

04-647-CD
WENDY BARNETT vs. SIDNEY MAPES, ETAL.

Wendy Barnett vs. Sidney Mapes, John Doe
2004-647-CD

Date: 12/29/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 11:59 AM

ROA Report

Page 1 of 1

Case: 2004-00647-CD

Current Judge: Fredric Joseph Ammerman

Wendy Barnett vs. Sidney L. Mapes, John Doe

Civil Other

Date		Judge
05/11/2004	Filing: Praeclipe to Issue Writ of Summons Paid by: Kapner, Kenneth M. Receipt number: 1878930 Dated: 05/11/2004 Amount: \$85.00 (Check) 2 cert. to Atty. with 2 Writ's of Summons to Atty. as instructed by Atty.	No Judge ✓
07/12/2004	Filing: Praeclipe to Reinstate Writ of Summons Paid by: Sansweet, David M. (attorney for Barnett, Wendy) Receipt number: 1882637 Dated: 07/12/2004 Amount: \$7.00 (Check) Issued 1 Reinstated Writ of Summons to Sheriff.	No Judge ✓
07/19/2004	Affidavit of Attempted Service, s/David M. Sansweet, Esq. No CC Entry of Appearance, filed on behalf of Defendant Sidney Mapes by s/John Flounlacker, Esq. No CC	No Judge ✓
	Praeclipe to File a Complaint, filed by s/John Flounlacker, Esq. Rule to File a Complaint Issued. One CC and Rule to Attorney Flounlacker	No Judge ✓
07/22/2004	Certificate of Service, Rule to File a Complaint dated July 19, 2004 upon David M. Sansweet, Esq., filed by s/John Flounlacker, Esq. No CC	No Judge ✓
08/06/2004	Sheriff Return, NOW July 23, 2004, Summons, served on Sidney Mapes. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
08/24/2004	Complaint, filed by s/David M. Sansweet, Esq. No CC	No Judge ✓
10/14/2004	Defendant, Sidney Mapes' Answer with New Matter to Plaintiff's Complaint. Notice to Plead within 20 days. Certificate of service. Filed by s/John Flounlacker, Esquire. No CC	No Judge ✓
	Stipulations, filed by Atty. Sansweet. 1 CC to Atty.	No Judge ✓
11/08/2004	Plaintiff's Answer to New Matter of Defendant Sidney Mapes. Filed by s/ David M. Sansweet, Esquire. No CC	No Judge ✓
11/24/2004	Defendant Sidney Mapes' Motion for Summary Judgment, filed by s/Laura A. Gargiulo, Esq. Two CC Attorney Gargiulo	No Judge ✓
12/08/2004	Order AND NOW, this 6th day of December, 2004 it is the Order of the Court that argument on Att. Gargiulo's Motion for Summary Judgment in the above-captioned matter has been scheduled for the 5th day of Jan. 2005 at 10:30AM. S/FJA 2 CC & Memo re; service to Atty. Flounlacher	Fredric Joseph Ammerman ✓
12/10/2004	Affidavit of Service filed, copy of Order of Court dated Dec. 6, 2004, along with an additional copy of Defendant's motion for Summary Judgement and supporting brief, mailed to Plaintiff's counsel, David M. Sansweet by certified mail. Filed by John Flounlacker, Esquire. no CC	Fredric Joseph Ammerman ✓

**THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED**

LAW OFFICES OF KENNETH M. KAPNER

BY: KENNETH M. KAPNER, ESQUIRE

IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE

IDENTIFICATION NO. 56582

1333 RACE STREET, SUITE 205

PHILADELPHIA, PENNSYLVANIA 19107

(215) 568-5683

(215) 568-7667 – FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT

COMMONWEALTH OF PA

321 E. MARKET STREET

CLEARFIELD COUNTY

APT. 2-REAR

TRIAL DIVISION

CLEARFIELD, PA 16830

Plaintiff,

TERM,

vs.

NO. 2004-647-CO

FILED

SIDNEY MAPES

P.O. BOX 1023

CLEARFIELD, PA 16830

AND

JOHN DOE

Defendants

MAY 11 2004

m/11/04 wms

William A. Shaw

Prothonotary/Clerk of Courts

2 CERTS to ATTY

2 WRTS to ATTY

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue A Writ of Summons - Civil Action in the above-captioned matter for service on the Defendants herein. The amount in controversy is not in excess of the Arbitration limits.

LAW OFFICES OF KENNETH M. KAPNER

BY:

DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff, Wendy Barnett

July 12, 2004 Document
Reinstated/Reissued to Sheriff/Attorney
for service.

[Signature]
Deputy Prothonotary

Date: May 10, 2004

Commonwealth of Pennsylvania
CITY AND COUNTY OF CLEARFIELD

SUMMONS
CITACION

COURT OF COMMON PLEAS

Wendy Barnett
321 E. Market Street
Apt. 2-Rear
Clearfield, PA 16830
vs.

Sidney Mapes
P.O. Box 1023
Clearfield, PA 16830
and
John Doe

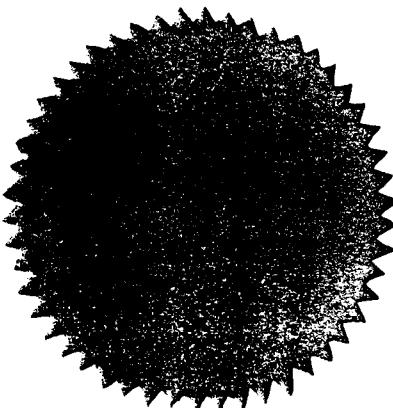
To⁽¹⁾
Sidney Mapes and John Doe

Term, 20 _____
No. 2004-647-CO

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

Wendy Barnett

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.



(1) Name(s) of Defendant(s)
(2) Name(s) of Plaintiff(s)

William A. Shaw
Prothonotary

By

WILLIAM A. SHAW

Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield, PA

Date MAY 11, 2004

COURT OF COMMON PLEAS

Term, 20 May No. 649

Wendy Barnett
321 E. Market Street
Apt. 2-Rear
Clearfield, PA 16830

vs.

Sidney Mapes
P.O. Box 1023
Clearfield, PA 16830
and
John Doe

SUMMONS

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
1333 Race Street
Suite 205
Philadelphia, PA 19107
(215) 568-5683

LAW OFFICES OF
KENNETH M. KAPNER
SUITE 205
1333 RACE STREET
PHILADELPHIA, PA 19107

(215) 568-5683
FACSIMILE: (215) 568-7667

TAX ID NO. 23-2828356

May 10, 2004

VIA FEDERAL EXPRESS

Clearfield Courthouse
Prothonotary's Office
P.O. Box 549
Clearfield, PA 16830

RE: Wendy Barnett vs. Sidney Mapes and John Doe
D.O.I.: _____
5/14/02

Dear Sir/Madam:

Enclosed for filing an original and one copy of a "Praeclipe to Issue" and Writ of Summons on behalf of my client, Plaintiff Wendy Barnett. As the statute of limitations is expiring in this matter on 5/14/04, please file same of record immediately and provide a time-stamped and fully executed copy of the Writ in the return self-addressed stamped envelope I have provided for your convenience. We will not need Sheriff's service as the insurance carrier for Mr. Mapes has agreed to accept service on behalf of Mr. Mapes. Enclosed is the Writ filing fee of \$85.00 as per your direction.

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



David Sansweet, Esquire

DS/cm

Enc.

cc: Edward J. Yocom (w/enc.)
Wendy Barnett (w/enc.)
John Flounlacker, Esquire (w/enc.)

**THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED**

LAW OFFICES OF KENNETH M. KAPNER

BY: KENNETH M. KAPNER, ESQUIRE

IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE

IDENTIFICATION NO. 56582

1333 RACE STREET, SUITE 205

PHILADELPHIA, PENNSYLVANIA 19107

(215) 568-5683

(215) 568-7667 – FAXSIMILE

Attorneys for Plaintiff

WENDY BARNETT

321 E. MARKET STREET

APT. 2-REAR

CLEARFIELD, PA 16830

COMMONWEALTH OF PA

CLEARFIELD COUNTY

TRIAL DIVISION

Plaintiff, : No. 2004-647-CD

vs.

SIDNEY MAPES

P.O. BOX 1023

CLEARFIELD, PA 16830

AND

JOHN DOE

Defendants

FILED
m/12/25/04
JUL 12 2004
NO CC
b/w

William A. Shaw
Prothonotary/Clerk of Courts

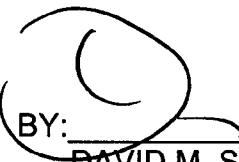
AFFIDAVIT OF ATTEMPTED SERVICE

I, David Sansweet, attorney for Plaintiff Wendy Barnett, swear and affirm that I made a good faith effort to attempt service of the Writ in the above-captioned matter. I was under impression, which I later found out to be mistaken, that service would be accepted on behalf of the Defendant by his insurance carrier and/or attorney, John Flounlacker. In fact, a copy of the Writ was forwarded to both of these individuals/entities when I originally filed the Writ with the Prothonotary by letter of 5/10/04, a copy of which is attached hereto to the affidavit. I in fact was not made aware that the above entities/individuals would not accept service until June of this year.

Further, a confirming letter was sent to the carrier for Defendant on 3/4/04 memorializing that the carrier and/or counsel for the carrier would accept service on behalf of the Defendant. In the attached response of the carrier by letter of 3/24/04, there was no mention whatsoever that the carrier and/or opposing counsel would not accept service. Therefore, I relied on these corresponding letters to conclude that an acceptance of service by the carrier/defense counsel was agreeable.

In any event, now that I have been advised that neither the insurance carrier nor the Defendant's attorney will accept service, I have dutifully filed an Order for Service by the Sheriff's Department.



BY: 
DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff, Wendy Barnett

Date: July 9, 2004

LAW OFFICES OF
KENNETH M. KAPNER

SUITE 205
1333 RACE STREET
PHILADELPHIA, PA 19107

(215) 568-5683

FACSIMILE: (215) 568-7667

TAX ID NO. 23-2828356

March 4, 2004

Edward J. Yocum
E.L. Braid Claim Service, Inc.
P.O. Box 946
Clearfield, PA 16830

RE:	Insured:	Sidney Mapes
	Policy:	BP 1000055
	D/L:	5/14/02
	Your File:	3K 4085
	Claim No.:	2004-000292LL
	Claimant/Our Client:	<u>Wendy Barnett</u>

Dear Mr. Yocum:

It was a pleasure speaking with you on 2/18/04. As per our discussion, and at your earliest convenience, please confirm that Sidney Mapes would be the only potential defendant in this matter and that there is not an outside entity responsible for the upkeep and maintenance of the apartment, and in particular the bathroom where the accident occurred. In return, I will most likely make Ms. Barnett available for a recorded statement. This will also confirm that since we are so close to the statute, I have agreed to file a Writ if we are unable to resolve this matter before the beginning of May and you will accept service on behalf of Mr. Mapes. This will also confirm that neither party will take any further action on the Writ as long as we are working towards a possible resolution of this claim.

As I advised you, at the present time, I do not have much in the way of documentation. Nonetheless, I enclose the following:

- 1) Lease Agreement;

Edward J. Yocom

March 4, 2004

Page 2

- 2) 2/10/04 report of Ms. Barnett's mental health therapist, A. Jean Wagoner, B.S. I did order the entire chart from Dr. Wagoner. However, Dr. Wagoner, citing confidentiality, would not release the entire chart and prepared this report in lieu of producing the entire chart. Nonetheless, according to Dr. Wagoner, most of Wendy's ongoing incident-related problems are more physical in nature than psychological.;
- 3) Witness statement of Ms. Barnett's roommate at the time, Joshua Willoughby, dated 11/14/02, wherein Mr. Willoughby speaks of his own shock incident with the bathroom mirror from which he experienced shock-type symptoms to his right arm and hand only two weeks prior to Ms. Barnett's injury. As you will read, Mr Willoughby also called Mr. Mapes to complain about what happened prior to Ms. Barnett's event.
- 4) Investigative report of Mathew O'Brien dated 2/25/03. Mr. O'Brien spoke to a subsequent tenant, William McBride, who claims to have been shocked while handling the medicine cabinet door after he moved in the apartment in September 2002. At the present time, I am not forwarding the documents referred to by Mr. O'Brien as they don't appear to be relevant to this claim. If you would like colored copies of the photographs, I will be glad to provide you with same under separate cover.

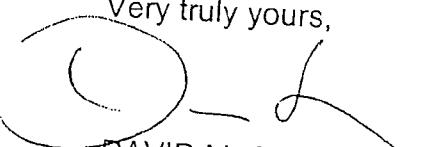
In any event, I will provide you with additional supporting documentation under separate cover. It is my understanding that Ms. Barnett is not making a wage loss claim as she was not working as of the accident date. In return, as you mentioned that some electrical repairs were undertaken following the 5/14/02 accident, would you kindly provide me with copies of any repair invoices or receipts related to same.

Finally, would you consider an immediate "discounted" settlement in lieu of protracted litigation; this could also save the carrier large sums of money toward a potential DPA/Medicare lien, as they have been paying for all of Ms. Barnett's accident-related treatment, yet have not asserted a subrogation claim to date. The total bill is quite substantial and growing as Ms. Barnett continues to treat. In fact, because of a flare-up of severe pain in her right arm/hand in January '04, Dr. Lipitz had Ms. Barnett undergo both an EMG and Bone Scan in February '04 at Clearfield Hospital. As such, please advise in this regard.

Edward J. Yocum
March 4, 2004
Page 3

Thank you for your immediate attention to these matters.

Very truly yours,


DAVID M. SANSWEET

DMS/cm
Enclosures

cc: Wendy Barnett (w/encl.)

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

E.L. BRAID CLAIM SERVICE, INC.

P.O. BOX 946

CLEARFIELD, PA 16830

March 24, 2004

Re: Insured: MAPES, SIDNEY
Policy: BP 100055
D/L: 5-14-02
Our File: 3K 4085
Claim No: 2004 000 292 LL
Claimant: BARNETT, WENDY

DAVID M. SANsweet, ESQUIRE
LAW OFFICES OF KENNETH M. KAPNER
SUITE 205
1333 RACE STREET
PHILADELPHIA PA 19107

Dear Mr. Sansweet:

In response to your correspondence dated March 4th, 2004, I cannot guarantee that Mr. Mapes is the only potential defendant in this matter as we are still in need of securing not only your client's statement but our insured's statement to determine all the facts and circumstances involving this alleged electrical shock incident, which may develop and uncover any potential parties that may we wish to join as additional defendants. However, as mentioned previously I am unaware of any other responsible party for the maintenance other than Mr. Mapes and individuals that he may hire for general repairs, service, maintenance etc. Meaning, I am unaware of any actual contract Mr. Mapes has with any maintenance company.

Regarding the writ that you intend to file at the beginning of May please be advised that our principal reserves the right to file a motion for you to act on the writ at any given time but I believe no such action would take place if both parties are viewed as acting in mutual cooperation.

Finally, as outlined above, you will understand that our principal will not give any consideration for "discounted settlement" until such time their liability investigation is complete to determine the liability exposure of their insured. Thus, we ask that once you are in receipt of this information and you can schedule an appointment to make your client available we would like to secure her statement as soon as possible so that we may then address the allegations in the statement that we intend to secure from Mr. Mapes. Once that is completed our principal then would be in a position to then make a determination of the position regarding this matter.

I take this opportunity to thank you in advance for your continued cooperation and we now await your response to our request to meet with you and your client.

Sincerely,

E. L. BRAID CLAIM SERVICE, INC.

Edward J. Yocom
Edward J. Yocom

EJY/kjw
CC: Tuscarora Wayne Mutual Ins. Co.

LAW OFFICES OF
KENNETH M. KAPNER
SUITE 205
1333 RACE STREET
PHILADELPHIA, PA 19107

(215) 568-5683
FACSIMILE: (215) 568-7667

TAX ID NO. 23-2828356

May 10, 2004

VIA FEDERAL EXPRESS

Clearfield Courthouse
Prothonotary's Office
P.O. Box 549
Clearfield, PA 16830

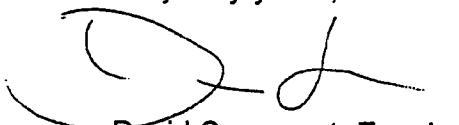
RE: Wendy Barnett vs. Sidney Mapes and John Doe
D.O.I.: 5/14/02

Dear Sir/Madam:

Enclosed for filing an original and one copy of a "Praecipe to Issue" and Writ of Summons on behalf of my client, Plaintiff Wendy Barnett. As the statute of limitations is expiring in this matter on 5/14/04, please file same of record immediately and provide a time-stamped and fully executed copy of the Writ in the return self-addressed stamped envelope I have provided for your convenience. We will not need Sheriff's service as the insurance carrier for Mr. Mapes has agreed to accept service on behalf of Mr. Mapes. Enclosed is the Writ filing fee of \$85.00 as per your direction.

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



David Sansweet, Esquire

DS/cm

Enc.

cc: Edward J. Yocum (w/enc.)
Wendy Barnett (w/enc.)
John Flounlacker, Esquire (w/enc.)

**THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED**

LAW OFFICES OF KENNETH M. KAPNER

BY: KENNETH M. KAPNER, ESQUIRE

IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE

IDENTIFICATION NO. 56582

1333 RACE STREET, SUITE 205

PHILADELPHIA, PENNSYLVANIA 19107

(215) 568-5683

(215) 568-7667 – FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT

COMMONWEALTH OF PA

321 E. MARKET STREET

CLEARFIELD COUNTY

APT. 2-REAR

TRIAL DIVISION

CLEARFIELD, PA 16830

Plaintiff,

No. 2004-647-CD

vs.

SIDNEY MAPES

P.O. BOX 1023

CLEARFIELD, PA 16830

AND

JOHN DOE

Defendants

h
FILED NO CC
m/12/27/04 Atty pd.7.00
JUL 12 2004 1 Summons
William A. Shaw Re-issued to
Prothonotary Clerk of Courts Staff

PRAECIPE TO REINSTATE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly reinstate the above-captioned Writ of Summons.

BY:

DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff, Wendy Barnett

Date: July 9, 2004

Commonwealth of Pennsylvania
CITY AND COUNTY OF CLEARFIELD

SUMMONS
CITACION

COURT OF COMMON PLEAS

Term, 20

No. 2004-647-C0

Wendy Barnett
321 E. Market Street
Apt. 2-Rear
Clearfield, PA 16830
vs.

Sidney Mapes
P.O. Box 1023
Clearfield, PA 16830
and
John Doe

To⁽¹⁾

Sidney Mapes and John Doe

CC: [Signature]

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

Wendy Barnett

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.

7-12-04 Document
~~Original~~ Reissued to Sheriff, ~~Attorney~~
for service. *[Signature]*
Deputy Prothonotary

William A. Shaw
Prothonotary

By

W. A. Shaw

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

⁽¹⁾ Name(s) of Defendant(s)
⁽²⁾ Name(s) of Plaintiff(s)

THOMAS, THOMAS & HAVER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

John Flounlacker, Esquire
Attorney I.D. 73112
(717)237-7134
Attorneys for Defendant

WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v : :
SIDNEY MAPES and JOHN DOE, : NO. 2004-647-CV
Defendants : :
: CIVIL ACTION - LAW
: :
: JURY TRIAL DEMANDED

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance for Defendant, Sidney Mapes in the above-captioned case.

Respectfully submitted,

THOMAS, THOMAS & HAVER, LLP

By: John Flounlacker
John Flounlacker, Esquire
Attorney I.D. # 73112
P.O. Box 999
305 N. Front Street
Harrisburg, PA 17108-0999
(717)237-7134

Date: 7/15/04

b6 *FILED*
JUL 19 2004
William A. Shaw
Prothonotary Clerk of Courts

CERTIFICATE OF SERVICE

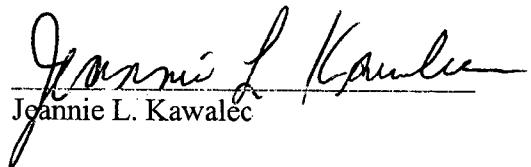
I, Jeannie L. Kawalec, an employee for the law firm Thomas, Thomas & Hafer, LLP, hereby state that a true and correct copy of the foregoing document(s) was served upon all counsel of record by first class United States mail, postage prepaid, addressed as follows, on the date set forth below:

By First Class U.S. Mail:

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite 205, 1333 Race Street
Philadelphia, PA 19107

THOMAS, THOMAS & HAVER, LLP

Dated: 7/15/04



Joannie L. Kawalec

THOMAS, THOMAS & HAVER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

John Flounlacker, Esquire
Attorney I.D. 73112
(717)237-7134
Attorneys for Defendant

WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
:
v : NO. 2004-647-CV
:
SIDNEY MAPES and JOHN DOE, : CIVIL ACTION - LAW
Defendants :
:
: JURY TRIAL DEMANDED

PRAECIPE TO FILE A COMPLAINT

TO THE PROTHONOTARY:

Please enter a RULE upon Plaintiff to file a Complaint within twenty (20) days hereof or suffer the entry of a Judgment of Non Pros.

THOMAS, THOMAS & HAVER, LLP


John Flounlacker, Esquire
Counsel for Defendant

FILED ^{1CCJ}
m19:541301 issued rule
JUL 19 2004 to Atty

William A. Shaw
Prothonotary/Clerk of Courts

RULE TO FILE A COMPLAINT

AND NOW, this 19th day of July, 2004, a RULE is hereby granted upon Plaintiff to file a Complaint herein within twenty (20) days after service hereof or suffer the entry of a Judgment of Non Pros.


PROTHONOTARY

THOMAS, THOMAS & HAFER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

John Flounlacker, Esquire
Attorney I.D. 73112
(717)237-7134
Attorneys for Defendant

WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
:
v : NO. 2004-647-CV
:
SIDNEY MAPES and JOHN DOE, : CIVIL ACTION - LAW
Defendants :
:
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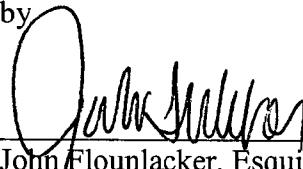
CERTIFICATE OF SERVICE

I do hereby certify that on this day I served a true and correct copy of the Rule to File a Complaint dated July 19, 2004 by U.S.P.S. Certified Mail, postage prepaid, addressed to the following:

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite205, 1333 Race Street
Philadelphia, PA 19107

Thomas, Thomas & Hafer, LLP

by


John Flounlacker, Esquire
305 N. Front Street
P.O. Box 999
Harrisburg, PA 17108-0999

Date: 7/20/04

*FILED NO CC
M 10:32 AM
JUL 22 2004
WILLIAM A. HARRIS
Prothonotary Clerk of Courts*

In The Court of Common Pleas of Clearfield County, Pennsylvania

BARNETT, WENDY

VS.

MAPES, SIDNEY

SUMMONS

Sheriff Docket # 15944

04-647-CD

SHERIFF RETURNS

NOW JULY 23, 2004 AT 2:05 PM SERVED THE WITHIN SUMMONS ON SIDNEY MAPES, DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SIDNEY MAPES A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: SNYDER

Return Costs

Cost	Description
26.00	SHERIFF HAWKINS PAID BY: ATTY Ck# 4925
10.00	SURCHARGE PAID BY: ATTY Ck#4926

Sworn to Before Me This

14th Day Of August 2004

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

So Answers,

Chester A. Hawkins
by Maury Mapes
Chester A. Hawkins
Sheriff

FILED

08:50 AM
AUG 06 2004

ewb
William A. Shaw
Prothonotary/Clerk of Courts

Commonwealth of Pennsylvania

SUMMONS
CITACION

CITY AND COUNTY OF CLEARFIELD

COP
COURT OF COMMON PLEAS

Term, 20

Wendy Barnett
 321 E. Market Street
 Apt. 2-Rear
 Clearfield, PA 16830
 vs.

No. 2004-647-C0

Sidney Mapes
 P.O. Box 1023
 Clearfield, PA 16830
 and
 John Doe

To⁽¹⁾
 Sidney Mapes and John Doe

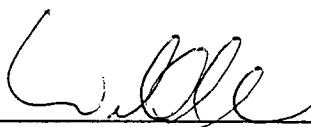
You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

Wendy Barnett

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.

7-12-04 Document
 Reinstated/Reissued to Sheriff ~~Attorney~~
 for service.

William A. Shaw
 Prothonotary

By 

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

(1) Name(s) of Defendant(s)
 (2) Name(s) of Plaintiff(s)

THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED

LAW OFFICES OF KENNETH M. KAPNER
BY: KENNETH M. KAPNER, ESQUIRE
IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE
IDENTIFICATION NO. 56582
1333 RACE STREET, SUITE 205
PHILADELPHIA, PENNSYLVANIA 19107
(215) 568-5683
(215) 568-7667 – FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT
321 E. MARKET STREET
APT. 2-REAR
CLEARFIELD, PA 16830

COMMONWEALTH OF PA
CLEARFIELD COUNTY
TRIAL DIVISION

Plaintiff, : No. 2004-647-CD

vs.

SIDNEY MAPES
P.O. BOX 1023
CLEARFIELD, PA 16830

AND

JOHN DOE

Defendants

FILED No CC
m/10/58/04
AUG 24 2004

ws
William A. Shaw
Prothonotary/Clerk of Courts

NOTICE TO DEFEND
PREMISES LIABILITY
CIVIL ACTION - COMPLAINT

NOTICE

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

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Ha faltado asentarse una comparecencia escrita o en persona o con un abogado entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Se avisa que si usted no defiende, la corte tomará medidas y puede continuar la demanda en su contra sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFFICIENTE DE PAGAR TAL SERVICIO. VAYA A UNA PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Earle D. Lees, Esquire
109 North Brady Street
Du Bois, PA 15801
Telephone: (814) 375-9310

Earle D. Lees, Esquire
109 North Brady Street
Du Bois, PA 15801
Telefona: (814) 375-9310

**THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED**

LAW OFFICES OF KENNETH M. KAPNER

BY: KENNETH M. KAPNER, ESQUIRE

IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE

IDENTIFICATION NO. 56582

1333 RACE STREET, SUITE 205

PHILADELPHIA, PENNSYLVANIA 19107

(215) 568-5683

(215) 568-7667 – FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT
321 E. MARKET STREET
APT. 2-REAR
CLEARFIELD, PA 16830

COMMONWEALTH OF PA
CLEARFIELD COUNTY
TRIAL DIVISION

Plaintiff, : No. 2004-647-CD

vs. :

SIDNEY MAPES
P.O. BOX 1023
CLEARFIELD, PA 16830

AND :

JOHN DOE

Defendants :

**PREMISES LIABILITY
CIVIL ACTION – COMPLAINT**

1. Plaintiff, WENDY BARNETT, is an adult individual residing at the above-captioned-address captioned address.

2. The Defendant, SIDNEY MAPES, is an individual who owned a rental property at 6 Water Street, Apt. #12, Clearfield, PA 16830 at all times relevant to the instant cause of action. Upon information and belief, Defendant Sidney Mapes also

owned and leased other rental properties in the surrounding area at all times relevant hereto.

3. Plaintiff entered into a lease agreement with Sidney Mapes for this rental unit on 6 Water Street for the lease term of 2/01/02 through 1/31/03. The lease was executed by Sidney Mapes on 1/28/02 and by Wendy Barnett on 2/1/02.

4. As of 5/14/02, this lease remained in effect and Plaintiff Wendy Barnett continued to be a tenant of Mr. Mapes and continued to reside at this rental property.

5. At all times material hereto, the Defendant acted by and through his duly authorized servants, agents and/or employees acting within the course and scope of their duties of employment and on behalf of each other.

6. At all times material hereto, the Defendant owned, operated, leased, managed, maintained, inspected, repaired and/or controlled the subject property.

7. On or about May 14, 2002, Plaintiff, Wendy Barnett, was a tenant of the premises located at 6 Water Street, Apt. #12, Clearfield, PA 16830 and was lawfully and rightfully upon the premises.

8. On or before May 14, 2002, Plaintiff Wendy Barnett was in the bathroom of the subject property when her right hand came in contact with the bathroom mirror of the medicine cabinet and/or fluorescent light surrounding same and/or an uncapped electrical wire protruding over the top of the mirror, causing shock injuries and other injuries and damages as set forth herein.

9. On or before May 14, 2002, Defendant assumed, undertook, had responsibility to, and was legally obligated to inspect, repair, maintain, supervise and control the premises aforesaid.

10. At least two weeks prior to May 14, 2002, and while Plaintiff Wendy Barnett was a tenant of the subject premises, her roommate Josh Willoughby had a similar experience while adjusting the same mirror in the bathroom. Very shortly thereafter, the subject tenants contacted Mr. Mapes to advise about this earlier incident and requested Mr. Mapes to repair and/or inspect the bathroom mirror area.

11. Despite this request, Defendant Sidney Mapes failed to visit, inspect and/or repair the dangerous condition of the bathroom mirror area prior to Plaintiff's accident. In fact, no action whatsoever was taken to rectify this dangerous condition.

12. Further, the electrical wire hanging over the mirror was allegedly repaired by an electrician shortly after the accident. Specifically, the electrician allegedly put a cap on the wire so that it would keep any current from running into the mirror. Despite same, the tenant subsequent to Plaintiff also was allegedly "shocked" in a similar fashion on or about September 2002, thus necessitating the bathroom medicine cabinet to be replaced.

13. The aforesaid accident was due solely to the negligence and carelessness of the Defendant, and was due in no manner whatsoever to any act or failure to act on the part of the Plaintiff.

COUNT I
WENDY BARNETT V. SIDNEY MAPES

14. Plaintiff incorporates by reference the facts and averments contained in Paragraphs 1 through 13 as though same were fully set forth at length herein.

15. The carelessness and negligence of the Defendant, SIDNEY MAPES, consisted, *inter alia*, of the following:

- a. Failing to correct the defective or hazardous condition which they were aware of should have been aware;
- b. Failing to warn persons in the position of Plaintiff of the defective or hazardous condition of the bathroom mirror area of the premises as described herein;
- c. Failing to maintain the premises in a condition which would protect and safeguard persons lawfully upon the premises;
- d. Allowing and permitting the aforesaid irregularity and deformity of the bathroom mirror/medicine cabinet area and bare electrical wires around a fluorescent light to remain on the premises so as to constitute a menace;
- e. Failing to properly inspect the said premises;
- f. Failing to exercise due care in the inspection, maintenance and repair of the premises, specifically the bathroom mirror area;
- g. Failing to correct and/or remedy the unreasonably dangerous condition of the bathroom mirror area even after receiving timely notice of this condition;
- h. Failing to discover the condition of the Defendant's premises which Defendant realized or should have realized created an unreasonable risk of harm to tenant Wendy Barnett;
- i. Failing to provide and/or take safeguards and precautions for the safety and well-being of Plaintiff and others similarly situated as required by law, regulations and/or customs, specifically those

applicable to maintenance of "exposed" electrical wires in residential/rental dwellings;

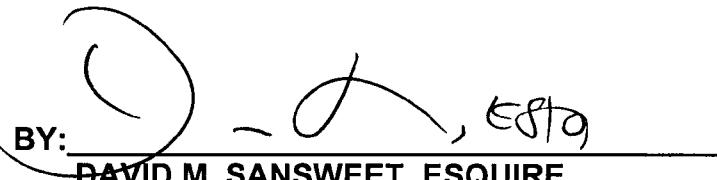
- j. Failing to repair the premises after receiving a report of the dangerous conditions, specifically the bathroom mirror area and exposed wire;
- k. Other negligence at law.

16. Plaintiff, WENDY BARNETT, due to the aforesaid negligence and careless conduct of the Defendant, SIDNEY MAPES, was caused to suffer injuries set forth by her treating doctors; specifically, she was caused to suffer including but not limited to the following symptoms and conditions: electric shock injuries; post-traumatic recurrent severe cephalgia; memory loss; right ear partial hearing loss, pain and other symptoms; right-sided shooting pain and numbness; pain, numbness, burning and tingling in her right arm and hand; post-traumatic stress syndrome and anxiety; exacerbation of pre-existing depression and bi-polar disorder; vertigo-like symptoms; disorientation; right upper extremity brachioradial-like symptoms; exacerbation of pre-existing right ear conditions; left ear partial hearing loss; questionable slight dysconjugate gaze on far lateral gaze bilaterally; paresthesia and reduced deep tendon reflexes in right upper extremity; neuropathic pain; neck pain; dizziness; labyrinthitis; back pain; left leg numbness; recurrent shortness of breath; altered mental status; recurrent nausea; she was caused to suffer injury to her blood vessels, ligaments, tendons, nerves, muscles and soft tissues throughout the injured areas of her body; she was caused to suffer serious and/or permanent to the portions of her body as indicated in her medical records; she was caused to suffer further injuries as reflected in any and all medical records produced in connection with the care and treatment rendered to her related to

this accident; she was caused to suffer further injuries, the full extent of which are not yet presently known, which may be serious and/or permanent in nature; she has in the past, is presently and will in the future be caused to suffer aches, pains and inconvenience; she has in the past, is presently and will in the future be caused to suffer a loss of life's pleasures and humiliations; she has in the past, is presently, and will in the future be caused to expend sums of money for medical care and treatment; she has in the past, is presently and will in the future be caused to suffer restriction, limitations and activity of daily living; she has in the past, is presently and will in the future be caused to suffer a loss of use and function of her body.

WHEREFORE, Plaintiff, WENDY BARNETT, demands judgment from the Defendant, SIDNEY MAPES, for sums of money not in excess of the Arbitration limits, together with the costs and disbursements of this action and delay damages, and brings this action to recover same.

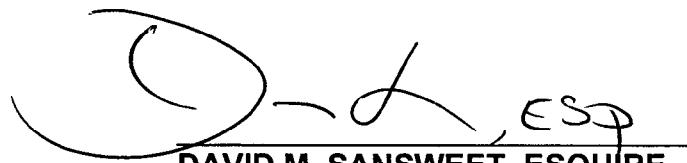
LAW OFFICES OF KENNETH M. KAPNER

BY: 
DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff

Date: August 23, 2004

VERIFICATION

DAVID M. SANSWEET, ESQUIRE, hereby states that he is the Attorney for the Plaintiff and that the information contained herein is true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of the 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff

DATE: August 23, 2004

THOMAS, THOMAS & HAVER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

John Flounlacker, Esquire
Attorney I.D. 73112
(717)237-7134
Attorneys for Defendant

WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
:
v : NO. 2004-647-CV
:
SIDNEY MAPES and JOHN DOE, : CIVIL ACTION - LAW
Defendants :
:
: JURY TRIAL DEMANDED

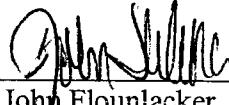
NOTICE TO PLEAD

TO PLAINTIFF:

YOU ARE HEREBY REQUIRED to respond to the within New Matter within twenty (20) days of the date of service hereof or a default judgment may be entered against you.

Respectfully submitted,

THOMAS, THOMAS & HAVER, LLP

By: 

John Flounlacker, Esquire
Attorney I.D. # 73112
P.O. Box 999
305 N. Front Street
Harrisburg, PA 17108-0999

Date: 10/11/04

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FILED NO CC
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OCT 14 2004

THOMAS, THOMAS & HAVER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

John Flounlacker, Esquire
Attorney I.D. 73112
(717)237-7134
Attorneys for Defendant

WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
:
v : NO. 2004-647-CV
:
SIDNEY MAPES and JOHN DOE, : CIVIL ACTION - LAW
Defendants :
:
: JURY TRIAL DEMANDED

**DEFENDANT, SIDNEY MAPES',
ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT**

AND NOW ONTO COURT, through undersigned counsel, comes the Defendant, Sidney Mapes, who, in Answer to the Complaint of the Plaintiff, respectfully represents that:

1. It is admitted the Plaintiff is who she says she is.
2. Admitted.
3. Admitted.
4. Admitted.
5. Answering Defendant submits that the allegations contained within this paragraph of the Plaintiff's Complaint amount to legal conclusions which require no answer.
6. Answering Defendant submits that the allegations contained within this paragraph of the Plaintiff's Complaint amount to legal conclusions which require no answer.
7. The averments in this paragraph are denied generally in accordance with Pa.R.C.P. 1029(e).
8. The averments in this paragraph are denied generally in accordance with Pa.R.C.P. 1029(e).

9. Answering Defendant submits that the allegations contained within this paragraph of the Plaintiff's Complaint amount to legal conclusions which require no answer.

10. The averments in this paragraph are denied generally in accordance with Pa.R.C.P. 1029(e).

11. Denied.

12. The averments in this paragraph are denied generally in accordance with Pa.R.C.P. 1029(e).

13. Answering Defendant submits that the allegations contained within this paragraph of the Plaintiff's Complaint amount to legal conclusions which require no answer.

COURT I
WENDY BARNETT v. SIDNEY MAPES

14. Paragraphs 1 through 13 of Defendant's Answer are incorporated herein and made a part hereof as if set forth in full.

15. The Answering Defendant submits that any allegations contained within this paragraph of the Plaintiff's Complaint alleging that the Answering Defendant was careless or negligent or that any of the conduct on the part of the Answering Defendant amounted to a proximate cause for the Plaintiff's injuries and/or damages amount to legal conclusions which require no answer. By way of further explanation:

(a) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to correct the defective or hazardous condition;

(b) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to warn persons in the position of Plaintiff of the defective or hazardous condition of the bathroom mirror area of the premises;

(c) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to maintain the premises in a condition which would protect and safeguard persons lawfully upon the premises;

(d) It is specifically denied that the Answering Defendant was careless and/or negligent for allowing and permitting the aforesaid irregularity and deformity of the bathroom mirror/medicine cabinet area and bare electrical wires around a fluorescent light to remain on the premises so as to constitute a menace;

(e) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to properly inspect the premises;

(f) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to exercise due care in the inspection, maintenance and repair of the premises;

(g) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to correct and/or remedy the unreasonably dangerous condition of the bathroom mirror area after receiving timely notice of this condition;

(h) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to discovery the condition of the Defendant's premises which Defendant realized or should have realized created an unreasonable risk of harm to tenant Wendy Barnett;

(i) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to provide and/or take safeguards and precautions for the safety and well-being of Plaintiff and others similarly situated as required by law, regulations and/or customs, specifically those applicable to maintenance of "exposed" electrical wires in residential/rental dwellings;

(j) It is specifically denied that the Answering Defendant was careless and/or negligent for failing to repair the premises after receiving a report of the dangerous conditions, specifically the bathroom mirror area and exposed wire;

(k) The allegations in Paragraph 15(k) are deleted by stipulation of the parties and therefore no answer is required by Answering Defendant.

16. The Answering Defendant submits that any allegations contained within this paragraph of the Plaintiff's Complaint alleging that the Answering Defendant was negligent and/or careless or that any of the conduct on the part of the Answering Defendant amounted to a proximate cause for the Plaintiff's injuries or damages amounts to legal conclusions which require no answer. By way of further explanation the remains of the averments in this paragraph are denied as after reasonable investigation, Answering Defendant lacks information or knowledge sufficient to form a basis to the belief as to the truth of the averments contained in this paragraph and same are therefore denied, strict proof being demanded at trial, if relevant.

NEW MATTER

17. Future discovery may show that some and/or all of the Plaintiff's claims are reduced and/or barred based on the Plaintiff's negligence.

18. Future discovery may show that the Answering Defendant breached no duty that it may have owed to the Answering Defendant.

19. Future discovery may show that none of the conduct on the part of the Answering Defendant amounted to a proximate or substantial cause for the Plaintiff's injuries and/or damages.

20. Future discovery may show that the Plaintiff's claims are barred by the applicable statute of limitations.

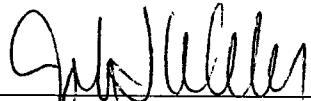
21. Future discovery may show that the Plaintiff failed to mitigate her damages.

22. Future discovery may show the negligent acts or omissions of other individuals and/or entities may have constituted intervening, superseding causes of the damages and/or injuries alleged to have been sustained by the Plaintiff.

WHEREFORE, Defendant, Sidney Mapes, hereby prays that the Complaint be dismissed, at the cost of Plaintiff.

Respectfully submitted,

THOMAS, THOMAS & HAVER, LLP

By: 

John Flounlacker, Esquire
Attorney I.D. # 73112
P.O. Box 999
305 N. Front Street
Harrisburg, PA 17108-0999
(717)237-7134

Date: 10/11/04

VERIFICATION

I, Defendant, Sidney Mapes, hereby state that the statements made in the foregoing Answer with New Matter to Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



SIDNEY MAPES

CERTIFICATE OF SERVICE

I, Jeannie L. Kawalec, an employee for the law firm Thomas, Thomas & Hafer, LLP, hereby state that a true and correct copy of the foregoing document(s) was served upon all counsel of record by first class United States mail, postage prepaid, addressed as follows, on the date set forth below:

By First Class U.S. Mail:

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite 205, 1333 Race Street
Philadelphia, PA 19107

THOMAS, THOMAS & HAVER, LLP



Jeannie L. Kawalec

Dated: 10/11/04

THOMAS, THOMAS & HAVER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

John Flounlacker, Esquire
Attorney I.D. 73112
(717)237-7134
Attorneys for Defendant

WENDY BARNETT,
Plaintiff

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 2004-647-CV
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED

v
SIDNEY MAPES and JOHN DOE,
Defendants

STIPULATION

It is hereby stipulated and agreed, by and between the counsel indicated below, as authorized by their respective clients, that Paragraph 15(k) containing the language "other negligence at law" is deleted, the Plaintiff's Complaint is hereby amended by this stipulation to delete the boilerplate allegations of paragraph 15(k): that therefore, Plaintiff need not file an amended complaint: and that, therefore, Defendants and the Court shall treat the Plaintiff's Complaint as having been originally filed without paragraph 15(k).

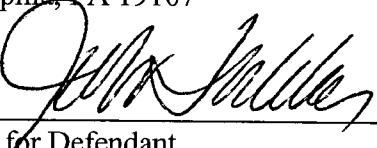
Date:

9/10/04


Counsel for Plaintiff
David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite 205, 1333 Race Street
Philadelphia, PA 19107

Date:

10/11/04


Counsel for Defendant
John Flounlacker, Esquire
Thomas, Thomas & Hafer, LLP
305 N. Front Street
P.O. Box 999
Harrisburg, PA 17108-0999

OCT 14 2004

LAW OFFICES OF KENNETH M. KAPNER
BY: KENNETH M. KAPNER, ESQUIRE
IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE
IDENTIFICATION NO. 56582
1333 RACE STREET, SUITE 205
PHILADELPHIA, PENNSYLVANIA 19107
(215) 568-5683
(215) 568-7667 – FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT	:	COMMONWEALTH OF PA
321 E. MARKET STREET	:	
APT. 2-REAR	:	CLEARFIELD COUNTY, COURT OF COMMON
CLEARFIELD, PA 16830	:	PLEAS
	:	
Plaintiff,	:	CIVIL ACTION - LAW
	:	
vs.	:	NO. 2004-647-CV
	:	
SIDNEY MAPES	:	
P.O. BOX 1023	:	
CLEARFIELD, PA 16830	:	
	:	
AND	:	
	:	
JOHN DOE	:	
Defendants	:	

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William A. Shaw
Prothonotary/Clerk of Courts

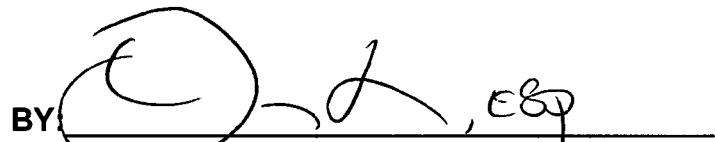
PLAINTIFF'S ANSWER TO NEW MATTER OF DEFENDANT SIDNEY MAPES

17-22. Denied. All of the allegations and averments contained in paragraphs 17-22 of Defendant's New Matter are conclusions of law to which no responsive pleadings are required under the applicable Pennsylvania Rules of Civil Procedure. Nonetheless, strict proof thereof is demanded at the time of trial. All of these allegations and averments are also specifically denied.

WHEREFORE, Plaintiff, Wendy Barnett, seeks judgment against Defendant, Sidney Mapes, and brings this action to recover same.

Respectfully submitted,

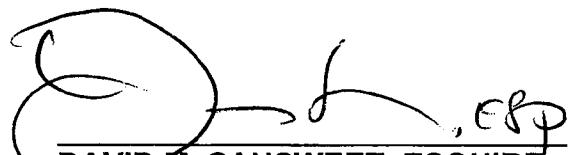
LAW OFFICES OF KENNETH M. KAPNER

BY 
DAVID M. SANSWEET, ESQUIRE

Date: November 3, 2004

VERIFICATION

DAVID M. SANSWEET, ESQUIRE, hereby states that he is the Attorney for the Plaintiff and that the information contained herein is true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements herein are made subject to the penalties of the 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff

DATE: **November 3, 2004**

CERTIFICATE OF SERVICE

I, Cristina Medina, an employee for the Law Offices of Kenneth M. Kapner, hereby state that a true and correct copy of the foregoing document(s) was served upon all counsel of record by first class United States mail, postage prepaid, addressed as follows, on the date set forth below:

By First Class U.S. Mail:

John Flounlacker, Esquire
Thomas, Thomas & Hafer, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108

LAW OFFICES OF KENNETH M. KAPNER

Cristina Medina
Cristina Medina

November 3, 2004

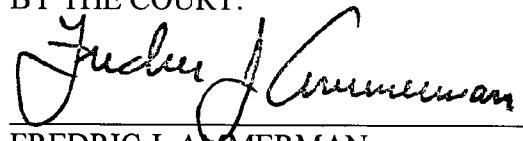
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

WENDY BARNETT :
:
vs. : No. 04-647-CD
:
SIDNEY MAPES and JOHN DOE :
:

ORDER

AND NOW, this 6th day of December, 2004, it is
the Order of the Court that argument on Attorney Gargiulo's Motion for Summary
Judgment in the above-captioned matter has been scheduled for the 5 day of
January, 2005, at 10:30 A.M, in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED *2cc4*
03:35 AM *DEC 06 2004* memo Re: Service
to Atty Flounacker
William A. Shaw
Prothonotary/Clerk of Courts

THOMAS, THOMAS & HAVER, LLP
John Flounlacker, Esquire
I.D. # 73112
Laura A. Gargiulo, Esquire
I.D. # 86128
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108-0999
(717) 237-7134

Attorneys for Defendant Sidney Mapes

WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD CO, PENNSYLVANIA
:
v. : NO. 2004-647-CV
:
SIDNEY MAPES and JOHN DOE, : CIVIL ACTION - LAW
Defendants :
:
: JURY TRIAL DEMANDED

DEFENDANT SIDNEY MAPES'
MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Defendant, Sidney Mapes, by and through his attorneys, Thomas, Thomas, & Hafer, LLP, and moves for summary judgment based upon the following:

1. This is a personal injury action wherein Plaintiff is asserting damages for an alleged electrical shock injury that occurred on May 14, 2002.
2. On May 11, 2004 the instant action was instituted by Writ of Summons.

A true and correct copy of the Writ of Summons is attached hereto as Exhibit "A."

3. At the time of filing, Plaintiff's correspondence to the Court specifically directed "We will not need Sheriff's service as the insurance carrier for Mr. Mapes has agreed to accept service on behalf of Mr. Mapes." A true and correct copy of Plaintiff counsel's correspondence to the Court is attached hereto as Exhibit "B."

FILED *acc*
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SP

William A. Shaw
Prothonotary/Clerk of Courts

4. Contrary to Plaintiff counsel's understanding, there was no agreement by the insurance carrier to accept service on behalf of Defendant Mapes. See Affidavit of Edward J. Yocum attached hereto as Exhibit "C."

5. Consequently, on May 21, 2004, undersigned counsel wrote to Plaintiff's counsel to inform him that there had been no such agreement to accept service on behalf of Mr. Mapes and therefore he was advised to perfect service in the manner proscribed in the Pennsylvania Rules of Civil Procedure. A true and correct copy of the May 21, 2004 correspondence is attached hereto as Exhibit "D."

5. On June 4, 2004, undersigned counsel again wrote to Plaintiff's counsel and reconfirmed that the insurance carrier would not accept service on behalf of Mr. Mapes, and advised that it would expect service of process to be in compliance with the Pennsylvania Rules of Civil Procedure. A true and correct copy of the June 4, 2004 correspondence is attached hereto as Exhibit "E."

6. On June 16, 2004, undersigned counsel wrote to Plaintiff's counsel a third time regarding the service of process issue, again indicating that there had been no agreement to accept service on behalf of Mr. Mapes. A true and correct copy of the June 16, 2004 correspondence is attached hereto as Exhibit "F."

7. On July 10, 2004, Plaintiff's counsel filed with the Court: (1) a Praeclipe to Issue Writ of Summons and Writ of Summons for Sheriff's service; (2) a Praeclipe to Reinstate Writ of Summons and Writ; (3) an Order for Service for Defendant, Sidney Mapes; and (4) an "Affidavit of Attempted Service." A true and correct copy of Plaintiff counsel's July 9, 2004 correspondence and accompanying documents is attached hereto as Exhibit "G."

9. Service of the Writ of Summons by the Sheriff was not effected until July 23, 2004.

10. Plaintiff's Complaint was filed on or about August 24, 2004.

11. Defendant's Answer with New Matter to the Complaint was filed on October 14, 2004.

12. Plaintiff's Reply to the New Matter was filed on November 8, 2004.

13. The pleadings in this case are now closed.

14. Pa.R.C.P. 1035.2 provides that a party may move for summary judgment if there are no genuine issues of material fact as to a necessary element of the cause of action or if, after completion of discovery, the party who bears the burden of proof at trial has failed to produce evidence of facts essential to the cause of action which would require the issues to be submitted to the jury.

15. “[A] writ of summons shall remain effective to commence an action only if the plaintiff then refrains from a course of conduct which serves to stall in its tracks the legal machinery he has just set in motion.” *Lamp v. Heyman*, 469 Pa. 465, 366 A.2d 882 (1976).

16. *Lamp* requires a good faith effort by the Plaintiff to have the writ served promptly and in compliance with the Pennsylvania Rules of Civil Procedure. *See, Teamann v. Zafris*, 811 A.2d 52, 62 (Pa. Commw. 2002), *appeal denied, Baker v. Zafris*, 574 Pa. 755, 830 A.2d 976 (2003), and by *Baker v. Zafris*, 574 Pa. 761, 831 A.2d 600 (2003).

17. Pursuant to the Pennsylvania Rules of Civil Procedure, original process must be served within thirty days of its issuance, and except in certain circumstances not

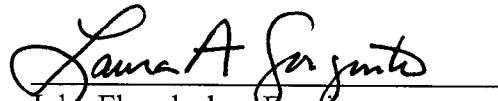
relevant to this action, must be served within the Commonwealth of Pennsylvania only by the sheriff. *See*, Pa. R.C.P. 401(a) and 400, respectively.

18. The evidence shows that Plaintiff herein did not make a good faith effort to have the Writ served on the Defendant in a timely manner in accordance with the Pennsylvania Rules of Civil Procedure.

19. Therefore, as no genuine issue as to any material fact exists, Defendant Mapes is entitled to summary judgment as a matter of law.

WHEREFORE, Defendant, Sidney Mapes, hereby requests this Honorable Court grant his Motion for Summary Judgment and enter judgment in his favor and against the Plaintiff.

Respectfully submitted,
THOMAS, THOMAS & HAVER, LLP



John Flounlacker, Esquire
I.D. # 73112
Laura A. Gargiulo, Esquire
I.D. # 86128
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108-0999
(717) 237-7134

*Attorneys for Defendant
Sidney Mapes*

Commonwealth of Pennsylvania
CITY AND COUNTY OF CLEARFIELD

SUMMONS
CITACION

COURT OF COMMON PLEAS

Wendy Barnett
321 E. Market Street
Apt. 2-Rear
Clearfield, PA 16830
vs.

Term, 20 _____
No. 2004-647-C0

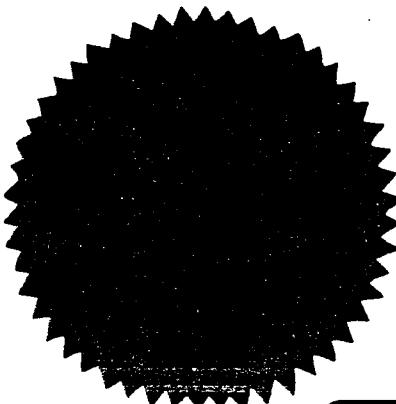
Sidney Mapes
P.O. Box 1023
Clearfield, PA 16830
and
John Doe

To⁽¹⁾
Sidney Mapes and John Doe

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

Wendy Barnett

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.

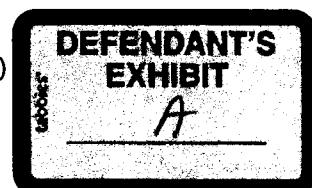


William A. Shaw
Prothonotary

By

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

(1) Name(s) of Defendant(s)
(2) Name(s) of Plaintiff(s)



Date May 11

MAY 12 2004

LAW OFFICES OF
KENNETH M. KAPNER
SUITE 205
1333 RACE STREET
PHILADELPHIA, PA 19107

(215) 568-5683
FACSIMILE: (215) 568-7667

TAX ID NO. 23-2828356

May 10, 2004

VIA FEDERAL EXPRESS

Clearfield Courthouse
Prothonotary's Office
P.O. Box 549
Clearfield, PA 16830

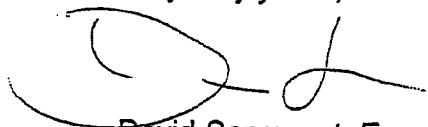
RE: Wendy Barnett vs. Sidney Mapes and John Doe
D.O.I.: 5/14/02

Dear Sir/Madam:

Enclosed for filing an original and one copy of a "Praecipe to Issue" and Writ of Summons on behalf of my client, Plaintiff Wendy Barnett. As the statute of limitations is expiring in this matter on 5/14/04, please file same of record immediately and provide a time-stamped and fully executed copy of the Writ in the return self-addressed stamped envelope I have provided for your convenience. We will not need Sheriff's service as the insurance carrier for Mr. Mapes has agreed to accept service on behalf of Mr. Mapes. Enclosed is the Writ filing fee of \$85.00 as per your direction.

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

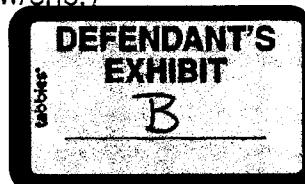


David Sansweet, Esquire

DS/cm

Enc.

cc: Edward J. Yocum (w/enc.)
Wendy Barnett (w/enc.)
John Flounlacker, Esquire (w/enc.)



WENDY BARNETT,
Plaintiff

v.

SIDNEY MAPES and JOHN DOE,
Defendants

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD CO, PENNSYLVANIA
:
: NO. 2004-647-CV
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED

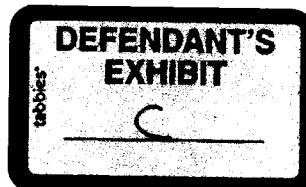
AFFIDAVIT OF EDWARD J. YOCUM

I, Edward J. Yocum, do hereby swear and affirm that the following statements are true and correct to the best of my personal knowledge:
WAS AT TIME OF ASSIGNMENT 5/11/10/2004

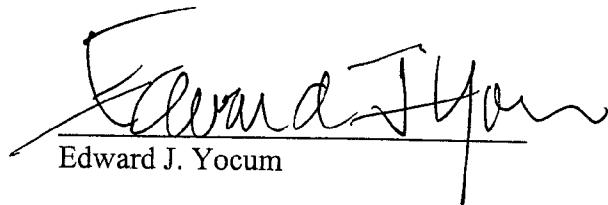
1. I am a Claim Manager employed by E.L. Braid Claim Service, Inc.
2. E.L. Braid Claim Service, Inc. was the independent adjusting firm hired by Tuscarora Wayne Mutual Insurance Company to investigate the Plaintiff's claims in the above-captioned matter.

3. Specifically, I was assigned by E.L. Braid Claim Service, Inc. to handle the investigation of Plaintiff's claims.

4. During my investigation of the matter, I spoke with Plaintiff's counsel regarding various issues related to the matter including the circumstances of the claim and Plaintiff's claimed damages.



5. During these conversations, I did not advise Plaintiff's counsel that E.L. Braid Claim Service, Inc., Tuscarora Wayne Mutual Insurance Company, or its counsel would accept service on behalf of Defendant Sidney Mapes.

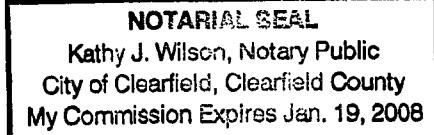


Edward J. Yocom

Sworn to and subscribed before me
this 10th day of November 2004

Kathy J. Wilson
Notary Public

My Commission expires:



THOMAS, THOMAS & HAVER LLP

ATTORNEYS AT LAW



www.tthlaw.com

305 North Front Street, P.O. Box 999, Harrisburg, PA 17108
Phone: (717) 237-7100 Fax: (717) 237-7105

John Flounlacker
(717)237-7134
jflounlacker@tthlaw.com

May 21, 2004

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite205, 1333 Race Street
Philadelphia, PA 19107

re: Barnett v. Mapes
Civil Action No.:
Our file No.: 157-40491

Dear Mr. Sansweet:

As you know, I have been retained by the Tuscarora-Wayne Insurance Company to represent the interests of Sidney Mapes in connection with the above-referenced litigation. I have received with thanks a copy of the Writ of Summons that you filed with the Clearfield County Court regarding this same lawsuit. I noted in the cover letter that accompanied your Writ of Summons that you indicated that "the insurance carrier for Mr. Mapes" has agreed to accept service on behalf of Mr. Mapes". After receiving your letter – I contacted the Tuscarora-Wayne Insurance Company to discuss this acceptance of service issue. I was advised that it is Tuscarora-Wayne's position that there was no such "agreement" concerning the carrier accepting service of process on behalf of Mr. Mapes.

In light of the above, this letter serves to confirm that the insurance carrier will not be accepting service of process on behalf of Mr. Mapes and further advises you to perfect your service in conformance with the Pennsylvania Rules of Civil Procedure. Once that has been accomplished – I have been instructed to prepare a Rule to Compel the production of the Plaintiff's Complaint.

Please do not hesitate to contact me if you have any questions in this regard.

Sincerely,

THOMAS, THOMAS & HAVER, LLP

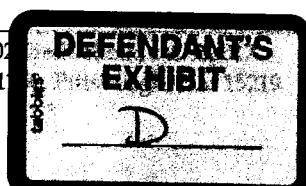
John Flounlacker

JF/jlk:285923.4

dictated but not read

cc. David Schweitzer, claim no.: 2004-000292-LL

Bethlehem Office • 3400 Bath Pike, Suite 302
Pittsburgh Office • 301 Grant Street, Suite 1



Phone: (610) 868-1675 • Fax: (610) 868-1702
Phone: (412) 697-7403 • Fax: (412) 697-7407

THOMAS, THOMAS & HAVER LLP

ATTORNEYS AT LAW



www.tthlaw.com

305 North Front Street, P.O. Box 999, Harrisburg, PA 17108
Phone: (717) 237-7100 Fax: (717) 237-7105

John Flounlacker
(717)237-7134
jflounlacker@tthlaw.com

June 4, 2004

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite205, 1333 Race Street
Philadelphia, PA 19107

re: Barnett v. Mapes
Our File No.: 157-40491

Dear Mr. Sansweet:

This letter serves to follow-up the most recent letter I sent you concerning the filing of your Complaint and service of your Writ and subsequent complaint.

I have received confirmation from the Tuscarora Wayne Insurance Company – my client's insurance carrier – that they have never agreed to accept service of process on behalf of their insured. Moreover, I have also received confirmation that Mr. Ed Yocum never agreed to accept service of process on behalf of the Tuscarora Wayne Insurance or my client.

In the event you wish to proceed with this litigation, this letter serves to amplify the contents of my previous letter indicating that no one has agreed to accept service of process with regard to your initiation of this lawsuit and we will be looking to you to comply with the Pennsylvania Rules of Civil Procedure with regard to same.

Sincerely,

THOMAS, THOMAS & HAVER, LLP

John Flounlacker

JF/jlk:285923.6

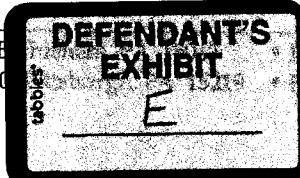
dictated but not read

cc. Schweitzer, Claim No.: 2004-000292-LL

Edward J. Yocum

Bethlehem Office • 3400 Bath Pike, Suite 302, Bethlehem, PA 18017
Pittsburgh Office • 301 Grant Street, Suite 1150, Pittsburgh, PA 15219

Phone: (610) 868-1675 • Fax: (610) 868-1702
Phone: (412) 697-7403 • Fax: (412) 697-7407



THOMAS, THOMAS & HAVER LLP
ATTORNEYS AT LAW



www.tthlaw.com

305 North Front Street, P.O. Box 999, Harrisburg, PA 17108
Phone: (717) 237-7100 Fax: (717) 237-7105

John Flounlacker
(717)237-7134

jflounlacker@tthlaw.com

June 16, 2004

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite205, 1333 Race Street
Philadelphia, PA 19107

re: Barnett v. Mapes
Our File No.: 157-40491

Dear Mr. Sansweet:

I wanted to let you know that I have now received confirmation from both my client's insurance carrier and from Mr. Edward J. Yocum, of the E.L. Braid Claim Service, Inc., that neither of these two individuals agreed to accept service of process for your Writ of Summons or the Complaint that you are to file to initiate this litigation.

As you know, you previously advised the Prothonotary's office at the Clearfield County Courthouse that a Sheriff would not be needed for service as the "insurance carrier" for Mr. Mapes has agreed to accept service on behalf of Mr. Mapes.

This letter serves to confirm that Mr. Mapes' insurance carrier has not agreed to accept service of process in connection with this litigation. Moreover, both the insurance carrier and Mr. Yocum have confirmed for me that no prior representations were ever made about acceptance of service in connection with this litigation.

Sincerely,

THOMAS, THOMAS & HAVER LLP

John Flounlacker

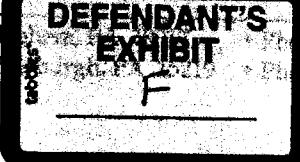
JF/jlk:285923.6

dictated but not read

cc. Clearfield County Prothonotary
Schweitzer, Claim No.: 2004-000292-LL
Edward J. Yocum

Bethlehem Office • 3400 Bath Pike, Suite 302, Bethlehem, PA 18017
Pittsburgh Office • 301 Grant Street, Suite 1150, Pittsburgh, PA 15213

DEFENDANT'S
EXHIBIT



Phone: (610) 868-1675 • Fax: (610) 868-1702
Phone: (412) 697-7403 • Fax: (412) 697-7407

LAW OFFICES OF
KENNETH M. KAPNER
SUITE 205
1333 RACE STREET
PHILADELPHIA, PA 19107

—
(215) 568-5683
FACSIMILE: (215) 568-7667

TAX ID NO. 23-2828356

July 9, 2004

VIA FEDERAL EXPRESS

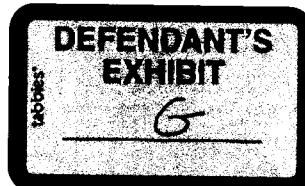
Clearfield County Courthouse
Prothonotary's Office
P.O. Box 549
Clearfield, PA 16830

RE: Wendy Barnett vs. Sidney Mapes and John Doe
No.: 2004-647-CD

Dear Sir/Madam:

Enclosed please find the following items concerning the above matter:

- 1) Original and one copy of a Praecept to Issue Writ of Summons and Writ of Summons for Sheriff's Service;
- 2) Original and one copy of a Praecept to Reinstate Writ of Summons and Writ;
- 3) Order for Service for Defendant, Sidney Mapes;
- 4) One check payable to the Prothonotary's Office in the amount of \$7.00 for the Reinstatement of Writ of Summons;
- 5) Two checks payable to the Sheriff of Clearfield County, one in the amount of \$75.00 for the Sheriff's Service fee and another in the amount of \$10.00 for the state surcharge reflecting charges for service of the Writ;
- 6) Self-addressed stamped return envelope in which to forward the executed Return of Service; and
- 7) Original and one copy of "Affidavit of Attempted Service".



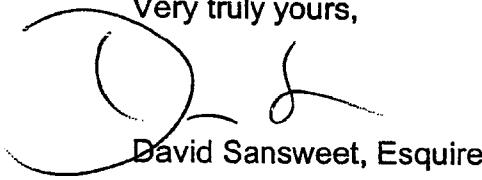
Clearfield County Courthouse
Prothonotary's Office
July 9, 2004
Page 2

Please file all of these pleadings/documents of record and return time-stamped copies of same in the additional enclosed self-addressed stamped envelope I have provided for your convenience.

Please also forward copies of the Writ along with the other related documents to the Sheriff for service.

Please do not serve the Defendant until the Writ is marked as "reinstated". Thank you for your attention to these matters.

Very truly yours,



A handwritten signature in black ink, appearing to read "D S". Below the signature, the name "David Sansweet, Esquire" is printed in a standard font.

DS/cm
Enc.

cc: John Flounlacker, Esquire (w/enc.)
Edward Yocum (w/enc.)

THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED

LAW OFFICES OF KENNETH M. KAPNER
BY: KENNETH M. KAPNER, ESQUIRE
IDENTIFICATION NO.: 49859
AND

DAVID M. SANSWEET, ESQUIRE
IDENTIFICATION NO. 56582
1333 RACE STREET, SUITE 205
PHILADELPHIA, PENNSYLVANIA 19107
(215) 568-5683
(215) 568-7667 - FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT
321 E. MARKET STREET
APT. 2-REAR
CLEARFIELD, PA 16830

COMMONWEALTH OF PA

CLEARFIELD COUNTY

TRIAL DIVISION

Plaintiff,

TERM,

vs.

NO. 2004-647-C0

SIDNEY MAPES
P.O. BOX 1023
CLEARFIELD, PA 16830

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

AND

JOHN DOE

Defendants

Attest.

Wendy Barnett
Prothonotary/
Clerk of Courts

PRAECLPTE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue A Writ of Summons - Civil Action in the above-captioned matter for
service on the Defendants herein. The amount in controversy is not in excess of the
Arbitration limits.

LAW OFFICES OF KENNETH M. KAPNER


BY:

DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff, Wendy Barnett

Date: May 10, 2004

THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED

LAW OFFICES OF KENNETH M. KAPNER

BY: KENNETH M. KAPNER, ESQUIRE

IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE

IDENTIFICATION NO. 56582

1333 RACE STREET, SUITE 205

PHILADELPHIA, PENNSYLVANIA 19107

(215) 568-5683

(215) 568-7667 - FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT
321 E. MARKET STREET
APT. 2-REAR
CLEARFIELD, PA 16830

COMMONWEALTH OF PA

CLEARFIELD COUNTY

TRIAL DIVISION

No. 2004-647-CD

Plaintiff,

vs.

SIDNEY MAPES
P.O. BOX 1023
CLEARFIELD, PA 16830

AND

JOHN DOE

Defendants

PRAECLPICE TO REINSTATE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly reinstate the above-captioned Writ of Summons.

BY:

DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff, Wendy Barnett

Date: July 9, 2004

ORDER FOR SERVICE
FOR DEFENDANT
SIDNEY MAPES

DATE _____
PROTHY. NO. 2004-647-CD

TO: SHERIFF OF CLEARFIELD COUNTY

FROM: David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
1333 Race Street - Suite 205
Philadelphia, PA 19107

WRIT AND OR
COMPLAINT
XXXXXX
XXXXXX
XXXXXX
XXXXXX

Wendy Barnett

Plaintiff

Vs.

Sidney Mapes and John Doe

Defendant

SERVE AT: (If R.D. Address must include specific instructions, also must have
Apt. Number and Apt. Bldg. Number)

DEFENDANT, SIDNEY MAPES
STREET 1306 Old Town Road

POST OFFICE _____

TOWNSHIP Clearfield, PA 16830

SPECIAL INSTRUCTIONS: (Use other side if necessary)

SERVICE WAS NOT MADE BECAUSE

**THIS IS AN ARBITRATION MATTER.
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED**

LAW OFFICES OF KENNETH M. KAPNER

BY: KENNETH M. KAPNER, ESQUIRE

IDENTIFICATION NO.: 49859

AND

DAVID M. SANSWEET, ESQUIRE

IDENTIFICATION NO. 56582

1333 RACE STREET, SUITE 205

PHILADELPHIA, PENNSYLVANIA 19107

(215) 568-5683

(215) 568-7667 - FACSIMILE

Attorneys for Plaintiff

WENDY BARNETT

321 E. MARKET STREET

APT. 2-REAR

CLEARFIELD, PA 16830

COMMONWEALTH OF PA

CLEARFIELD COUNTY

TRIAL DIVISION

Plaintiff, : No. 2004-647-CD

vs.

SIDNEY MAPES

P.O. BOX 1023

CLEARFIELD, PA 16830

AND

JOHN DOE

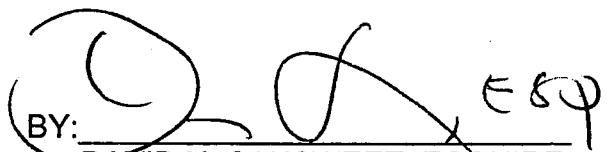
Defendants :

AFFIDAVIT OF ATTEMPTED SERVICE

I, David Sansweet, attorney for Plaintiff Wendy Barnett, swear and affirm that I made a good faith effort to attempt service of the Writ in the above-captioned matter. I was under impression, which I later found out to be mistaken, that service would be accepted on behalf of the Defendant by his insurance carrier and/or attorney, John Flounlacker. In fact, a copy of the Writ was forwarded to both of these individuals/entities when I originally filed the Writ with the Prothonotary by letter of 5/10/04, a copy of which is attached hereto to the affidavit. I in fact was not made aware that the above entities/individuals would not accept service until June of this year.

Further, a confirming letter was sent to the carrier for Defendant on 3/4/04 memorializing that the carrier and/or counsel for the carrier would accept service on behalf of the Defendant. In the attached response of the carrier by letter of 3/24/04, there was no mention whatsoever that the carrier and/or opposing counsel would not accept service. Therefore, I relied on these corresponding letters to conclude that an acceptance of service by the carrier/defense counsel was agreeable.

In any event, now that I have been advised that neither the insurance carrier nor the Defendant's attorney will accept service, I have dutifully filed an Order for Service by the Sheriff's Department.

BY: 
DAVID M. SANSWEET, ESQUIRE
Attorney for Plaintiff, Wendy Barnett

Date: July 9, 2004

CERTIFICATE OF SERVICE

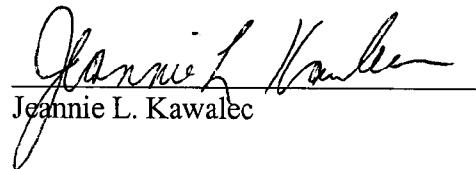
I, Jeannie L. Kawalec, an employee for the law firm Thomas, Thomas & Hafer, LLP, hereby state that a true and correct copy of the foregoing document(s) was served upon all counsel of record by first class United States mail, postage prepaid, addressed as follows, on the date set forth below:

By First Class U.S. Mail:

David M. Sansweet, Esquire
Law Offices of Kenneth M. Kapner
Suite205, 1333 Race Street
Philadelphia, PA 19107

THOMAS, THOMAS & HAFER, LLP

Dated: 11/19/04



Jeannie L. Kawalec

RECEIVED

THOMAS, THOMAS & HAVER, LLP
John Flounlacker, Esquire
I.D. # 73112
Laura A. Gargiulo, Esquire
I.D. # 86128
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108-0999
(717) 237-7134

NOV 24 2004

COURT ADMINISTRATOR'S
OFFICE

Attorneys for Defendant Sidney Mapes

WENDY BARNETT,
Plaintiff : IN THE COURT OF COMMON PLEAS
v. : CLEARFIELD CO, PENNSYLVANIA
SIDNEY MAPES and JOHN DOE, : NO. 2004-647-CV
Defendants : CIVIL ACTION – LAW
: JURY TRIAL DEMANDED

**DEFENDANT SIDNEY MAPES' BRIEF IN SUPPORT
OF HIS MOTION FOR SUMMARY JUDGMENT**

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff commenced this action seeking damages for personal injuries allegedly sustained on May 14, 2002 as a result of an electrical shock. The action was initiated on May 11, 2004 when Plaintiff filed a Writ of Summons against the Defendants. At the time of filing, Plaintiff's correspondence to the Court specifically directed "We will not need Sheriff's service as the insurance carrier for Mr. Mapes has agreed to accept service on behalf of Mr. Mapes." *See*, May 10, 2004 correspondence attached as Exhibit B to Defendant's Motion for Summary Judgment.

On May 21, 2004, Defendant Mapes' counsel wrote to Plaintiff's counsel to inform him that, contrary to Plaintiff counsel's understanding, there had been no agreement by Defendant Mapes' insurer to accept service on behalf of Mr. Mapes; and therefore, Plaintiff counsel was advised to perfect service in the manner proscribed in the Pennsylvania Rules of Civil Procedure. Defendant Mapes' counsel followed up with Plaintiff's counsel by additional correspondence on June 4, 2004 and June 16, 2004 to

reconfirm that the insurance carrier would not accept service on behalf of Mr. Mapes, and to advise that it would expect service of process to be in compliance with the Pennsylvania Rules of Civil Procedure.

Thereafter, on July 9, 2004, Plaintiff's counsel filed with the Court: (1) a Praecept to Issue Writ of Summons and Writ of Summons for Sheriff's service; (2) a Praecept to Reinstate Writ of Summons and Writ; (3) an Order for Service for Defendant, Sidney Mapes; and (4) an "Affidavit of Attempted Service."

Service was not perfected in accordance with the Pennsylvania Rules of Civil Procedure until July 23, 2004.

Plaintiff subsequently filed his Complaint in this action on August 24, 2004. Defendant filed his Answer with New Matter to the Plaintiff's Complaint on October 14, 2004. Plaintiff's reply to the new matter was filed on November 8, 2004. The pleadings in this case are now closed. The evidence demonstrates that Plaintiff failed to make a good faith effort to timely serve the Writ of Summons in accordance with the Pennsylvania Rules of Civil Procedure. Defendant submits that, as the pleadings are closed and there are no genuine issues of material fact regarding service of process, the matter is ripe for summary judgment pursuant to Pennsylvania Rule of Civil Procedure 1035.2. This brief is filed in support of Defendant Mapes' Motion for Summary Judgment

II. QUESTIONS PRESENTED

WHETHER MOVING DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW WHEN PLAINTIFF FAILED TO TOLL THE STATUTE OF LIMITATIONS BY EFFECTUATING TIMELY SERVICE OF PROCESS IN ACCORDANCE WITH THE PENNSYLVANIA RULES OF CIVIL PROCEDURE

Suggested Answer: In the affirmative

III. ARGUMENT

After the pleadings are closed, any party may move for summary judgment when there is no genuine issue of any material fact, or when discovery has been completed and the party having the burden of proof at trial has failed to produce evidence of facts essential to the cause of action which would warrant submission of the issue to a jury.

Pa.R.C.P. 1035.2. The Supreme Court of Pennsylvania has held that the party having the burden of proof at trial must “adduce sufficient evidence on an issue essential to his case...such that a jury could return a verdict in his favor.” *Ertel v. The Patriot-News Co.*, 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996). Failure to do so entitles the moving party to judgment as a matter of law. *Id.*

Defendant Mapes is entitled to summary judgment because the Plaintiff failed to toll the statute of limitations by effectuating timely service of process in accordance with the Pennsylvania Rules of Civil Procedure. The statute of limitations in personal injury actions based upon the negligence of another is two years. Pa. C.S. § 5524(2).¹ Pursuant to Pa.R.C.P. 400, except in certain circumstances not relevant to this action, original process must be served within the Commonwealth of Pennsylvania *only* by the sheriff. Pa.R.C.P. 400. Further, under Rule 401(a) of the Pennsylvania Rules of Civil Procedure, original process must be served within thirty days after the issuance of the writ or the filing of the complaint. Pa.R.C.P. 401(a). “Unless a party applies to a court for an

¹ Specifically, 42 Pa. C.S. § 5524(2) provides:

The following actions and proceedings must be commenced within two years:

(2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.

extension of time in which to serve original process, or unless the parties agree to waive the thirty-day time restriction, a writ or complaint will be dead at the expiration of thirty days.” *Cahill v. Schults*, 434 Pa. Super. 332, 643 A.2d 121, 124, n.5 (1994) quoting Goodrich-Amram 2d § 401(a):1. Therefore, the writ must be properly served within thirty days in order to prevent its expiration.

In *Lamp v. Heyman*, 469 Pa. 465, 366 A.2d 882 (1976), the Pennsylvania Supreme Court examined the issue of whether the filing of a praecipe for writ of summons within the limitations period tolls the running of the statute of limitations if service is not effectuated until after the statute of limitations has run. The Court concluded that “a writ of summons shall remain effective to commence an action only if the plaintiff then refrains from a course of conduct which serves to stall in its tracks the legal machinery he has just set in motion.” *Id.* at 889. *Lamp* has been interpreted to require a good faith effort by the Plaintiff to have the writ served promptly and in compliance with the Pennsylvania Rules of Civil Procedure. *See, Teamann v. Zafiris*, 811 A.2d 52, 62 (Pa. Commw. 2002), *appeal denied, Baker v. Zafiris*, 574 Pa. 755, 830 A.2d 976 (2003), and by *Baker v. Zafiris*, 574 Pa. 761, 831 A.2d 600 (2003). Therefore, the filing of a praecipe for a writ of summons will only toll the statute of limitations if there is a good faith attempt to serve the writ prior to its expiration. *Moses v. T.N.T. Red Star Express*, 1999 Pa. Super. 31, 725 A.2d 792, 796 (1999).

Where non-compliance with *Lamp* is alleged, the court is required to determine in its sound discretion whether a good faith attempt to serve the writ was made. *See, McCreesh v. City of Philadelphia*, 839 a.2d 1206, 1211 (Pa. Commw. 2003). To find that *Lamp* has not been satisfied, Plaintiff’s conduct need not demonstrate bad faith or an

overt attempt to delay the litigation. *Id.* at 1211, n.15. Plaintiff has the burden of showing that there was a good faith effort to serve the writ. *Id.*

The evidence is clear that Plaintiff cannot sustain her burden here. On May 11, 2004, Plaintiff, through her attorney, filed a Praeclipe to issue a writ of summons, and the writ was issued on the same day. The court was specifically directed, however, to forego sheriff service because of Plaintiff counsel's mistaken belief that the Defendant's insurer had agreed to accept service of process on his behalf. The statute of limitations ran on May 14, 2004, three days later. On May 21, 2004, well within the thirty days for service of the writ in compliance with the Pennsylvania Rules of Civil Procedure, Defendant's counsel wrote to Plaintiff's counsel informing him that, contrary to his mistaken belief, there had been no such agreement to accept service; and therefore, he was advised to effectuate service in compliance with the Pennsylvania Rules of Civil Procedure. On June 4, 2004, also within the thirty days, Defendant's counsel sent a second letter to Plaintiff's counsel to reconfirm that no agreement existed and that service would be expected to conform to the Pennsylvania Rules of Civil Procedure.

Despite these letters, and a third letter sent on June 16, 2004, Plaintiff took no action to have the writ served in accordance with the Rules of Procedure until July 10, 2004, at which time he filed a praecipe to reinstate the writ and requested sheriff's service. The original writ of summons had expired on June 10, 2004. The Defendant submits, Plaintiff failed to make a good faith effort to comply with the Rules of Procedure for service of the writ. Whatever Plaintiff counsel's belief prior to May 21, 2004, it is clear that after that date, Plaintiff was on notice that the insurer had not agreed to accept service and that she should serve the writ on the defendant in compliance with

the Rules of Procedure. Plaintiff, however, did not attempt service by sheriff, nor did she request reinstatement of the writ prior to its expiration. Thus, the statute of limitations had run on Plaintiff's cause of action.

Defendant submits that this case is similar to *Farinacci v. Beaver County Industrial Development Authority*, 510 Pa. 589, 511 A.2d 757, 759 (1986) and like cases. In *Farinacci*, the praecipe for writ of summons was filed on the last day for filing within the statute of limitations. The writ was then issued the following day, but due to plaintiff's counsel's inadvertence, the sheriff was not requested to serve the writ. Thus, the original writ was never served. Approximately one week after the original writ expired, counsel had it reissued and the defendants were served within the next two weeks. In reviewing the matter, the Supreme Court determined that the plaintiffs "failed to provide an explanation for counsel's inadvertence which could substantiate a finding that plaintiffs made a good-faith effort to effectuate service of the writ." *Id.* at 760. Thus, the court found that plaintiffs' delay in effecting service failed to satisfy the good-faith requirement to give defendants notice of the action. Accordingly, the court found that the statute of limitations was not tolled and dismissed the action.

Moreover, in *Williams v. Southeastern Pennsylvania Transportation Authority*, 137 Pa. Commw. 163, 585 A.2d 583 (1991), the Commonwealth Court held that service by mail did not satisfy the Pennsylvania Rules of Civil Procedure; and therefore, there was not a good faith attempt at service of process. In *Williams*, plaintiff's counsel asserted that personal service was not necessary because he had mailed a copy of the writ and an acceptance of service form to the defendant. The court found that the plaintiff had not attempted to actively thwart service of process; nevertheless, because he did not take

action to insure that the writ was served in accordance with the Rules of Procedure, *Lamp* dictated that the action be dismissed. *Id.* at 167. See also, *McCreesh v. City of Philadelphia*, 839 A.2d 1206, 1211 (Pa. Commw. 2003), *appeal granted*, 850 A.2d. 629 (Pa. 2004).

Likewise, in the case at bar, *Lamp* dictates that the case be dismissed. Plaintiff simply failed to make a good faith effort to serve the writ of summons in a timely manner in accordance with the Rules of Civil Procedure. As in *Farinacci*, Plaintiff failed to serve the original writ by sheriff's service within the thirty days allowed. It not until July 10, 2004, one month after expiration of the writ, that Plaintiff took affirmative action to have the writ reissued and served in compliance with the Rules of Civil Procedure. Unfortunately for Plaintiff, this action was taken too late. Further, any assertion that the Defendant had timely received notice of the action by mail is specious given the Commonwealth Court's holding in *Williams*.

The evidence is clear that Plaintiff was on notice as of defense counsel's May 21, 2004 and June 4, 2004 correspondence that the Defendant's insurer had not agreed to accept service on Defendant Mapes' behalf and expected service to conform to the Rules of Procedure. Nonetheless, the writ of summons expired on June 10, 2004 without any action by Plaintiff to either have it reissued or have it properly served. Thus, Plaintiff's failure to comply with the Rules of Procedure regarding service requires that the Court find that Plaintiff's filing of the praecipe for writ of summons did not toll the statute of limitations. Accordingly, because the statute of limitations has run on Plaintiff's cause of action, the action must be dismissed.

IV. CONCLUSION

For the foregoing reasons, Defendant, Sidney Mapes, respectfully requests that this Honorable Court grant his Motion for Summary Judgment and dismiss the Plaintiff's action with prejudice.

Respectfully submitted,

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Sidney Mapes*

CERTIFICATE OF SERVICE

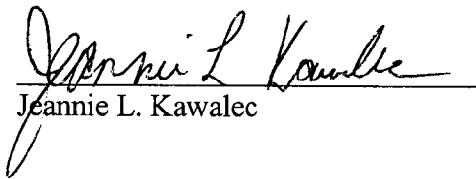
I, Jeannie L. Kawalec, an employee for the law firm Thomas, Thomas & Hafer, LLP, hereby state that a true and correct copy of the foregoing document(s) was served upon all counsel of record by first class United States mail, postage prepaid, addressed as follows, on the date set forth below:

By First Class U.S. Mail:

David M. Sansweet, Esquire
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THOMAS, THOMAS & HAVER, LLP

Dated: 11/19/04



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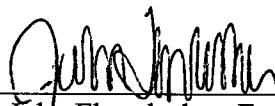
WENDY BARNETT, : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD CO, PENNSYLVANIA
:
v : NO. 2004-647-CV
:
SIDNEY MAPES and JOHN DOE, : CIVIL ACTION - LAW
Defendants :
:
: JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

This is to certify that on December 8, 2004, a true and correct copy of Order of Court dated December 6, 2004, scheduling the above case for argument, along with an additional copy of Defendant's Motion for Summary Judgment and supporting brief were mailed to Plaintiff's counsel, David M. Sansweet, via certified mail, at Law Offices of Kenneth M. Kapner, Suite 205, 1333 Race Street, Philadelphia, Pennsylvania 19107.

THOMAS, THOMAS & HAVER, LLP

By:


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Date: 12/8/04

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William A. Shaw
Prothonotary/Clerk of Courts

WENDY BARNETT,
Plaintiff

v

SIDNEY MAPES and JOHN DOE,
Defendants

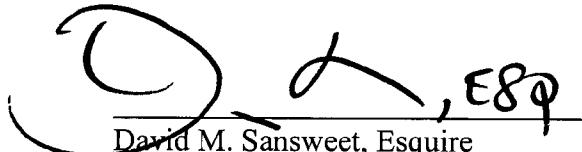
: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 2004-647-CV
:
: CIVIL ACTION - LAW
:
: JURY TRIAL DEMANDED

PRAECIPE TO SETTLE, DISCONTINUE AND END

TO THE PROTHONOTARY:

Please mark the above matter as settled, discontinued and ended with prejudice.

Respectfully submitted,



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Suite 205, 1333 Race Street
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Counsel for Plaintiff, Wendy Barnett

Date: 1/25/05

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FILED
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copy to CA
JAN 31 2005



William A. Shaw
Prothonotary

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

CIVIL DIVISION

Wendy Barnett

Vs.

No. 2004-00647-CD

Sidney L. Mapes

John Doe

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 January 31, 2005, marked:

Discontinued, Settled and Ended

Record costs in the sum of \$128.00 have been paid in full by Attorney David Sansweet..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 31st day of January A.D. 2005.

William A. Shaw, Prothonotary