

04-427-CD
CHRISTOPHER M. SCHULZ vs. F. CORTEZ BELL, III, et al.

2004-427-CD

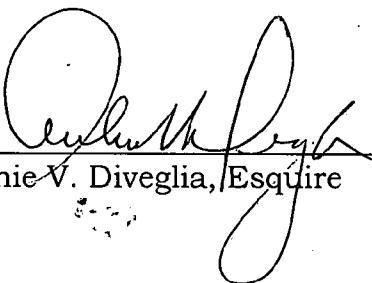
Christopher Schulz vs F. Cortez Bell III et al

CHRISTOPHER M. SCHULTZ, : IN THE COURT OF COMMON
Plaintiff : PLEAS OF CLEARFIELD COUNTY,
: PENNSYLVANIA
vs. :
: NO: 04-427-0
F. CORTEZ BELL, III, :
BELL, SILBERBLATT AND WOOD, : CIVIL ACTION - LAW
Defendants : JURY TRIAL DEMANDED

CERTIFICATE OF MERIT AS TO DEFENDANT, F. CORTEZ BELL, III

I, Archie V. Diveglia, Esquire, do hereby certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill, or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint, fell outside the acceptable, professional standards in that such conduct was the cause of bringing about harm.

4-5-04
Date


Archie V. Diveglia, Esquire

FILED

APR 12 2004

William A. Shry
Prothonotary Clerk of Courts

FILED
APR 12 2004
10:23 AM
cc
SAC

William A. Smith
Pittsburgh, PA 15222-3390

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

CHRISTOPHER M. SCHULTZ,)
Plaintiff)
)
-vs-) No. 04-427-CD
)
F. CORTEZ BELL, III and)
BELL, SILBERBLATT AND WOOD,)
Defendants)

Type of Pleading:
PRAECIPE FOR APPEARANCE

Filed on Behalf of:
**F. CORTEZ BELL, III AND
BELL SILBERBLATT AND WOOD,
DEFENDANTS**

Counsel of Record for this Party:

ROBERT I. JOHNSTON, ESQUIRE
PA I.D. #19793
BELDEN LAW
117 North Main Street
Greensburg, PA 15601
(724) 834-0300
(724) 834-1307

FILED *D*

APR 26 2004
m / 1 / 30 / 04
William A. Shaw
Prothonotary
Prothonotary
no 4/c.

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

CHRISTOPHER M. SCHULTZ,)
Plaintiff)
)
-vs-) No. 04-427-CD
)
F. CORTEZ BELL, III and)
BELL, SILBERBLATT AND WOOD,)
Defendants)

PRAECIPE FOR APPEARANCE

To the Prothonotary:

Please enter my appearance for the defendants, **F. CORTEZ BELL**
III and BELL, SILBERBLATT AND WOOD, Defendants.

Respectfully submitted,

BELDEN LAW



Robert I. Johnston, Esquire
PA I.D #19793
117 North Main Street
Greensburg, PA 15601
(724) 834-0300

CERTIFICATE OF SERVICE

I, **ROBERT I. JOHNSTON**, Esquire, of the law firm of **BELDEN LAW**, attorney for defendants, do hereby certify that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** was served upon the following, by United States Postal Service, First Class Mail, postage prepaid, on the 20th day of April, 2004.

Archie V. Diveglia, Esquire
Two Lincoln Way West
New Oxford, Pa 17350



Robert I. Johnston, Esquire
PA I.D. #19793

FILED

APR 26 2004

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

SCHULTZ, CHRISTOPHER M.

VS.

BELL, F. CORTEZ III and BELL, SILBERBLATT & WOOD

COMPLAINT

Sheriff Docket # 15372

04-427-CD

SHERIFF RETURNS

NOW APRIL 2, 2004 AT 8:57 AM SERVED THE WITHIN COMPLAINT ON BELL, SILBERBLATT & WOOD, DEFENDANT AT EMPLOYMENT, 318 EAST LOCUST ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RICHARD A. BELL, PARTNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING

NOW APRIL 2, 2004 AT 11:20 AM SERVED THE WITHIN COMPLAINT ON F. CORTEZ BELL III, DEFENDANT AT EMPLOYMENT, 318 EAST LOCUST ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO F. CORTEZ BELL III, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING

Return Costs

Cost	Description
40.62	SHERIFF HAWKINS PAID BY: ATTY CK# 2605
20.00	SURCHARGE PAID BY: ATTY

Sworn to Before Me This

17 Day of May 2004
William A. Shaw

So Answers,

Chester A. Hawkins
by Marilyn Hahn
Chester A. Hawkins
Sheriff

FILED

8 1:25 BA

MAY 17 2004

William A. Shaw
Prothonotary

CHRISTOPHER M. SCHULTZ, : IN THE COURT OF COMMON
Plaintiff : PLEAS OF CLEARFIELD COUNTY,
: PENNSYLVANIA
vs. :
: NO: 04-427-CD
F. CORTEZ BELL, III, and :
BELL, SILBERBLATT AND WOOD, : CIVIL ACTION - LAW
Defendants : JURY TRIAL DEMANDED

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 OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

**David Meholic, Court Administrator
Clearfield County Courthouse
One North 2nd Street
Clearfield, PA 16830
(814) 765-2641, Extension 5982**

FILED

MAR 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

CHRISTOPHER M. SCHULTZ, : **IN THE COURT OF COMMON
Plaintiff** : **PLEAS OF CLEARFIELD COUNTY,**
: **PENNSYLVANIA**
vs. :
: **NO:**
F. CORTEZ BELL, III, and :
BELL, SILBERBLATT AND WOOD, : **CIVIL ACTION - LAW**
Defendants :
: **JURY TRIAL DEMANDED**

COMPLAINT

AND NOW, this 25th of March 2004, comes the plaintiff, Christopher M. Schultz, by and through his attorneys, Diveglia and Kaylor, P.C., who file this action on his behalf and aver in support as follows:

1. The plaintiff, Christopher M. Schultz, is an adult individual with a postal address of P.O. Box 274, Windburne, Pennsylvania 16879.
2. The defendant, F. Cortez Bell, III, is an adult individual and an attorney licensed by the Commonwealth of Pennsylvania who has an office address of 318 East Locust Street, Clearfield, Pennsylvania 16830. The plaintiff, Christopher M. Schultz, is asserting a professional liability claim against this defendant.
3. The defendant, Bell, Silberblatt and Wood, is believed to be a partnership of attorneys of which defendant, F. Cortez Bell, III, is one such partner with the partnership also comprised of attorneys Ann B. Wood and Richard Bell licensed by the Commonwealth of Pennsylvania and the partnership has an address of 318 East Locust Street, Clearfield Pennsylvania

16830. The plaintiff, Christopher M. Schultz, is asserting a professional liability claim against these defendants.

4. At all times set forth hereafter, the defendant, F. Cortez Bell, III, was acting within the scope of his employment as either a partner or an employee of the law firm of Bell, Silberblatt and Wood.

5. On October 21, 1991, the plaintiff, Christopher M. Schultz, was seriously injured in a motor vehicle accident on Interstate 80 in Graham Township, Clearfield County, Pennsylvania, as a result being struck by another vehicle while an occupant in a vehicle that was disabled and parked off the berm of Interstate 80.

6. As a result of injuries incurred in the above-described accident, the plaintiff, Christopher M. Schultz, thereafter was represented by the defendants who negotiated a settlement from the driver involved. A release was signed by plaintiff, Christopher M. Schultz, of said settlement on or about October 12, 1995. The action was discontinued by the defendant, F. Cortez Bell, III, on or about January 10, 1996.

7. It is believed discovery will determine that the defendant, Bell, Silberblatt and Wood, knew or should have known that the defendant, F. Cortez Bell, III, because of personal reasons and because of lack of experience, knowledge and skill, was not capable of handling a personal injury claim involving underinsured motorist coverage.

8. Prior to the signing of the settlement release and discontinuance of the action against the tort feasor involved, the defendant, F. Cortez Bell, III,

knew, or should have known, that there was underinsured motorist insurance coverage available and payable because the settlement made on behalf of the plaintiff, Christopher M. Schultz, exhausted the limits of the applicable insurance policy of the tortfeasor.

9. The underinsured motorists benefits available totaled the potential of \$350,000.00 and the injuries and losses of the plaintiff, Christopher M. Schultz, were such that the potential arbitration award met or exceeded the potential \$350,000.00 available.

10. Despite knowing of the potential of the underinsured motorist claim, the need to notify the underinsured motorist insurance companies of the available settlement and obtain consent to settle as required under the policies, the defendant, F. Cortez Bell, III, discontinued plaintiff's case without obtaining consent to settle. In fact, the defendant, F. Cortez Bell, III, did not notify the Aetna Insurance Company as to the claim for underinsured motorist until in excess of one year after the release was signed. The other underinsured insurance carrier, Allstate, was not notified until February 9, 1996, almost four months post signing of the settlement release with the tortfeasor.

11. From the signing of the release, up to and including May 15, 2002, the defendant, F. Cortez Bell, III, advised the plaintiff, Christopher M. Schultz, that he was pursuing the underinsured motorist sums and throughout that time frame indicated to plaintiff, he had to overcome certain problems.

12. The plaintiff, Christopher M. Schultz, from October 1995 to May 15, 2002 attempted to meet with the defendant, F. Cortez Bell, III, to discuss the matter in full, but was always advised that he was not available for one reason or another. Finally, the plaintiff, Christopher M. Schultz, demanded and

received an appointment, which was scheduled for May 20, 2002, the purpose of which was to discuss when the underinsured motorist benefits would be obtained.

13. On May 15, 2002, the plaintiff, Christopher M. Schultz, received a letter canceling the May 20, 2002, appointment and for the first time defendant, F. Cortez Bell, III, indicated that there would be no recovery of underinsured motorist benefits stating that nothing more could be done.

14. The letter of May 15, 2002, which is attached as Exhibit 1, contains statements which are fraudulent-like or made with intent to deceive the plaintiff, Christopher M. Schultz, and/or was made with such gross disregard to the law of the Commonwealth of Pennsylvania that it constitutes reckless indifference to the law relating to underinsured motorist benefits and to Christopher Shultz's obtaining such benefits.

15. The defendant, F. Cortez Bell, III, continued to represent the plaintiff, Christopher M. Schultz, in various legal matters up to and including May 15, 2002.

16. The actions of the defendant, F. Cortez Bell, III, relate to communications with the Aetna and Allstate Insurance Companies and to plaintiff, Christopher M. Schultz, were made either with gross negligence as to the facts, or with intent to deceive or commit fraud, or in reckless disregard to the rights of Christopher M. Schultz to obtain underinsured motorist benefits.

17. The actions of the defendant, F. Cortez Bell, III, and his handling of the underinsured motorist benefits claim of Christopher M. Schultz, is not only negligent but done in such a reckless and fraudulent-like manner so as to

constitute outrageous conduct on the part of the defendant, F. Cortez Bell, III, entitling plaintiff, Christopher M. Schultz, to punitive damages.

18. The failure of the defendant, F. Cortez Bell, III, to properly pursue the underinsured motorist claim of the plaintiff, Christopher M. Schultz, resulted in the denial of the claim by the applicable insurance companies and thus preventing plaintiff, Christopher M. Schultz, from the potential of receiving \$350,000.00 available benefits.

19. When the defendant, F. Cortez Bell, III, learned from Aetna and Allstate Insurance Companies that they were not going to pay or negotiate on payment of the potential underinsured motorist benefits because the defendant, F. Cortez Bell, III, failed to obtain prior consent from them, the defendant, F. Cortez Bell, III, failed to further pursue the matter despite the known fact that there was no prejudice to those insurance companies.

20. After the denial of the underinsured motorist claims by Aetna and Allstate, the defendant, F. Cortez Bell, III, engaged in a course of conduct of keeping from the plaintiff, Christopher M. Schultz, that he, F. Cortez Bell, III, had allowed the claim to lapse. This course of conduct consisted of, among other things, making gross misstatements and/or fraudulent-like statements as to the law as it relates to preserving underinsured motorist claims and failure to respond to phone calls or to schedule office appointments.

COUNT I
FIRST CAUSE OF ACTION - NEGLIGENCE
CHRISTOPHER M. SCHULTZ vs. F. CORTEZ BELL, III

Paragraphs 1 through 20 of this Complaint are incorporated herein and made a part hereof.

21. The defendant, F. Cortez Bell, III, failed to meet the acceptable, applicable, and professional standards of care for an attorney handling a motor vehicle accident in a case in Pennsylvania and this failure caused loss to plaintiff, Christopher M. Schultz, that being a denial of potential of underinsured motorist benefits of \$350,000.00 and lapse of that claim.

22. The defendant, F. Cortez Bell, III, is liable to the plaintiff, Christopher M. Schultz, for the loss of potential underinsured motorist compensation up to \$350,000.00 as a result of his negligence. His negligence consisted of the following:

A. The defendant, F. Cortez Bell, III, negligently failed to preserve the underinsured motorist claim because he:

- 1) Failed to obtain consent for settlement of the underlying claim against the tortfeasor from the two underinsured motorist companies as provided by the policies in question, and/or

- 2) Even after the underinsured motorists insurance companies, Aetna and Allstate, refused to negotiate on the underinsured motorist claim because the defendant, F. Cortez Bell, III, settled the claim for the plaintiff, Christopher M. Schultz, without first

obtaining consent by them, he failed to pursue the denial of the underinsured claim on the basis there was no prejudice on the part of those insurance companies to his failure to give consent to settle.

- B. The defendant, F. Cortez Bell, III, negligently failed to keep himself versed in the law of personal injury claims and underinsured motorist claims that a reasonably prudent attorney practicing personal injury law would have known or researched. This failure resulted in a lack of understanding as to obtaining consent to settle in a timely manner or how to challenge a denial for lack of consent.
- C. The defendant, F. Cortez Bell, III, was not aware of the available underinsured motorist coverage or failed to take reasonable steps to investigate to determine the existence of such coverage and actions that needed to be taken prior to the settlement of the claim of plaintiff, Christopher M. Schultz, with the insurance company for the tortfeasor. The defendant, F. Cortez Bell, III, apparently negligently failed to obtain and/or read the applicable insurance policies for the motor vehicle which the plaintiff, Christopher M. Schultz, was operating at the time of his injury or the policy providing coverage for his parents, with whom he resided, to understand and appreciate the necessity of an attempt to settle as required by the policy. These failures resulted in a lack of understanding as to obtaining consent to settle in a timely manner or how to challenge a denial for lack of consent.

D. The defendant, F. Cortez Bell, III, failed to use due diligence on his part to conduct the proper investigation not only to the applicable potential underinsured motorist coverage, but also of the law relating to underinsured motorist claims.

E. The defendant, F. Cortez Bell, III, failed to challenge the validity of denial of underinsured coverage nor did he seek to require the underinsured carriers to establish prejudice arising from their lack of consent. This negligence is apparent in that the defendant, F. Cortez Bell, III, knew that Allstate had investigated the assets of the tortfeasor and found that there were none and therefore there could be no prejudice from failure to protect the subrogation claim.

F. The defendant, F. Cortez Bell, III, failed to promptly and fully notify the plaintiff, Christopher M. Schultz, of his failures to obtain proper consent to settle and thereby prevented the plaintiff, Christopher M. Schultz, from seeking a second opinion or seeking other counsel relating to his underinsured claim. Had the defendant, F. Cortez Bell, III, properly and fully notified the plaintiff, Christopher M. Schultz, of his failures, it was still possible for the plaintiff, Christopher M. Schultz, to have obtained counsel duly versed in underinsured motorist claims who could have pursued the matter against these insurance carriers, thus preserving his underinsured motorist claim.

WHEREFORE, plaintiff, Christopher M. Schultz, demands judgment against the defendant, F. Cortez Bell, III, for a sum in excess of \$50,000.00 together with damages for delay, interest and costs.

COUNT II

CHRISTOPHER M. SCHULTZ vs. BELL, SILBERBLATT AND WOOD

Paragraphs 1 through 22 of this Complaint are incorporated herein and made a part hereof.

23. At all times concerning the matter set forth above, the defendant, F. Cortez Bell, III, was an employee and/or partner of the defendant, Bell, Silberblatt and Wood, and was acting within the scope of his employment.

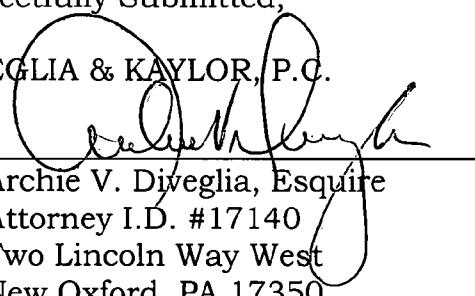
24. The defendant, Bell, Silberblatt and Wood, is liable for the negligence of the defendant, F. Cortez Bell, III, under the doctrine of *respondeat superior*.

25. In addition to being vicariously liable for the actions of the defendant, F. Cortez Bell, III, under the doctrine of *respondeat superior*, the defendant, Bell, Silberblatt and Wood, by and through the partners Ann B. Wood and Richard Bell is independently negligent because it allowed defendant, F. Cortez Bell, III, to handle personal injury claims when it knew or should have known that defendant, F. Cortez Bell, III, did not posses the necessary experience and knowledge to handle such a claim.

WHEREFORE, plaintiff, Christopher M. Schultz, demands judgment against the defendant, Bell, Silberblatt and Wood, for a sum in excess of \$50,000.00 together with damages for delay, interest and costs.

Respectfully Submitted,

DIVEGLIA & KAYLOR, P.C.

By: 

Archie V. DiVeglia, Esquire
Attorney I.D. #17140
Two Lincoln Way West
New Oxford, PA 17350
(717) 624-2500

Attorney for Plaintiff

ORDER # 20-7542-1/10 • LEGAL FILE SYSTEMS • BIBBERO SYSTEMS, INC. • PETALUMA, CA.
TO REORDER CALL TOLL FREE: (800) BIBBERO (800-242-2376) OR FAX (800) 242-9330 MFG IN U.S.A.

Law Offices
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA. 16830
e-mail: bswlaw@pennswoods.net
Writer's Direct e-mail: chipbell@pennswoods.net

RICHARD A. BELL
ANN B. WOOD
F. CORTEZ BELL, III

Office Telephone: (814) 765-5537
FAX: (814) 765-9730

PAUL SILBERBLATT 1954-1985
F. CORTEZ BELL, JR. 1954-1995 (Rel.)

OF COUNSEL
DANIEL C. BELL

May 15, 2002

Re: Office Appointment scheduled for
Monday, May 20, 2002

Mr. Christopher Schultz
P.O. Box 274
Winburne, PA 16879

Dear Chris:

The purpose of this letter is to cancel the office appointment currently scheduled for Monday, May 20, 2002 at 1:30 p.m. To my knowledge both you and Kathleen should now be receiving your Social Security Funds and therefore those matters which I was handling on your behalf are now completed. The only matter which we have been continually discussing is the settlement received as a result of your father's death from Mr. Wittreich's insurance and whether there could be any other recovery above and beyond what has already been received. If you will recall at the time the settlement was reached as well as throughout our various office appointments thereafter I have advised you as to the Daley-Sand case which precludes us from getting any more monies from any other source unless the Court, by Order, has preserved any right to make a claim to the under insured/uninsured motorist coverage. Commencing immediately after we received the settlement from the primary insurer, we began looking both through your file and my file to see if any Court Order could be found which left open the door to seeking coverage from other sources, specifically under insured/uninsured motorist coverage. It is my understanding that you have been unable to find any such Orders in your file and I have previously advised you that I have been unable to find any such Orders and our search included obtaining a copy of the docket transcript of the case in order to assure that our files contained all the Orders which had been issued by the Court.

May 15, 2002

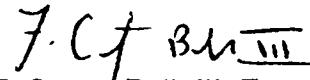
Page 2

At this point in time, there simply is no other means of recovery by which funds can be received from any other source. That is consistent with the Daley-Sand finding that any such other recoveries are precluded unless the Court has issued an Order directing that settlement must occur regardless of any outstanding issues of under insured/uninsured coverage. There simply is nothing more which can be done. Meeting to discuss the matter any further simply does not result in any solution other than set forth above and therefore I have canceled the office appointment.

Very truly yours,

BELL, SILBERBLATT & WOOD

By,



F. Cortez Bell, III, Esquire

FCBIII/day

VERIFICATION

The foregoing COMPLAINT is based upon the information which has been gathered by my counsel in the preparation of the lawsuit. I have read the COMPLAINT and to the extent that it is based upon information which I have given to my counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content is that of counsel, I have relied upon counsel in making this verification. This statement and verification are made subject to the penalties of Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

3/24/04

Date

Christopher M. Schultz
Christopher M. Schultz

FILED

acc shff

m/2:00pm

MAR 29 2004

Attly pd. 85.00

William A. Shaw
Prothonotary/Clerk of Courts

CHRISTOPHER M. SCHULTZ, : IN THE COURT OF COMMON
Plaintiff : PLEAS OF CLEARFIELD COUNTY,
: PENNSYLVANIA
vs. :
: NO: 04-427-CD
F. CORTEZ BELL, III, :
BELL, SILBERBLATT AND WOOD, : CIVIL ACTION - LAW
Defendants :
: JURY TRIAL DEMANDED

PRAECIPE FOR DISCONTINUANCE

TO: The Prothonotary

Please discontinue the above case. All claims of the Plaintiff have been satisfied in full.

Respectfully Submitted,

DIVEGLIA & KAYLOR, P.C.

Dated: 8-5-04

By: Archie V. Diveglia

Archie V. Diveglia, Esquire
Attorney I.D. #17140
Two Lincoln Way West
New Oxford, PA 17350
(717) 624-2500

Attorney for Plaintiff

FILED No cc
M/24/04 Cert. of Disc.
AUG 09 2004 to Atty

William A. Shaw Copy to CIA
Prothonotary/Clerk of Courts

FILED

AUG 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA



CIVIL DIVISION

Christopher M. Schultz

Vs. No. 2004-00427-CD
F. Cortez Bell III
Bell, Silberblatt & Wood

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 August 9, 2004, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by Diveglia and Kaylor, P.C.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 9th day of August A.D. 2004.

William A. Shaw, Prothonotary