,
BERT CRETCHER and
ED LYNCH
in their capacity as the last board of directors
of Morris Drilling Supply, Inc.

Defendants.

Case No. _____

PETITION**Count I**

COMES NOW plaintiff Aaron Choate (hereinafter "Aaron") and, in Count I of his Petition, alleges and states the following cause of action against defendant Chicago Pneumatic Tool Company (hereinafter "Chicago Pneumatic"):

1. Defendant Chicago Pneumatic is a New Jersey corporation engaged in the business of manufacturing industrial equipment, including hydraulic truck-mounted top-drive water well drills. Chicago Pneumatic distributed these through the stream of commerce into the state of Missouri.
2. The tortious acts of defendant Chicago Pneumatic described herein occurred in the State of Missouri.
3. Defendant William Morris is a resident of Greene County, Missouri. Bert Cretcher is a resident of Johnson County, Kansas. Upon information and belief, Ed Lynch is deceased.
4. The amount in controversy here exceeds \$25,000 exclusive of interest and

EXHIBIT

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costs. Therefore, jurisdiction is proper in the Circuit Court of Greene County, Missouri.

5. On or about November 23, 2001, Aaron was operating a REICH drill T-650W, identification number 101115 (hereinafter "the drilling rig") at a job site in Polk County, Missouri. At that time, the drilling rig had no falling object protective devices for the drill operator. The drilling rig also had no warning about the hazard of falling objects striking the drill operator, although the drill operator was required to stand in a position where heavy objects were being raised over his head.

6. As the drilling rig was being operated, a section of the steel piping fell and hit Aaron in the head or the back of the neck which fractured his cervical spine and injured his spinal cord causing paralysis. Aaron is a paraplegic as a direct result of this accident.

7. The drilling rig that Aaron was operating on November 23, 2001, was manufactured by defendant Chicago Pneumatic. The drilling rig was sold in 1978 in the course of Chicago Pneumatic's business.

8. At the time the drilling rig was sold by Chicago Pneumatic, the drilling rig was then in a defective condition unreasonably dangerous when put to a reasonably anticipated use, in that the drilling rig had no falling object protection for the operator who was required to stand in a position where objects were being raised over his head.

9. At the time of Aaron's injury, the drilling rig was being used in a manner reasonably anticipated and was in substantially the same condition, insofar as material to the design defects listed herein, as when it was first manufactured and sold by Chicago Pneumatic.

10. As a direct result of the defective and unreasonably dangerous condition of the drilling rig that existed when it was sold, Aaron sustained severe traumatic injuries

which have left him permanently disfigured and disabled. Aaron has suffered nervous injury and emotional upset, and he has undergone personality changes. He has suffered pain and anxiety of the body and mind. He has suffered all of the above injuries, pain and damages since the date of the occurrence, suffers them at the present time, and will suffer them in the future; said injuries, pain and damages being permanent, disabling and progressive.

11. By reason of Aaron's injuries, he has incurred items of expense in obtaining medical care and treatment.

12. Prior to the aforesaid injuries, Aaron was a healthy man, capable of doing and performing work and labor. As a direct and proximate result of his injuries, he has suffered, and in the future will suffer, loss of wages, earnings, salary and profit, and he has suffered, and in the future will suffer, an impaired and diminished capacity for work, labor and pleasure.

13. By reason of the foregoing, Aaron is entitled to recover fair and reasonable damages for his injuries.

WHEREFORE, plaintiff Aaron Choate prays for fair and reasonable damages against Chicago Pneumatic Tool Company, for prejudgment interest as allowed by law, for his costs herein expended, and for such other and further relief as the Court deems just and proper.

**Count II
(Loss of Consortium)**

COMES NOW plaintiff Mary Choate (hereinafter "Mary"), and in Count II of this petition, alleges and states the following:

1. Realleges and restates all of paragraphs 1-13 of Count I of this petition and

incorporates each of said paragraphs by reference.

2. At all times mentioned herein, Mary was the lawful wedded wife of plaintiff Aaron Choate.

3. By reason of the injuries to Mary's husband, she has been, and in the future will be, deprived of Aaron's society, services, support, association, consortium and companionship, and her enjoyment thereof has been, and in the future will be, lessened, impaired and diminished.

4. By reason of the foregoing, Mary is entitled to fair and reasonable compensation for her losses and damages.

WHEREFORE, plaintiff Mary Choate prays for judgment against Chicago Pneumatic Tool Company, for such damages that are fair and reasonable, together with prejudgment interest as allowed by law, Aaron's costs herein expended and for such other and further relief as the Court deems just and proper.

Count III
(Strict Liability Failure to Warn)

COMES NOW plaintiff Aaron Choate, and in Count III of this petition, alleges and states the following causes of action against Chicago Pneumatic:

1. Realleges and restates all of paragraphs 1-7 and 11-13 of Count I of this petition and incorporates each of said paragraphs herein by reference.

2. At the time the drilling rig was sold by Chicago Pneumatic, the drilling rig was unreasonably dangerous when put to a reasonably anticipated use without knowledge of its characteristics, in that the drilling rig had no warnings about the hazards created by the lack of protection to the operator from falling objects and/or the need to guard operators from such hazards.

3. Defendant Chicago Pneumatic failed to give an adequate warning of the danger.

4. At the time of Aaron's injury, the drilling rig was being used in a manner reasonably anticipated and was in substantially the same condition, insofar as material to the lack of adequate warning described herein, as when it was first manufactured and sold.

5. As a direct result of the drilling rig being sold without an adequate warning, Aaron sustained severe traumatic injuries which left him permanently disfigured and disabled. Aaron has suffered nervous injury and emotional upset, and he has undergone personality changes. He has suffered pain and anxiety of the body and mind. He has suffered all the above injuries, pain and damages since the date of the occurrence, suffers them at the present time and will suffer them in the future; said injuries, pain and damages being permanent, disabling and progressive.

WHEREFORE, plaintiff Aaron Choate prays for fair and reasonable damages against Chicago Pneumatic Tool Company, for prejudgment interest as allowed by law, for his costs herein expended, and for such other and further relief as the Court deems just and proper.

Count IV
(Loss of Consortium)

COMES NOW plaintiff Mary Choate (hereinafter "Mary"), and in Count IV of this petition, alleges and states the following:

1. Realleges and restates all of paragraphs 1-5 of Count III of this petition and incorporates each of said paragraphs by reference.

2. At all times mentioned herein, Mary was the lawful wedded wife of

plaintiff Aaron Choate.

3. By reason of the injuries to Mary's husband, she has been, and in the future will be, deprived of Aaron's society, services, support, association, consortium and companionship and her enjoyment thereof has been, and in the future will be, lessened, impaired and diminished.

4. By reason of the foregoing, Mary is entitled to fair and reasonable compensation for her losses and damages.

WHEREFORE, plaintiff Mary Choate prays for judgment against Chicago Pneumatic Tool Company, for such damages that are fair and reasonable, together with prejudgment interest as allowed by law, Aaron's costs herein expended and for such other and further relief as the Court deems just and proper.

Count V
(Negligent Manufacture, Design and Failure to Warn)

COMES NOW plaintiff Aaron Choate, and in Count V of this petition alleges and states the following cause of action against defendant Chicago Pneumatic Tool Company:

1. Realleges and restates all of paragraphs of 1-7 and 11-13 of Count I of this petition and incorporates each of said paragraphs herein by reference.

2. Defendant Chicago Pneumatic designed and/or manufactured the drilling rig.

3. The drilling rig was designed and/or manufactured with no falling object protection for the operator and no warnings about the hazards created by no falling object protection for the operator and/or the need to guard operators from such hazards.

4. Defendant Chicago Pneumatic failed to use ordinary care to either

manufacture and/or design the drilling rig to be reasonably safe, or adequately warn of the risk of harm created by the lack of falling object protection for the operator.

5. As a direct result of Chicago Pneumatic's failure to use ordinary care, in the respect set out in paragraph 4, to manufacture and/or design the drilling rig to be reasonably safe or give an adequate warning of its dangers, Aaron sustained severe traumatic injuries which left him permanently disfigured and disabled. Aaron has suffered nervous injury and emotional upset, and he has undergone personality changes. He has suffered pain and anxiety to the body and mind. He has suffered all of the above injuries, pain and damages since the date of the occurrence, suffers them at the present time, and will suffer them in the future; said injuries, pain and damages being permanent, disabling and progressive.

WHEREFORE plaintiff Aaron Choate prays for fair and reasonable damages against defendant Chicago Pneumatic Tool Company, for prejudgment interest as allowed by law, for his costs herein expended and for such other and further relief as the Court deems just and proper.

Count VI
(Loss of Consortium)

COMES NOW plaintiff Mary Choate (hereinafter "Mary"), and in Count VI of this petition, alleges and states the following:

1. Realleges and restates all of paragraphs 1-5 of Count V of this petition and incorporates each of said paragraphs by reference.
2. At all times mentioned herein, Mary was the lawful wedded wife of plaintiff Aaron Choate.
3. By reason of the injuries to Mary's husband, she has been, and in the

future will be, deprived of Aaron's society, services, support, association, consortium and companionship and her enjoyment thereof has been, and in the future will be, lessened, impaired and diminished.

4. By reason of the foregoing, Mary is entitled to fair and reasonable compensation for her losses and damages.

WHEREFORE, plaintiff Mary Choate prays for judgment against Chicago Pneumatic Tool Company, for such damages that are fair and reasonable, together with prejudgment interest as allowed by law, Aaron's costs herein expended and for such other and further relief as the Court deems just and proper.

Count VII
(Negligently Supplying Dangerous Instrumentality)

COMES NOW plaintiff Aaron Choate and, in Count VII of this petition, alleges and states the following cause of action against defendant Chicago Pneumatic Tool Company:

1. Realleges and restates all of paragraphs 1-7 and 11-13 of Count I of this petition and incorporates each of said paragraphs herein by reference.

2. Defendant Chicago Pneumatic supplied the drilling rig for use by companies or individuals to drill water wells or other drilling tasks. The drilling rig continued to be used for that purpose until the time that Aaron was injured. Aaron was employed by a water well drilling company, McCarthy Drilling, at the time of the accident and was one of the users of this drill.

3. The drilling rig had no falling object protection for the operator. Therefore, the drilling rig was dangerous when put to a reasonably anticipated use.

4. Defendant Chicago Pneumatic had no reason to believe that those for

whose use the drilling rig was supplied would realize its dangerous condition.

5. Defendant Chicago Pneumatic knew or had information from which Chicago Pneumatic, in the exercise of ordinary care, should have known of such dangerous condition.

6. Chicago Pneumatic failed to adequately warn of such dangerous condition and was thereby negligent.

7. As a direct result of such negligence, Aaron sustained severe traumatic injuries which have left him permanently disfigured and disabled. Aaron has suffered nervous injury and emotional upset, and he has undergone personality changes. He has suffered pain and anxiety of the body and mind. He has suffered all of the above injuries, pain and damages since the date of the occurrence, suffers them at the present time and will suffer them in the future; said injuries, pain and damages being permanent, disabling and progressive.

WHEREFORE, plaintiff Aaron Choate prays for fair and reasonable damages against defendant Chicago Pneumatic, for prejudgment interest as allowed by law, for his costs herein incurred and for such other and further relief as the Court deems just and proper.

**Count VIII
(Loss of Consortium)**

COMES NOW plaintiff Mary Choate (hereinafter "Mary"), and in Count VIII of this petition, alleges and states the following:

1. Realleges and restates all of paragraphs 1-7 of Count VII of this petition and incorporates each of said paragraphs by reference.

2. At all times mentioned herein, Mary was the lawful wedded wife of

plaintiff Aaron Choate.

3. By reason of the injuries to Mary's husband, she has been, and in the future will be, deprived of Aaron's society, services, support, association, consortium and companionship and her enjoyment thereof has been, and in the future will be, lessened, impaired and diminished.

4. By reason of the foregoing, Mary is entitled to fair and reasonable compensation for her losses and damages.

WHEREFORE, plaintiff Mary Choate prays for judgment against Chicago Pneumatic Tool Company, for such damages that are fair and reasonable, together with prejudgment interest as allowed by law, Aaron's costs herein expended and for such other and further relief as the Court deems just and proper.

Count IX
(Strict Liability Retail)

COMES NOW plaintiff Aaron Choate, and in Count IX of this petition, alleges and states the following cause of action against William Morris, Bert Cretcher and Ed Lynch in their capacity as the last board of directors of Morris Drilling Supply, Inc.

1. Morris Drilling Supply, Inc. was a Missouri corporation with its business office and principal place of business located in Springfield, Greene County, Missouri. At all times relevant hereto, Morris Drilling Supply, Inc. was an authorized dealer of Chicago Pneumatic Tool Company, Inc.

2. In 1979, Morris Drilling Supply, Inc. sold or transferred the REICH drill T-650W, identification number 101115 (hereinafter "the drilling rig") and placed the drilling rig in the stream of commerce.

3. In 1984, Morris Drilling Supply, Inc. had its corporate charter forfeited for

failure to pay franchise tax. At the time of the forfeiture, the last board of directors of Morris Drilling Supply, Inc. were William Morris, Bert Cretcher and Ed Lynch. Morris, Cretcher and Lynch are liable to plaintiff as hereinafter stated to the extent that they received property of Morris Drilling Supply, Inc. after the forfeiture of its corporate status.

4. William Morris is a resident of Greene County, Missouri; Bert Cretcher is a resident of Johnson County, Kansas; and Ed Lynch, upon information and belief, is deceased.

5. On or about November 23, 2001, Aaron was operating a REICH drill T-650W, identification number 101115 (hereinafter "the drilling rig") at a job site in Polk County, Missouri. At that time, the drilling rig had no falling object protective devices for the drill operator. The drilling rig also had no warning about the hazard of falling objects striking the drill operator, although the drill operator was required to stand in a position where heavy objects were being raised over his head.

6. As the drilling rig was being operated, a section of the steel piping fell and hit Aaron in the head or the back of the neck which fractured his cervical spine and injured his spinal cord causing paralysis. Aaron is a paraplegic as a direct result of this accident.

7. The drilling rig that Aaron was operating on November 23, 2001, was sold by Morris Drilling Supply, Inc. The drilling rig was sold in 1979 in the course of Morris Drilling Supply, Inc.'s business.

8. At the time the drilling rig was sold by Morris Drilling Supply, Inc., the drilling rig was then in a defective condition unreasonably dangerous when put to a reasonably anticipated use, in that the drilling rig had no falling object protection for the

operator who was required to stand in a position where objects were being raised over his head.

9. At the time of Aaron's injury, the drilling rig was being used in a manner reasonably anticipated and was in substantially the same condition, insofar as material to the design defects listed herein, as when it was first sold by Morris Drilling Supply, Inc.

10. As a direct result of the defective and unreasonably dangerous condition of the drilling rig that existed when it was sold, Aaron sustained severe traumatic injuries which have left him permanently disfigured and disabled. Aaron has suffered nervous injury and emotional upset, and he has undergone personality changes. He has suffered pain and anxiety of the body and mind. He has suffered all of the above injuries, pain and damages since the date of the occurrence, suffers them at the present time, and will suffer them in the future; said injuries, pain and damages being permanent, disabling and progressive.

11. By reason of Aaron's injuries, he has incurred items of expense in obtaining medical care and treatment.

12. Prior to the aforesaid injuries, Aaron was a healthy man, capable of doing and performing work and labor. As a direct and proximate result of his injuries, he has suffered, and in the future will suffer, loss of wages, earnings, salary and profit, and he has suffered, and in the future will suffer, an impaired and diminished capacity for work, labor and pleasure.

13. By reason of the foregoing, Aaron is entitled to recover fair and reasonable damages for his injuries.

WHEREFORE, plaintiff Aaron Choate prays for fair and reasonable damages against William Morris, Bert Cretcher and Ed Lynch, in their capacity as the last board of

directors of Morris Drilling Supply, Inc., for prejudgment interest as allowed by law, for his costs herein expended, and for such other and further relief as the Court deems just and proper.

Count X
(Loss of Consortium)

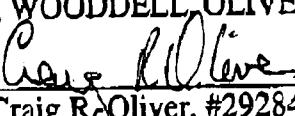
COMES NOW plaintiff Mary Choate (hereinafter "Mary"), and in Count X of this petition, alleges and states the following:

1. Realleges and restates all of paragraphs 1-13 of Count IX of this petition and incorporates each of said paragraphs by reference.
2. At all times mentioned herein, Mary was the lawful wedded wife of plaintiff Aaron Choate.
3. By reason of the injuries to Mary's husband, she has been, and in the future will be, deprived of Aaron's society, services, support, association, consortium and companionship and her enjoyment thereof has been, and in the future will be, lessened, impaired and diminished.
4. By reason of the foregoing, Mary is entitled to fair and reasonable compensation for her losses and damages.

WHEREFORE, plaintiff Mary Choate prays for judgment against William Morris, Bert Cretcher and Ed Lynch, in their capacity as the last board of directors of Morris Drilling Supply, Inc., for such damages that are fair and reasonable, together with prejudgment interest as allowed by law, Aaron's costs herein expended and for such other and further relief as the Court deems just and proper.

BRUER, WOODDELL, OLIVER & BATES, P.C.

By


Craig R. Oliver

Craig R. Oliver, #29284

1360 East Bradford Parkway
Springfield, Missouri 65804
(417) 887-2740
Fax (417) 887-1342
coliver@bwob-law.com

ATTORNEYS FOR PLAINTIFFS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION – LAW

AARON CHOATE and :
MARY CHOATE, :
Plaintiffs :
: :
v. : No.
: :
CHICAGO PNEUMATIC TOOL :
COMPANY, et al. :
Defendants. :
:

SUBPOENA TO ATTEND AND TESTIFY

TO: REICHdrill, Inc.
Intersection of Rt. 322 West and Rt. 53 North,
P. O. Box 361
Philipsburg, PA 16866

YOU ARE ORDERED BY THE COURT to come to the law office of Stover, McGlaughlin, Gerace, Weyandt and McCormick, P.C., 919 University Dr., State College, PA, on Tuesday, April 6, 2004 at 9:00 o'clock A.M. to testify on behalf of the Plaintiffs in a video deposition, as set forth in the notice of deposition attached to this subpoena, in the case of **AARON CHOATE and MARY CHOATE V. CHICAGO PNEUMATIC TOOL COMPANY, et al., No. 103CC2757, in the Circuit Court of Green County, Missouri**, and for any continuances of that deposition and to remain until excused. This subpoena has been issued pursuant to 42 Pa.C.S.A. § 5326.

You are required under Pa. R.C.P. 4007.1(e) to designate one or more officers, directors, or managing agents, or other persons, who consent to testify on your behalf, and may set forth for each person designated, the matters on which each person will testify. The person or persons so designated shall testify as to matters known or reasonably available to the organization.

The subject matters upon which the examination will take place are set forth in the attached deposition notice.

You are required to bring with you all documents responsive to the request for materials to be produced set forth in the deposition notice.

If you fail to attend the deposition as required by this Subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

EXHIBIT

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Issued on application of **Timothy A. Schoonover, 919 University Drive, State College, PA 16801, (814) 231-1850, Attorney I.D. No. 76260**, attorney for Petitioners.

BY THE COURT:

Date: _____

Prothonotary

RETURN OF SERVICE

On the _____ day of _____, 2004, I, _____, served REICHdrill, Inc. with the foregoing Subpoena with a notice of deposition by:

_____ at _____, PA at _____

____ M. and that with the subpoena I gave to him/her a check for the statutory witness fee and mileage reimbursement.

I verify that the statements in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: _____

Print Name:

Title:

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

AARON CHOATE and)
MARY CHOATE,)
Plaintiffs,)
vs.) Case No. 103CC2757
CHICAGO PNEUMATIC TOOL)
COMPANY et al.)
Defendants.)

NOTICE TO TAKE VIDEOTAPED DEPOSITION

YOU ARE HEREBY NOTIFIED that a videotaped deposition will be taken to be used in the above-styled cause as hereinafter set forth:

Place: The videotaped deposition will be taken at the law offices of Stover, McGlaughlin, Gerace, Weyandt & McCormick, 919 University Drive, State College, PA 16801.

Time: Tuesday, April 6, 2004, beginning at 9:00 a.m.

Witnesses to be Deposed: REICHdrill, Inc. This notice is given pursuant to Rule 57.01(b)(4) of Missouri Rules of Civil Procedure. REICHdrill, Inc. has a duty to designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf on the matter set forth below.

Purpose of Deposition: Said deposition is intended to be used for any lawful purpose including at the trial of the above-referenced cause.

Definition: As used herein, the term "drilling rig" refers to the Reich Drill T-650W, identification number 101115.

As used herein, the term "Chicago Pneumatic" refers to Chicago Pneumatic Tool Co. or any of its corporate predecessors, including, but not limited to, Reich Drill.

EXHIBIT

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Matters On Which Examination Is Requested:

- (a) the design of the drilling rig;
- (b) whether any modifications were made to the drilling rig subsequent to its manufacture and before the injury to Aaron Choate on November 23, 2001.
- (c) all safety features incorporated into the drilling rig to prevent the operator or operators from being injured as a result of falling objects;
- (d) all safety features incorporated into other drilling rigs or similar machines manufactured by Chicago Pneumatic, REICHdrill or its predecessor designed to prevent the operators from being injured as a result of falling objects.
- (e) warnings provided by the seller of the drilling rig for the purpose of warning the operator or operators of the danger of becoming injured as a result of falling objects;
- (f) warnings provided by Chicago Pneumatic or REICHdrill for other drilling rigs or similar machines for the purpose of warning the operator or operators of the danger of becoming injured by falling objects;
- (g) claims made by persons injured while operating drilling rigs or similar machines made by Chicago Pneumatic or REICHdrill, wherein persons became injured as a result of falling objects;
- (h) other types of drilling rigs similar to the drilling rig manufactured by Chicago Pneumatic or REICHdrill.

Materials To Be Produced:

All materials will be produced at deposition pursuant to Rules of Civil Procedure.

- (a) all documents with regard to design, manufacture, sale, purchase and transfer of the drilling rig, whether generated by Reich Drill or Chicago Pneumatic, or by anyone;
- (b) detailed drawings of any guards designed for the drilling rig which were intended to prevent persons from becoming injured by falling objects;
- (c) detailed drawings of any guards designed for similar drilling rigs or similar machines manufactured by Reich Drill or Chicago Pneumatic which were intended to prevent operator from becoming injured by falling objects.
- (d) any written warnings provided by Reich Drill or Chicago Pneumatic to anyone concerning the danger of becoming injured by falling objects;

- (e) all marketing literature regarding the type of drilling rig the same or similar to the drilling rig and similar drilling rig;
- (f) all product catalogs or brochures for drilling rigs that are the same or similar to this drilling rig;
- (g) all documents reflecting injuries that occurred to persons as a result of persons becoming injured by falling objects while operating a drilling rig or any similar drilling rig manufactured by Reich Drill or Chicago Pneumatic;
- (h) all operating manuals or user guides for the drilling rig or similar types of drilling rigs manufactured by Reich Drill, including the most recent operating manual and users guide for the most current model of drilling rig that is most similar or the same as the drilling rig.
- (i) all documents reflecting claims made by persons who were injured by falling objects while operating a drilling rig or any similar drilling rig manufactured by Reich Drill or Chicago Pneumatic;
- (j) all marketing literature for drilling rigs sold by Reich Drill or Chicago Pneumatic during 1979 through 1980, inclusive.

Court Reporter:

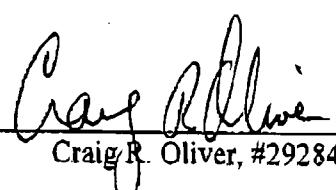
Nicole Zimmerman, MLP Reporting Service,
413 North Vesper St., Lock Haven, PA 17745

Videographer:

Thomas Blanchard, Blanchard Video Services,
RR 4 Box 286, Towanda, PA 18848

The Law Offices of Robert M.N. Palmer, P.C.

By



Craig R. Oliver, #29284

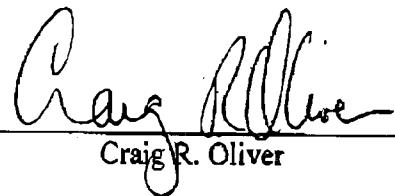
205 Park Central East, Suite 511
Springfield, MO 65806
Phone: 417-865-3234
Fax: 417-865-1698
e-mail: oliver@palmerlaw.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of the foregoing was served via U.S. mail, first class postage fully prepaid, on this 18th day of February, 2004, upon:

Michael J. Patton
Turner, Reid, Duncan, Loomer & Patton
1355 East Bradford Parkway, Suite A
P.O. Box 4043
Springfield, MO 65808
Attorney for Chicago Pneumatic



Craig R. Oliver

INTERROGATORIES AND DEPOSITIONSRule 57.03

Rule 58.01 and Rule 60.01, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in that court.

(c) **Perpetuation by Action.** This Rule does not limit the power of a court to entertain an action to perpetuate testimony.

(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended Sept. 28, 1993, eff. Jan. 1, 1994.)

Committee Note—1974

This is substantially the same as Rule 27 of the Federal Rules of Civil Procedure except the time period which must elapse between service of notice and the hearing of the petition was lengthened to 90 days.

Compare: Rule 27 of the Federal Rules of Civil Procedure.

57.03. Depositions Upon Oral Examination

(a) **When Depositions May Be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and petition upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in Rule 57.09. The attendance of a party is compelled by notice as provided in subdivision (b) of this Rule. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court describes.

(b) **Notice of Examination: General Requirements; Special Notice; Production of Documents and Things; Deposition of Organization.**

(1) A party desiring to take the deposition of any person upon oral examination shall give not less than seven days notice in writing to every other party to the action and to a non-party deponent.

The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. If the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs shall be stated.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

A party may attend a deposition by telephone.

(2) The court may for cause shown enlarge or shorten the time for taking the deposition.

(3) The notice to a party deponent may be accompanied by a request made in compliance with Rule 58.01 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 58.01 shall apply to the request.

(4) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This Rule 57.03(b)(4) does not preclude taking a deposition by any other procedure authorized in these rules.

(5) When the party causing a deposition or depositions to be taken under a notice shall have completed the taking thereof, any other party may, before the same or any other officer authorized to take depositions, and at the same place, proceed immediately, or on the next day, to take any depositions the party may desire to be taken in the civil action, and may continue the taking thereof from day to day, at said place, until the party shall have taken all the party desires; but to do so, the party shall, before or during the time of the taking of the depositions on behalf of the other party, give all other parties, or the attorneys representing them, notice in writing of the intention to do so, the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(c) **Non-stenographic Recording—Video Tape.** Depositions may be recorded by the use of video tape or similar methods. The recording of the deposition by video tape shall be in addition to a usual recording and transcription method unless the parties otherwise agree.

(1) If the deposition is to be recorded by video tape, every notice or subpoena for the taking of the deposition shall state that it is to be video taped and shall state the name, address and employer of the recording technician. If a party upon whom notice for the taking of a deposition has been served desires to have the testimony additionally recorded by other than stenographic means, that party shall serve notice on the opposing party and the witness that the proceedings are to be video taped. Such notice must be served not less than three days prior to the date

Rule 57.03**RULES OF CIVIL PROCEDURE**

designated in the original notice for the taking of the depositions and shall state the name, address and employer of the recording technician.

(2) Where the deposition has been recorded only by video tape and if the witness and parties do not waive signature, a written transcription of the audio shall be prepared to be submitted to the witness for signature as provided in Rule 57.03(f).

(3) The witness being deposed shall be sworn as a witness on camera by an authorized person.

(4) More than one camera may be used, either in sequence or simultaneously.

(5) The attorney for the party requesting the video taping of the deposition shall take custody of and be responsible for the safeguarding of the video tape and shall, upon request, permit the viewing thereof by the opposing party and if requested, shall provide a copy of the video tape at the cost of the requesting party.

(6) Unless otherwise stipulated to by the parties, the expense of video taping is to be borne by the party utilizing it and shall not be taxed as costs.

(d) **Record of Examination; Oath; Objections.** The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Rule 57.08(c). If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or any other objection to the proceedings shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and that party shall transmit them to the officer before whom the deposition is to be taken, who shall propound them to the witness, and the questions and answers thereto shall be recorded.

(e) **Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or a court having general jurisdiction in the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 56.01(c). If the order made terminates the examination, it shall be

resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 51.01(g) apply to the award of expenses incurred in relation to the motion.

(f) **Submission to Witness; Changes; Signing.** When the testimony is fully transcribed, the deposition shall be submitted by the officer to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them; provided, however, that the answers or responses as originally given, together with the changes made and reasons given therefor, shall be considered as a part of the deposition. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found, or is dead or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness, or death or absence of the witness or the fact of the refusal to sign together with the reasons, if any, given therefor; and the deposition may then be used as fully as though signed, unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(g) **Certification, Delivery, and Filing; Exhibits; Copies.**

(1) **Certification and Delivery.** The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall deliver the deposition to the party who requested that the testimony be transcribed.

(2) **Filing.**

(a) **By the Officer.** Upon delivery of a deposition, the officer shall file with the court a certificate showing the caption of the case, the name of the deponent, the date the deposition was taken, the name and address of the person having custody of the original deposition, and whether the charges have been paid. The officer shall not file a copy of the deposition with the court except upon court order.

(b) **By a Party.** A party shall not file a deposition with the court except upon specific court order or contemporaneously with a motion placing the deposition or a part thereof in issue. The court may enact local court rules requiring a party who intends to use a deposition at a hearing or trial to

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(Adopted 1998, eff 25, 2001,

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file that deposition with the court on or prior to the date of the hearing or trial.

(c) **Return of Deposition.** At the conclusion of the hearing or trial the deposition that has been filed or delivered to the court shall be returned to the party that filed or delivered the deposition.

(d) **Retention of Deposition.** The original deposition shall be maintained until the case is finally disposed.

(3) **Exhibits.** Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification if the person affords to all parties fair opportunity to verify the copies by comparison with the originals and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the civil action.

(4) **Copies.** Upon request and payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(h) **Failure to Attend or to Serve Subpoena; Expenses.**

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving notice to pay to such other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

(2) If a witness fails to appear for a deposition and the party giving the notice of the taking of the deposition has not complied with these rules to compel the attendance of the witness, the court may order the party giving the notice to pay to any party attending in person or by attorney the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorney's fees.

(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; Sept. 28, 1993, eff. Jan. 1, 1994; June 25, 2001, eff. Jan. 1, 2002.)

57.04. Depositions Upon Written Questions

(a) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may

be compelled by the use of subpoena as provided in Rule 57.09. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 57.09(b)(4).

Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 57.09(d), (f), and (g), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions.

(c) **Notice of Delivery.** When the deposition is delivered, the party taking it promptly shall give notice thereof to all other parties.

(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; Sept. 28, 1993, eff. Jan. 1, 1994.)

57.05. Persons Before Whom Depositions May Be Taken

(a) **In Missouri.** Within the State of Missouri, depositions shall be taken before an officer authorized by the laws of this State to administer oaths, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) **Elsewhere in the United States.** Within other States of the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before a person authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

INTERROGATORIES AND DEPOSITIONS

Rule 57.10

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(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended June 1, 1993, eff. Jan. 1, 1994; May 15, 1998, eff. Jan. 1, 1999; May 28, 2001, eff. Jan. 1, 2002.)

57.08. Depositions for Use in Foreign Jurisdictions

Whenever the deposition of any person is to be taken in this state pursuant to the laws of another state or of the United States or of another country for use in proceedings there, the circuit court in the county where the deponent is found may, upon ex parte application, make an order directing issuance of a subpoena as provided in Rule 57.09, in aid of the taking of the deposition, and having due regard for the laws and rules of such foreign jurisdiction, may make such orders as could be made if the deposition were intended for use in this jurisdiction.

(Adopted March 29, 1974, eff. Jan. 1, 1975.)

Committee Note—1974

The source is Kansas Statutes Annotated 60-228(d).

57.09. Subpoena for Taking Deposition

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall:

(1) Be issued by the officer or person before whom depositions may be taken as designated in Rule 57.05 or 57.06 or by the clerk of the court in which the civil action is pending;

(2) State the name of the court and the title of the civil action; and

(3) Command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

The court may:

(1) Quash or modify the subpoena if it is unreasonable or oppressive, or

(2) Require the party seeking discovery to advance the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Protection of Persons Subject to Subpoenas. A party shall serve a subpoena for the production of documentary evidence on a non-party not less than seven days before the time specified for compliance.

A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena.

A non-party commanded to produce and permit inspection and copying may serve the party seeking discovery with a written objection to inspection and copying of any or all of the designated materials. The objection shall state specific reasons why the subpoena should be quashed or modified.

The objection shall be served on all parties to the action within ten days after service of the subpoena or before the time specified for compliance, whichever is earlier.

If a timely and specific objection is made, the party seeking discovery shall not be entitled to inspect and copy the materials except pursuant to an order of the court.

Upon notice to the non-party commanded to produce, the party seeking discovery may move at any time for an order to compel production.

(d) Service. A subpoena may be served by:

(1) The sheriff or a sheriff's deputy, or

(2) Any other person who is not a party and is not less than eighteen years of age.

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to that person the fees and mileage the witness would have been entitled to receive for attending court pursuant to subpoena.

(e) Authorization to Issue Subpoena. Proof of service of a notice to take a deposition as provided in Rules 57.03 and 57.04 is sufficient to authorize the issuance of a subpoena for taking a deposition.

(f) Contempt. Any person who without adequate excuse fails to obey a subpoena served upon the person may be held in contempt of the court in which the civil action is pending.

(Adopted March 29, 1974, eff. Jan. 1, 1975. Amended Sept. 28, 1998, eff. Jan. 1, 1994; June 25, 2001, eff. Jan. 1, 2002.)

Committee Note—1974

The sources are prior Rules 57.06(b), 57.19, 57.20 and 57.38 and Rule 46 of the Federal Rules of Civil Procedure.

Compare: Rule 46 of the Federal Rules of Civil Procedure.

57.10. Taxing and Certifying Costs

(a) Costs—How Taxed. The costs of taking depositions shall be taxed in favor of the party paying the same and taxed as other costs in the civil action.

(b) Costs—How Certified and Taxed. The costs shall be certified by the person before whom the deposition is taken in the amount provided by law.

(Adopted March 29, 1974, eff. Jan. 1, 1975.)

Committee Note—1974

This is substantially the same as prior Rule 57.46.

EXHIBIT

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.
CIVIL ACTION – LAW

AARON CHOATE and :
MARY CHOATE, :
Plaintiffs :
:
v. : No.
CHICAGO PNEUMATIC TOOL :
COMPANY, et al. :
Defendants. :
:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the person(s) and in the manner indicated below:

SERVICE BY FIRST CLASS MAIL, POSTAGE PRE-PAID, ADDRESSED AS FOLLOWS:

Michael J. Patton, Esq.
Turner, Reid, Duncan, Loomer & Patton
1355 East Bradford Parkway, Suite A
P.O. Box 4043
Springfield, MO 65808
Attorney for Chicago Pneumatic

DATED, this 20th day of February, 2004.

Timothy A. Schoonover, Esq.

write A message
to monitor

FILED

FEB 20 2004

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William A. Shaw
Prothonotary

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