

04-941-CD
LINUS OWENS vs. PENNSYLVANIA DEPARTMENT OF CORRECTIONS, SCT
HOUTZDALF, et al.

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

LINUS OWENS

-VS-

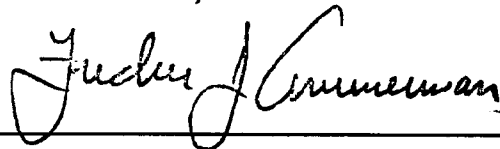
No. 04-941-CD

PENNSYLVANIA DEPARTMENT OF :
CORRECTIONS, SCI HOUTZDALE, :
GEORGE PATRICK, :
SUPERINTENDENT, et al. :

O R D E R

NOW, this 16th day of June, 2004, the Court being in receipt of the various documents submitted by the Plaintiff, including the "Pleadings, Facts and Claims" and the request for in forma pauperis standing; the Court believing that the Plaintiff's concerns should be directed through the Department of Corrections and the Commonwealth Court as opposed to the Clearfield County Court of Common Pleas, it is therefore the ORDER of this Court that the request for in forma pauperis standing be and is hereby denied.

BY THE COURT,



President Judge

FILED

JUN 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

FILED
b7C/q:116287
JUN 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

Sec
Aff
Am 10079
SCE Houtzdale
PO Box 1000
Houtzdale, PA 16851

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

LINUS OWENS,
PLAINTIFF

CIVIL ACTION AT LAW
AFFIDAVIT

v.

C.A. NO. 04-941-CD

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, SCI HOUTZDALE,
GEORGE PATRICK, SUPERINTENDENT;
et al. DEFENDANTS

Pa.R.C.P. RULE 240 (a)(b)(1i)
(f)(1)(h):

IN FORMA PAUPERIS

1. I am the Plaintiff, Linus Owens, in the above matter and **because** of my financial condition am unable to pay the fees and cost of prosecuting or ~~defending~~ the action or proceeding.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the cost of litigation.

3. I represent that the information below relating to my ability to pay the fees and cost true and correct:

(a). Name: LINUS OWENS

Address: P.O. BOX #1080

HOUTZDALE, PA 16698

Social Security Number: \$ 18.40

(b). Employment

If you presently employed, state

Employer: DEPARTMENT of CORRECTIONS

Address: P.O. BOX #1080

HOUTZDALE, PA 16698

Salary or wages per month: \$ 18.40

Type of work: MAINTENANCE

(c). Other income within the past twelve months

Business or profession: NONE

Other self-employment: NONE

Interest: NONE

Dividends: NONE

Pension and annuities: NONE

Social security benefits: NONE

FILED

JUN 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

support payments: NONE
Unemployment compensation and supplemental
benefits: NONE

Workman's compensation: NONE
public assistance: NONE
Other: NONE

(d). Other contributions to household support
(Wife)(Husband) Name: NONE

If your(Wife)(husband) is employed, state
Employer: NONE

Salary or wages per month: NONE

Type of work: NONE

Contributions from children: NONE

Contributions from parents: NONE

Other contributions: NONE

(e). Property owned

Cash: NONE

Checking account: NONE

Saving Account: YES

Certificates of deposit: NONE

Real estate (including home): NONE

Stocks; bonds: NONE

Motor vehicle: Make NONE Year

Other: NONE

(f). Debts and obligations

Mortgage: NONE

Rent: NONE

Loans: NONE

Other: NONE

(g). Persons dependent upon for support

(Wife) (Husband) Name: NONE

Children, if any: NONE
Name: _____ Age _____

Other Persons: NONE
Name: _____

Relationship: _____

4. I understand that I have a continuing obligation to inform the court of improvement in my financial circumstances which would permit me to pay the cost incurred herein.

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

Date: 6/12/04

Linus Owens
Linus Owens AM 6079
SCI HOU., P.O. Box 1000
HOUTZDALE, PA 16698-1000

FILED Nb
cc
JUN 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

COPY

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

Linus Owens,
PLAINTIFF

CIVIL ACTION AT LAW
COMPLAINT

v.

C.A. NO. _____

PENNSYLVANIA DEPARTMENT OF CORRECTIONS)
SCI HOUTZDALE, GEORGE PATRICK,)
SUPERINTENDENT; MIKE FISHER OR ACTING)
ATTORNEY GENERAL; DEPUTY HENRY TATUM,)
SUPERINTENDENT; INSTITUTIONAL BUSINESS)
MANAGER, DAVID B. PERRY: ET AL.)

Pa.R.C.P. RULE 1018-1018.1

NOTICE

You have been sued in court. If you wish to defend against the claim set forth in the following pages, you must take action in 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** a judgement 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

(NAME)

(ADDRESS)

(TELEPHONE NUMBER)

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

LINUS OWENS,
PLAINTIFF

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, SCI HOUTZDALE,
GEORGE PATRICK, SUPERINTENDENT;
HENRY DATUM, DEPUTY SUPERINTEN
DENT; MIKE FISHER, OR ACTING
ATTORNEY GENERAL; INSTITUTIONAL
BUSINESS MANAGER, DAVID B. PERRY:
DEFENDANTS et al.

CIVIL ACTION AT LAW
COMPLAINT

C.A. NO. _____

Pa.R.C.P. RULE 2102(2)(b) AND
2103(b), 2123:

THE COMMONWEALTH AND POLITICAL SUBDIVISION AS PARTIES

JURISDICTION AND VENUE

The Honorable Court of Common Pleas of Clearfield County, Pennsylvania has original jurisdiction pursuant Pennsylvania Constitution Art. V, §§ 5,8 in cases except as may ---- otherwise be provided by acts of general assembly. "Commonwealth" is defined by Pa.R.C.P. 76. An action may be brought against the Commonwealth only when a cause of action exists and when a right of action has been authorized by statute. Constitution of 1968, Article I § 11, 1 PAC.S. §2310. Also "Political subdivision" is defined by Pa.R.C.P. NO. 76.

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

LINUS OWENS,
PLAINTIFF

CIVIL ACTION AT LAW
COMPLAINT

v.

C.A. No. _____

(
PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, SCI HOUTZDALE,
GEORGE PATRICK, SUPERINTENDENT;
et al. Defendants

) 42 Pa.C.S.A. § 8522(a)(b)(3)
) 42 PaC.S.A. § 8542(a)(1)(2)
) 42 Pa.C.S.A. § 8542(b)(2)
)

EXCEPTIONS TO GOVERNMENT IMMUNITY AND SOVEREIGN IMMUNITY

Plaintiff asserts; his claims are redressed by: Care,
custody or control of personal property;

Exceptions to Governmental Immunity and Provides:

(b) Acts which may impose liability. The following acts
by a local agency or any of its employees may result in the
imposition of liability on a local agency.

(2) Care, custody or control of personal property. the
care, custody or control of the local agency. The only losses
for which damages shall be recoverable under this paragraph
are those property losses suffered with respect to personal
property in the possession or control of the local agency.

Plaintiff asserts; his claim is also redressed by: Acts
which may impose liability.

Exceptions to Sovereign Immunity:

(b) Acts which may impose liability. The following acts
by a Commonwealth party may result in the imposition of liability
on the Commonwealth and the defense of sovereign immunity shall
not be raised to claim for damages caused by:

(3) Care, custody or control of personal property. The
care, custody or control of personal property in the possession
or control of the Commonwealth parties, including Commonwealth
-owned personal property and property of persons held by a Commo-
nwealth agency, except that sovereign immunity of the Commonweal-
th is retained as a bar to actions claims arising out of Commonw-
ealth agency activities involving the use of nuclear and other
radioactive, equipment, devices and materials.

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

LINUS OWENS,
PLAINTIFF

CIVIL ACTION AT LAW
COMPLAINT

(

v.

C.A. NO. _____

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, SCI HOUTZDALE,
GEORGE PATRICK, SUPERINTENDENT
et al., DEFENDANTS

Pa.R.C.P. RULE 1019(a)(b)(c)
(d)(g)(i); AND
Pa.R.C.P. RULE 1021(a)(b)(c)
(d):

U

PLEADING FACTS AND CLAIMS

1. Plaintiff asserts: His Claims of redress lay in § 8522(a)(b)(b)(3) only and only to the extent set forth in this subchapter and within the limits set forth in section 8528 (relating to limitations of damages), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of negligent act where the damages would be recoverable under the common law by a person not available the defense of sovereign immunity.

2. Plaintiff asserts: Also his claims of redress lay in section 8542(a)(1)(2)(2)(b)(2);

3. Plaintiff asserts: That these two Statutes impose liability on the Commonwealth (D.O.C.) SCI Houtzdale and on the Commonwealth Parties mentioned in his Pleading Facts and Claims.

4. Plaintiff asserts: That these two Statutes impose's liability against the Commonwealth of SCI Houtzdale, and SCI Houtzdale employees and the defense of sovoerign immunity shall not be raised to the Claims for damages caused by:

- (i). Superintendent: George Patrick;
- (ii). Deputy Superintendnet: Henry Tatum;
- (iii). Dusiness Maager: David Perry;
- (iv). Accountant: Richard Moyer;
- (v). Unit-D-Unit Manager: Michelle Ivicic;

FACTS

1. Plaintiff asserts: He activated his Cable Service/Privileges April 2, 2003, and was according to SCI Houtzdale Policy Five (v-A.), Inmate Service/Privileges Handbook Supplement for year 2004, Revisions. The agreement is to be forward to the Business Office by the 20th of the month prior to the month Plaintiff wants service to be connected.

Plaintiff was provided with a copy of subscriber agreement and notice by ~~maintenance~~ that cable service would be activated by 25 day of April, 2003.

2. Plaintiff asserts: Sufficient funds must be in your inmate account in order to activate and retain your Cable Service. After the initial deduction, the money is **automatically** deducted from your account when the monthly statement are generated. Plaintiff Cable Service Fees were deducted each month as due.

3. Plaintiff asserts: The Cable fees per., month are Ten Dollars (\$10.00), subject to change after thirty days (30) notice.

4. Plaintiff asserts: Filed his cancellation Form Request in writing and it was recieved by the Business Office at SCI Houtzdale 12/11/2003, "stamped recieved by Inmate accounts Division." Also signed by employee C.O.I. Baily on the witness line. Plaintiff requested discontinuance of his Cable Service according Five (v-A.) ¶ Four(4): [Q]outing, "Discontinue Cable services must be requested in writing to the Business Office by the 20th of the month prior.

5. Plaintiff asserts: He **exercised** this option to **discontinue** Cable Service and it **was** Communicated to entent by submission of Cable Cancellation Form in writing to the Business Manager Mr. David Perry, and Accountant, Richard Moyer by 20th of prior month. [S]ee exhibit C.A. NO. _____(A).

Cable Service was not discontinued by the Business Manager or Accountant, Richard Moyer, and Cable Service was deducted for the month of 12/2003 and also for 01 for the month of 2004.

[S]ee Exhibit C.A. NO. _____(A).

XXXXX

FACTS

6. Plaintiff assert: He submitted a Request Slip DC 135 A-Form to Superintendent Tatum after several Communications to the Business Office of SCI Houzdale Business Manger Perry. To investigate why the Business Office personnel would not follow their own policies of Inmate/Service/Privileges V. A., ¶ Four (4) and honor Plaintiff's Cancellation Form in writing to the SCI Hou., Business Office NOV. 11, 2003. Plaintiff gave Super., Tatum this Cancellation Form also to do his inquiry. Which has the Date the Business Office received the Cancellation Discontinuation by their Stamp Received (Stamp). Which was Stamped by their Office Dec. 12, 2003... Super., Tatum reply to this Request Slip was SCI Hou., Business Office never received the Cancellation Application. When it plainly has their stamp right on the Form. See Exhibit C.A. NO. _____ (A) and Exhibit C.A. NO. _____ (B) DC-135-A Request Form.

7. Plaintiff assert: He filed another DC-135-A-Form, Request Unit_D Manager, Mrs. Ivicic, to investigate why Inmate Accounts Would not cancel service after request on Nov. 11 2003. Received by Inmate Account's Business Office Dec. 12, 2003. This request to Mrs. Ivicic Filed April 23, 04 was investigated by Mrs. Ivicic and reply was " As discussed today the first time you sent the cancellation notice there was not an **legible** signature they returned the form once again.... they do not have a record of you returning the form with the proper signature. If you wish to cancel your cable you need to send another cancellation form though cable will continue to be deducted for your account." And a copy was sent down to Super., Tatum. Signed 4/26/04 by Mrs. Ivicic. See Exhibit C.A.C.NO. _____ (A) Inmate Owens, AM6070 signature is plainly signed on the cancellation form and witness by the Business Office 12/12/03. See Mrs. Ivicic reply Exhibit C.A. NO. _____ (C) of 4/26/04/ Service at time of request are still being deducted for April 04, and May 04.

FACTS

8. Plaintiff assert: He resubmitted another Cancellation/Discontinuation Form requesting Cancellation of his cable service 4/27/04 received by SCI Business Office 26, C4 Inmate Accounts as of May 31, 2004 Cable service has still not **been** terminated from the Business Office for their inadvertent mistake and negligents of deduct of these service for cable.

9. Plaintiff assert: He filed a Grievance to Business Office Explanation why his cable was not discontinued to Inmate Account too Dorretta Chencharick 4/30/04, Grievance No. 827223, Exhibit NO. _____ (D). See this exhibit and Exhibit NO. _____ (C). This Grievance was to have the Inmate Account -business Office come in to compliance with Plaintiff's original request to cancel service and to honor the first cancellation order since their Explanation was it was returned with a notice that my signature was not on the cancellation form when it very well was and received by their office on Dec. 12, 03. See Exhibit C.A. NO. _____ (C) Grievance NO. _____ 827223 DC-804 Part 1 and Exhibit C.A. NO. _____ A() Cancellation Request Form.

10. Plaintiff asserts. He received back his initial reply for denying his request for reimbursement of his Account for Cable Service from Nov. 12, 03 Cancellation submission and a arbitrary capricious reason attached. See DC-ADM 804, Inmate Grievance Part 2 "~~Official~~/Inmate Initial Review Response" Attachment B... This Response state in the reply of the Grievance was never done and the stamp received on both Cancellation Request Forms and my signature and witnesses signature verified this is nothing more than negligents by Failure to file these forms timely as requested by SCI Employees and Business manager and Inmate Accounting to do their duty owed Plaintiff and reply is answered by SCI Hou., Accountant Richard F. Moyer assigned to Inmate Accounts 5/12/04. See Exhibits C.A. NO. _____ (F) Grievance NO. 827223, DC-804 Part 2.

CLAIMS

1. Plaintiff claims George Patrick, Superintendent highlights in duty to enforce "Inmate Service/Privileges, V.A. # Four- (4) was a direct breach of duty owed Plaintiff. George Patrick failed to enforce or investigate inmate Linus Owens, Plaintiff's Grievance, based on SCI Hou., Business Office failure to discontinue Cable Service timely requested 11/11/03 and received by the SCI Hou., Business Office 12/12/03.

George Patrick ~~ck~~ Through his highlights and breach of duty to the policies enacted under Cable Service/Privileges, let SCI Houtzdale Business Office Employees, David Perry, Business Manager and Richard Moyer, Accountant, fraudulently, with malice, intent, and knowledge, go out sided the guidelines of "Inmate Service/Privileges V. A. # Four (4) and continued to deduct funds from Prison Account after George PATRICK was put on notice of Grievance NO. 82720 was negligent in his investigation owed Plaintiff as a Official in Charge of his subordinates. George Patrick Did not investigate the Stamp received Date on the Cancellation Form or make any inquiries as why they not honor it as received by Inmate Account Official, which was stamped received 12/12/03 and again 04/26/04 is a breach and highlights of duty Plaintiff. Plaintiff claim George Patrick is liable for the suffering and lost of funds deduct from his inmate Account be cause SCI Hou., (D.O.C.) is in control of his inmate Account in possession of SCI Houtzdale and administered and deducted by SCI hou., Business Manager, David Perry and Accountant Richard Moyer, Commonwealth parties: Whom has negligently violated policies of Cable Service/Privileges Policy V. A. # Four (4) and is in control and custody of Plaintiff's Inmate Account at SCI Hou., Business Office and Account continues to be deducted for Cable Service Expenses deducting \$11,000 and April 26, 04 Plaintiff claim injury and suffering damages of \$20,000.00.

CLAIM-II

1. Plaintiff Claims Henry Tatum, Patrick's Deputy Super., negligent in his duty to enforce "Inmate Service/Privileges, V.A. Four-(4) Policy was a direct breach of duty owed Plaintiff.

Henry Tatum has failed to enforce or investigate inmate Linus Owens, Plaintiff's Request Slip, Complaint, DC-135-A Dated 4/15/004, Exhibit C.A. NO. _____ (b) Request Form, based on SCI Hou., Business Office 12/12/03.

(i) Henry Tatum through his negligence and breach of duty to enforce the enacted Policies under Cable Service/Privileges, let Hazdale Business Employee, David Perry, Business Manager and Richard Hoyer, accountant, fraudulently, with malice, intent, and knowledge go out side the Guide lines of "Inmate Service/Privileges" V.A. # Four (4) and Continue to deduct funds from Prison Account after Henry Tatum was put on notice by DC-135-A-Complaint-4/15/04/ was negligent in his investigation owed Plaintiff as a Official in charge of enforcement of Policies and Procedure and his Subordinates.....

(ii) Henry Tatum did not investigate the Cancellation Form stamped received or make inquiries as why these request of discontinuation were not honored as received by Inmate Account Officials, which was stamped received 12/12/03 and again on 4/23/04 is a breach and negligence of duty owed Plaintiff...

(iii) Plaintiff Claim. Henry Tatum is liable for injury and lost of funds suffered because of his negligence or duty to investigate his Complaint properly, funds deducted from Inmate Plaintiff's Account in the Possession of SCI Hou., Business Manager, David Perry and Accountant, Richard Hoyer, Commonwealth Parties. Whom has negligently, violated Policies of Cable Service/Privileges Policy V.A. # Four (4) and Inmate Account in Care and Control and Custody of SCI Hou., Employees Business Office.

(iv) Plaintiff Claim. He suffered injury and Damages at \$20,000.00.

CLAIMS-III

1. Plaintiff's Claim. Mitchell's failure, after being duly notified, to perform her duty to conform to FBI National Training Center policies of "Inmate Service/Privileges, V.A. 4000-1) is a direct breach of duty owed Plaintiffs.

*** Michell, David, has failed to communicate or investigate. Inmate David Brown, Plaintiff Request Slip, Completed, FD-135-A Dated 4/23/64, Exhibit C.1. NO. _____ (C), dated 4/23/64, at 12/10/63. No. 100-331 Vol. 1, Plaintiff Office 12/10/63.

(1). Michelle Ivicic, through her negligence in not following the guidelines of the Prisoner's Privileges and the Prisoner's Rights Act, 1984, in her communication between the officials of SCI Hou., Business Employees, David Perry, Manager and Richard Moyer Accountant. When one of inmate's in in her unit has a problem which can not be resolved report such ~~XX~~ to the proper prison authorities. Let Hou., Business Employees David Perry, Business Manager, and Richard Moyer, accountant; fraudulently, with malice, intent, and knowledge go out ide guide lines of "Inmate Service/Privileges" V.A. 4 four (4) and continue to deduct funds from Prison Account after Michelle Ivicic was put on notice by DC-135-A-Complaint-4/23/04 was negligent in her communication and investigation owed Plaintiff as a Official assigned to communicate Plaintiff's wishes to authorities as to communicate when a Official in their official capacity has went out side policies and procedure as Officials in their Official capacities... toward her client.

(ii). Michelle Ivicic, did not investigate the Cancellation Form Stamped to make inquiries as to why these request or discontinuations were not honored as received 12/12/03 and again 4/26/04 is a breach and negligent of duty owed Plaintiff.....

(iii). Plaintiff Claim: Michelle Ivicic, is liable for injury loss of funds suffered because of her negligence or duty to investigate Plaintiff's Account in the possession of SCI hou., Business Manager, David Perry, and Accountant,-----Richard Moyer, Commonwealth Parties: Whom has negligently violated POLic-ies of Cable Service/Privileges **Policy V.A. # Four (4)** and Inmate Account in the care and control and custody of SCI hou., Employees Business Office. (iv). Plaintiff Claim: He suffered Injury and at \$20,000.00...
5

CLAIM-IV

1. Plaintiff Claim: That SCI Houtzdale (D.O.C.) Business Employee, Business Manager, David Perry, fraudulently with malice, intent and full-knowledge continued to deduct funds from Prison Inmate Account after Cancellation Discontinuation Form Notice was presented 11/11/03, stamped received by SCI Inmate Account 12/12/03 and another on 04/26/04.

(i) David Perry, maliciously, with intent and full-knowledge continue Cable Service because of several Complaints and Grievance filed after finding that the Business Office had mistakenly not put on file Plaintiff's Cancellation Discontinuation Notice filed 11/11/03 and again on 4/26/04, the first received on 12/1-2/04, and the second one received on Apr./27/04 by Inmate Account's marked received by the Office stamp.

(ii) David Perry, will-fully continued this service out of malice intent because his attention was called to his mistake by Plaintiff through Communication of Grievance and DC-135's-A-Request Slip Form, retaliated on Plaintiff for filing such then with fraudulent intent continued deducting funds from Plaintiff Account. In violation of Cable Service/Privileges V.A. ¶ Four (4), and Cancellation Form Exhibits verifies this malice intent.

(iii) David Perry negligent in his duty owed was wilfully known to be owed to Plaintiff out of malice intent and with knowledge of did not record Cancellation Forms submitted to the Business Office Inmate Account for the second time on 04/26-/04 and received 04/27/04 marked stamped with Inmate Accounting stamp.

(iv) David Perry has failed to do a duty owed Plaintiff by contract, Policy Inmate Cable Service/Privileges V.A. ¶ Four (4) and deducted funds from Inmate's Linus Owens, Account in the Control and Possession of SCI Houtzdale and Custody of SCI Business Office, David Perry, Commonwealth Party: has negligently in violation of Policy and Plaintiff wastes.

(v) Plaintiff Claim: He is injured in his person and Account request \$20,000.00 in liability for damages suffered by malice and willful negligent and intent to deduct funds because of grievance and Complaint filed.

CLAIM-V

1. Plaintiff Claim: That ~~SCI~~ Houtzdale (D.O.C.) Business Employee, Inmate, Account, accountant, Richard Moyer, fraudulently with malice, intent and full-knowledge continued to deduct funds from Prison Inmate Account after Cancellation Discontinuation Form Notice was presented 11/11/03, stamped received by SCI Inmate Account 12/12/03 and Other on 04/26/04.

(i) ~~Richard Moyer~~, maliciously, with intent and full-knowledge continue Cable Service because of **several** Complaints and Grievance filed after finding that the Business Office had mistakenly not put on file Plaintiff's Cancellation Discontinuation Notice filed 11/11/03 and again on 4/26/04, the first **received** on 12/12-04, and the second one received on Apr./27/04 by Inmate Account's marked received by the Office stamp.

(ii) ~~Richard Moyer~~, will-fully continued this service out of malice intent because his attention was called to his mistake Plaintiff through Communication of Grievance and DC-135s-A-Request Slip Form, retaliated on Plaintiff in a conspired effort for filing such then with fraudulent intent continued deducting funds from plaintiff Account. In violation of Cable Service/Privileges V.A. ¶ Four (4), and Cancellation Form ~~Exhibits~~ verifies this malice intent. See ~~Exhibit~~ C.A. NO. _____ (F) DC-ADM, 804 Inmate Grievance Part 2 "Official Inmate Grievance ~~Initial~~ Review Response."

(iii). Richard Moyer negligents in his duty ~~owed~~ was ~~willfully~~ known to be owed to Plaintiff out of malice intent and with knowledge of did not record Cancellation Forms submitted to the Business Office Inmate Account for the second time on 04/26/-04 and received 04/27/04 marked stamped with Inmate Accounting Stamp.

(iv) Richard Moyer has failed to do a duty owed Plaintiff by Contract, Policy Inmate Cable Service/Privileges V.A. ¶ Four (4) and deducted funds from Inmate's Linus Owens, Account in the Control and Possession of SCI Houtzdale and Custody of SCI Hou., Business Office, Richard Moyer, Commonwealth party: has negligently in violation of Policy and Wishes.

(v). Plaintiff Claim: He is injured in his person and Account request \$20,000.00 in liability for damages suffered by malice and willful negligents and intent to deduct funds because grievance and complaints filed.

WHEREFORE, Plaintiff request a jury trial to review the damage lost and the mental angst suffered by malice intent of wilful negligents of a duty owed by each individual Defendant at the sum of \$20,000. eac which Plaintiff pray for as relief.

Date: 6/12, 2004

Respectfully submitted

Linus Owens
Linus Owens, Pro se, AM6079
134 Joseph Ave., Johnstown, PA
Zip Code 15905

((((((((((((((((

EXHIBIT ATTACHED

EXHIBIT C.A. NO. _____ (A) 1Pg.
Cancellation Of Cable Service From Received 12/12/03

EXHIBIT C.A. NO. _____ (B) 1Pg.
Form DC-135A-Request Slip. Complaint, to Super., Tatum 4/15/04

EXHIBIT C.A. NO. _____ (C) 1Pg.
Form DC-135A-Request Slip, Complaint, to Unit Manager, Ivicic 4/15/04

EXHIBIT C.A. NO. _____ (G) 1Pg.
Cancellation Of Cable Service Form Received 04/27/04

EXHIBIT C.A. NO. _____ (D) 1Pg.
DC-ADM-804, Officcial Inmate Gievance, Grievance No. 82723

EXHIBIT C.A. NO. _____ (F) 1Pg.
DC-ADM-804-Initial Review Response, Grievance NO. 82723
Attachment B

Respectfully submitted

Date: 6/12, 2004

Linus Owens

CANCELLATION OF CABLE SERVICE

SUBJECT: Cancellation of Cable Service

TO: Inmate Accounting Office

FROM:

OWENS, L. # AM-6079
INMATES NAME AND DC NUMBER12-11-03
DATE

I understand that if I wish to cancel my cable service permanently or temporarily (e.g. ATA (several months), RHU) I must use this form **and, that be submitting this form, I** cancel my subscriber agreement with the Cable Service Provider. **I understand** this form must be received in the facility Inmate Accounting Office by the 20th calendar day of the month to cancel the service for the following month. I understand the monthly service fee will continue to be deducted from my account until I submit this form to the facility Inmate Accounting Office.

I understand once my service is cancelled it will remain cancelled until such time as I reapply. If so, I must submit a new "Inmate Subscriber Agreement" form to the facility Inmate Accounting Office by the 20th calendar day of the month to begin by the first or next regular work day of the following month.

I understand that by canceling cable television service that I will be required to wait sixty (60) days before establishing new service.

I understand that full or partial refunds for cable television service will not be issued for any reason, including cancellation or absence from the facility for Authorized Temporary Absence, furlough, hospital stays, etc.

I would like my cable television service cancelled according to policy.

SIGNATURES

INMATE

L. Owens

DATE

12-11-03

EMPLOYEE WITNESS

Bailey COT

DATE

12-11-03

Form DC-135A INMATE'S REQUEST TO STAFF MEMBER	Commonwealth of Pennsylvania Department of Corrections
	INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.
1. To: (Name and Title of Officer) <i>Unit Manager Ms. Ivicic</i>	2. Date: <i>4-23-04</i>
3. By: (Print Inmate Name and Number) <i>Owens, AM-6079</i> <i>Linus Owens</i> Inmate Signature	4. Counselor's Name <i>Ms. Driskel</i> 5. Unit Manager's Name _____
6. Work Assignment <i>PM-Maintenance</i>	7. Housing Assignment <i>D/A #58</i>
8. Subject: State your request completely but briefly. Give details. <i>Ms. Ivicic; We spoke briefly about a problem I'm having with inmate accounts regarding funds that are being deducted from my account for cable services. If you need to see the cancellation form, I would gladly show it to you upon request.</i> <i>THANK you for your time and patience, Respectfully</i> <i>Linus</i>	
9. Response: (This Section for Staff Response Only) <i>Mr. Owens,</i> <i>As we discuss today the first time you got the cancellation notice that went on your account. They returned the form with a notice for you to cancel. And its return, once again. I haven't see my record if you returning the form with the proper signature. I would like to cancel your cable. you need to send another cancellation form through cable unit. Continue to be deducted from your account.</i> <i>C. D. D. D. D.</i>	
To DC-14 CAR only <input type="checkbox"/>	To DC-14 CAR and DC-15 IRS <input type="checkbox"/>

Staff Member Name

M. Ivicic
 Print

Date

April 26, 2004
 Sign

Form DC-135A

INMATE'S REQUEST TO STAFF MEMBER

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

~~Deputy Superintendent Tatum~~

2. Date:

4-15-04

3. By: (Print Inmate Name and Number)

OWENS, L. AM-6079

4. Counselor's Name

Ms. Driskel

5. Unit Manager's Name

Ms. Ivicic

6. Work Assignment

PM-Maintenance

7. Housing Assignment

D/A #58

8. Subject: State your request completely but briefly. Give details.

Dear Sir: In late November I submitted a request for the termination of cable services. A cancellation form was forwarded to me. C/O Mr. Bailey and I both placed our signatures on the form. I noticed that the deduction of funds for cable services are still being deducted from my account. On several occasions I have written to inmate accounts about this matter but got no responses. After sometime I became frustrated and decided to forward a grievance to S.C.I. CAMP HILL. Had I been a little more patient I would have written to you sooner. If you aren't too busy, please look into this matter at a convenience to you.

Respectfully,

Submitted, L. Owens

9. Response: (This Section for Staff Response Only)

Mr. Owens
I have received your request
I will be looking into it
for Mr. Bailey file

To DC-14 CAR only ☐To DC-14 CAR and DC-15 IRS ☐

Staff Member Name

Print

Sign

Date

CANCELLATION OF CABLE SERVICE

SUBJECT: Cancellation of Cable Service

DA58

TO: Inmate Accounting Office

FROM:

OWENS, L. AM-6079
INMATES NAME AND DC NUMBER4-26-04
DATE

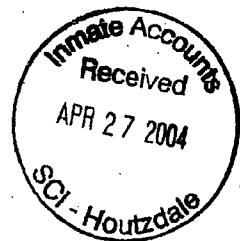
I understand that if I wish to cancel my cable service permanently or temporarily (e.g. ATA (several months), RHU) I must use this form **and, that be submitting this form, I** cancel my subscriber agreement with the Cable Service Provider. **I understand** this form must be received in the facility Inmate Accounting Office by the 20th calendar day of the month to cancel the service for the following month. I understand the monthly service fee will continue to be deducted from my account until I submit this form to the facility Inmate Accounting Office.

I understand once my service is cancelled it will remain cancelled until such time as I reapply. If so, I must submit a new "Inmate Subscriber Agreement" form to the facility Inmate Accounting Office by the 20th calendar day of the month to begin by the first or next regular work day of the following month.

I understand that by canceling cable television service that I will be required to wait sixty (60) days before establishing new service.

I understand that full or partial refunds for cable television service will not be issued for any reason, including cancellation or absence from the facility for Authorized Temporary Absence, furlough, hospital stays, etc.

I would like my cable television service cancelled according to policy.

**SIGNATURES**

INMATE

DATE

4-26-04

EMPLOYEE WITNESS

DATE

4-26-04

DC-804
Part 1

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA 17001-0598

FOR OFFICIAL USE ONLY

GRIEVANCE NUMBER
50722

OFFICIAL INMATE GRIEVANCE

TO: FACILITY GRIEVANCE COORDINATOR <i>Mr. C. J. Hill</i>	FACILITY: <i>SCC Hill</i>	DATE: <i>5-2-04</i>
FROM: (INMATE NAME & NUMBER) <i>Quens AM 6079</i>	SIGNATURE of INMATE: <i>[Signature]</i>	
WORK ASSIGNMENT: <i>[Blank]</i>	HOUSING ASSIGNMENT: <i>D/A 58</i>	
INSTRUCTIONS: 1. Refer to the DC-ADM 804 for procedures on the inmate grievance system. 2. State your grievance in Block A in a brief and understandable manner. 3. List in Block B any actions you may have taken to resolve this matter. Be sure to include the identity of staff members you have contacted.		
A. Provide a brief, clear statement of your grievance. Additional paper may be used, maximum two pages. <i>[Faint handwritten text]</i>		
B. List actions taken and staff you have contacted, before submitting this grievance. <i>[Faint handwritten text]</i>		

Your grievance has been received and will be processed in accordance with DC-ADM 804.

[Signature]
Signature of Facility Grievance Coordinator

5-2-04
Date

WHITE - Facility Grievance Coordinator Copy CANARY - File Copy PINK - Action Return Copy GOLDENROD - Inmate Copy

Revised
December 2000

ADM 804, Inmate Grievance System

Attachment B

C-804
Part 2COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P.O. BOX 598
CAMP HILL, PA 17001OFFICIAL INMATE GRIEVANCE
INITIAL REVIEW RESPONSE

GRIEVANCE NO.

82723

TO: (Inmate Name & DC No.)	FACILITY	HOUSING LOCATION	GRIEVANCE DATE
Owens, Linus AM6079	SCI-Houtzdale	DA 58	04/30/04

The following is a summary of my findings regarding your grievance:

On December 12, 2003, an incomplete "Cancellation of Cable Service" notice was received in Inmate Accounts.

Inmate Accounts returned this form to you to be completed. An additional three days were allowed to permit you to cancel your cable for January 2004. Directions were attached to the form explaining what needed to be done. You failed to complete the form and return it to Inmate Accounts by the due date.

Cable charges were taken and continue to be taken until you complete the form and return it to Inmate Accounts.

Grievance denied.

Distribution:

Inmate Owens AM6079
Superintendent
Deputy (2)
Major (1)
Superintendent's Assistant
Inmate Records
Grievance Officer
File

Print Name and Title of Grievance Officer

RICHARD F MOYER
ACCOUNTANT I

SIGNATURE OF GRIEVANCE OFFICER

Richard F Moyer

DATE

5-12-04

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

LINUS OWENS,
PLAINTIFF

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, SCI HOUTZDALE,
GEORGE PATRICK, SUPERINTENDENT
et al. DEFENDANTS

CIVIL ACTION AT LAW
COMPLAINT

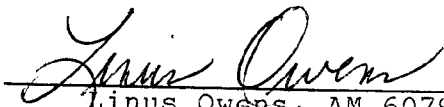
C.A. NO. _____

Pa.R.C.P. RULE 1024(a)(c):

VERIFICATION

___ I, Owens, verify that the statement made in this foregoing Civil Action At Law, Complaint and Application to Proceed in Forma Pauperis are true and Correct to best of my Knowledge, information and belief. I understand that any false statement made herein are subject to penalties of perjury, 18 Pa.C.S.A. § 4904, relating to sworn falsification to authorities, this day 12 of June, 2004.

Date: 6/12, 2004


Linus Owens, AM 6079
SCI Hou., P.O. Box 1000
Houtzdale, PA 16698-1000
Pro se litig-ant

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

())	
LINUS OWENS,)	
PLAINTIFF)	CIVIL ACTION AT LAW
)	COMPLAINT
)	
v.)	C.A. NO. _____
)	
PENNSYLVANIA DEPARTMENT OF)	Pa.R.C.P.: 440(a)(1)(2)(i)
CORRECTIONS, SCI HOUTZDALE,)	Pa.R.C.P. 422(a)(b)(1)(2)(3)
GEORGE PATRICK, SUPERINTENDENT)	
et al. DEFENDANTS)	

CERTIFICATE OF SERVICE

I Linus Owens, hereby certify that I have this day _____.
of, _____, 2004, served the foregoing document[s] Civil
Action At Law, Complaint and Application to proceed in Forma
Pauperis. Pursuant to, Verification and Certification of Service,
upon the Person[s], in the manner listed, below. Which service
satisfies the requirement of Pa.R.C.P. 422(a)(b)(1)(2)(3)
and Pa.R.C.P. 440(a)(1)(2)(i).

Mail	Service by United States
Prothonotary: William Shaw Courthouse, 230E. Maket St. Clearfield, PA 16830	Attorney General: Mike Fisher or Acting Attorney General Jerry Paperty, Office of Attorney General, 16th Floor Strawberry Sq., Harrisburg, PA 17120
Judge: Madric J. Ammerman(P.J.) Courthouse, 230E. Market St. Clearfield, PA 16830	Michelle Ivicic, Unit Manager at SCI Hou., Unit Manager, D- Unit, Hou., PA. 16698-1000
Superintendent: George Patrick At SCI Houtzdale, Office of Superintendent, Houtzdal, PA 16698-1000	Richard Moyer, Accountant, at SCI Hou., Bus., Offc., Hou., PA 16698-100
Deputy Superintendent, Henry Tatum At SCI Houtzdale, Office of Deputy Superintendent, Houtzdale, PA 16698-1000	
Institutional Business Manager: David B. Perry at SCI Hou., Houtzdlae, PA 16698-1000	

Date: _____, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LINUS OWENS,

CIVIL TRIAL DIVISION

Plaintiff,

C.A. No. 04-941CD

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SCI HOUTZDALE,
GEORGE PATRICK,
SUPERINTENDENT; MIKE FISHER OR
ACTING ATTORNEY GENERAL;
DEPUTY HENRY TATUM,
SUPERINTENDENT; INSTITUTIONAL
BUSINESS MANAGER, DAVID B.
PERRY,

Defendants.

PRAECIPE FOR APPEARANCE

Filed on Behalf of Defendants,

Pennsylvania Department of
Corrections SCI Houtzdale,
George Patrick,
Superintendent; Mike Fisher or
Acting Attorney General;
Deputy Henry Tatum,
Superintendent; Institutional
Business Manager, David B.
Perry

Counsel of Record:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853

Office of Attorney General
Torts Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

(814)836-4362

JURY TRIAL DEMANDED

JUL 21 2004

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my Appearance on behalf of the defendants,
Pennsylvania Department of Corrections SCI Houtzdale, George
Patrick, Superintendent; Mike Fisher or Acting Attorney General;
Deputy Henry Tatum, Superintendent; Institutional Business
Manager, David B. Perry, in connection with the above-captioned
case. A trial by a jury of twelve is requested.

GERALD J. PAPPERT
Attorney General

BY:

A handwritten signature in dark ink, appearing to read "William A. Dopierala", written over a horizontal line.

William A. Dopierala
Sr. Deputy Attorney General

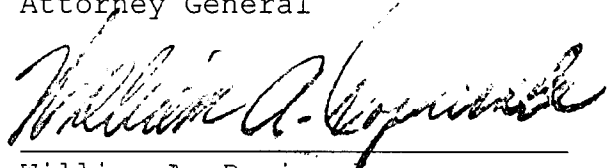
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe for Appearance was served upon the following pro se plaintiff of record, via first-class mail, postage prepaid on July 19, 2004:

Linus Owens, AM6079
SCI Houtzdale
P. O. Box 1000
Houtzdale, PA 16698-1000

GERALD J. PAPPERT
Attorney General

BY:



William A. Dopierala
Sr. Deputy Attorney General

Date: 8/11/2004

Clearfield County Court of Common Pleas

User: BILLSHAW

Time: 04:51 PM

ROA Report

Page 1 of 1

Case: 2004-00941-CD

Current Judge: No Judge

Linus Owens vs. Pennsylvania Department of Corrections, SCI Houtzdale, George Patrick

Civil Other

Date		Judge
6/18/2004	Petition In Forma Pauperis filed by Plff. No CC.	No Judge
	OrderNOW, this 16th day of June, 2004, the Court being in receipt of the various documents submitted by the Plff, the Court believing that the Plff's concerns should be directed through the Dept. of Corrections and the Commonwealth Court as opposed to the Clfd. Co. Court of Common Please, it is therefore the ORDER of this Court that the request for in forma pauperis standing be and is hereby denied. s/FJA 5 CC to Plff. AM 6079, SCI Houtzdale, PO Box 1000, Houtzdale, PA 16651	No Judge
7/21/2004	Praecipe For Entry of Appearance, filed by Atty. Dopierala no cert. Enter appearance on behalf of the Defendants. s/William A. Dopierala	No Judge
8/2/2004	Praecipe for Argument List, filed by s/William A. Dopierala No CC	No Judge
	Defendants' Preliminary Objections in the Nature of a Demurrer, filed by s/William A. Dopierala No CC	No Judge

04-941-CD

Mr. LINUS OWENS (2657)
7180 Highland Drive Bldg #5
Pittsburgh, PA ~~15206~~ 15206

William Shaw, Prothonotary
230 E. MARKET ST.
Clearfield PA 16830

JUN 25, 2004

Dear Sir;

My NAME is LINUS OWENS, and I have presently been released from S.C.I. Houtzdale. A civil action was filed on my behalf on 6-14-04. I would like for all process to be sent to me at this address. I AM A RESIDENT AT THE V.A. MEDICAL CENTER IN PITTSBURGH. Should there be any questions please do not hesitate to contact me.

Respectfully
Submitted,
Linus Owens

RECEIVED
PROTHONOTARY'S OFFICE
7/16/04
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

Linus Owens vs. Pennsylvania Department of Corrections, SCI Houtzdale, George Patrick

Civil Other

Date		Judge
06/18/2004	Petition In Forma Pauperis filed by Plff. No CC.	No Judge
	OrderNOW, this 16th day of June, 2004, the Court being in receipt of the various documents submitted by the Plff, the Court believing that the Plff's concerns should be directed through the Dept. of Corrections and the Commonwealth Court as opposed to the Clefd. Co. Court of Common Please, it is therefore the ORDER of this Court that the request for in forma pauperis standing be and is hereby denied. s/FJA 5 CC to Plff. AM 6079, SCI Houtzdale, PO Box 1000, Houtzdale, PA 16651	No Judge
07/21/2004	Praecipe For Entry of Appearance, filed by Atty. Dopierala no cert. Enter appearance on behalf of the Defendants. s/William A. Dopierala	No Judge
08/02/2004	Praecipe for Argument List, filed by s/William A. Dopierala No CC	No Judge
	Defendants' Preliminary Objections in the Nature of a Demurrer, filed by s/William A. Dopierala No CC	No Judge

Deleted by [unclear]

No Complaint Filed

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LINUS OWENS,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SCI HOUTZDALE,
GEORGE PATRICK,
SUPERINTENDENT; MIKE FISHER
OR ACTING ATTORNEY GENERAL;
DEPUTY HENRY TATUM,
SUPERINTENDENT;
INSTITUTIONAL BUSINESS
MANAGER, DAVID B. PERRY,

Defendants.

CIVIL TRIAL DIVISION

C.A. No. 04-941CD

DEFENDANTS' PRELIMINARY
OBJECTIONS IN THE NATURE OF
A DEMURRER

Filed on Behalf of Defendants,

Pennsylvania Department of
Corrections SCI Houtzdale, George
Patrick, Superintendent; Mike Fisher
or Acting Attorney General; Deputy
Henry Tatum, Superintendent;
Institutional Business Manager,
David B. Perry

Counsel of Record:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853

Office of Attorney General
Torts Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

(814)836-4362

JURY TRIAL DEMANDED

FILED ^{no cc}
m/j:5481
AUG 02 2004
William A. Shaw
Prothonotary/Clerk of Courts

DEFENDANTS' PRELIMINARY OBJECTIONS IN THE NATURE OF A
DEMURRER

AND NOW, come the Defendants, Pennsylvania Department of Corrections SCI Houtzdale, George Patrick, Superintendent; Mike Fisher or Acting Attorney General; Deputy Henry Tatum, Superintendent; Institutional Business Manager, David B. Perry, by the Attorney General of the Commonwealth of Pennsylvania, and file the within Preliminary Objections in the Nature of a Demurrer, averring in support thereof, as follows:

1. Plaintiff, Linus Owens, a *pro se* prisoner, incarcerated in State Correction Institute of Houtzdale located in Clearfield County, Pennsylvania, filed a claim for monetary damages in the amount of \$20,000.
2. On December 12, 2003, plaintiff alleges he made a request in writing to the proper prison authorities to discontinue the plaintiff's cable services at \$10.00 per month.
3. Plaintiff alleges that as of December 12, 2003, said cable services were not terminated and \$10.00 per month from that time to the present continue to be deducted from plaintiff's account.
4. Plaintiff requests in damages the amount of \$20,000.

DEMURRER

5. The plaintiff claims his claim for monetary damages falls within 8522(b)(3) Care, Custody and Control of Personal Property of the Sovereign Immunity Act.

6. In order for a waiver of Sovereign Immunity for damages arising from care, custody and control of personal property to apply, the personal property of the Commonwealth must in some manner be responsible for the injury. Bufford v. Pennsylvania Department of Transportation, 670 A.2d 751 (Pa. Cmwlth. 1996); Nicholson v. M&S Detective Agency, Inc., 503 A.2d 1106 (Pa. Cmwlth. 1986).

7. Because plaintiff's alleged injury of monetary damages was caused by failure to discontinue plaintiff's cable services and not caused by any personal property owned or in the care, custody and control of the Commonwealth plaintiff's cause of action does not fall within the exceptions to Sovereign Immunity and based on Bufford, a demurrer is warranted.

8. Plaintiff has filed suit against D. Michael Fisher as Attorney General and Gerald Pappert as Acting Attorney General who are public officials, whom the Supreme Court has held are protected by qualified immunity. DuBree v. Commonwealth, 393 A.2d 293 (Pa. 1978) and, as such, suit against them is barred by official immunity.

9. The Pennsylvania Supreme Court has held that:

"Sovereign Immunity is not waived for individuals who form policy on behalf of the Commonwealth institutions and who are not directly involved in the injury to plaintiff. Moser v. Heinstand, 681 A.2d 1322 (Pa. 1966).

10. Accordingly, the Superintendent, George Patrick, Deputy Superintendent, Henry Tatum, Business Manager, David Perry are all employed in positions which formulate policy on behalf of SCI-Houtzdale and, as such,

based on Moser, must be dismissed from the case, because they had no direct involvement in plaintiff's alleged injury.

11. In Counts IV and V, plaintiff makes allegations of willful and malicious intent to harm plaintiff which involves an intentional tort.

12. The Commonwealth Court ruled that a claim involving intentional torts does not fall within any of the exceptions to Sovereign Immunity. 42 Pa. C.S.A. § 8522 et seq. Faust v. Department of Revenue, 592 A.2d 935 (Pa. Cmwlth. 1991).

13. Plaintiff's allegations against all defendants named in the Complaint involve negligent investigation. Negligent investigation does not fall within the exceptions to Sovereign Immunity. Shakoor v. Commonwealth Department of Transportation, 440 A.2d 647 (Pa. Cmwlth. 1981).

14. Accordingly, based on Shakoor, plaintiff has failed to state a cause of action for which relief can be granted and plaintiff's Complaint should be dismissed with prejudice.

15. Plaintiff's actual damage loss of \$10.00 per month from December 12, 2003 to July of 2004 would equal approximately \$190.00 (19 months x \$10.00). Even if interest were added, plaintiff's claim of \$20,000 in damages is without legal foundation.

16. If plaintiff is claiming punitive damages, said damages are not permitted under Sovereign Immunity. 1 Pa. C.S.A. § 2310; 42 Pa. C.S.A. § 8521 and Clark v. Southeastern Pennsylvania Transportation Authority, 691 A.2d 988 (Pa. Cmwlth. 1997).

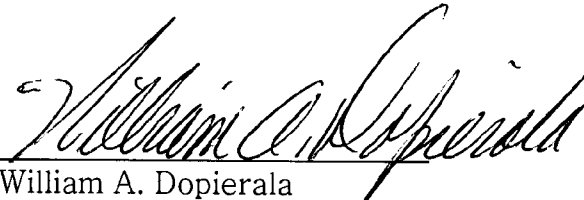
17. If plaintiff is claiming pain and suffering, said damages require a physical injury which did not occur here, and, therefore cannot be recovered against the Commonwealth. Sinn v. Burd, 404 A.2d 672 (Pa. 1979). Accordingly, plaintiff's damage claim for \$20,000 has no legal foundation, plaintiff's claim for \$190 plus interest does not fall within the jurisdictional damages amount of the Court of Common Pleas and should be dismissed for lack of jurisdiction. 42 Pa. C.S.A. § 7361.

WHEREFORE, the Commonwealth Defendants respectfully request this Honorable Court grant its Preliminary Objections in the Nature of a Demurrer and dismiss plaintiff's Complaint for failure to state a cause of action for which relief can be granted.

Respectfully submitted,

GERALD J. PAPPERT
Attorney General

BY:


William A. Dopierala
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LINUS OWENS,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SCI HOUTZDALE,
GEORGE PATRICK,
SUPERINTENDENT; MIKE FISHER
OR ACTING ATTORNEY GENERAL;
DEPUTY HENRY TATUM,
SUPERINTENDENT;
INSTITUTIONAL BUSINESS
MANAGER, DAVID B. PERRY,

Defendants.

C.A. No. 04-941CD

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2004, it is HEREBY
ORDERED ADJUDGED AND DECREED that Defendants' Preliminary Objections
in the Nature of a Demurrer are granted.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

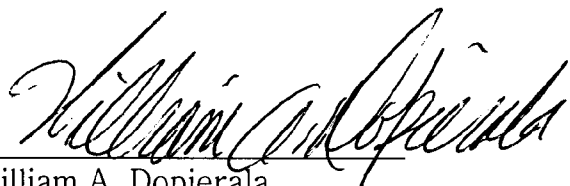
I hereby certify that a true and correct copy of the foregoing Preliminary Objections in the Nature of a Demurrer was served upon the following *pro se* plaintiff of record, via first-class mail, postage pre-paid on

July 30,, 2004:

Linus Owens, AM6079
SCI Houtzdale
P. O. Box 1000
Houtzdale, PA 16698-1000

GERALD J. PAPPERT
Attorney General

BY:


William A. Dopierala
Sr. Deputy Attorney General

FILED

AUG 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LINUS OWENS,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SCI HOUTZDALE,
GEORGE PATRICK,
SUPERINTENDENT; MIKE FISHER
OR ACTING ATTORNEY GENERAL;
DEPUTY HENRY TATUM,
SUPERINTENDENT;
INSTITUTIONAL BUSINESS
MANAGER, DAVID B. PERRY,

Defendants.

CIVIL TRIAL DIVISION

C.A. No. 04-941CD

PRAECIPE FOR ARGUMENT LIST

Filed on Behalf of Defendants,

Pennsylvania Department of
Corrections SCI Houtzdale, George
Patrick, Superintendent; Mike Fisher
or Acting Attorney General; Deputy
Henry Tatum, Superintendent;
Institutional Business Manager,
David B. Perry

Counsel of Record:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853

Office of Attorney General
Torts Litigation Section
4801 Atlantic Avenue
Erie, PA 16506

(814)836-4362

JURY TRIAL DEMANDED

FILED *no cc*
m/j: 5481
AUG 02 2004

WAS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LINUS OWENS,

CIVIL TRIAL DIVISION

Plaintiff,

C.A. No. 04-941CD

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SCI HOUTZDALE,
GEORGE PATRICK,
SUPERINTENDENT; MIKE FISHER
OR ACTING ATTORNEY GENERAL;
DEPUTY HENRY TATUM,
SUPERINTENDENT;
INSTITUTIONAL BUSINESS
MANAGER, DAVID B. PERRY,

Defendants.

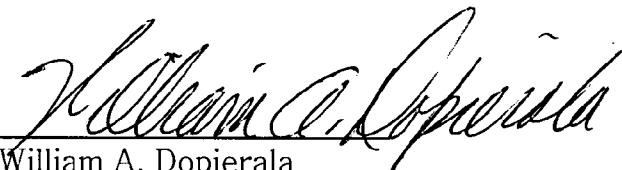
PRAECIPE FOR ARGUMENT LIST

TO: WILLIAM SHAW

Please place the Preliminary Objections on behalf of the Defendant's Pennsylvania Department of Corrections SCI Houtzdale, George Patrick, Superintendent; Mike Fisher or Acting Attorney General; Deputy Henry Tatum, Superintendent; Institutional Business Manager, David B. Perry, on the next available argument list.

GERALD J. PAPPERT
Attorney General

By:


William A. Dopierala
Sr. Deputy Attorney General

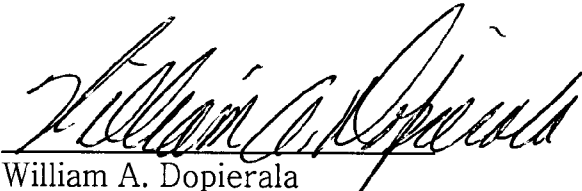
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe for Argument List was served upon the following parties and counsel of record, via first-class mail, postage pre-paid on July 30, 2004:

Linus Owens, AM6079
SCI Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000

GERALD J. PAPPERT
Attorney General

By:


William A. Dopierala
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LINUS OWENS,

Plaintiff,

vs.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS SCI HOUTZDALE,
GEORGE PATRICK,
SUPERINTENDENT; MIKE FISHER
OR ACTING ATTORNEY GENERAL;
DEPUTY HENRY TATUM,
SUPERINTENDENT;
INSTITUTIONAL BUSINESS
MANAGER, DAVID B. PERRY,

Defendants.

RECEIVED

AUG 02 2004

COURT ADMINISTRATOR'S
OFFICE

CIVIL TRIAL DIVISION

C.A. No. 04-941CD

DEFENDANTS' BRIEF IN SUPPORT
OF PRELIMINARY OBJECTIONS IN
THE NATURE OF A DEMURRER

Filed on Behalf of Defendants,

Pennsylvania Department of
Corrections SCI Houtzdale, George
Patrick, Superintendent; Mike Fisher
or Acting Attorney General; Deputy
Henry Tatum, Superintendent;
Institutional Business Manager,
David B. Perry

Counsel of Record:

William A. Dopierala
Sr. Deputy Attorney General
Pa. I.D. #21853

Office of Attorney General
Torts Litigation Section
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JURY TRIAL DEMANDED

DEFENDANTS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS IN THE
NATURE OF A DEMURRER

AND NOW, come the Defendants, Pennsylvania Department of Corrections SCI Houtzdale, George Patrick, Superintendent; Mike Fisher or Acting Attorney General; Deputy Henry Tatum, Superintendent; Institutional Business Manager, David B. Perry, by the Attorney General of the Commonwealth of Pennsylvania, and file the within Brief in Support of Preliminary Objections in the Nature of a Demurrer, averring in support thereof, as follows:

Plaintiff, Linus Owens, *pro se* prisoner, incarcerated in State Correction Institute of Houtzdale located in Clearfield County, Pennsylvania, filed a claim for monetary damages in the amount of \$20,000.

On December 12, 2003, plaintiff alleges he made a request in writing to the proper prisoner authorities to discontinue the plaintiff's cable services at \$10.00 per month.

Plaintiff alleges that as of December 12, 2003 said cable services were not terminated and \$10.00 per month from that time to the present continue to be deducted from plaintiff's account.

Plaintiff requests in damages the amount of \$20,000.

ARGUMENT

Plaintiff has alleged in his Complaint that his cause of action falls under the care, custody and control of personal property, i.e., 42 Pa. C.S.A. § 8522(b)(3).

Plaintiff's Allegations do not fall within 42 Pa. C.S.A. § 8522(b)

A. Official Immunity.

Plaintiff has brought allegations against Michael Fisher as Attorney General and Gerald Pappert as Acting Attorney General.

The Pennsylvania Supreme Court in DuBree v. Commonwealth, 393 A.2d 293 (Pa. 1978) held that Commonwealth officials are protected by qualified immunity.

The trial court in DuBree held that since the official had not engaged in actionable conduct and that if there was negligence it could only be attributable to him because it was committed by someone in his chain of command, the official was protected by Official Immunity. Similarly, in the present case, Mike Fisher and/or the Acting Attorney General would be held liable solely based on someone else's position in the chain of command and, therefore, as in DuBree, a suit against them is barred by Official Immunity and their names should be stricken from the caption of the Complaint.

B. Immunity of Administrators

Plaintiff has made allegations against Superintendent George Patrick, Deputy Superintendent Henry Tatum and Business Manager David Perry.

The Pennsylvania Supreme Court has held that the Statute waiving Sovereign Immunity against institutions for negligence on the part of an employee and its agents, does not extend to individuals acting as administrators of an institution who are acting solely in an administrative capacity and who were not directly involved in the plaintiff's injury. Moser v. Heinstand, 681 A.2d

1322 (Pa. 1966). In Moser, plaintiff brought suit for improper surgery. Plaintiff filed a Complaint for negligent treatment against Dr. Heinstand, Ashland State Hospital and the Department of Public Welfare. Plaintiff sought recovery against the Commonwealth defendants based on ostensible agency liability, vicarious liability and corporate liability. Ashland State Hospital and the Department of Public Welfare filed Preliminary Objections in the Nature of a Demurrer, alleging that plaintiff failed to state a cause of action which fell within any of the statutory exceptions to Sovereign Immunity. The Court of Common Pleas sustained the Preliminary Objections and dismissed the Complaint. The Commonwealth Court affirmed and plaintiff appealed. The Supreme Court upheld the Commonwealth Court based on the reasonings cited above. Similarly, in the present case, plaintiff's suit against the administrators of SCI-Houtzdale should be dismissed because based on the holding in Moser defendant George Patrick, SCI-Houtzdale Superintendent, Henry Tatum, SCI Deputy Superintendent and David Perry, Business Manager had no direct involvement in plaintiff's injury.

C. Intentional Torts

In Counts IV and V of plaintiff's Complaint, plaintiff makes allegations of willful and malicious intent to harm plaintiff which involves an intentional tort.

The Commonwealth Court ruled that a claim involving intentional torts does not fall within any of the exceptions to Sovereign Immunity. Pa. C.S.A. § 8522 *et seq.* Faust v. Department of Revenue, 592 A.2d 835 (Pa. Cmwlth. 1991).

In enacting the Act of September 28, 1978, P.L. 788 (Act 152, as amended), the General Assembly of the Commonwealth of Pennsylvania determined that Sovereign Immunity was to remain the law in Pennsylvania with limited exceptions:

Pursuant to Section 11 of Article 1 of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth and its officials and employees acting within the scope of their duty shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity. 42 Pa. C.S.A. §2310.

A Commonwealth party is defined as a Commonwealth agency and any employee thereof, but only with respect to an action within the scope of his office or employment. 42 Pa. C.S.A. §8501. Pursuant to the provisions of 42 Pa. C.S.A. §8501, the defendants in the instant action are Commonwealth parties entitled to the protection of the Sovereign Immunity Act.

The Sovereign Immunity Act, 42 Pa. C.S.A. §8501, et seq. waived immunity for negligent acts or omissions occurring in nine specific categories. The nine categories for which immunity has been waived must be narrowly construed. Mascaro v. Youth Study Center, 514 Pa. 351, 523 A.2d 1118 (1997); Snyder v. Harmon, 522 Pa. 424 562 A.2d 307 (1989).

42 Pa. C.S.A. §8522(a) states that the Sovereign Immunity of a Commonwealth party is waived as a bar to an action against a Commonwealth party for damages arising out of a negligent act, where the damages would be recoverable under the common law or a statute creating a cause of action if the

injury were caused by a person not having available the defense of Sovereign Immunity.

Sovereign Immunity was not waived by the General Assembly for causes of action involving willful acts such as those alleged by the plaintiff to have occurred in the instant case. In the Report on Sovereign Immunity of the Joint State Government Commission of the General Assembly of the Commonwealth of Pennsylvania, the Commission in discussing areas of liability not waived stated:

In developing the eight previously discussed areas of liability in which waiver of Sovereign Immunity is proposed, the Task Force considered other areas of potential waiver and determined to retain Sovereign Immunity. In evaluating the areas rejected, the Task Force reviewed among other materials the statutory exceptions provided in other jurisdictions.

The Task Force specifically rejected waiving Sovereign Immunity for claims arising out of:

1. Intentional Torts such assault and battery, false imprisonment, false arrest, malicious prosecution, abuse of privacy, libel and slander, misrepresentation, deceit, interference with contract rights, fraud and invasion of privacy. The Report of the Joint State Government Commission on Sovereign Immunity (May 1978) at page 15. (Emphasis Added) (Attached hereto as Exhibit "B").

As the Commonwealth Court held in Yakowicz v. McDermott, 120 Pa. Cmwlth. 479, 458 A.2d 1330 (1988), when an action for defamation against an employee of a Commonwealth agency was barred:

We note that the immunity defense provided by the General Assembly to local agencies and their employees in 42 Pa. C.S.A. §8541-8564 is lost to local agency employees where their actions which cause injury constitute a crime, actual fraud, actual malice or willful misconduct. 42 Pa. C.S.A. §8550. This would permit a defamation action based on malicious publication to be brought against a local agency employee. See Malia v. Monchack, 116 Pa. Cmwlth. 484, 543 A.2d 184 (1988). The General Assembly has not included any such abrogation of the immunity provided to Commonwealth agency employees. 120 Pa. Cmwlth. at 488, n. 5, 548 A.2d at 1334, n. 5. (Emphasis Added)

In Faust v. Department of Revenue, 140 Pa. Cmwlth. 389, 592 A.2d 835 (1991), appeal denied, 607 A.2d 257 (1992), 42 Pa. C.S.A. §8522, the Commonwealth Court ruled that a claim involving intentional torts does not fall within any of the exceptions to Sovereign Immunity.

The Commonwealth Court held as follows:

Faust's next two contentions are that the state does not enjoy Sovereign Immunity when there is an alleged denial of a citizen's state constitutional rights and that individual state employees, acting within the course and scope of their employment, do not enjoy Sovereign Immunity for their intentional torts. However, it is well established that Sovereign Immunity is the law in Pennsylvania and is grounded in Article 1, Section 11 of the Pennsylvania Constitution. Citations omitted at 1 Pa. C.S.A. §2310. The Legislature provided that the Commonwealth and its officials acting within the scope of their duties enjoy sovereign and official immunity and are immune from suit except when and where the Legislature specifically provides otherwise.

At 42 Pa. C.S.A. §8522(b) the Legislature specifically waives Sovereign Immunity in nine areas. In the present case, Faust's action is against the state and its officials acting in their official capacity. Clearly, the defendant-appellees enjoy the immunity provided by one Pa. C.S.A. §2310. Further, intentional tort claims and civil rights actions are not within the narrow exceptions set forth at 42 Pa. C.S.A. §8522(b). 592 A.2d at 839 (Emphasis Added).

This reasoning was also followed in Holt v. Northwest Pennsylvania Training Partnership Consortium, Inc., 694 A.2d 1134 (Pa. Cmwlth. 1997), where the Commonwealth Court held that “an employee of the Commonwealth ... acting within the scope of his or her employment or duties is protected by Sovereign Immunity from the imposition of liability for intentional tort claims.” (694 A.2d at 1140).

The reasoning employed in the above cited cases applies to the instant matter and the law requires that the case at hand be dismissed with prejudice.

D. Negligent Investigation

Plaintiff’s allegations against all defendants named in the Complaint involve negligent investigation (Claims I – V).

Failure to investigate does not fall within the exceptions to Sovereign Immunity, Shakoor v. Commonwealth Department of Transportation, 440 A.2d 647 (Pa. Cmwlth. 1981).

In Shakoor, plaintiff was struck by an uninsured motorist’s vehicle which had been issued a registration sticker by PennDot despite the owner’s lack of insurance. Plaintiff filed suit against PennDot for failure to properly investigate the driver’s statement to verify the he was properly insured as required by law. Id. At 648.

The Commonwealth Court held that failure to investigate constituted negligent policies or activities and therefore did not fall within the exceptions to Sovereign Immunity. Id. at 6405.

This line of reasoning was followed in Nicholson v. M&S Detective Agency, Inc., 503 A.2d 1106 (Pa. Cmwlth. 1986). In Nicholson, a security guard at a bank hired by a detective agency committed a robbery. During the course of the robbery, the security guard threatened to murder a bank employee. The employee sued the State Police alleging that the State Police failed to report the security guard's extensive criminal record and, therefore, violated the Pennsylvania State Police statutory duty to assist private detective agencies by examining police records in order to prevent said agencies from hiring criminals. Id. at 1107.

Plaintiff alleged that the State Police's failure to use reasonable diligence in examining and investigating their records produced an erroneous report to the detective agency and thereby caused plaintiff's damages. Id. at 1107.

The Commonwealth Court held that although the statutory duty to assist the detective agency was violated, plaintiff's allegations for failing to properly investigate or use due diligence in submitting the erroneous report did not fall within any of the exceptions to Sovereign Immunity and plaintiff's case was dismissed. Id. at 1108. Similarly, in Geovannitti v. Commonwealth, Department of Transportation, 537 A.2d 966 (Pa. Cmwlth. 1988), plaintiff's case was also dismissed where plaintiff alleged PennDot's failure to revoke a defendant's driver's license, where the defendant suffered a heart attack while driving was the cause of the accident which killed plaintiff's wife and daughter. Plaintiff alleged PennDot was negligent in failing to investigate defendant's physical fitness when obtaining his driver's license. The Court held, citing to Shakoor

and Nicholson, that plaintiff failed to state a cause of action which fell within the exceptions to Sovereign Immunity. Id. at 575.

Based upon the above case law, plaintiff's allegations of failing to investigate, or use of due diligence to determine the correct circumstances of plaintiff's claim do not fall within any exceptions to Sovereign Immunity and plaintiff's Complaint should be dismissed with prejudice. In addition, case law holds that failure by a Commonwealth Agency to maintain accurate information in their records does not fall within the exceptions to Sovereign Immunity. Even where the inaccurate information is made available to third parties, this constitutes merely negligent regulation and policies which do not fall within the exceptions to Sovereign Immunity. Bufford v. Pennsylvania Department of Transportation, 670 A.2d 751 (Pa. Cmwlth. 1996). Therefore, any allegations made by plaintiff that the prison or its employees failed to keep an accurate record at plaintiff's request in order to end his cable services does not fall within the exceptions to Sovereign Immunity and plaintiff's claim should be dismissed as in Bufford.

E. Damages

Plaintiff's actual damage loss of \$10.00 per month from December 12, 2003 to July of 2004, *i.e.*, the present, would equal approximately \$190.00 (19 months x \$10.00). Even if interest were added, plaintiff's claim of \$20,000.00 in damages is without legal foundation.

If plaintiff is claiming punitive damages, said damages are not permitted under Sovereign Immunity. 1 Pa. C.S.A. § 2310; 42 C.S.A. § 8521.

If plaintiff is claiming pain and suffering, said damages require a physical injury which did not occur here and, therefore, cannot be recovered against the Commonwealth. Sinn v. Burd, 404 A.2d 672 (Pa. 1979).

Accordingly, plaintiff's damage claim for \$20,000 has no legal foundation and plaintiff's claim for \$190.00 plus interest does not fall within the jurisdictional damage amount of the cost of the Court of Common Pleas and should be dismissed for lack of jurisdiction. 42 Pa. C.S.A. § 7361

CONCLUSION

WHEREFORE, the Commonwealth defendants respectfully request this Honorable Court to grant its Preliminary Objections in the Nature of a Demurrer and dismiss plaintiff's Complaint with prejudice.

Respectfully submitted,

GERALD J. PAPPERT
Attorney General

BY:

A handwritten signature in black ink, appearing to read "William A. Dopierala", written over a horizontal line.

William A. Dopierala
Sr. Deputy Attorney General

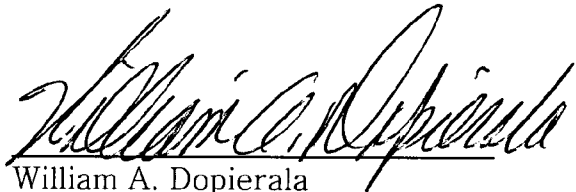
CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Defendant's Brief in Support of Preliminary Objections in the Nature of a Demurrer was served upon the following *pro se* plaintiff of record, via first-class mail, postage pre-paid on July 30, 2004:

Linus Owens, AM6079
SCI Houtzdale
P. O. Box 1000
Houtzdale, PA 16698-1000

GERALD J. PAPPERT
Attorney General

BY:


William A. Dopierala
Sr. Deputy Attorney General



August 12, 2004

Linus Owens
7180 Highland Drive, Bldg. #5
Pittsburgh, PA 15206

RE: Linus Owens
vs.
Pennsylvania Dept. of Corrections etal

Dear Mr. Owens:

Please be advised that your Petition to Proceed In Forma Pauperis in the above case has been denied by the Court.

You may proceed with this action by submitting your action along with the \$85.00 filing fee to this office.

According to the Rules of Civil Procedure, the Prothonotary's Office may strike your filing if payment is not received in full within ten (10) working days from the date of this letter.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Enclosures

August 27, 2004

Re: Linus Owens vs. Pennsylvania Department of Corrections et al
Case No. 04-941-CD

Dear Linus Owens:

Please be advised that the action you filed in the above matter has been stricken effective August 27, 2004. You may not proceed with this action without good cause from the court.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

CC: William Dopierala, Esq.
Court Administrator