



Date: 12/15/2004

\*\*\* **CLERK OF COURT REPORT** \*\*\*

User: BANDERSON

Time: 11:59 AM

ROA Report

Page **Oct. 11 '04 1:28**

Case: 2004-00819-CD

Current Judge: Fredric Joseph Ammerman

Richard T. Hughes PE vs. Mark S. Wagner, Patricia Wagner

**Tx. TOTAL PAGES 007454**  
**Rx. TOTAL PAGES 002967**  
**PRINT TOTAL PAGES 006820**

Civil Other

No.	DATE	START	TIME	PARTNER	Judge	PAGE	RESULT
06/07/2004				Filing: Civil Complaint Paid by: Naddeo, James A. (attorney for Hughes, Richard T. PE) Receipt number: 1880498 Dated: 06/07/2004 Amount: \$85.00 (Check) 1 CC to Atty.	No Judge	✓	
07/07/2004				Entry of Appearance, on behalf of Defendants, filed by s/Thomas G. Wagner, Esq. No CC	No Judge	✓	
07/13/2004				Sheriff Return, NOW, June 8, 2004, Complaint served on Mark & Patricia S Wagner, by deputizing Thomas Kontes, Shff of Elk County. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge	✓	
08/09/2004				Entry of Appearance filed by Atty. Thomas G. Wagner on behalf of Mark S. Wagner and Patricia L. Wagner. No Cert. Copies.	No Judge	✓	
				Notice to Plead, filed by s/ Thomas G. Wagner, Esq. on behalf of Defendants. No Cert Copies.	No Judge	✓	
08/24/2004				Answer to New Matter, Filed by s/James A. Naddeo, Esq, 1 cc Atty Naddeo	No Judge	✓	
10/06/2004				Motion For Judgment on the Pleadings filed by Atty. Naddeo. 1 CC to Atty.	No Judge	✓	
10/11/2004				Order, AND NOW, this 8th day of October, 2004, it is the ORDER of this Court that Argument on Plaintiff's Motion for Judgment on the Pleadings is scheduled for the 20th day of December, 2004, at 9:30 a.m. in Courtroom No. 1, Clfd Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2 CC Atty	Fredric Joseph Ammerman	✓	
10/12/2004				Certificate of Service, on behalf of Plaintiff, copy of Motion for Judgement on the Pleadings and Order served on the 11th day of October, 2004 upon Thomas G. Wagner, Esquire. Filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman	✓	
10/19/2004				Certificate of Service, Defendant's First Set of Interrogatories to Plaintiff and Request for Production of Documents by 1st class mail to James A. Naddeo, Esquire. Filed by s/ Thomas G. Wagner, Esquire. No CC	Fredric Joseph Ammerman	✓	
10/22/2004				Certificate of Service, on behalf of Plaintiff, Notice of Taking Depositions served on Thomas G. Wagner, Esquire. filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman	✓	
11/10/2004				Certificate of Service of Plffs. Answers to Interrogatories and Request for Production of Documents filed in the above-captioned action was served on the following person and in the following manner on the 10th day of Nov. 2004. filed by Atty. Naddeo No cc.	Fredric Joseph Ammerman	✓	

## Divorce with Custody

Date		Judge
09/06/2002	ORDER: AND NOW, this 5th day of September, 2002, Defendant shall maintain full liability, comp. and collision auto insurance for Plaintiff and insurance coverage for his minor daughter. s/FJA Four CC to Atty. Blakley.	Fredric Joseph Ammerman ✓
03/14/2003	Affidavit Under 3301(d) of the Divorce Code. s/Elizabeth Marie Aravich no cc	Fredric Joseph Ammerman ✓
	Certificate of Service, Plaintiff's Affidavit under 3301(d) of the Divorce Code, along w/Notice of Intention to Request Entry of Divorcee Decree and Counter-Affidavit upon TONI M. CHERRY, ESQ. s/Benjamin S. Blakley, III, Esq. no cc	Fredric Joseph Ammerman ✓
03/18/2003	Counter-Affidavit Under Section 3301(D) of The Divorce Code. s/Gary Eugene Aravich 1 cc Atty Blakley	Fredric Joseph Ammerman ✓
04/10/2003	Petition For Bifurcation and Outcome. filed by s/Benjamin S. Blakley, III, Esq. Verification s/Elizabeth Marie Aravich 4 cc Atty Blakley	Fredric Joseph Ammerman ✓
04/14/2003	RULE RETURNABLE, AND NOW, this 11th day of April, 2003, issued upon GARY EUGENE ARAVICH, RULE RETURNABLE and Hearing thereon to be heard the 20th day of May, 2003, at 2:00 p.m. by the Court, s/FJA,J. 4 cc Atty Blakley.	Fredric Joseph Ammerman ✓
05/01/2003	Certificate of Service, Petition For Bifurcation upon: TONI M. CHERRY, ESQ. filed by s/Benjamin S. Blakley, III, Esquire no cc	Fredric Joseph Ammerman ✓
05/20/2003	Praeipce to Transmit Record, filed by s/Benjamin S. Blakley, III No CC	Fredric Joseph Ammerman ✓
	Decree in Divorce/Dated: May 20, 2003. BY THE COURT: /s/Fredric J. Ammerman, Judge	Fredric Joseph Ammerman ✓
	May 31, 2003, Vital Statistics information reported to New Castle, PA. Certified Copies of Decree to Parties of Record.	
05/22/2003	ORDER, NOW, this 20th day of May, 2003, re: Petition For Bifurcation is GRANTED. The Court will reserve jurisdiction over all outstanding economic issues. Upon receipt of an appropriate Divorce Decree and Vital Statistics form, the Court will divorce the parties. by the Court, s/FJA,J. 2 cc Atty Blakley, 1 cc to Atty T. Cherry	Fredric Joseph Ammerman ✓
08/20/2003	Motion For Hearing On Economic Issues. filed by s/Benjamin S. Blakley, III, Esq. 2 cc Atty Blakley	Fredric Joseph Ammerman ✓
	ORDER: NOW, this 20th day of August, 2003 Pretrial conference among counsel and the Court will be held Oct. 10, 2003 at 1:00PM s/FJA 2 CC to Atty. Blakley 2 CC to Atty. T. Cherry.	Fredric Joseph Ammerman ✓
10/10/2003	Plaintiff's Supplemental PreHearing Memorandum. filed by s/Benjamin S. Blakley, III, Esq. 3 cc to Atty	Fredric Joseph Ammerman ✓
	ORDER, NOW, this 10th day of October, 2003. re: Hearing on Economic Issues scheduled for 21st day of Jan., 2004 at 9:00 a.m. Plaintiff and Defendant shall file all documents required under Local Rule of Court 1920.2 within no more than 30 days from this date. by the Court, s/FJA,J. cc to T. Cherry, Blakley, III	Fredric Joseph Ammerman ✓

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

RICHARD T. HUGHES, P.E.  
an individual.

v.

MARK S. WAGNER, and PATRICIA  
WAGNER,  
Guarantors

No. 04 -819 -CD

Type of Pleading:

COMPLAINT

Filed on behalf of:  
Plaintiffs

Counsel of Record for  
this party:

James A. Naddeo, Esq.  
Pa I.D. 06820

211 1/2 E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

**JUN 07 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

RICHARD T. HUGHES, P.E.  
an individual,

v.

MARK S. WAGNER, and PATRICIA  
WAGNER,  
Guarantors

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No. 04 - -CD

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 LEGAL HELP.

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURT HOUSE  
Market and Second Streets  
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

RICHARD T. HUGHES, P.E.  
an individual,

v.

MARK S. WAGNER, and PATRICIA  
WAGNER,  
Guarantors

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No. 04 - -CD

**COMPLAINT**

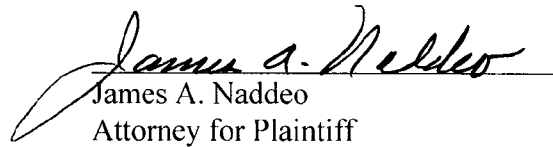
NOW COMES Plaintiff Richard T. Hughes, P.E., an individual payee, and by his attorney James A. Naddeo, sets forth the following:

1. That Plaintiff, an adult individual, resides at 606 Krebs Avenue, Clearfield, PA 16830.
2. That Defendants Mark S. Wagner and Patricia L. Wagner, husband and wife, reside at 428 Chestnut Street, St. Marys, PA 15857.
3. That Clearfield Dental Arts, LTD. (hereinafter "CDA") is a Pennsylvania Corporation located at 508 Krebs Avenue, Clearfield, PA 16830.
4. That Plaintiff loaned \$85,000 to CDA on July 6, 1998 as evidenced by a Promissory Note and Security Agreement attached hereto as Exhibit "A."
5. That on July 13, 1998, Defendants executed a Guaranty Agreement to be Personal Guarantors on the note in the event of CDA's default. The Guaranty Agreement is attached hereto as Exhibit "B."
6. That on January 14, 2004, CDA stopped all payments and defaulted on the loan.
7. At the time of default and at present, the principal balance due on the loan is \$60,487.

8. That the Guaranty Agreement provides that Defendants guaranteed \$34,000, or 40% of the \$85,000 loan. Exhibit B, ¶ 7.

9. That Plaintiff claims damage recoverable from Defendant Guarantors, Mark S. and Patricia L. Wagner, in the amount of \$34,000 plus interest.

WHEREFORE, Plaintiff claims damage in the amount of \$34,000 plus interest, recoverable from Guarantors according to the terms of the Guaranty Agreement and The Promissory Note and Security Agreement.

  
James A. Naddeo  
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA )

SS .

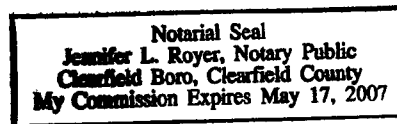
COUNTY OF CLEARFIELD )

Before me, the undersigned officer, personally appeared RICHARD T. HUGHES who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Richard T. Hughes

SWORN and SUBSCRIBED before me this 2nd day of April, 2004.

Jennings L. Royer



**PROMISSORY NOTE AND SECURITY AGREEMENT**

**Amount: \$85,000.00**

**July 6, 1998**

**FOR VALUE RECEIVED, CLEARFIELD DENTAL ARTS, LTD. ("Maker")** promises to pay to the order of **RCHARD HUGHES ("Hughes" or "Payee")**, without defalcation or setoff, the principal sum of Eighty-Five Thousand and no/100 (\$85,000.00) Dollars lawful money of the United States of America, together with interest on the unpaid principal balance at the rate of seven percent (7%) per annum.

1. The principal of this Note and Security Agreement shall be paid by Maker in monthly installments of principal and interest as set forth in a loan from Mid-State Bank to Hughes hereto attached as Exhibit "A."
2. Security Interest. To secure the payment of the indebtedness evidenced by this Note and Security Agreement and the performance and payment of all other obligations, liabilities and indebtedness of Maker to Payee howsoever created or incurred, presently existing and hereafter arising or acquired, Maker hereby assigns to Payee, and grants to it a security interest in, all of Maker's property hereinafter described, whether or not such property is in possession of Maker and wheresoever situated or located (collectively, the "Collateral"): all stock in trade, work in process, machinery, instruments, equipment, furniture, and accounts receivable of the Dental laboratory known as Beres & Hughes Dental Laboratory which is presently located at 508 Krebs Avenue, Clearfield, Pennsylvania.

EXHIBIT "A"

3. Obligations of Maker. Maker hereby covenants, represents, warrants, and agrees that:
  - 3.1 The Collateral will be solely used for and in connection with the operation and maintenance of Maker's business;
  - 3.2 The Collateral will not be misused, abused, wasted or allowed to deteriorate, but shall be kept in good working order and condition and repair, reasonable wear and tear excepted;
  - 3.3 The Collateral shall be insured at all times in the amount of its full insurable value and against all expected risks to which it may be exposed, including fire and extended coverage.
4. Events of Default. The occurrence of any of the following events with respect to Maker or any of them shall, without notice or demand, constitute a default on the part of Maker hereunder ("Event of Default");
  - 4.1 If Maker shall fail to make any payment of principal or interest under this Note and Security Agreement when due, and such failure shall continue uncorrected for a period of thirty (30) days;
  - 4.2 If there shall occur any other breach, failure or violation by maker in the payment or performance of any of its obligations, covenants or warranties under this Note and Security Agreement, and such breach, failure or violation shall continue uncorrected for a period of thirty (30) days after written notice thereof from Payee to Maker;

5. Payee's Rights and Remedies. Upon the occurrence of an Event of Default, in addition to all other rights and remedies provided hereunder, Payee shall have and may exercise all of the rights and remedies provided by the Uniform Commercial Code in effect in the Commonwealth of Pennsylvania at the date of the execution of this Note and Security Agreement, and any other applicable law. In conjunction with , in addition to, or in substitution therefor, Payee shall have an may exercise the following rights and remedies:
- 5.1 The entire unpaid indebtedness of Maker to Payee secured hereby, together with all interest accrued thereon, shall become immediately due and payable, without notice or demand;
- 5.2 Payee may enter upon Maker's business premises to take possession of, assemble and collect the Collateral or to render it unusable;
- 5.3 MAKER HEREBY AUTHORIZES AND EMPOWERS ANY PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES TO APPEAR FOR MAKER, AND WITH OR WITHOUT COMPLAINT FILED, CONFESS JUDGMENT AGAINST IT IN FAVOR OR PAYEE OR ANY SUBSEQUENT HOLDER FOR THE PRINCIPAL SUM HEREOF AND INTEREST DUE THEREON, TOGETHER WITH THE COSTS OF SUIT AND ATTORNEY'S FEES FOR COLLECTION HEREINAFTER PROVIDED FOR, WITH RELEASE OF ERRORS, WITHOUT ANY STAY OF EXECUTION OF RIGHT OF APPEAL. NO SINGLE EXERCISE OF THE FOREGOING POWER TO

CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER WHETHER OF NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE VALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISE FROM TIME TO TIME AS OFTEN AS THE HOLDER HEREOF SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL AMOUNTS OWING HEREUNDER, TOGETHER WITH COSTS. IT IS HEREBY ACKNOWLEDGED THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF MAKER HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY MAKER.

6. Other Provisions.

- 6.1 Payee may waive any default, or remedy any default in any reasonable manner, without waiving such default remedies and without waiving any other prior or subsequent default; and Payee may waive of delay the exercise of any right or remedy under this Note and Security Agreement without waiving that right or remedy or any other right or remedy hereunder;
- 6.2 This Note and Security Agreement shall be binding upon, and shall inure to the benefit of, the respective heirs, executors, administrators, successors and assigns of the parties hereto;
- 6.3 This Note and Security Agreement may not be amended, modified or terminated except in a writing executed by all the parties hereto; and no waiver of any

provision or consent hereunder shall be effected unless executed in a writing by the waiving or consenting party;

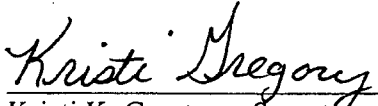
6.4 The provisions of this Note and Security Agreement shall be deemed severable, so that if any provision hereof is declared invalid under the laws of any state where it is in effect or of the United States, all other provisions of this Note and Security Agreement shall continue in full force and effect;

6.5 This Note and Security Agreement shall be construed in accordance with governed by the laws of the Commonwealth of Pennsylvania.

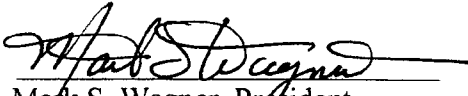
IN WITNESS WHEREOF, the Maker, intending to be legally bound hereby, has executed, sealed and delivered this Note and Security Agreement as of the day and year first above written.

CLEARFIELD DENTAL ARTS LTD.

ATTEST:

  
Kristi K. Gregory, Secretary

BY:

  
Mark S. Wagner, President

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT made this 13 day of July, 1998, by and between **MARK S. WAGNER** and **PATRICIA L. WAGNER**, husband and wife, whose address is 428 Chestnut Street, St. Marys, Pennsylvania 15857 ("**GUARANTORS**") and **RICHARD HUGHES**, an individual whose address is 506 Krebs Street, Clearfield, Pennsylvania 16830 ("**HUGHES**" or "**PAYEE**").

**WHEREAS**, Hughes has loaned to Clearfield Dental Arts Ltd. ("**CDA**") the sum of Eighty-Five Thousand Dollars and no/100 (\$85,000.00) ("**the debt**") which is to be repaid by CDA according to the terms of the Promissory Note and Security Agreement executed by CDA ("**the note**"); and

**WHEREAS**, the Guarantors, in consideration for said loan, have agreed to guarantee to Hughes the repayment of the CDA note on the same terms as Hughes has borrowed the monies from Mid-State Bank which note is hereto attached and marked Exhibit "A"; and

**WHEREAS**, one of the Guarantors is a shareholder in CDA and as a part of the consideration for the loan has promised to guarantee said loan and to secure his or her spouse to join in this guaranty agreement;

EXHIBIT "B"

AND WHEREAS, this guaranty agreement is to be limited to the percentage of ownership of the shareholder which is forty (40%) per cent.

NOW THEREFORE, intending to be legally bound, the Guarantors hereby jointly and severally guarantee to Hughes the repayment of the principal and interest of the CDA loan on the same terms and conditions as Hughes has borrowed the monies from Mid-State Bank as set forth on Exhibit "A."

1. Guarantors hereby:

(a) unconditionally guarantee the prompt, punctual and full payment of the principal and interest on the Note in accordance with the terms and tenor set forth on Exhibit "A," all as completely and effectually as if such guaranty had been made by the Guarantors in writing and signed by them on the face of the Note;

(b) agree that if a default under the Note shall occur, then Guarantors will promptly make or cause payment to be made under the Note and will perform or cause to be performed all such terms, covenants and conditions of the Note.

2. Guarantors further waive presentment for payment, notice of nonpayment or dishonor, protest, notice of acceptance

of this guaranty, diligence in collection and all formalities legally required to charge them with liability hereunder, and generally indulgences, extensions and notices of every kind.

3. Guarantors agree that their liability hereunder as Guarantor shall not be impaired or affected by

(a) any renewal or extension which may be made (with or without their knowledge or consent) of the time of payment of the Note, or of the time for performance by any party obligated thereto of any of the terms and provisions of the Note;

(b) by any forbearance or delay in enforcing payment of the Note or enforcing the obligations of any party or person to the Note, in accordance with the terms thereof; or

(c) by any modification of the terms, tenor or provisions of the Note.

4. Guarantors agree that they may be joined in any action against the CDA; and that recovery may be had against Guarantors either in such action or any independent action without exhausting any remedy or claim against CDA, including specifically but without limitation of any kind, the collection of rentals if a default under the Note shall occur or any

proceeding with respect to realization of the security afforded by the said debt.

5. This Guaranty shall inure to the benefit of and may be enforced by Hughes, his executors, administrators, successors and assigns and by any subsequent holder of the Note.

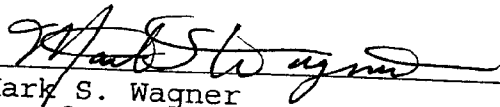
6. The obligations and liabilities imposed on the Guarantors by this Guaranty shall be binding upon their distributees, heirs, successors and assigns and Guarantors hereby expressly waive any acceptance hereof.

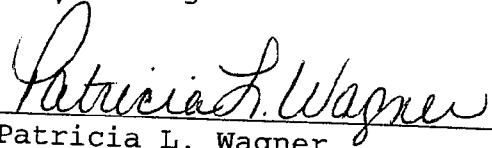
7. Notwithstanding the foregoing promises, the limit of this Guaranty shall be Thirty-Four Thousand and no/100 Dollars (\$34,000.00).

8. GUARANTORS HEREBY AUTHORIZE AND EMPOWER ANY PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR FOR MAKER, AND WITH OR WITHOUT COMPLAINT FILED, CONFESS JUDGMENT AGAINST THEM IN FAVOR OF HUGHES OR ANY SUBSEQUENT HOLDER FOR THE PRINCIPAL SUM HEREOF AND INTEREST DUE THEREON, TOGETHER WITH THE COSTS OF SUIT AND ATTORNEY'S FEES FOR COLLECTION HEREINAFTER PROVIDED FOR, WITH RELEASE OF ERRORS, WITHOUT ANY STAY OF EXECUTION OF RIGHT OF APPEAL. NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS

JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE VALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISE FROM TIME TO TIME AS OFTEN AS THE HOLDER HEREOF SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL AMOUNTS OWING HEREUNDER, TOGETHER WITH COSTS. IT IS HEREBY ACKNOWLEDGED THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF GUARANTORS HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY GUARANTORS..

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and date first above written.

 (SEAL)  
Mark S. Wagner

 (SEAL)  
Patricia L. Wagner

JAMES A. NADDEO  
ATTORNEY AT LAW  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

8/3/44-801  
JUN 07 2004

icc

Atty Naddeo

Atty pd. 85.00

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

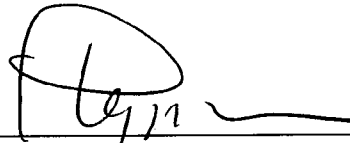
RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

Vs. :

MARK S. WAGNER and :  
PATRICIA L. WAGNER, :  
Defendants :

ENTRY OF APPEARANCE

Please enter my appearance on behalf of the Defendants, Mark S. and Patricia L. Wagner, in the above matter.



Thomas G. Wagner, Esq.

I.D. #17404

115 Lafayette Street

St. Marys, Pa. 15857

(814) 78103445

FILED

JUL 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

HUGHES, RICHARD T. , P.E.

VS.

WAGNER, MARK S. & PATRICIA

COMPLAINT

Sheriff Docket #

15728

04-819-CD

**SHERIFF RETURNS**

NOW JUNE 8, 2004, THOMAS KONTES, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MARK S. WAGNER and PATRICIA WAGNER, DEFENDANT.

NOW JUNE 16, 2004 SERVED THE WITHIN COMPLAINT ON MARK S. WAGNER and PATRICIA WAGNER, DEFENDANTS BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED MARK S. WAGNER.

**Return Costs**

Cost	Description
28.00	SHERIFF HAWKINS PAID BY: ATTY CK# 16234
10.00	SURCHARGE PAID BY: ATTY Cke#16239
54.20	ELK CO. SHFF. PAID BY: ATTY

Sworn to Before Me This

13 Day Of July 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 Marilyn Hays*  
Chester A. Hawkins  
Sheriff

**FILED**

8:55am  
JUL 13 2004  
E.D.

William A. Shaw  
Prothonotary

15728

# Affidavit of Service

Richard T. Hughes, P.E.  
vs.  
Mark S. Wagner and Patricia Wagner

No. 819 Term, 20 04

Returnable within \_\_\_\_\_ days  
from date of service hereof.

NOW June 16, 20 04 at 11:15 o'clock P.M.

served the within Complaint on Mark S. Wagner and Patricia  
Wagner

at 428 Chestnut St., St. Marys, Elk County, PA

by handing to Mark S. Wagner, husband,

a true and attested copy of the original Complaint and made

known to him the contents thereof. Sheriff's Costs - \$54.20 PAID

Sworn to before me this 22nd

day of June A.D. 20 04

Carla A. Fry  
Prothonotary

My Commission Expires  
January 7, 2008

So answers,

Thomas C. Korte  
Sheriff

Heidi  
Deputy



CHESTER A. HAWKINS  
SHERIFF

# Sheriff's Office Clearfield County

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986  
AFTER 4:00 P.M. (814) 765-1533  
FAX (814) 765-5915

ROBERT SNYDER  
CHIEF DEPUTY  
CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

MARILYN HAMM  
DEPT. CLERK  
PETER F. SMITH  
SOLICITOR

## DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 15728

RICHARD T. HUGHES, P.E.

TERM & NO. 04-819-CD

VS

DOCUMENT TO BE SERVED:

COMPLAINT

MARK S. WAGNER & PATRICIA WAGNER

SERVE BY: 07/07/2004

**MAKE REFUND PAYABLE TO:** JAMES A. NADDEO, ESQ.

**SERVE:** MARK S. WAGNER & PATRICIA WAGNER

**ADDRESS:** 428 CHESTNUT ST., ST. MARYS, PA. 15857

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of  
CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF  
ELK COUNTY, Pennsylvania to execute this writ. This  
Deputation being made at the request and risk of the Plaintiff this 8th Day of  
JUNE 2004

Respectfully,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

Vs. :

MARK S. WAGNER and :  
PATRICIA L. WAGNER, :  
Defendants :

ENTRY OF APPEARANCE

Please enter my appearance on behalf of the Defendants in the above matter.



Thomas G. Wagner  
Supreme Court ID No. 17404  
Meyer & Wagner  
115 Lafayette St.  
St. Marys, PA 15857  
814-781-3445

FILED <sup>EGK</sup>  
m/j:2587 No  
AUG 09 2004 oc

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

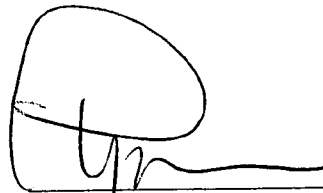
Vs. :

MARK S. WAGNER and :  
PATRICIA L. WAGNER, :  
Defendants :

NOTICE TO PLEAD

TO THE PLAINTIFF:

You are required to file a sworn Answer to the within New Matter within twenty (20) days after service upon you or a Default Judgment may be entered against you.



Thomas G. Wagner,  
Attorney for Defendants

FILED

m/11:25/04  
AUG 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

Vs. :

MARK S. WAGNER and :  
PATRICIA L. WAGNER, :  
Defendants :

ANSWER AND NEW MATTER

Answer.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of said averments. Proof thereof is demanded at trial.

7. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of said averments. Proof thereof is demanded at trial.

8. It is admitted that the Defendants' liability under the guaranty agreement is limited to \$34,000, but it is denied that the Defendants are liable for \$34,000 of the currently-outstanding debt of Clearfield Dental Arts Limited. On the contrary, Defendants understand their liability to be limited to 40% of the outstanding debt, which was originally 40% of \$85,000, or \$34,000.

9. Denied. On the contrary, Defendants are not indebted to the Plaintiff; or, in the alternative, their liability is limited to 40% of the currently-outstanding debt of CDA.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed, with costs upon the Plaintiff.

New Matter.

10. Defendants' liability under the guaranty agreement is limited to 40% of the balance due.

11. There was no consideration for the execution of the guaranty agreement by the Defendants.

12. There was no consideration for execution of the guaranty agreement by the Defendant Patricia Wagner.

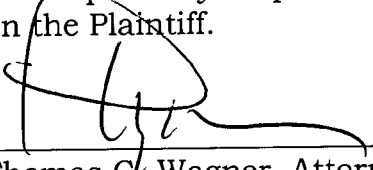
13. Defendants have been discharged from their liability, either wholly or pro tanto, by reason of one or more of the following:

A. Failure of the Plaintiff to apply collateral of the debtor to the debt;

B. Release of collateral of the debtor; or

C. Failure of the Plaintiff to preserve any collateral of the debtor on which Plaintiff held a security interest.

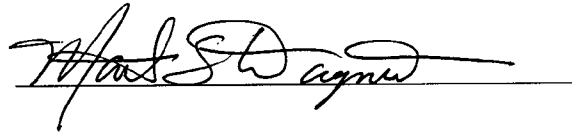
WHEREFORE, Defendants respectfully request that the Complaint be dismissed, with costs upon the Plaintiff.

  
\_\_\_\_\_  
Thomas G. Wagner, Attorney for Defendants

### VERIFICATION

I, Mark S. Wagner, having read the foregoing Answer and New Matter, verify that the statements made therein are true and correct to the best of my personal knowledge or information and belief.

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

A handwritten signature in cursive script, appearing to read "Mark S. Wagner", is written over a horizontal line.

Date: 8-6-04

1 CENR to ARV

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

RICHARD T. HUGHES, P.E.           \*  
an individual,                   \*  
                    Plaintiff       \*  
                                    \*  
                    vs.           \*  
                                    \*  
MARK S. WAGNER and PATRICIA   \*  
WAGNER,                         \*  
                    Defendants     \*

No. 04 - 819 - CD

**ANSWER TO NEW MATTER**

NOW COMES Plaintiff, Richard T. Hughes, and by and through his attorney, James A. Naddeo, Esquire, sets forth the following:

10. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied and to the contrary, it is alleged that the Guaranty Agreement obligates Defendants to pay 40% of the original loan.

11. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied and to the contrary, it is alleged that the loan made by Plaintiff to Clearfield Dental Arts, LTD., was contingent upon the receipt of personal guarantees from the principals of said corporation and their spouses.

12. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied and in further answer thereto, Plaintiff incorporates his answer to Paragraph 11 hereof by reference.

13. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied and in further answer thereto, Plaintiff alleges as follows:

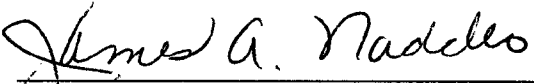
A. Denied. On the contrary, it is alleged that Plaintiff was not obligated under the Guaranty Agreement to apply the collateral to the debt but to the contrary has the right to pursue Defendants for the full amount to which they are obligated under the Guaranty Agreement.

B. Denied for the reason that Plaintiff never released the collateral of the debtor and to the contrary repossessed the collateral which he was able to sell for the sum of \$8,000.00.

C. Denied for the reason that Plaintiff did not fail to preserve the collateral of the debtor but to the contrary repossessed said collateral which was sold for the sum of \$8,000.00.

WHEREFORE, Plaintiff respectfully requests judgment as demanded in his Complaint.

Respectfully submitted,

  
\_\_\_\_\_  
James A. Naddeo, Esquire  
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )

N J Hughes

Richard T. Hughes

*Jennifer L. Royer*

Notarial Seal  
Jennifer L. Royer, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires Mar. 17, 2007

Notarial Seal  
Jennifer L. Royer, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires May 17, 2007

James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

JAMES A. NADDEO  
ATTORNEY AT LAW  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

**FILED**

**AUG 24 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

RICHARD T. HUGHES, P.E.  
an individual,

v.

MARK S. WAGNER, and PATRICIA  
WAGNER,  
Guarantors

No. 04 - 819 -CD

Type of Pleading:

**MOTION FOR JUDGMENT  
ON THE PLEADINGS**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:

James A. Naddeo, Esq.  
Pa I.C. 06820

207 East Market Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

0 3134 BA 100 to 1000

OCT 06 2004

William A. Chew  
Prothonotary

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

RICHARD T. HUGHES, P.E.  
an individual,

v.

MARK S. WAGNER, and PATRICIA  
WAGNER,  
Guarantors

:  
:  
:  
:  
:  
:  
:  
:

No. 04 - 819 -CD

**ORDER**

AND NOW, this \_\_\_\_\_ day of October, 2004, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, pursuant to Pa.R.C.P. 1034, it is hereby ORDERED that judgment be entered in favor of Plaintiff and against Defendants in the amount of \$\_\_\_\_\_ with interest, and costs.

---

Judge

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

RICHARD T. HUGHES, P.E.  
an individual,

Plaintiff

vs.

MARK S. WAGNER and PATRICIA  
WAGNER,

Defendants

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 04 - 819 – CD

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff, Richard T. Hughes, P.E., by his undersigned counsel, respectfully moves this Court pursuant to Pa.R.C.P. No 1034 for judgment on the pleadings on the grounds that:

1. Plaintiff commenced this action against Defendants, Mark S. and Patricia Wagner on June 6, 2004, seeking to recover monies due to Plaintiff on a Guaranty Agreement executed by Defendants pursuant to a loan transaction as set forth in Plaintiff's Complaint, a true and correct copy of which is attached as Exhibit "A."

2. On August 9, 2004, Defendants filed their answer with new matter, a true and correct copy of which is attached as Exhibit "B."

3. On August 24, 2004, Plaintiff filed a reply to Defendants' new matter, a true and correct copy which is attached as Exhibit "C."

4. Paragraph 5 of Defendants' Answer admits Plaintiff's allegation that Defendants executed a Guaranty Agreement to be Personal Guarantors on a Promissory Note which forms the basis of Plaintiff's claim.

5. Defendants' general denial of the allegation relating to CDA's breach of the terms of the note, which allegations are set forth in paragraph 6 of the Complaint, is improper under Pa.R.C.P. No. 1029 (c), and constitutes an admission of the allegations inasmuch as it is clear

that a defendant must know whether the allegations are true or false. Cercone v. Cercone, 254 Pa.Super. 381 (1978).

6. Paragraphs 11 and 12 of Defendants' new matter allege a lack of consideration as an affirmative defense.

7. Consideration is not required on sealed documents. A seal is presumptive evidence of consideration. Williamsburg v. Smith, 132 Pa.Super. 73; 200 A.215 (1938).

8. Paragraph 13 of Defendant's new matter alleges that they have been discharged from their liability by one or more of the following:

- a. Failure of Plaintiff to apply collateral of the debtor to the debt;
- b. Release of collateral of the debtor;
- c. Failure of the Plaintiff to preserve any collateral of the debtor on which Plaintiff held a security interest.

9. Plaintiff has liquidated the collateral and applied the proceeds of the sale to the debt. Such proceeds were insufficient to satisfy the debt.

10. Paragraph 10 of Defendants' new matter alleges that their liability under the guaranty agreement is limited to 40% of the balance due.

11. To the contrary, the plain language of the guaranty agreement provides the Defendant Guarantors are liable for 40% of the loan under the same terms as the Promissory Note. The Guaranty Agreement does not state that their liability is limited to 40% of the balance due.

12. The intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement. Steuart v. McChesney, 498 Pa. 45; 444 A.2d 659 1982.

13. The Pleadings are closed and time exists within which to dispose of this motion before trial.

14. No genuine issues of material fact exist.

15. Plaintiff is entitled to judgment as a matter of law on the pleadings pursuant to Pa.R.C.P. 1034.

WHEREFORE, Plaintiff, Richard T. Hughes, P.E. respectfully requests that this court enter judgment in favor of Plaintiff and against Defendants, Mark S. and Patricia Wagner, in the amount of \$34,000, with interest, and costs.

  
James A. Naddeo, Esq.  
Attorney for Plaintiff

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

RICHARD T. HUGHES, P.E.  
an individual,

v.

MARK S. WAGNER, and PATRICIA  
WAGNER,  
Guarantors

No. 04 - -CD

COMPLAINT

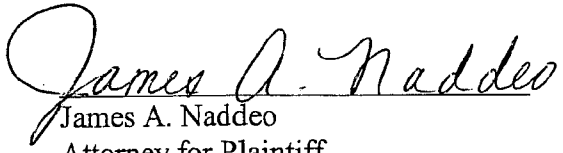
NOW COMES Plaintiff Richard T. Hughes, P.E., an individual payee, and by his attorney James A. Naddeo, sets forth the following:

1. That Plaintiff, an adult individual, resides at 606 Krebs Avenue, Clearfield, PA 16830.
2. That Defendants Mark S. Wagner and Patricia L. Wagner, husband and wife, reside at 428 Chestnut Street, St. Marys, PA 15857.
3. That Clearfield Dental Arts, LTD. (hereinafter "CDA") is a Pennsylvania Corporation located at 508 Krebs Avenue, Clearfield, PA 16830.
4. That Plaintiff loaned \$85,000 to CDA on July 6, 1998 as evidenced by a Promissory Note and Security Agreement attached hereto as Exhibit "A."
5. That on July 13, 1998, Defendants executed a Guaranty Agreement to be Personal Guarantors on the note in the event of CDA's default. The Guaranty Agreement is attached hereto as Exhibit "B."
6. That on January 14, 2004, CDA stopped all payments and defaulted on the loan.
7. At the time of default and at present, the principal balance due on the loan is \$60,487.

8. That the Guaranty Agreement provides that Defendants guaranteed \$34,000, or 40% of the \$85,000 loan. Exhibit B, ¶ 7.

9. That Plaintiff claims damage recoverable from Defendant Guarantors, Mark S. and Patricia L. Wagner, in the amount of \$34,000 plus interest.


WHEREFORE, Plaintiff claims damage in the amount of \$34,000 plus interest, recoverable from Guarantors according to the terms of the Guaranty Agreement and The Promissory Note and Security Agreement.

  
James A. Naddeo  
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )

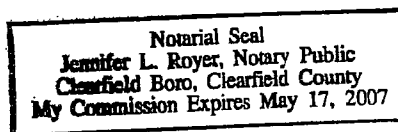
SS.

Before me, the undersigned officer, personally appeared RICHARD T. HUGHES who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
Richard T. Hughes

SWORN and SUBSCRIBED before me this 2nd day of April, 2004.

Jeanette L. Royer



PROMISSORY NOTE AND SECURITY AGREEMENT

Amount: \$85,000.00

July 6, 1998

FOR VALUE RECEIVED, CLEARFIELD DENTAL ARTS, LTD. ("Maker") promises to pay to the order of RICHARD HUGHES ("Hughes" or "Payee"), without defalcation or setoff, the principal sum of Eighty-Five Thousand and no/100 (\$85,000.00) Dollars lawful money of the United States of America, together with interest on the unpaid principal balance at the rate of seven percent (7%) per annum.

1. The principal of this Note and Security Agreement shall be paid by Maker in monthly installments of principal and interest as set forth in a loan from Mid-State Bank to Hughes hereto attached as Exhibit "A."
2. Security Interest. To secure the payment of the indebtedness evidenced by this Note and Security Agreement and the performance and payment of all other obligations, liabilities and indebtedness of Maker to Payee howsoever created or incurred, presently existing and hereafter arising or acquired, Maker hereby assigns to Payee, and grants to it a security interest in, all of Maker's property hereinafter described, whether or not such property is in possession of Maker and wheresoever situated or located (collectively, the "Collateral"): all stock in trade, work in process, machinery, instruments, equipment, furniture, and accounts receivable of the Dental laboratory known as Beres & Hughes Dental Laboratory which is presently located at 508 Krebs Avenue, Clearfield, Pennsylvania.

EXHIBIT "A"

3. Obligations of Maker. Maker hereby covenants, represents, warrants, and agrees that:

3.1 The Collateral will be solely used for and in connection with the operation and maintenance of Maker's business;

3.2 The Collateral will not be misused, abused, wasted or allowed to deteriorate, but shall be kept in good working order and condition and repair, reasonable wear and tear excepted;

3.3 The Collateral shall be insured at all times in the amount of its full insurable value and against all expected risks to which it may be exposed, including fire and extended coverage.

4. Events of Default. The occurrence of any of the following events with respect to Maker or any of them shall, without notice or demand, constitute a default on the part of Maker hereunder ("Event of Default");

4.1 If Maker shall fail to make any payment of principal or interest under this Note and Security Agreement when due, and such failure shall continue uncorrected for a period of thirty (30) days;

4.2 If there shall occur any other breach, failure or violation by maker in the payment or performance of any of its obligations, covenants or warranties under this Note and Security Agreement, and such breach, failure or violation shall continue uncorrected for a period of thirty (30) days after written notice thereof from Payee to Maker;

5. Payee's Rights and Remedies. Upon the occurrence of an Event of Default, in addition to all other rights and remedies provided hereunder, Payee shall have and may exercise all of the rights and remedies provided by the Uniform Commercial Code in effect in the Commonwealth of Pennsylvania at the date of the execution of this Note and Security Agreement, and any other applicable law. In conjunction with, in addition to, or in substitution therefor, Payee shall have and may exercise the following rights and remedies:
- 5.1 The entire unpaid indebtedness of Maker to Payee secured hereby, together with all interest accrued thereon, shall become immediately due and payable, without notice or demand;
- 5.2 Payee may enter upon Maker's business premises to take possession of, assemble and collect the Collateral or to render it unusable;
- 5.3 MAKER HEREBY AUTHORIZES AND EMPOWERS ANY PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES TO APPEAR FOR MAKER, AND WITH OR WITHOUT COMPLAINT FILED, CONFESS JUDGMENT AGAINST IT IN FAVOR OR PAYEE OR ANY SUBSEQUENT HOLDER FOR THE PRINCIPAL SUM HEREOF AND INTEREST DUE THEREON, TOGETHER WITH THE COSTS OF SUIT AND ATTORNEY'S FEES FOR COLLECTION HEREINAFTER PROVIDED FOR, WITH RELEASE OF ERRORS, WITHOUT ANY STAY OF EXECUTION OF RIGHT OF APPEAL. NO SINGLE EXERCISE OF THE FOREGOING POWER TO

CONFESS JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER WHETHER OF NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE VALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISE FROM TIME TO TIME AS OFTEN AS THE HOLDER HEREOF SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL AMOUNTS OWING HEREUNDER, TOGETHER WITH COSTS. IT IS HEREBY ACKNOWLEDGED THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF MAKER HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY MAKER.

6. Other Provisions.

6.1 Payee may waive any default, or remedy any default in any reasonable manner, without waiving such default remedies and without waiving any other prior or subsequent default; and Payee may waive of delay the exercise of any right or remedy under this Note and Security Agreement without waiving that right or remedy or any other right or remedy hereunder;

6.2 This Note and Security Agreement shall be binding upon, and shall inure to the benefit of, the respective heirs, executors, administrators, successors and assigns of the parties hereto;

6.3 This Note and Security Agreement may not be amended, modified or terminated except in a writing executed by all the parties hereto; and no waiver of any

provision or consent hereunder shall be effected unless executed in a writing by the waiving or consenting party;


6.4 The provisions of this Note and Security Agreement shall be deemed severable, so that if any provision hereof is declared invalid under the laws of any state where it is in effect or of the United States, all other provisions of this Note and Security Agreement shall continue in full force and effect;

6.5 This Note and Security Agreement shall be construed in accordance with governed by the laws of the Commonwealth of Pennsylvania.

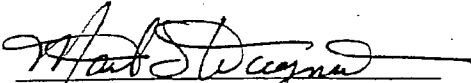
IN WITNESS WHEREOF, the Maker, intending to be legally bound hereby, has executed, sealed and delivered this Note and Security Agreement as of the day and year first above written.

CLEARFIELD DENTAL ARTS LTD.

ATTEST:

  
Kristi K. Gregory, Secretary

BY:

  
Mark S. Wagner, President

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT made this 13 day of July, 1998, by and between MARK S. WAGNER and PATRICIA L. WAGNER, husband and wife, whose address is 428 Chestnut Street, St. Marys, Pennsylvania 15857 ("GUARANTORS") and RICHARD HUGHES, an individual whose address is 506 Krebs Street, Clearfield, Pennsylvania 16830 ("HUGHES" or PAYEE).

WHEREAS, Hughes has loaned to Clearfield Dental Arts Ltd. ("CDA") the sum of Eighty-Five Thousand Dollars and no/100 (\$85,000.00) ("the debt") which is to be repaid by CDA according to the terms of the Promissory Note and Security Agreement executed by CDA ("the note"); and

WHEREAS, the Guarantors, in consideration for said loan, have agreed to guarantee to Hughes the repayment of the CDA note on the same terms as Hughes has borrowed the monies from Mid-State Bank which note is hereto attached and marked Exhibit "A"; and

WHEREAS, one of the Guarantors is a shareholder in CDA and as a part of the consideration for the loan has promised to guarantee said loan and to secure his or her spouse to join in this guaranty agreement;

EXHIBIT "B"

AND WHEREAS, this guaranty agreement is to be limited to the percentage of ownership of the shareholder which is forty (40%) per cent.

NOW THEREFORE, intending to be legally bound, the Guarantors hereby jointly and severally guarantee to Hughes the repayment of the principal and interest of the CDA loan on the same terms and conditions as Hughes has borrowed the monies from Mid-State Bank as set forth on Exhibit "A."

1. Guarantors hereby:

(a) unconditionally guarantee the prompt, punctual and full payment of the principal and interest on the Note in accordance with the terms and tenor set forth on Exhibit "A," all as completely and effectually as if such guaranty had been made by the Guarantors in writing and signed by them on the face of the Note;

(b) agree that if a default under the Note shall occur, then Guarantors will promptly make or cause payment to be made under the Note and will perform or cause to be performed all such terms, covenants and conditions of the Note.

2. Guarantors further waive presentment for payment, notice of nonpayment or dishonor, protest, notice of acceptance

of this guaranty, diligence in collection and all formalities legally required to charge them with liability hereunder, and generally indulgences, extensions and notices of every kind.

3. Guarantors agree that their liability hereunder as Guarantor shall not be impaired or affected by

(a) any renewal or extension which may be made (with or without their knowledge or consent) of the time of payment of the Note, or of the time for performance by any party obligated thereto of any of the terms and provisions of the Note;

(b) by any forbearance or delay in enforcing payment of the Note or enforcing the obligations of any party or person to the Note, in accordance with the terms thereof; or

(c) by any modification of the terms, tenor or provisions of the Note.

4. Guarantors agree that they may be joined in any action against the CDA; and that recovery may be had against Guarantors either in such action or any independent action without exhausting any remedy or claim against CDA, including specifically but without limitation of any kind, the collection of rentals if a default under the Note shall occur or any

proceeding with respect to realization of the security afforded by the said debt.

5. This Guaranty shall inure to the benefit of and may be enforced by Hughes, his executors, administrators, successors and assigns and by any subsequent holder of the Note.

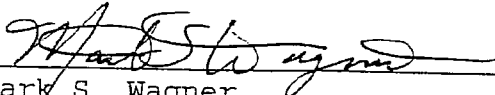
6. The obligations and liabilities imposed on the Guarantors by this Guaranty shall be binding upon their distributees, heirs, successors and assigns and Guarantors hereby expressly waive any acceptance hereof.

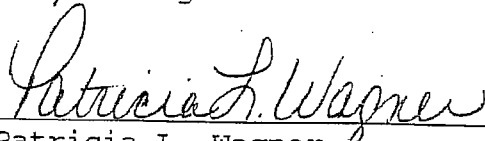
7. Notwithstanding the foregoing promises, the limit of this Guaranty shall be Thirty-Four Thousand and no/100 Dollars (\$34,000.00).

8. GUARANTORS HEREBY AUTHORIZE AND EMPOWER ANY PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR FOR MAKER, AND WITH OR WITHOUT COMPLAINT FILED, CONFESS JUDGMENT AGAINST THEM IN FAVOR OF HUGHES OR ANY SUBSEQUENT HOLDER FOR THE PRINCIPAL SUM HEREOF AND INTEREST DUE THEREON, TOGETHER WITH THE COSTS OF SUIT AND ATTORNEY'S FEES FOR COLLECTION HEREINAFTER PROVIDED FOR, WITH ~~RELEASE OF ERRORS~~, WITHOUT ANY STAY OF EXECUTION OF RIGHT OF APPEAL. NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS

JUDGMENT SHALL BE DEEMED TO EXHAUST THE POWER WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE VALID, VOIDABLE, OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISE FROM TIME TO TIME AS OFTEN AS THE HOLDER HEREOF SHALL HAVE RECEIVED PAYMENT IN FULL OF ALL AMOUNTS OWING HEREUNDER, TOGETHER WITH COSTS. IT IS HEREBY ACKNOWLEDGED THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF GUARANTORS HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY GUARANTORS..

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and date first above written.

  
Mark S. Wagner (SEAL)

  
Patricia L. Wagner (SEAL)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

Vs. :

MARK S. WAGNER and :  
PATRICIA L. WAGNER, :  
Defendants :

ANSWER AND NEW MATTER

Answer.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of said averments. Proof thereof is demanded at trial.

7. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of said averments. Proof thereof is demanded at trial.

8. It is admitted that the Defendants' liability under the guaranty agreement is limited to \$34,000, but it is denied that the Defendants are liable for \$34,000 of the currently-outstanding debt of Clearfield Dental Arts Limited. On the contrary, Defendants understand their liability to be limited to 40% of the outstanding debt, which was originally 40% of \$85,000, or \$34,000.

9. Denied. On the contrary, Defendants are not indebted to the Plaintiff; or, in the alternative, their liability is limited to 40% of the currently-outstanding debt of CDA.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed, with costs upon the Plaintiff.

New Matter.

10. Defendants' liability under the guaranty agreement is limited to 40% of the balance due.

11. There was no consideration for the execution of the guaranty agreement by the Defendants.

12. There was no consideration for execution of the guaranty agreement by the Defendant Patricia Wagner.

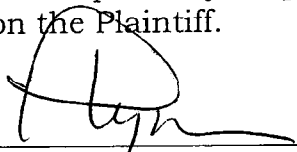
13. Defendants have been discharged from their liability, either wholly or pro tanto, by reason of one or more of the following:

A. Failure of the Plaintiff to apply collateral of the debtor to the debt;

B. Release of collateral of the debtor; or

C. Failure of the Plaintiff to preserve any collateral of the debtor on which Plaintiff held a security interest.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed, with costs upon the Plaintiff.

  
\_\_\_\_\_  
Thomas G. Wagner, Attorney for Defendants



12. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied and in further answer thereto, Plaintiff incorporates his answer to Paragraph 11 hereof by reference.

13. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is generally denied and in further answer thereto, Plaintiff alleges as follows:

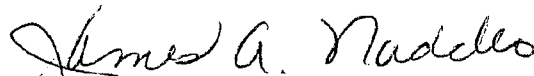
A. Denied. On the contrary, it is alleged that Plaintiff was not obligated under the Guaranty Agreement to apply the collateral to the debt but to the contrary has the right to pursue Defendants for the full amount to which they are obligated under the Guaranty Agreement.

B. Denied for the reason that Plaintiff never released the collateral of the debtor and to the contrary repossessed the collateral which he was able to sell for the sum of \$8,000.00.

C. Denied for the reason that Plaintiff did not fail to preserve the collateral of the debtor but to the contrary repossessed said collateral which was sold for the sum of \$8,000.00.

WHEREFORE, Plaintiff respectfully requests judgment as  
demanded in his Complaint.

Respectfully submitted,

A handwritten signature in cursive script, reading "James A. Naddeo". The signature is written in dark ink and is positioned above a horizontal line.

---

James A. Naddeo, Esquire  
Attorney for Plaintiff

8

CLEARFIELD, PENNSYLVANIA 16830

P.O. BOX 552

ATTORNEY AT LAW

JAMES A. NADDEO

Lap over margin

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

RICHARD T. HUGHES, P.E.  
an individual,  
Plaintiff

vs.

MARK S. WAGNER and PATRICIA  
WAGNER,  
Defendants

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No. 04 - 819 - CD

O R D E R

AND NOW, this 8th day of October, 2004, it is the  
ORDER of this Court that Argument on Plaintiff's Motion for  
Judgment on the Pleadings is scheduled for the 20 day of  
December, 2004, at 9:30 A.m. in Courtroom No. 1,  
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

Judith J. Ammann

010:16 BA 2004  
OCT 11 2004  
E6K

CLEARFIELD, PENNSYLVANIA 16830

P.O. BOX 552

ATTORNEY AT LAW

JAMES A. NADDEO

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

RICHARD T. HUGHES, P.E.  
an individual,  
Plaintiff

vs.

MARK S. WAGNER and PATRICIA  
WAGNER,  
Defendants

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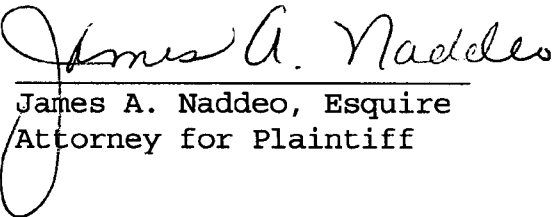
No. 04 - 819 - CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Motion for Judgement on the Pleadings and Order filed in the above-captioned action were served on the following person and in the following manner on the 11th day of October, 2004:

**First-Class Mail, Postage Prepaid**

Thomas G. Wagner, Esquire  
MEYER & WAGNER  
115 Lafayette Street  
St. Marys, PA 15857

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

JAMES A. NADDEO  
ATTORNEY AT LAW  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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FILED

OCT 12 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

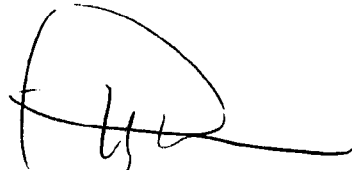
Vs. :

MARK S. WAGNER and :  
PATRICIA L. WAGNER, :  
Defendants :

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of Defendants' First Set of Interrogatories to Plaintiff and Request for Production of Documents by first class United States mail on October 18, 2004, addressed as follows:

James A. Naddeo, Esq.  
211 ½ East Locust Street  
PO Box 552  
Clearfield, Pa. 16830



---

Thomas G. Wagner, Attorney for Defendants

7/1/19/34  
OCT 19 2004  
EGR  
NO  
CC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

RICHARD T. HUGHES, P.E., Plaintiff : NO. 04-819-CD

Vs. :

MARK S. WAGNER and :

PATRICIA L. WAGNER, :

Defendants :

DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF

And

REQUEST FOR PRODUCTION OF DOCUMENTS

TO: RICHARD T. HUGHES, P.E., Plaintiff  
c/o James A. Naddeo, Esq.  
207 East Market Street  
PO Box 552  
Clearfield, Pa. 16830

Pursuant to Pennsylvania Rule of Civil Procedure 4004, you are required to file sworn answers to the within Interrogatories and Request for Production of Documents within thirty (30) days after service upon you.

As used in the following Interrogatories, the word "document" is intended to include is intended to include all writings of any kind, computer data, photographs or any other form of information contained in any form of media. The word "Note" when used in these Interrogatories, is intended to refer to the Promissory Note and Security Agreement dated July 6, 1998, in the principal amount of \$85,000, a copy of which is attached to the Complaint in this case as Exhibit "A".

1. State the name and address of all persons who assisted in the preparation of the Answers to the following Interrogatories.

Answer:

2. Has the Plaintiff maintained a written account of all payments made on the Note dated July 6, 1998, attached to the Complaint as Exhibit "A".

Answer:

3. If the answer to the foregoing Interrogatory was "yes" please attach a complete copy of said account.

Answer:

4. Has the Plaintiff received or taken possession of any tangible personal property described as the "Collateral" under the Note dated July 6, 1998, attached to the Complaint as Exhibit "A" since the date of the note?

Answer:

5. If the answer to the preceding Interrogatory was "yes", please describe in detail all of said tangible personal property and state the date on which said tangible personal property was received or possessed by the Plaintiff and from whom said tangible personal property was received or taken.

Answer:

6. Has the Plaintiff at any time issued any document advising Clearfield Dental Arts LTD or any of its officers, agents or employees of the existence of any default under the Note?

Answer:

7. If the Answer to the preceding Interrogatory was “yes”, please attach a copy of all of said documents.

Answer:

8. Does the Plaintiff know the whereabouts of all of the inventory, equipment and other tangible personal property located at the offices of Clearfield Dental Arts, LTD, at the time of the closing of said business?

Answer:

9. If the answer to the preceding Interrogatory was “yes”, please describe in detail the location of said equipment, inventory and other tangible personal property and the persons or entities in control thereof.

Answer:

10. Does the Plaintiff know the current whereabouts of Scott H. Baun, Christy K. Gregory and Robert Lynn, former shareholders in Clearfield Dental Arts, LDT.? If so, state the current address of each such person.

Answer:

A handwritten signature in black ink, appearing to read 'T. G. Wagner', written over a horizontal line.

Thomas G. Wagner,  
Attorney for Defendants



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

RICHARD T. HUGHES, P.E.  
an individual,  
Plaintiff

vs.

MARK S. WAGNER and PATRICIA  
WAGNER,  
Defendants

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No. 04 - 819 - CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Depositions filed in the above-captioned action was served on the following person and in the following manner on the 22nd day of October, 2004:

**First-Class Mail, Postage Prepaid**

Thomas G. Wagner, Esquire  
MEYER & WAGNER  
115 Lafayette Street  
St. Marys, PA 15857



James A. Naddeo, Esquire  
Attorney for Plaintiff

JAMES A. NADDEO  
ATTORNEY AT LAW  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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FILED

OCT 22 2004

RECEIVED BY MAIL 10/22/04

William A. Shaw  
Prothonotary/Clerk of Courts

James A. Naddeo, Esquire  
Attorney for Plaintiff

**JAMES A. NADDEO**

**ATTORNEY AT LAW**

**P.O. BOX 552**

**CLEARFIELD, PENNSYLVANIA 16830**

Lap over margin

**FILED**

**NOV 10 2004**

**William A. Shaw  
Prothonotary/Clerk of Courts**



James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

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

RICHARD T. HUGHES, P.E.  
an individual,  
Plaintiff

vs.

MARK S. WAGNER and PATRICIA  
WAGNER,  
Defendants

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No. 04 - 819 - CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Praeipue to Withdraw Motion for Judgment on the Pleadings filed in the above-captioned action was served on the following person and in the following manner on the 17th day of December, 2004:

**First-Class Mail, Postage Prepaid**

Thomas G. Wagner, Esquire  
MEYER & WAGNER  
115 Lafayette Street  
St. Marys, PA 15857



James A. Naddeo, Esquire  
Attorney for Plaintiff

JA

CLEARFIELD, PENNSYLVANIA 16830

P.O. BOX 552

ATTORNEY AT LAW

JAMES A. NADDEO

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**FILED**

**DEC 17 2004**

William A. Shaw

Prothonotary/Clerk of Courts

William A. Shaw  
Prothonotary

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

RICHARD T. HUGHES, P.E.  
an individual,  
Plaintiff

vs.

MARK S. WAGNER and PATRICIA  
WAGNER,  
Defendants

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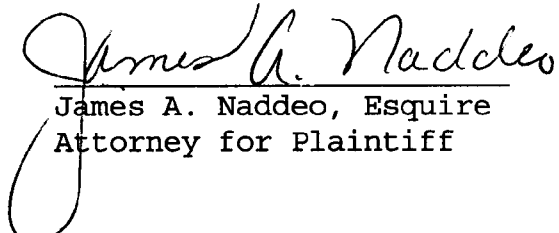
No. 04 - 819 - CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Answers to Defendants' Second Set of Interrogatories and Request for Production of Documents filed in the above-captioned action was served on the following person and in the following manner on the 4th day of January, 2005

**First-Class Mail, Postage Prepaid**

Thomas G. Wagner, Esquire  
MEYER & WAGNER  
115 Lafayette Street  
St. Marys, PA 15857

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

JAMES A. NADDEO  
ATTORNEY AT LAW  
207 EAST MARKET STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

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FILED No CC  
03:42/61 Cert. of Disc.  
MAR 31 2005 to Atty  
William A. Shaw  
Prothonotary/Clerk of Courts  
copy to  
CIA  
(124)

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

RICHARD T. HUGHES, P.E.           \*  
an individual,                   \*  
                    Plaintiff       \*  
                                    \*  
                    vs.           \*  
                                    \*  
MARK S. WAGNER and PATRICIA   \*  
WAGNER,                         \*  
                    Defendants     \*

No. 04 - 819 - CD

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and  
discontinued.



James A. Naddeo, Esquire  
Attorney for Plaintiff

JAMES A. NADDEO  
ATTORNEY AT LAW  
207 EAST MARKET STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

**FILED**  
**MAR 31 2005**  
William A. Shaw  
Prothonotary/Clerk of Courts

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

**CIVIL DIVISION**

**Richard T. Hughes PE**

**Vs.**

**No. 2004-00819-CD**

**Mark S. Wagner  
Patricia Wagner**

**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 March 31, 2005, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by James A. Naddeo, Esq.

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

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William A. Shaw, Prothonotary